

DÁIL ÉIREANN

AN COMHCHOISTE UM LEANAÍ, MÍCHUMAS, COMHIONANNAS AGUS LÁNPHÁIRTÍOCHT

JOINT COMMITTEE ON CHILDREN, DISABILITY, EQUALITY AND INTE- GRATION

Dé Máirt, 16 Feabhra 2021

Tuesday, 16 February 2021

Tháinig an Comhchoiste le chéile ag 4 p.m.

The Joint Committee met at 4 p.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	Seanadóirí / Senators
Patrick Costello,	Mary Fitzpatrick,
Cathal Crowe,	Alice-Mary Higgins,*
Alan Dillon,	Sharon Keogan,
Jennifer Murnane O'Connor,	Erin McGreehan,
Sean Sherlock,	Mary Seery Kearney.
Mark Ward,	
Jennifer Whitmore.	

* In éagmais / In the absence of Senator Lynn Ruane.

I láthair / In attendance: Deputy Thomas Pringle.

Teachta / Deputy Kathleen Funchion sa Chathaoir / in the Chair.

Business of Joint Committee

Chairman: We are in public session. Senator Higgins is substituting today for Senator Ruane, and we have no apologies.

Before we begin, I request that members sit only in the permitted seats and in front of available microphones to ensure they are heard. This is important as not doing so causes serious problems for broadcast, editorial and sound staff. I remind those present to please maintain social distancing at all times during and following the meeting. I ask those members participating remotely to keep their devices on mute until they are invited to speak. When speaking, I ask that cameras be switched on where possible and for members to be mindful that we are now in public session.

In addition, I remind members of the constitutional requirements regarding the necessity for members to be physically present within the confines of the place where Parliament has chosen to sit, namely, Leinster House, in order to participate in public meetings. I will not permit a member to participate where he or she is not adhering to this constitutional requirement. Therefore, any member who attempts to participate in this meeting from outside the precincts will be refused permission to do so.

Scrutiny of EU Legislative Proposals

Chairman: I turn now to matters of EU scrutiny. In regard to schedule B and COM(2020)621, the committee considered this proposal at its meeting on 2 February and agreed this proposal requires further scrutiny.

Report of the Commission of Investigation into Mother and Baby Homes: Engagement with the Minister for Children, Disability, Equality, Integration and Youth

Chairman: I welcome the Minister, Deputy O’Gorman, and his officials who are joining us today, Ms Laura McGarrigle, assistant secretary, Mr. James Gibb, principal officer and Ms Mary Rogerson, principal officer.

Before I invite the Minister to deliver his opening statement, I wish to advise him of the following in relation to parliamentary privilege. He is protected by absolute privilege regarding the presentation he makes to the committee. That means that he has an absolute defence against any defamation action for anything he says at the meeting. However, he is expected not to abuse the privilege and it is my duty, as Chair, to ensure it is not abused. Therefore, if his statements are potentially defamatory to any identifiable person or entity, he will be directed to discontinue his remarks and it is imperative that he comply with any such direction.

Our meeting this afternoon is to engage with the Minister regarding consideration of the report of the commission of investigation into mother and baby homes and matters raised in previous correspondence concerning the report and the destruction of records and audio files by the commission of investigation. I invite the Minister to now deliver his opening statement and that will be followed by a question and answer session with members. I will call on the members in the order in which they indicate, if they wish to start doing so now. I also remind

members that they have a full seven minutes for their contributions today, but I will have to cut everyone off at the end of that time. I call the Minister.

Minister for Children, Equality, Disability, Integration and Youth (Deputy Roderic O’Gorman): I thank the committee for the invitation to attend today’s meeting to discuss the report of the commission of investigation into mother and baby homes and certain related matters. The committee provided a comprehensive list of topics for discussion during today’s engagement. I will endeavour to address some of these matters in my opening statement, but we have a lengthy period of time today to discuss these issues in significant detail.

The Government published the commission’s report a month ago. It was followed by an immediate State apology from An Taoiseach for the wrongs that we as a nation visited on our most vulnerable citizens and that was an acknowledgement of the fault on the part of the State and its failings regarding these vulnerable citizens. I know and understand that many survivors have been disappointed and angered by the report, finding its tone and language cold and overly legalistic. I recognise that some of the conclusions, which were grounded in a legalistic approach and analysis of 1.3 million pages of evidence, can feel removed from the grief, the breach of human rights and the trauma of the lived experience of many former residents.

I recognise that, and I am committed to continuing engagement with survivors on ways in which we can bear witness to their experiences through future research and memorialisation. To that end, I am also clear that the report does not represent a conclusion. Rather, it represents the backdrop for the State’s apology to those who have suffered and it also represents a starting point from which we can seek to move forward and the State can seek to start rebuilding that relationship of trust so badly broken by the State’s failure. It is imperative that we build, without delay, on the spirit in which the apology was given and take action and make appropriate reparation. The Government has accepted the report’s recommendations and has responded with a commitment to develop a strategic action plan spanning 22 ambitious actions. Initial work is already under way on the action plan and across many of the actions.

Access to birth and early life information, including the birth certificate, is a fundamental issue and a top priority for me as Minister. My officials are working intensively with the Office of the Attorney General to advance information and tracing legislation, with a view to having the heads of Bill ready by March or early April. I look forward to engaging with the committee on this crucial legislation.

I have established the interdepartmental group on restorative recognition. This interdepartmental group has already held its first meeting on 4 February and it has been tasked with reporting back to me by the end of April. It has also been asked to develop detailed proposals for a restorative recognition scheme. The work of this interdepartmental group must take account of the specific groups identified by the commission, but importantly is not limited to those groups. Its work will be underpinned by a human rights focus and informed by strong stakeholder consultation and an understanding of criticisms made of previous schemes.

Restorative recognition encompasses more than just financial compensation. One strand of the scheme will involve the provision of an enhanced medical card similar to that provided for former residents of Magdalen laundries and the interdepartmental group proposal will also encompass this element. In the immediate term, counselling services are available for all former residents through the national counselling service in the HSE. This includes telephone and face-to-face counselling through an established nationwide network of counselling locations. Additional resources have been made available to the national counselling service to support

this commitment. Access will also be provided to a patient advocacy liaison support service. A targeted programme of health research will also be undertaken to assist and inform the development of future service provision for former residents, and preparatory work on this research study has begun.

I am also working to advance other actions committed to by Government. For example, my Department has appointed an archivist to lead the work on the preservation of, and public access to, the relevant records within my Department. My officials have also initiated work with the Department of Further and Higher Education, Research, Innovation and Science, and the Irish Research Council, IRC, on the creation of several scholarships in memory of the children who died in institutions. In collaboration with the IRC, we are funding a research project in the National University of Ireland Galway, NUIG, relating to terminology, representation and misrepresentation and this work will shortly commence.

The overarching theme for all this work is a commitment to progressing it in a survivor-centred manner, characterised by continuous engagement with former residents and their representative groups, as well as with survivors living around the world. This can only happen through an enhanced model of engagement, with the requisite scale to support the multiplicity of voices and perspectives in this space. I am committed to establishing such a model, following consultation. I met with the collaborative forum twice in the past two weeks, and this was one of the issues which we discussed.

Finally, I am conscious that one of the items referenced in the invitation for today's meeting was the deletion of audio recordings relating to the confidential committee of the commission and I note that I have written separately to the committee on this matter. I am sure we will discuss that issue further in the question and answer session. I look forward to further discussions today, especially concerning working with the committee in respect of implementing the significant 22 action points I referred to earlier, which I and this Government believe will make a significant and tangible difference to survivors.

Chairman: I thank the Minister. Our first speaker now is Deputy Dillon, and he will be followed by Deputy Sherlock.

Deputy Alan Dillon: I thank the Minister for appearing before the committee today and for his ongoing engagement on this matter and the important work we have ahead of us. Like many of the survivors and advocacy groups, I am deeply uncomfortable and disappointed with how the mother and baby homes report has been handled to date, both in terms of the lack of consultation with survivors and previously the rush to get the legislation through the House, the leaking of the report to the Sunday newspapers in advance of its publication and also the continuing issues relating to the access to records. Having spoken to the members of the Tuam Mother and Baby Home Alliance, I wish to raise their concerns that their voices are now being dismissed.

