DÁIL ÉIREANN

AN COMHCHOISTE UM OIDEACHAS AGUS COIMIRCE SHÓISIALACH

JOINT COMMITTEE ON EDUCATION AND SOCIAL PROTECTION

Dé Céadaoin, 15 Aibreán 2015

Wednesday, 15 April 2015

The Joint Committee met at 1.10 p.m.

MEMBERS PRESENT:

Deputy Catherine Byrne,	Senator Gerard P. Craughwell,
Deputy Michael Conaghan,	Senator Marie-Louise O'Donnell.
Deputy Seán Crowe,+	
Deputy Noel Harrington,	
Deputy Charlie McConalogue,	
Deputy Jonathan O'Brien,	

+ In the absence of Deputy Jonathan O'Brien, for part of meeting.

DEPUTY JOANNA TUFFY IN THE CHAIR.

The joint committee met in private session until 1.29 p.m.

General Scheme of Retention of Records Bill 2015: Discussion

Chairman: I welcome the officials from the Department of Education and Skills. I draw to their attention the fact that by virtue of section 17(2)(*l*) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to this committee. However, if they are directed by the committee to cease giving evidence on a particular matter and they continue to so do, they are entitled thereafter only to a qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and they are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person or persons or an entity by name or in such a way as to make him, her or it identifiable. Their opening statement will be published on the committee website after the meeting.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official either by name or in such a way as to make him or her identifiable. I remind members, visitors and those in the gallery to ensure that their mobile phones are switched off completely or switched to flight mode.

Today we are looking at the general scheme of the retention of records Bill 2015. On 9 March, the Minister for Education and Skills referred to the committee the general scheme of this Bill for pre-legislative scrutiny. Submissions on the general scheme were sought and seven were received. At its meeting on 1 April, the joint committee decided to invite the Department of Education and Skills to today's meeting to assist us in our consideration of the matter. I welcome from the Department Mr. Dermot Mulligan, Ms Mary McGarry and Mr. Aongus Ó hAonghusa. I now invite Mr. Mulligan to make his presentation.

Mr. Dermot Mulligan: I thank the committee for the invitation to take part in today's discussion on the general scheme of the retention of records Bill 2015, which was approved by the Government in March. The Bill amends existing legislation and its aim is to preserve the records of the Commission to Inquire into Child Abuse, the Residential Institutions Redress Board and the Residential Institutions Review Committee so that we never forget the wrong which was done to children and that we remain constantly vigilant to protect the rights of children. Specifically, the intention is that these records will be deposited with the National Archives where they will be preserved and sealed for a period of 75 years. At the end of this period, the records will be available for public inspection, subject to conditions which will be determined by the director of the National Archives.

I will now say a few words about the bodies whose records will be covered by this Bill. The first of these is the Commission to Inquire into Child Abuse, which was established by the Commission to Inquire into Child Abuse Act 2000. Its main functions were to report on the abuse of children in certain types of institutions and to give those who suffered this abuse an opportunity to describe what happened to them. Under the Act, the types of institutions covered included "a school, an industrial school, a reformatory school, an orphanage, a hospital, a children's home and any other place where children are cared for other than as members of their families."

The commission comprised two separate and distinct committees, namely, the confidential

committee and the investigation committee, which were required to report separately to the commission as a whole. The confidential committee heard the uncontested evidence of those who did not wish to have the alleged abuse investigated further. The investigation committee inquired into the manner in which children were placed in institutions, the abuse they suffered while in these institutions and related matters. Investigations were conducted into all institutions where the number of complainants was more than 20. Between the two committees, the commission received the evidence of over 1,500 witnesses who attended or were resident as children in schools and care facilities in the State, including particularly industrial and reformatory schools. The commission produced its final report, also known as the Ryan report, in May 2009. The commission has almost completed its work and is expected to be dissolved later this year.