How does the Minister intend to recover the testimonial evidence? Are duplicates available? When was he aware that the tapes would be destroyed? Survivors indicate that they were not aware before, during or after their interviews that their recordings would be destroyed. They signed no paperwork to that effect.

There is obvious targeting of survivors by members of the legal profession. It is depressing to note that advertisements are being placed in newspapers inviting those affected to contact them. I have been contacted by Breeda Murphy, PRO of the Tuam Mother and Baby Home

Alliance. This practice is illegal. How does the Minister intend to challenge such behaviour? I ask him to discuss this with his Cabinet colleagues to ensure the practice is stamped out and survivors can get on with their lives.

Deputy Roderic O’Gorman: I thank the Deputy for his comments. I recognised during the discussion on the database legislation that I had not reached out enough to survivor groups prior to that. Following the passage of the legislation I met approximately 50 survivors via phone calls, which is a substantial number, during November and December and I continue to meet them.

In the context of the publication of the report, in the past two weeks I met twice with the collaborative forum, which is a body appointed to represent the diverse groups of survivors. We arranged to have two meetings because I understood that there would be a significant amount of material on which we would need to engage with them. I will meet other survivor groups in the future to discuss the various elements of the action plan. I am also aware that in the medium and long term there needs to be a better mechanism in place for engagement between survivors and the Government. We have committed to an enhanced model of stakeholder engagement. I made a suggestion to the collaborative forum. I am engaging with it in the first place as the body that is currently in place and following that engagement we will broaden the discussion. I am very much aware that the scale of the actions that have been set out by the Government needs some sort of external voice to ensure that I, successor Ministers or Ministers in other Departments are adhering to the commitments. That is very important. We do not have the mechanism to do that at the moment.

As regards the deletion of records, I became aware of the deletion of the taped testimonies of those who had given personal accounts before the confidential committee when I read the report. It was stated in one of the chapters that outlined how the commission functioned. There had been a reference in the debate in the Seanad to some deletion of tapes by one of the Senators who said it was stated clearly in the text of the report what the commission had done. In the report the commission indicated that it had done this in compliance with what it understood were its obligations under data protection law. I know that since the report has come out people who gave testimony before the confidential committee have argued that they did not understand it as the commission did. The commission circulated a document that stated it would seek permission to tape the personal accounts before the confidential committee. That document did not reference deletion. The commission has stated in all correspondence with me that it asked for consent for the deletion of these tapes. However, I acknowledge a number of survivors have come forward to say their consent was not sought. It is problematic when survivors say they are not being listened to. The Deputy raised the case of a survivor with whom I and the Department have engaged who says they are not being listened to.

In the context of what we can do next, I have outlined a range of actions in terms of the action plan but what is fundamental is to ensure that we can take what actions are possible, - as Minister and soon as data controller of the archive - that are within the power of the data controller. People have a range of rights under GDPR. One of those rights that I have mentioned on a number of occasions is a right to rectification, which is if a person feels there is incomplete information about him or her on a particular file, he or she can seek to have that rectified. In terms of the very significant responsibility that my Department will have as data controller, we have been looking into the right to rectification to see whether it provides a mechanism. The lived experience of survivors is crucial both in terms of what is in the archive, but also how we as a country remember what happened in these institutions. I also believe that in the context

of the national records and memorial centre there is a very real capacity to use the personal accounts of those who gave them to the confidential committee but also the much wider range of survivors because, as we know, 550 gave their personal accounts before the confidential committee but there is a much bigger number overall and I believe we can use them as part of the response.

Deputy Sean Sherlock: I acknowledge the statement of Councillor Mary Linehan Foley, Mayor of Cork. I wish to quote from the statement she issued last week.

As many will be aware, I am the child of a mother and baby home. I was born in Bessborough Mother and Baby Home. This is a fact I never shied away from. I have come to know my birth mother and consider myself to be very fortunate. But I know there are many who have not been so fortunate.

She goes on to say:

It's almost a contradiction for me to issue an apology on behalf of an organisation that I was myself a survivor of; and now a member of. But I want all survivors to know that I mean this truly and sincerely. I know that while these actions took place in the not too distant past, as a society we have transformed entirely. But we must never forget the part we played in this painful past, never forget what happened and ensure it never happens again.

I want to acknowledge her words because it is important to listen to somebody who is a public representative who was born in a home. She wants a process and wants us to move on, but the process must be a robust one. That is the reason we are here today.

My first question for the Minister is a technical one. Are the minutes of the collaborative forum recorded? "Yes" or "No".

Deputy Roderic O'Gorman: I have attended two meetings with the collaborative forum. The minutes of the two meetings will be recorded and will be provided.

Deputy Sean Sherlock: The second question relates to narrative. The Minister, I think it is fair to say, has described the language of the executive summary as being cold. In the absence of us having recourse to questioning the members of the commission - they have refused invitations to be here and I am not going to pass judgment on that - the Minister is the person in the firing line for questions on the narrative. The process of correcting the narrative has yet to be fleshed out. If I understood him correctly, what he is saying is that through the interdepartmental process that he is going to seek some mechanism that he has called a right to rectification. I would like to know the following, in very simple terms. Will he consult with external bodies, such as the Collaborative Forum on Mother and Baby Homes, about what that will mean in real terms for people like the following? Today, I spoke to a lady that I will call Mary. She said to me that she gave evidence to the commission, not the confidential committee. She said that she did receive her transcript. She said it was reflected in report but she tells me that there were inaccuracies. Normally, politicians are good judges of character and when I spoke to this person today I knew well within a minute or two that this was a reasonable, rational person who, crucially, did not give evidence to the confidential committee, she gave it to the commission but there are inaccuracies. No matter how small or big those inaccuracies are, they are inaccuracies. What can I tell this person in respect of a process that the Minister will now create in the absence of, we assume, the commission not being reconstituted again although we would support calls for that? What process can that person rely upon now to ensure that her story is accurately reflected in this report?

The Minister, dare I say it, has to give a simple, clear answer in respect to the right of rectification. Will there be a restorative process? Will he open up a whole chapter again in respect of people such as I have described? There are many of them out there, we all have testimony of it and the Minister has acknowledged those people and the fact that there has been no correct interpretation of what they said to the confidential committee and the commission. What will the Minister do to ensure that the narrative is corrected for people? We cannot talk about burials legislation, and information and tracing, until there is confidence that the narrative has been corrected.

Chairman: There are only two minutes remaining.

Deputy Roderic O’Gorman: I will do my best to provide as clear an answer as possible. On a point of clarity, the interdepartmental group, IDG, is not related to the right to rectification. That is dealing with restorative recognition, the financial payments.

As regards the immediate avenues for the individual who contacted the Deputy, the commission’s archive will move over to my Department fully by 28 February, as we know, the general data protection regulation, GDPR, applies to that. Any individual who believes that they have personal information within the archive is entitled to rely on all of the rights of GDPR, including the right to rectification. That person can then contact the information management unit that my Department has set up specifically to deal with the subject access requests, ask for the information and if they feel there are inaccuracies then look at the use of rectification, or other rights within GDPR to rectify the specific issues as regards their particular personal account.

Deputy Sean Sherlock: If material has been destroyed, how does the Minister reconcile what he has just said with that fact?

What will be the entire cost of this process in terms of a compensatory process, building out a package with access to medical cards, counselling, healthcare and so on? What is the indicative budget for this entire process, as we stand?

Chairman: We might need the Minister to come back at the end on some points that he does not get to cover. Each person has seven minutes but there will be some time for him at the end as well. Is that okay?

Deputy Roderic O’Gorman: Yes. Do I have time to answer now?

Chairman: I can give the Minister one minute.

Deputy Roderic O’Gorman: On the first point, my understanding is that the treatment of sworn evidential testimony is different from the treatment of the personal accounts given before the confidential committee and, I think, Deputy Sherlock said that the lady he was speaking to was in the former category.

As regards the second question, which is a vital but much bigger question as regards the cost of the overall set of measures, those are being worked out by the interdepartmental group at the moment. Those figures are being adjusted and that is part of the work of the interdepartmental group. As I have said before, it has been given a very tight timeframe to get back because I am aware that I want to provide these benefits to survivors as quickly as possible.

Chairman: I call Deputy Whitmore who will be followed by Senator Seery Kearney.

Deputy Jennifer Whitmore: I thank the Minister for coming in today. I know he is in a

difficult position because he is answering questions on behalf of the commission. That is unfortunate because my preference would have been that we could have put our questions to the commission. They has declined to come in and in their absence I will put some questions to the Minister on the work that was undertaken.