The other two bodies covered by the Bill are the Residential Institutions Redress Board and the Residential Institutions Review Committee. These bodies were established by the Residential Institutions Redress Act 2002. The redress board was established to make awards to residents of certain residential institutions who suffered abuse in childhood. To qualify for an award from the redress board, applicants were required to establish to the board's satisfaction that they suffered injuries consistent with abuse while resident in one of the 139 specified institutions. Abuse is defined in the legislation to include physical, sexual and emotional abuse, and neglect. The legislation made it clear that the making of an award to an applicant does not constitute a finding of fact relating to fault or negligence on the part of an alleged abuser or the person responsible for the management, administration, operation, supervision, inspection and regulation of the specified institutions. At the end of December 2014, the redress board had made 15,547 awards, with an overall average award value of €62,240. The review committee was established to provide for appeals from decisions of the redress board. The Residential Institutions Redress Board and the review committee have also almost completed their work and it is expected that they will be dissolved this year. The overall expenditure on the redress scheme is some €1.2 billion.

I will now describe the current legislative provisions, which have imposed strict confidentiality requirements on all three bodies. As far as the Residential Institutions Redress Board and the review committee are concerned, section 28 of the 2002 redress Act prohibits the disclosure of information provided to those bodies other than to the Garda Síochána or to an appropriate person in relation to prevention of child abuse.

It also provides for any unauthorised disclosure to be a criminal offence. Section 28(6) prohibits publication of any information concerning an application or an award that could reasonably lead to the identification of an applicant, an alleged abuser or a residential institution. Any such publication is also a criminal offence.

Section 28 of the 2000 Act also provides that the commission cannot be required to disclose information provided to it, other than to An Garda Síochána to prevent a serious offence or to an appropriate person to prevent child abuse.

Section 27 prohibits the disclosure of information provided to the confidential committee, other than in limited circumstances, with any unauthorised disclosure constituting a criminal offence.

While section 5(3) of the 2000 Act provides that the commission's report could contain findings that the abuse of children occurred in a particular institution, the person who committed the abuse could be identified only where they had been the subject of a criminal conviction in

relation to it. Under the Act, the commission report could not identify or contain information that could lead to the identification of those who were the subject of abuse in childhood and could not contain findings in relation to particular instances of the alleged abuse of children.

Under the existing legislation, it is a matter for each of the three bodies concerned to dispose of their records. Section 7(6) of the 2000 Act provides that the commission shall make such arrangements as it considers appropriate in relation to the custody and disposal of its documents and copies of documents given to it. In this regard, the records of the confidential committee are expressly deemed by section 27(5) not to constitute departmental records within the meaning of the National Archives Act 1986 and every witness to the committee was given an assurance of complete confidentiality. Similarly, the records of the redress board and review committee do not constitute departmental records within the meaning of the National Archives Act 1986 and under sections 28(6) and 28(7) of the 2002 Act, it is a matter for the board or committee respectively to determine the disposal of its documents.

If there were no change to the legislation then the board and review committee would be required to destroy their records on dissolution. The commission would also be required to destroy its confidential committee records. The commission considered that the retention of investigation committee records which identify individual survivors and alleged abusers would be in breach of the 2000 Act.

I will now explain the rationale for the retention of the records. The Oireachtas has previously considered the issue of the retention of the commission's records. The Government sponsored motion on the Ryan report on the Commission to Inquire into Child Abuse, which was adopted by Dáil Éireann on Friday, 12 June 2009, noted "the desirability that, in so far as possible, all of the documentation received by and in the possession of the Commission to Inquire into Child Abuse is preserved for posterity and not destroyed". The Labour Party's Private Members' Institutional Child Abuse Bill 2009 also addressed this issue. In July 2013, the then Minister for Education and Skills, Deputy Ruairí Quinn, announced that he had secured Government agreement in principle to bring forward legislative proposals to allow for the retention of the records of these three redress bodies. In the press release of Tuesday, 10 March 2015, announcing the publication of the general scheme of the Bill, Minister for Education and Skills, Deputy Jan O'Sullivan announced:

> In keeping with the motion adopted by Dáil Éireann following the publication of the Ryan report, these proposals will allow the documentation received by the Commission to Inquire into Child Abuse to be preserved for posterity and not destroyed. They will also preserve the documentation of the Residential Institutions Redress Board and the Review Committee. These records are highly sensitive and contain the personal stories of victims of institutional child abuse. I believe that it is very important that these records are not destroyed, both to ensure that future generations will understand what happened and out of respect to the victims who came forward. By sealing the records for 75 years and ensuring appropriate safeguards on the release of the records thereafter, we are in a position to preserve these sensitive records.