The commission's report specifically states that 550 witnesses were asked for permission to record their evidence and then all such recordings were destroyed. Section 43 of the Commissions of Investigation Act 2004 says: "all evidence received by and all documents created by or for the commission" have to transfer over to the Minister. We are in a situation where there was evidence recorded. The Commission states that consent was given. There is no record of that consent and some survivors are saying that they did not give that consent. So there is no evidence of such consent being given. With the information that we know now, does the Minister believe that the commission was within its legal remit to destroy this data? Has he sought legal advice on that?

Deputy Roderic O'Gorman: In terms of answering for the commission, the Deputy has recognised that I am not the commission, which is an independent body. If the Deputy does not mind, the use of the word "evidence" in terms of the personal accounts-----

Deputy Jennifer Whitmore: That is what it is.

Deputy Roderic O'Gorman: In my mind, I separate evidence in terms of the sworn testimony given before the commission with the confidential accounts given before the confidential committee.

Deputy Jennifer Whitmore: In terms of the confidential commission's report, the commission stated that witnesses were asked for permission to record their evidence, and they went on to say, on the clear understanding that recordings would be used only as an aide-memoire but they did state "evidence".

Deputy Roderic O'Gorman: In terms of my engagement with the commission on this point, because I think that might be useful, when the commission stated, when the issue of the-----

Deputy Jennifer Whitmore: I am concerned about the time. Does the Minister believe that the commission was within its legal remit to destroy that documentation or those testimonies?

Deputy Roderic O'Gorman: In all its communications with me the commission have outlined what they believe are its rights and responsibilities. In the context of GDPR and data protection, it has said that it has acted in good faith in terms of what they did. I am aware that there are survivors who have stated that there is an issue around whether they were asked, in particular, for consent.

Deputy Jennifer Whitmore: What is the Minister's opinion? Does he believe the commission acted within the remit of the law when they destroyed those files?

Deputy Roderic O'Gorman: It is difficult, again in the context of an independent commission, for me to make a judgment without having had the benefit of the sense of what the commission did in each individual situation.

Deputy Jennifer Whitmore: I will change tack. Has the Minister sought legal advice as to

whether the commission was correct or within its legal rights to destroy that data?

Deputy Roderic O’Gorman: I have engaged with the Attorney General on what the commission did with the tapes. We are still going back and forth on that issue and we will continue to engage on it.

Deputy Jennifer Whitmore: Discussions are still happening and there are still some investigations taking place on the Minister’s behalf. Someone is looking into this and gathering information on this matter. It is clear that this is a very time-limited and time-sensitive situation, as the commission will be dissolved in a few weeks’ time. The Minister is still trying to establish the legality or illegality of its action. The survivors have said they did not give consent and many have gone to the Garda and the Data Protection Commission, DPC, about this. There is an obvious need to provide time to allow survivors to get answers to these questions and to allow for any examination or investigations to take place. I have asked this of the Minister before now but things have moved quite quickly in this regard. Will he please consider extending the term of the commission? The commission previously sought to extend the time provided for the provision of its reports and that time was granted because the commission sought it. The Government has extended the timeframe for which the commission was operational because the commission and the Government wanted it. This time, the survivors want more time. Will the Minister please extend the commission’s remit by one year to allow his questions and the questions of the Attorney General, the DPC, the Garda and survivors to be answered?

Deputy Roderic O’Gorman: In considering that point, I and the Government need to take account of a range of factors that would result from any decision to extend the commission’s lifespan. The biggest concern for me is the transfer of the archive to my Department. I have set out on a number of occasions how my Department has undertaken a very significant amount of work to prepare for the transfer of the archive, in order that we can properly address the subject access requests that we are going to get and provide significant personal information to people who have personal information within the archive. We all regard that as a positive step. One of the considerations we have to look at is that, if the commission’s lifespan is extended for the purposes of an investigation by the DPC or other bodies, in order to be able to answer that investigation the commission would have to have its archive because the DPC and other bodies would be looking at the material contained within the archive.

Deputy Jennifer Whitmore: The material has been destroyed, so no matter what the DPC looks into, it will not be able to find the information. That is unless it is on a computer somewhere and the Minister has already sought that information. This is the problem. The Minister stated that this did not represent a conclusion but it will represent a conclusion because once the commission is dissolved, there will be no answers for people. This will just be swept under the carpet again and we cannot allow that to happen.

Deputy Roderic O’Gorman: Again, in the context of an investigation that might take place, in order for the commission to be able to respond to that investigation it would need access to the entirety of its files to be able to provide the sort of detailed responses needed. If that were the case and it still had access to its files, we would not have provided the archive and the commission would still be holding on to all the personal information. As we know, the commission has not undertaken subject access requests, SARs, up to this point. We are first looking to ensure survivors can get access to their personal information, which I am committed to doing in the context of the information management unit set up by my Department. In the context of the audio material being destroyed, we are also looking to provide a right to rectification and, again, my Department has put some time into ascertaining how that could happen. We can get a better

outcome for survivors in the context of access to information and potential use of rectification in a GDPR compliant way.

Chairman: We have gone over time-----

Deputy Jennifer Whitmore: With that approach there would be no accountability and we have to move past the point where we allow things like this to happen with no accountability. That is the problem. Survivors want justice, they want to be heard, and they need to see accountability with this, as do we all. The commission has already duplicated those files and the Department is getting the duplicates of all the data. Let it do that again but the commission-----

Chairman: We have to move on.

Deputy Roderic O’Gorman: That is just one part of the archive.

Chairman: I hate to intervene. This an important point and I hate to have to do this but we have gone over time. I call Senator Seery Kearney.

Senator Mary Seery Kearney: I thank the Minister for being here. I find it hard to fathom how the commission of investigation arrived at some of the statements and findings of fact that it did, as well as the language it used. Given the commission members’ qualifications, experience and knowledge, I cannot comprehend how they made some of their statements at all and in some cases without qualifying or contextualising them. I equally do not understand their methodology. I have conducted numerous investigations over the last number of years and I always have a methodology that requires verification by contributors of their statements before I can make findings of fact out of them. We are dealing today with the destruction of the audio recordings. I completely understand deleting the audio recordings where there is a transcript but in the absence of that, which is the purpose of making the recording, I do not understand how that has come about. I acknowledge that I heard about this during the Seanad debate on this matter and it did register with me. Additional hurt has been caused and I acknowledge that. It is unfathomable that the commission members were not minded to the implications of what they did.

There have been calls to extend the life of the commission in order that we can have accountability for the anomalies and the, at times, downright hurtful absurdities involved. As desirable as that is, I am not confident that it is the way forward. One of the big concerns is that we might go to all the trouble of extending the life of the commission and then the members could just resign. We would then have an empty commission with no way of questioning and no method around it. It is an independent statutory body of finite duration. It made flawed or very weak findings of fact when stronger findings could have been made and there are mistakes that clearly need to be rectified. Should we return to it or run it all over again? That would cause significant delay in the release of information, access to information and the Department’s control of that information and anything like that would not be acceptable. If the report were amended or we were to run it again and have it say the things I believe it should say and make the suggestions it could make, the key question is whether that would alter how the Minister and the Government responded. There are 22 action points. If we had a different report that drew absolute conclusions, as people would want it to and as could have been drawn, would that have strengthened the response or changed how the Government is responding to it? I am hoping to hear that it would not. The Government has been in a process of listening to survivors and their families and has taken part in the collaborative forum so in that context, the response the Government has given has been the strongest one possible.

We then come down to a number of key questions. How will we ensure that justice is seen to be done by the Government as regards telling people's stories, getting them on the record and being heard? How will the State validate that? That needs to be done in an official manner whereby we listen to and archive the stories and make them available to the public. We must validate that by our actions in order that we have the opportunity to call out the humanity, show leadership and facilitate a healing of sorts. When will we have the legislation on access to information and tracing? What sort of timeline is there around that? What timelines are in place as regards recognition, tax relief on inheritance, care packages and supports? That would give reassurance that we are progressing with the matters over which the State has control. What progress has the Government made with the institutions and seeking contributions from the religious orders? We also discussed the Minister contacting GlaxoSmithKline. Where are we at in that regard? On the matter of the audio tapes, what actions can we take to ensure that the contributors, not only to the confidential committee but wider than that, will have the opportunity to have their stories told and on the record of the State? I would appreciate answers to those questions.

Deputy Roderic O’Gorman: I thank the Senator for the questions. Like her, I acknowledge the additional hurt and anger that these actions have caused to survivors. In terms of the actions that I, as Minister, and the Government might take now, foremost in my mind is how we can most benefit survivors. I believe we can do that through the provision of a well-resourced unit that can give them the access to the information many of them have sought for decades and in the context of answering subject access requests, SARs, in a manner that is compatible with GDPR, aligned with the potential rectification elements that we can apply as well. That is crucial to giving survivors information that we do not have. It is key. We will provide from the archive information that they do not have and we will buttress that for groups of people outside of this particular group of survivors through the information and tracing legislation. I discussed this a number of times during the debate on the database legislation. We now have a commitment to heads of Bill being available by March or early April. Regarding the scale of that legislation, that is an extremely tight timeline, but we have put in additional resources with the support of the Attorney General’s office. We have external counsel working on that legislation. Once the heads are ready, we can bring to this committee for extensive debate. Central to my approach to that is the right of an individual to access personal information, including birth certificates and early life information. That is the position of Government on this particular issue. It is a GDPR-centred approach, not an approach anchored in previous drafts of legislation in this particular area.

The Senator referenced engagement with the congregations. I have written to them and there are a number of meetings with some of the congregations in place. She also referenced GlaxoSmithKline. I will write to the company and ask that it reflect on the chapter on vaccination and the lack of an ethical framework and its breach of the regulatory framework in terms of how vaccination trials took place. I hope it will respond on that question. I have the ability to do that because of the content of the report. I can speak to the religious organisations and ask them to contribute to restorative recognition because we have the evidence from the report that 9,000 babies and children died in the institutions that they were running. We have clear evidence that GlaxoSmithKline breached ethical and regulatory standards. There are very legitimate criticisms of language that have been put forward, particularly about the executive summary and also other parts of the report, but the report gives the Government the basis upon which many of the 22 action points can be advanced.

Deputy Mark Ward: I thank the Minister for attending. I have two questions for him now

and I may come in again later if there is an opportunity to do so.

The commission of investigation terms of reference required it to establish a confidential committee to provide a forum for people who were formerly resident in the institutions under investigation or who worked in these institutions during a relevant period to provide accounts of their experience in these institutions, in writing or orally, as informally as possible given the circumstances. The Clann Project and others have argued that the destruction of the audio files is, as already mentioned, a breach of the Data Protection Act 2018 and section 31 of the Commissions of Investigation Act 2004, which states that it is an offence for a person to destroy information in any form relating to matters within a commission's terms of reference before it is dissolved. This commission is not dissolved yet. We have heard from witnesses that the report does not reflect the severity of their experiences and that it is not an adequate record of the testimonies they provided. More than 550 witnesses gave evidence to the confidential committee. The Minister has defended the commission's decision to destroy the audio files on the basis that it was done to protect people who wanted to speak in confidence to the inquiry. My questions follow on from Deputy Whitmore's questions. When did the Minister seek the advice of the Attorney General on this matter in terms of the commission's responsibility under the Data Protection Act 2018 and Commissions of Investigation Act 2004? Did he do so before or after the audio files were destroyed?

My next question relates to a matter that comes within the remit of the Minister's Department. On page 11 of the report of the confidential committee, it is stated that an electronic repository of information was set up to record the information provided by witnesses to the confidential committee. This repository contains the application form of the witness and the account of the experience described by the witness to the committee. The commission proposes to redact the names and other identifying information before submitting this repository as part of the commission's archives to the Minister. Unless the witnesses wants his or her name retained, the person's full story is retained in this process. Only a full transcript of each person's oral evidence, anonymised where instructed, can meet the threshold of retaining the person's full story in the confidential committee process. Can the Minister confirm whether a full transcript of each individual's oral evidence to the confidential committee was retained and submitted within the electronic repository of information submitted to his Department?

Deputy Roderic O'Gorman: I thank the Deputy for the questions. On the second question dealing with the issues covered in the database legislation passed by the Oireachtas last year, my understanding is that the documents that are referred to and protected under that legislation are summaries undertaken by those who were listening to the personal accounts before the confidential committee. They are summaries of the individual personal accounts given by the 550 people who appeared before the confidential committee. My understanding is that they are not a verbatim text of those meetings; they are a summary document. That is my understanding of what is provided for and protected under the database legislation.

In regard to my engagement with the Attorney General on this issue, I do not have the specific date but two or three weeks ago I wrote to the Attorney General in the context of concerns that were being raised as regards the confidential committee and the status of the commission of investigation. As well as my engagement with the Attorney General, I have engaged extensively with the Data Protection Commissioner to get an understanding of concerns that she had raised and on working with the Data Protection Commission to ensure that when the archive transfers to my Department its procedures are GDPR compliant. My officials and I met with the Data Protection Commissioner a number of weeks ago to address issues around GDPR

compliance in my Department going forward. That is important. I am very conscious of the need, once the archive transfers to my Department, to answer the subject access requests from survivors in a way that is GDPR compliant.

Deputy Mark Ward: To return to my point regarding page 11 of the confidential committee report, it states that the person's full story is retained in the electronic repository on transfer to the Department. When was the decision made to summarise the personal testimonies provided orally rather than record them verbatim? The testimonies and oral transcripts were not done verbatim - the Minister used that word. When was that decision made? Why was the decision made at that stage? I do not understand why these important testimonies from witnesses were summarised. Who made that decision? What right had anyone to summarise another person's lived experience in the mother and baby homes? I would be interested to find out the answer to that.

Deputy Roderic O'Gorman: I cannot tell the Deputy because all the operational elements of the commission are a matter for the commission. Neither me nor my predecessor could answer because all of those decisions on how the commission would operate were taken some years ago around the time of its establishment, I imagine. They would not have been shared with the Department or with my predecessor. That is the manner in which a commission of investigation operates. It is set up as an independent body and is given in its terms of reference the power to apply its own internal workings.

Deputy Mark Ward: The Minister has no recollection. The reports the Minister has are summaries and not verbatim or full testimonies of the oral hearings. I believe that, in respect of what was said already and the dissolution of the commission, we need to resolve some of these matters at this time. These are the questions people are getting in touch with us about. They do not believe their testimonies have been reflected in the report. The absence of something verbatim or a full transcript of oral testimony amounts to a big gap in the report. It is something I will follow up on.

Deputy Roderic O'Gorman: I believe potentially the right to rectification gives us an element to address this in the context of what is in the archive. I have set out in my reply to other Deputies how the wider story of what happened in these institutions can be reflected in the memorial and records centre as well as other actions the Government is taking to ensure the real stories of people who were in these institutions get heard. I imagine the Deputy will agree that is the most powerful element of the report.

Deputy Jennifer Murnane O'Connor: I thank the Minister and I welcome him. All of us have many questions to ask. I have been contacted by survivors in recent days looking for the commission to be extended because of all the unanswered questions. I thought what one particular survivor wrote was really sad. She said she was tired and she wanted her history. I thought she deserved that.

Why were only 18 institutions covered by the commission's terms of reference? The commission had five years. The term was extended up to five years. We all know there are county homes in our areas, including Carlow, in respect of which questions need to be answered. It reminds me how if someone hands another person a book, the book is only half a book rather than a full book. That is a major concern.

I understand the commission is an independent body. However, I was disappointed that two members of the commission refused to attend our meeting. I have concerns about that. It is

important that we get all our answers.

What efforts were made to trace and interview survivors in America, the UK and other countries? We have a vast number of questions. I have been asked that several times recently.

Other issues jump out at me. Why did the commission recommend redress be given only to those who had spent more than six months in the mother and baby homes and only up to 1973? We cannot have limits if we are to offer redress.

I have another question on unauthorised adoptions. I have spoken with survivors who were wrapped in blankets, handed to an attendant on an airplane and flown 7,000 miles to be given away to a new family. There were no paperwork or records. We know that thousands of children were adopted in the USA without legal paperwork in the middle part of the previous century. Why was this missing? Why was even part of that not in the commission report?

I have concerns that there is no recommendation in the report that would honour the UN Convention on the Rights of the Child. Every child should have, as far as possible, the right from birth to know his or her parents and to preserve his or her own identify, including nationality, name and family relations. To me, that is so important.