The retention of these records therefore represents a significant departure from the position provided for in the existing legislation and it is recognised that this is a very sensitive issue. There is a need for the legislation to balance the rights to privacy of those who gave evidence to the commission and redress bodies against the need to ensure that as a society we never forget the harm that was done to children and the need to ensure that the protection of children is always to the forefront of our minds. The heads of this Bill attempt to strike this balance.

The legal advice is that this balance is achieved if access to the records is prohibited for a lengthy period, of the order of 75 years, having regard to the rights of the parties who engaged with the bodies.

The intention is that after this period the records will be available for public inspection in accordance with conditions stipulated by the director of the National Archives. It is expected that the individuals involved will be deceased at that stage.

The draft general scheme was circulated to the 18 congregations that are party to the 2002 indemnity agreement and to the various groups representing survivors of residential institutional child abuse.

The Department and the Minister would be happy to consider any views of the committee arising out of its consideration of the Bill. It would be the Minister's intention to proceed as quickly as possible with the drafting of the Bill after that.

Deputy Charlie McConalogue: I thank the witnesses for appearing before the committee and updating us on the Department's position on the proposed Bill. The balance struck is reasonable. However, when the committees, boards and inquiries were set up, one would have expected the issue to be addressed then, as those who contributed to the inquiries, the redress board and the review committee would have done so on the basis of the 2002 legislation. Why was that not the case? It can only have been to try to reassure those coming forward that their contributions would be confidential. Now we are changing the terms, although I accept it is for valid reasons. I would be interested to hear any feedback the Department has had arising from its engagement with those who contributed and whose testimony informed those documents. I would like to hear their views on the issue and whether they would have been as comfortable coming forward in the first place had what we may regard as a reasonable balance been included in the initial legislation.

Deputy Seán Crowe: I have a couple of questions. If we go down the road of new legislation, I would not want to compound the hurt inflicted on children and particularly on those who have given evidence. I have read some of their submissions, some of which concern reputational damage to organisations. We are stuck in this difficult situation. This is a significant departure. Perhaps Mr. Mulligan would explain where the demand for this has come from. He mentioned an announcement made by the former Minister for Education and Skills, Deputy Ruairí Quinn, in the Dáil. Has the demand come from academics, historians or the survivors themselves? What is the scale of the records being dealt with? How many records are involved? What are the criteria for keeping and not keeping records? How many individuals' records are involved? Why did the Minister decide not to have a consultation process on the issue? That is a significant matter. The complaint throughout has been that people have not been involved in the process. The next step for the committee is whether it will allow those individuals to give their views, or perhaps that is a discussion for later on. Is there a concern about legal action, given that testimony was given on the basis of confidentiality which is now being breached, or is that provided for in the new legislation?

What will happen to the records held by the Education Finance Board? Why are they not being included in the legislation? In one of the submissions, Irish Survivors of Child Abuse, Irish SOCA, complained bitterly about institutional vandalism. I am conscious that the witnesses may not be able to answer some of these questions. Why were those records destroyed if we are concerned about keeping records? Will the Minister make a commitment that there will be no exemptions in the sealing of the records as per the concerns of Irish SOCA? That is

an issue the witnesses may not be able to address, but the Minister needs to return to the committee with that information. Will the Minister listen to the concerns of survivors who do not agree with this initiative? There needs to be a consultation process so that this is not just landed on people. Many people who went through the process said it opened old wounds and was the worst thing they had done. They had wanted to tell their story but were left devastated as individuals. What are the implications of any legal actions being taken? Have any of these records been accessed to assist with the prosecution of individuals or are they kept separate?

The 75-year limit confuses me. Why is it 75 years? Is it just a ballpark figure? The witnesses said there was a legal recommendation but why was it not 50 years? I presume a lot of the people affected would be dead within 50 years. Why is it 75 years? Why is it not 100 years? When the data are handed over to the National Archives who will be legally responsible for the records? Does the Department of Education and Skills lose its responsibility for them?

Senator Gerard P. Craughwell: My input will be very short. A number of the victims that came forward to the various redress boards did so on the basis of the legislation that was there at the time. As Deputy McConalogue has already pointed out, what is very reasonable today was not available to the people who came forward. I have personal knowledge of one individual who did not come forward because he did not want his name to come out. The man, who has since died, never sought compensation and this was for two reasons. One, he did not want to relive what had happened in the institution and, two, he wanted total privacy with respect to what happened to him in his early life. If we now decide to retain the records - I do not care whether it is for 75 years or 175 years - is there a breach of trust here?