I welcome that we are bringing in legislation. I believe it is important to ensure that legal and illegal adoptions can be traced. This is a major issue and we have to get this right.

I wish to comment on one of the major questions I have been asking and everyone has been asking the same question today. In October, we had a major vote on the mother and baby homes to protect files. We were there to protect them, yet today we are being told that in the report from the commission information and recordings were destroyed. Can the Minister explain what exactly we voted for in October when we voted to protect information on the mother and baby homes? There has been confusion about this. These questions need to be answered. I call on him to come back to me on them.

Deputy Roderic O’Gorman: I hear what the Deputy is saying about the constituent she spoke to who wants her history. I believe that the information and tracing legislation we have committed to providing at rapid pace is the key element in giving people their history and in answering for so many people the questions of their birth, parents and early life information. That is why the information and tracing legislation is central to the Government’s response to the commission. I believe by doing that we will meet the requirement of the UN Convention on the Rights of the Child to which the Deputy referred.

Like her, I was not in the House when the terms of reference of the commission were set out. I understand that originally the commission related to the 14 mother and baby homes and four county homes that were picked. I gather they were picked because they were the homes where it was believed the greatest number of full records and files were available. One issue we have been clear about in our response and in the consideration of the interdepartmental group is that all survivors of county homes are considered to part of what the Government is responding to. This ties in to the second point made by the Deputy about the start of recognition and her concerns about the 1973 cut-off point. The Government took an important decision when it set out the action points. The decision was that the interdepartmental group would not be limited to simply looking at the three categories that the commission set out. It can recommend the provision of redress for a wider category. We recognised that concern held by the Deputy about the use of that arbitrary cut-off time.

Another important point relates to what we voted to protect last year. When the commission wrote to my predecessor in January, it proposed to delete the database that links mothers and their children. We voted to protect that database and the related records. When SARs come to my Department, in less than one month the officials in my Department will be able to use that database to provide information for people who have been denied information up to this point. I believe that is significant.

Deputy Jennifer Murnane O'Connor: I thank to the Minister. That is helpful information. What about the efforts with survivors in America, the UK and other countries? That is important. I have been contacted by survivors. I believe they feel they have been forgotten. This has to be survivor-led. I know the Minister understands that. We have to ensure that the survivors are heard. They have gone through enough hurt and pain and we cannot allow this again. I call on him to give a guarantee that this will never happen to the survivors again. We cannot leave them again. They are so vulnerable and have gone through so much.

Deputy Roderic O'Gorman: I am very much aware of the needs of survivors who are living outside the country. Some moved subsequently and some are out of the country as a result of the adoption practices that the Deputy described. Some of these groups are represented on the collaborative forum. At our latest meeting, we specifically discussed issues with regard to survivors living outside the country. I will continue to engage. I have committed to meeting groups from the UK and the USA to engage with them and get a sense from them of how the Government can better support them.

Senator Erin McGreehan: Many of us present, including the Minister, have stated that the report is imperfect. He said as much to us in the Seanad and said it again here. We are all disappointed with the contradictions. The executive summary does not relate to the testimony in a way. It is cold, as the Minister rightly said. This is an independent report, not a Government or Oireachtas report, but the Oireachtas now has responsibility to deal with it. Is there a way that we as a Government and the Department can make an official statement about the executive summary stating that we accept the veracity of those testimonies and to give some solace to the women after the fact? Nobody expected the report to give justice. Justice will come in many different ways and justice for one survivor is not justice for other survivors.

Is there a structured mechanism to take in considerations of groups that are not part of the collaborative forum and to move to next steps, redress and all those recommendations? Many groups choose not to be part of the collaborative forum.

Is there a way that we can help and support women who had intellectual disabilities who had children in those mother and baby homes and still survive to this day? Can an independent advocate be appointed?

My priority now, and the Minister has referred to this on several occasions, is the Act. We are disappointed about the destruction of the tapes. I would be interested to hear the opinion of the Attorney General on that. We are not going to find out the methodology behind the report but let us look to the future and see how we can help these women. The survivors are here and we need to act. I would appreciate if we could start now and get the institutional burials legislation and the adoption legislation passed. I reiterate how glad I am that we passed that legislation last year. If we did not, it would be an entirely different conversation today. We would have a blank database and the adoption and tracing legislation would be much more difficult. It was difficult when some members of the committee voted against the protection of that database.

What have we been doing in the past while to move forward with recommendations and even to go beyond the recommendations and have a proper holistic approach to taking care of the needs of these women, survivors and adoptees? What is being done to make sure that we hold up this period of our past and say that this will not be done again and that we cannot let it happen again? What is being done so that we stand not in front of or behind the survivors but beside them to say that this is about them and their memorial? How has the Department moved forward with that? That is the priority and time is of the essence.

Deputy Roderic O’Gorman: The Senator is correct that time is of the essence. It is something that survivors have brought home to me with regard to being able to avail of the enhanced medical card or any sort of recognition scheme, and also the time to get the information that will be so valuable to them, which is why we all need to work swiftly together. I want to work with this committee on the information and tracing legislation. I have set out the timeframe for that. There will be much work for all of us when that comes up for pre-legislative scrutiny. The institutional burials Bill is coming before the committee soon. I look forward to seeing what members have to say on that and I take an open mind to improving that Bill on foot of the pre-legislative scrutiny.

The collaborative forum was picked by a good process to ensure that a wide range of interests was represented, but I think it would note itself that it does not represent everybody. I have tried to engage with as many groups as I can but there is a limit to my ability to meet people because we know that there are so many groups in this sphere. One proposal that I have spoken about, which is listed in the 22 action points, is the idea of a new method of stakeholder engagement in order that there is a better, resourced focal point for engagement between all the survivor groups and Government.

I had the experience of meeting 40 or 50 survivors in November and December, which was incredibly good, and they taught me so much. Doing that on a sustained basis to know it has been done regularly and to keep tabs on Government to ensure that all 22 action points are being put in place requires something more structured and organised. We have an idea about that in the Department but we will not have a monopoly on this issue and we are engaging with the collaborative forum on it. The Senator spoke about the idea of an independent advocate for one group of survivors. Perhaps there will be an advocate for a wider group of survivors, going beyond just women with an intellectual disability, as the Senator highlighted.

Chairman: Senator Higgins is attending remotely. I ask her to confirm that she is in Leinster House.

Senator Alice-Mary Higgins: I am in Leinster House. I am substituting for Senator Lynn Ruane. The Minister will be aware from debates in the Seanad that Senator Ruane and I have strong concerns about the method of operation of the commission and especially about the confidential committee. I want to focus on two sets of concerns.

The Minister mentioned in his statement that he has no role or knowledge of the operational decisions taken by the commission. Does he expect that when these documents and the archive are transferred to him that he will, at that point, have knowledge of the operational decisions taken by the commission? Will he be given the answers or information that he needs about the processes employed by the commission in its work? I say that in the context of the serious concerns about the confidential committee and the actions and decisions it took, which may be in breach of section 31 of the 2004 Act. The 2015 statutory instrument that established the commission explicitly stated that the confidential commission should provide in its procedures for

individuals who wish to have their identity remain confidential during the conduct of the commission. The commission should provide for a consent-based exception for those who wished confidentiality rather than having the imposition of privacy, which seems to have been the practice. In that context, will the Minister get the information that he needs? Is he confident about that? Will the Data Protection Commission get the answers that it needs about the processes?

I have mentioned the statutory instrument and the 2004 Act. The most crucial aspect of EU law and the GDPR is the right to consent in processing. Deletion is one of the strongest forms of processing in GDPR. The right to rectification is also crucial, as others on the committee have highlighted. Does the Data Protection Commission have the answers it needs from the commission of investigation? Does the Minister or will the Minister have the information that he needs from the commission? If he is not confident that he will have all of that information, does he not think that we may need to extend the terms so that the commission can be extended and be available to give that information as it might be required?

To follow on from Deputy Whitmore's point, he is in many cases receiving duplicates of at least half the files, which may not perhaps have been protected by him except for the changes that we made to the legislation. Could he not still get copies of the archive and maintain the commission for a period so that it is available to answer these important questions?

Deputy Roderic O’Gorman: I thank the Senator. She has flagged up the concerns about the operation of the confidential committee and my own reflection, having looked at the report, is that there are questions about the appropriateness of trying to accommodate an investigative, judicial process and a truth-telling process in one inquiry. The difficulties of that have become apparent.

The Senator asked about details of the transfer of the archive of the commission. We will be receiving all information, including information on all of its administrative processes. All of that will be transferring to me, as part of the commission's archive. I hope that the extent of that information will be such that it will be able to provide me and my officials with a full account of the actions that were taken by the commission.

The commission of investigation and the Data Protection Commissioner have been engaged in correspondence as regards the procedures undertaken by the commission. I know that within that correspondence, and in the commission's correspondence with the committee, it has sought to draw attention to the fact that it believes its processes have been legitimate. I have written to the commission to urge it to engage as fully as possible with the Data Protection Commissioner because I am conscious that it is important that clarity is provided on the various processes that were undertaken by the confidential committee. As I said when I met the Senator on this issue, I have also engaged directly and met with the Data Protection Commissioner to reassure her that we were urging the commission to engage fully with her office and also in the context of ensuring that the actions we take when the archive transfers to the Department at the end of the month are conducted fully in compliance with the general data protection regulation, GDPR.

Senator Alice-Mary Higgins: I will follow up on that because the role of the Data Protection Commission is not simply advisory. There is a legal responsibility and potential legal investigation. Section 45 of the 2004 Act states that if a tribunal is established to inquire into a matter that was within the commission's terms of reference, all evidence received by and all documents created by or for the commission should be made available to it either by the specified Minister, who would be this Minister, Deputy O’Gorman, if the commission has been dissolved, or by the commission if it is not already dissolved. It seems that the Act envisaged a

situation in which a tribunal was to take place and a commission had not been dissolved. I am conscious of the investigations and tribunals we may well need regarding vaccinations, forced and unauthorised adoptions, and potential criminal or legal investigations. Will the commissioners be available? Will those who were involved, for example, in the tasks of the confidential committee and the summarising of testimonies be available? Will the hard materials, the hard drives and electronic devices used, be available to the Minister if he has to give them to a future tribunal, or indeed if he has to provide them in respect of a criminal investigation or a statutory investigation by the Data Protection Commissioner? I ask those questions because those are crucial issues and the Minister might answer them. We will have opportunities to engage in the future on the information and tracing legislation.

I will also mention the redress scheme. This points again to the fact that there must be no waivers or gagging orders.

Chairman: The Senator's time is up and I cannot let the Minister back in because others here have not yet had the opportunity to speak.

Deputy Roderic O'Gorman: The Senator raised one important point about what comes over to my Department that I might address at the end.

Senator Mary Fitzpatrick: Would the Minister like to use my first minute to answer that question because we all want to hear an answer?

Deputy Roderic O'Gorman: I thank the Senator. To respond to Senator Higgins on her question about the availability of the hard drives and everything, the full server is being transferred to the Department so my understanding is that all the electronic information will be transferred as part of the archive and will lie within the archive. I cannot speak to the availability of the members of the commission or staff in the future but my understanding is that the archive will be complete and will contain that electronic information.

Senator Mary Fitzpatrick: I thank the Minister for that, for coming before the committee and for the work that he and his Department are doing. The report from the commission was always destined to disappoint and has caused more upset and hurt than anybody would ever have wanted or intended. It has also caused a lot of anger. Its failure in tone, as the Minister has articulated, and failure to recognise basic human rights are what we have all found most objectionable on behalf of the survivors. That is why we are all struggling with this and opposed to the acceptance of the report.

I take the Minister's point that there is value in the fact that the report provides evidence upon which the Government can act and upon which it has made 22 recommendations. I accept and recognise that value and we all need to try to salvage something from this for the survivors.

We voted to protect the database and the records so that they could be transferred to the Minister's Department. My colleagues and I would like to see that done as soon as possible. Our only objective in wishing that to be promptly addressed is to allow survivors access to their own information so they can, hopefully, begin to reclaim their identities and begin to achieve some healing.

We wanted the State apology which was provided by the Taoiseach but the job now is about trying to deliver some justice. The Minister has spoken about some of the actions that have already been taken. Other speakers have alluded to the fact that the commission is being dissolved and its members are going to somehow disappear and not be available. We invited

them to come to the committee in a constructive way because we wanted to progress the issues and had serious questions about the report on behalf of survivors. It is hugely frustrating and disappointing that they did not come before and engage with the committee. We would ask the Minister, in his communication with the members of the commission before it is wound up, to specifically ask them to make themselves available on an ongoing basis, to contribute to the healing that has to take place and the effort to give some justice to the survivors. They have given five years of their lives and work to produce the report but it really cannot end here and we would urge them not to allow that to happen. I would also ask the Minister to ask the members of the commission to give a statement of the methodology that was used because it is not clear.

I will not repeat all of the questions about the destruction of the testimonies and statements but it is a serious matter. The authorities that were charged with protecting evidence have a job to do. Can the Minister advise the committee when he expects the Attorney General to respond on the questions he has asked and the advice he has sought on the legality of the actions that were taken in that regard?

I took from the Minister's language that he is going to ask the pharmaceutical companies to reflect when he contacts them. I would ask him to go further. I ask him to ask them to make a contribution and propose how they think they can make reparations, contribute to the healing and provide some justice to the survivors. They have a role to play in that.

Regarding the information unit and resource being created, the sustainable, structured, survivor-centred approach that the Minister of State speaks of is very welcome, but how is the work on the establishment of a national archive progressing?

Deputy Roderic O'Gorman: I thank the Senator. We all agree about the failure of language and tone. When I first read the mother and baby homes report, I focused on the confidential committee. If one takes away the executive summary, the level of hurt and trauma that emerges from the confidential committee will always stick with me when I think of the report. It is the stories I read there that chilled us, as they did so many people, to our core.

The evidence that the Senator mentioned in the report, particularly relating to death, is enabling me to engage with the religious orders. The evidence relating to the pharmaceutical companies is different, as is the initial engagement, but I take the Senator's point. I am structuring it in asking them to see what engagement and reparation they feel is necessary, in light of the very clear statements of failure to adhere to international ethical standards and regulatory standards. Some of these vaccine trials happened in the 1930s and 1940s but there were both regulatory and ethical standards at play then that were very clearly ignored. There needs to be a recognition of that. I hope to see the Attorney General reply in the near future. He has always been extremely good and efficient in coming back to us quickly. The information unit, as the Senator said, gives us the opportunity to start to provide very real and badly needed information for survivors.

As regards the national archive, my Department and other Departments will engage with the Department of the Taoiseach on how that project is progressed. Again, when we speak of the tone and language of the report, we wish to create a space where we can reflect, in the words of survivors, what happened to them in arrange of ways and where people can come and deposit the real testimony of what happened to them, be it oral or written. The national records and memorial centre gives us the opportunity to honestly reflect the lived reality of the survivors, women and children, who were in these institutions.

Chairman: I hope to give the Minister of State a few minutes at the end. I know there a lot of concluding remarks, but time is short.

Deputy Patrick Costello: Given the time pressure, I will try to be quick. If a summary is presented without a full recording or transcript, and the recording is destroyed afterwards, that is a huge problem. There are many questions about how close a summary it was. Why was this done? Why was this chosen? There are questions about the informed consent of the participants and so on. We can only get those answers, to echo what everyone says, if the commission was to provide the committee with the details of the methodology, as was requested. The Minister is here answering for somebody else's homework which puts him in a difficult position.

The reality is that there is potential for a large gap between what people said and what goes on the official record. The right to rectification is only a part of that. It is important to understand how that gap happened and to prevent it happening again. A couple of issues arise from that. The reason this has caused so much hurt is that so many things have been hidden in the past. I have concerns that I have addressed to the Minister already. However, many people hope that the institutional burials Bill can be a source of information and can answer questions. We all need to be very careful with that legislation and ensure that it helps survivors and helps answer questions where information is missing.

Are the Attorney General and the DPC likely to report soon? How much investigation will they do into this? There are wider questions to be answered regarding this data and their destruction. There is a large overlap here, hopefully not with the next commission, with other areas where information is recorded and summarised and a recording or field notes might subsequently be deleted or destroyed. That is a huge picture that impacts on so many other areas that we need to get to the bottom of. A lot of unintended consequences from this are coming to light.

I said I would be quick, and I am conscious I am not. An official response or a shadow report, as mentioned by Senator McGreehan, is a positive idea. A shadow report from NGOs is very common at international level. Something like that, perhaps through the collaborative forum, would be worth exploring and the Minister's thoughts on that would be welcome.

I am conscious that he said that his Department is coming up with a way of implementing and monitoring the 22 action points. This committee also has a role in that. I ask him to keep the committee informed as much as possible. We are all in difficult times and no committee can get space to do the work it wants, but quarterly updates from the Department on the progress of a clear timeline that could be picked over in our correspondence would be very useful. It would save the Minister time in coming before the committee as well as keeping it fully informed, given the strains on all committees in getting work done in these difficult times.

Deputy Roderic O'Gorman: I am always happy to come to this committee or provide a written update. I find it beneficial to come to this committee for the range of experience and expertise that it has. However, I am happy to provide written reports. I have, on this point, provided detailed reference and I am always happy to engage with the Chair on issues. I think the Deputy is right that the committee has a role in keeping pressure on the Government and I to implement all 22 actions and to support us in the pre-legislative processes.

On the issue of the institutional burials Bill, we have heads of Bill coming before the committee. I look forward, as I said, to the presentations and the advocacy that will take place on that. I want to make it good legislation that is survivor-centred. I am happy to engage with the report that the committee brings forward on that legislation. I cannot speak for the DPC, but I

know it is engaged in ongoing correspondence with the commission.

I take the Deputy's point that the right to rectification can only do so much to bridge the gap between what was said and what goes on the record and I accept that. Since these tapes are fully deleted, all I can do is seek to bridge that gap in the way that I can. We are looking at the right to rectification. If we do that in the context of a clear statement from each person who has been before the confidential committee, that will be a powerful piece. It is part of the response to concerns about the cold and legalistic nature of the language.

Chairman: I thank the Minister. I call Deputy Crowe.

Deputy Cathal Crowe: Can I confirm that I have seven minutes?

Chairman: It is seven minutes.

Deputy Cathal Crowe: I should not need all that time. I thank the Minister for his continued engagement. He is very committed to this process and, rightly so, because there are many hurt, angry and upset victims at the heart of this matter.

The summary report and commentary to date have centred on women. Most of the homes were run by nuns and, by virtue of their sex and the fact that they were carrying babies, it was women who went into these homes. It was, therefore, a very female environment. Very little has been said - these are the unwritten chapters of Irish history - about the men. As this issue emerged on the airwaves, I heard far too many stories of the guy down the road who bought a ticket and went to Birmingham for two years, just absconded, because he had got a local girl pregnant. There is a lot of soul-searching still to be done by men in Ireland, most of whom now are moving on in years. They really need to look at this and ask themselves if they became the first cog in this process when they bought a ferry or airline ticket and absconded or ran for their lives from their responsibilities, and whether that was the right thing to do. Some people still have time to address and atone for their wrongdoing.

I agree with others that the language in the commission's report is cold and clinical. It is a report of an investigation and has many shortcomings but it is what it is. The commission's work has wound up but the actions must now commence. That will be the litmus test for the Minister, his Department and the Government overall.

We have all received umpteen emails from people who are extremely upset stating that the audio recordings of 550 testimonies have been destroyed. Is that the case? Have the testimonies made their way through the cogs of administration and the Civil Service where they await destruction and can they be salvaged at the eleventh hour or have they been destroyed? I ask the Minister for a "Yes" or "No" answer.

Deputy Roderic O'Gorman: I have written to the commission to ascertain that and we received a response this afternoon. It is the commission's view that those tapes are not retrievable.

Deputy Cathal Crowe: It is often the case that when archives have to be destroyed they are placed in an archive box somewhere in a Department and may not yet have been destroyed. It is very important to dig deep and immediately establish the position in that regard with certainty.

The staff in my office draw up a list of people I have to call back and WhatsApp it to me. I received a call from a lady in my home county and I phoned her back when I left Dublin one

day. I was still on my phone when I reached the Barack Obama Plaza. We were an hour and a half on the phone and it was a call I will not forget. She told me her birthday each year is the day she regrets most because it is the day on which she becomes aware of her lack of identity. She said she had delved into the whole process of establishing who she is, who her mother was and tracing her backstory. She is acutely aware there are shortcomings in the Irish system in terms of social workers. We do not have enough social workers. Britain is two decades ahead of us in how it deals with people who have been adopted and those who are trying to trace their life story. It involves much more than sliding a brown package across a desk to reveal to someone who he or she is. There needs to be a whole process of supports thereafter. We need some assurances from the Department that there will be increased recruitment of social workers so that supports continue long after people establish who they are.

Is the Minister giving direction to local authorities? I ask because it came as a surprise to me that local authorities had a function in mother and baby homes. They had an oversight and inspection role in the homes. Clare County Council in my constituency had a function with regard to Kilrush mother and baby home in which 168 babies died. We have seen mayors and chief executives of various local authorities stand up in council chambers and apologise. Have guidelines been issued on this? Local authorities were a major player as they were the eyes of the public and performed an inspection role? Is guidance being issued by the Department on the role of local authorities in this process as it continues?

In the days following the summary report being issued, the breaking story in the news was about mother and baby homes in Northern Ireland. It is conceivable that a young girl growing up in a Border area or community could have spent time in both jurisdictions. Has there been engagement between the Minister and his counterparts in Northern Ireland to seek justice for these young women who are now old? Is there cross-Border co-operation on this?

What is happening with religious orders and financial redress? We cannot take “No” for an answer. There must be no ifs or buts. They have to pay up and the cost cannot all fall on State coffers. There is a dual responsibility on the State and church. The church has to pay up and we need to know how that is panning out.

I will end with a human story. Leaving Leinster House about four months ago, before lockdowns began, I encountered an elderly woman and a younger woman at the front gate. I established that they were mother and daughter. The elderly lady had spent time in Tuam and now lives in Dublin with her daughter living a short distance away. The mother was a survivor of a mother and baby home. She told me she had had a hard life in her early years but has had a good life since. We moved on in our discussion and I established that she needed certain things to make her life a bit easier. She had applied for a housing adaptation grant. I give credit to Senator Mary Fitzpatrick. The mother and daughter live in her local area and the Senator came out to speak to them. We can show that lady at the front gate and many more like her around the country real kindness in the latter years of their lives, whether it is in housing or by providing all the other supports they may need. I know I have asked a lot of questions but I would the Minister to make a brief comment.

Chairman: The Deputy’s seven minutes are up so I must move on to Senator Keogan and Deputy Pringle.

Senator Sharon Keogan: I welcome the Minister and thank him for engaging with us, whether it is in the Seanad or at this committee.

We have all been taken aback by personal testimonies, including those of Senator Victor Boyhan, Independent Councillor Francis Timmons in Dublin or Independent Councillor Mary Linehan-Foley in Cork. It must have been really difficult for Councillor Linehan-Foley, as a survivor, to stand up last week and apologise. My thoughts were with her last week when she did that.

The witnesses who gave evidence to the commission will be very disappointed to hear that the evidence taken down was summarised. I have no doubt that, once again, they will feel this is a slap in the face and that they are just a footnote in the pages of history. I am really disappointed to learn that their testimony was summarised.

I, too, have received emails from very many people seeking an extension of the commission. We are here to serve the survivors. As I said last week at a meeting, there is a fine line between what this commission is to do and what the Government is to do. Our foremost duty must be to the survivors and whatever happens must be survivor-led.

The transfer of the information to the Department will enable the survivors to get their information quicker. Before the information goes to the Department, have the 550 people who gave testimony been contacted by the commission to say their documents are to be forwarded to Tusla? If so, how many have been contacted?

On the issue of GlaxoSmithKline and the church breaching ethical standards, the Minister stated he would write to them. Why has he not written to them to date? He has had the report for nearly three months so he should have written to them. I urge him to do that tomorrow. We need to find out what role the GlaxoSmithKline and the church had and what documents they may have on the vaccination programme.

The survivors need restorative and reparative justice. I welcome Deputy Crowe's point on ways that we can support the survivors into their old age. Anything that we can do to make their lives easier we must do. So many people are responsible for this. I read the report and cried for many hours. I cried at the naivety of the young and not so young women. They had no sex education. We have moved on as a nation and learned from the mistakes we made in the past, but the wounds will not heal until the survivors can access those documents. The wounds are theirs. The public and their hunger for righteousness can sometimes overshadow the needs of the survivor. Those people have suffered for decades and their wounds have been open for so long. They want those wounds to be closed and those scars healed. The sooner we get that information through the Department, whether redacted or not, the better.

Deputy Roderic O'Gorman: As for contact being made with the 550 individuals who gave personal accounts, that is being conducted by the commission and it has a statutory duty under the legislation we passed to contact all 550 people. I might pass to Ms McGarrigle to add further detail.

Ms Laura McGarrigle: Through the process, the commission must contact all 550 individuals who spoke to the confidential committee to ascertain whether they wish their account to be fully anonymous and not connected with their name, or whether they wish to have their name remain attached to the account that has been recorded as it passes into the archive that is deposited with the Minister.

Senator Sharon Keogan: Does Ms McGarrigle know when that was done? I talked to a couple of survivors and they had not heard from anybody. Is it just being done at the moment?

She might elaborate on that.

Ms Laura McGarrigle: My understanding is that the process commenced late last year, after the passing of the 2020 Act, and has been ongoing. While I cannot speak for the commission, I imagine that the process is close to conclusion. Our understanding was that it was well under way.

Senator Sharon Keogan: To my knowledge, that is not the case. I know of some survivors who have not heard any word back from the commission on the matter, and they were wondering when they would hear.

Chairman: I call Deputy Pringle before I invite the Minister to respond.

Deputy Thomas Pringle: I want to return to some issues raised by a number of speakers. In a reply to a parliamentary question issued last week, the Minister stated he had “sought further information from the Chair of the Commission to clarify whether it may be technically possible to recover any recordings or notes made by the Confidential Committee.” He went on to state that he was “liaising closely with the Data Protection Commissioner to ensure these matters can be appropriately addressed by the Commission prior to its dissolution.” He asked the commission whether the information that people have given can be recovered. Should the commission be the one to answer that question, given that it has breached its duty to the people who gave evidence to the commission prior to this?

What was the Data Protection Commissioner’s response to the talks with the commission?

If the Minister does not get satisfactory answers, will he still go ahead and dissolve the commission at the end of this month?

Will the Minister publish all the correspondence between himself, the commission and the Data Protection Commissioner over recent months in order that the committee can be fully aware of the details and support him in his response? That is vital, not least to rebuild trust with the survivors, who gave evidence to the commission in the belief that it would be treated properly and who have been very disappointed up to this stage. The entire debate has been about how to recover the testimonies rather than about how we can help the survivors to move on.

Deputy Roderic O’Gorman: As I stated in my reply to the Deputy’s parliamentary question, I wrote to the commission. It was a technical inquiry about whether the information could be retrieved. As I noted in response to one of the Senators, the commission replied today, stating that it did not believe that the material can be retrieved. I have no basis to say that answer was provided to me in bad faith and I assume it is a technical answer to a technical question about what can or cannot be done.

That ties in with the Deputy’s third question about the dissolution of the commission. Again, I am not dissolving the commission; it will dissolve on 28 February, under the legislation as currently stated. During the meeting we have discussed the reasons we might not seek to extend that timeline. I am examining the range of considerations that need to be taken to be account in making that call. My greatest concern is what I can do for survivors to try to rectify what has happened in this regard. I have stated what I think may be possible under the right to rectification, but there are also the tangible benefits that the transfer of the archive to my Department will give. I have put on record my concerns about whether that would be possible if there was an extension of the commission’s lifespan.

The Data Protection Commission has had its own engagement with the commission. That is ongoing, as far as I know, and I do not wish to speak for it. As regards my correspondence, I will consider the Deputy's request. I do not want to make a call on it now. I assume that everything is available under freedom of information in any event but I will consider with my officials the issue of publishing the correspondence.

Chairman: There is a passion on the part of the committee to do the right thing by survivors. We all have different political backgrounds but we are all united on it. We want to do everything in our power to ensure that, finally, there will be some justice, and that is where some of the questions are coming from. We were very disappointed, to say the least, when the commission did not accept our invitation because we felt there were genuine questions to be asked, including about the extension of the timeline. Part of the hurt and the anger about the report was because people had waited for so long, and when it was finally published, it was underwhelming, which is the most respectful language I can think of to describe it.

Whatever we have to do has to be done. This generation of politicians has to be the one to finally get justice and closure. During this Oireachtas term and previous ones, there have been so many sympathetic and emotional speeches, and everyone is very sorry, but people want action. Part of that relates to questions about the report was handled and how it reached its conclusions, such as the finding that there had been no forced adoptions when, clearly, testimony indicated that there had been. Other issues include action on access to records, redress, medical cards and counselling. That type of action would be important but serious questions about how the report was conducted cannot be dismissed. One of the suggestions made earlier is that this commission be extended. Perhaps in two weeks, it will be found that there was no need for that but this action should be taken now so that if there is a need for it, that mechanism is there for people to use if they want to take cases or do any follow up. There should be a body there for them so that they are not left without an entity. That mistake could be made if it is not extended. I understand some of the arguments against extending something indefinitely or the potential for people to resign but that needs to be looked at as an option. Regarding all of the other action points on which people have been waiting, unfortunately, many people have passed away without getting any sort of justice, access to their records or information about what happened to their children. The committee will not be found wanting. I am very proud of the committee because we have been so united on this issue and want to do everything we can to help. We want to work with the Minister, which is why those questions are coming forward. We understand that he is not the commission but our frustration comes from the fact that we could not have the commission appear before us and that it would not come forward. We are appealing to the Minister to do everything in his power and one element of that is to seriously consider extending the commission.

Deputy Roderic O'Gorman: I share the passion of committee members for bringing about a resolution of these issues. I want to work with them and was very happy to come in today to engage with them on these issues. I have engaged a lot in the Dáil and I will take a third Seanad debate later this week as well as private sessions with this committee. I have no problem with any of that. I am glad to do it because it is important that we get into the detail of these issues. I hope that what is different between now and previous times is that we have this very comprehensive action plan that sets out not just one issue. From my engagement with survivors, it involves the range of needs they have. Survivors have different priorities. For some, that information and tracing legislation is core while for others, it is about getting an enhanced medical card or making sure the stories are reflected in the secondary school curriculum. The action plan is comprehensive. I said earlier that the commission's report is not a conclusion.

The action plan is not a conclusion either. It is something that we can develop it if we see there are elements that are not fully addressed.

Deputy Crowe referred to supports from local authorities. We reference local authorities in terms of engagement. The Minister of State, Deputy Rabbitte, felt very strongly that support for survivors with housing issues was something local authorities could focus on because she identified that a large part of the community might have needs in that area. It is a plan that can be flexible to respond to the specific needs of survivors, which is important.

I will discuss some issues noted by Deputy Crowe. Both he and Deputy Sherlock flagged the importance of the apologies by local authorities. This is very significant because, like Deputy Crowe, before I read this report, I was not aware of certain issues. I understood that county homes were linked to local authorities but I did not understand how mother and baby homes were linked to local authorities. Most of us come that route and have a very nice understanding of what our local authorities do. They were so intrinsically linked to what was happening in these institutions so those apologies from Cork, Galway and other local authorities are very appropriate. We are happy to engage with local authorities, which can step up themselves. We know where these institutions were and we know the involvement so local authorities are very capable of setting a standard within their own areas.

We have a very comprehensive range of actions to take. The timelines are tight, particularly with the information and tracing Bill. We will look to bring it before the committee for pre-legislative scrutiny by April. We have the institutional burials Bill as well but we have other non-legislative elements such as the work of the interdepartmental group on the restorative recognition scheme. When I met with the group at the commencement of its work, I made two things very clear. I wanted a human rights-based approach to its work and I wanted it to learn from the mistakes of earlier redress schemes. I spoke with staff from the Christine Buckley Centre for Education and Support. Senator McGreehan had asked me to reach out to them. The centre put a very human face on the failings of previous redress schemes, which is something I want to be very aware of to make sure that even in the terms of redress, we do not end up re-traumatising survivors. I look forward to working with this committee to address these issues.

Chairman: I thank the Minister and all of the members for their co-operation. It is really difficult when we have to fit everything into two hours. Deputy John Paul Phelan wanted to contribute but, unfortunately, a member needs to be within the Leinster House complex to contribute to public sessions. I thank all the officials for attending. Is it agreed to publish the opening statement on the Oireachtas website? Agreed.

The joint committee adjourned at 5.56 p.m. *sine die*.