Some people will not have mentioned what happened to them to their extended family, such as their in-laws, and will never have mentioned that they were in an institution. The idea that the information would come out 50 years after they died would cause them pain and suffering right now. Are we opening the door to possible litigation? A colleague asked about litigation on behalf of the good names of institutions but what about the good names of individuals?

On the subject of consultation, are we going to have to go back to every individual to get a signature from them to say they agree to retaining their records? Some 15,547 came forward to the redress board having suffered great pain in their younger lives. Are we now going to force them to go into their old age wondering who is going to find out their secrets? While I see the benefit of doing this, I also see a breach of trust.

Deputy Noel Harrington: I thank the officials for their presentation. As Deputy McConalogue said, there is an element of changing the goalposts for both alleged abusers and, in particular, survivors who would have entered into a process in good faith and, with a certain knowledge of the legislation, been assured that their identities would be preserved. Any legislation which attempts to balance rights is difficult because somebody's rights are bound to be chipped away in some respects. There is a necessity to preserve these records, not for posterity but to ensure this never happens again. Human nature has collective amnesia and intergenerational amnesia is quite prevalent. Society is inclined to forget things. That is why we should preserve the records. However, we are lighting a 75 year fuse here that could explode in a different context and society. Take the example of the 1911 census records. If one trawls through those records, one can identify people who were described as lunatics and one might know their grandsons, grand-daughters or relations. The term was quite acceptable at that time but it is now unacceptable. It is just a description, and it is only the tip of the iceberg in terms of the sensitivity of these files. How do we, in 2015, protect something, even in the language, that could be opened in 2080? It is not the identity of the people who will be deceased, but

there is a bigger consideration in terms of their families. This is still a small country. It is based on townlands, the parish, the street and the neighbourhood, so we must be very mindful of the dangers of this legislation.

Senator Marie-Louise O'Donnell: I wish to take up something Deputy Crowe said. Why is the Department doing it? I do not understand; perhaps there is something wrong. They are protected in section 28 of the 2002 redress Act. That section prohibits the disclosure and publication. Why are we doing it? It is after the fact here.

Have the witnesses read the submission from the Sisters of Our Lady of Charity and their argument against it? Have they read the contribution of the Congregation of Our Lady of Charity of the Good Shepherd? They make extraordinary arguments as to why it should not be done. The Oireachtas Library & Research Service has done us a great service. The questions on pages 9 and 10 of its research ask the question that all of the Senators and Deputies here are asking, namely: where is the expectation of confidentiality which people began with and that is now turned into something else? Where is the expectation of one's good name, which again people began with and has now become something else? Where is the expectation of privacy? In fact, 75 years is not a long time because some of them were infants. My mother is 93 and she is fine. The idea appears to be that 75 years is somewhere in the jurassic past.

Perhaps the witnesses would answer some of these questions because it appears as if we have changed A to B and I am wondering about the reason for that. If I organise myself, in situation A, from a confidentiality, good name and right to privacy perspective and that is how I got involved, and then it becomes something else, there are legitimate questions to be asked. I do not know how we got here, although in one way I do. However, I wish to have that question answered, because I would oppose it.

Deputy Michael Conaghan: The overriding consideration is that the State has a duty to society and to all of us to ensure that matters such as these are not forgotten and that the records are not obliterated, when people will argue in the future about what happened and did not happen to many young people. It is important that those records are retained and that the State gives a reasonable time, in so far as it can, in terms of protecting people's identities. Regarding the passage of time and 75 years, one can never copperfasten that. However, the availability of the data as a standing reminder of the dreadful things that happened must be retained, so we are not left after whatever number of years have passed guessing what happened, using hearsay or trying to interpret something that is almost a lost memory. The actual data is the basic requirement that society needs.

The general point is that there is an overriding and over-arching obligation on the State. There is no perfect way of doing this. One is always going to touch a nerve or reach an edge or verge where one is not sure whether to step on one side or the other. That is a human predicament with all of this type of undertaking. The State has probably done the best job it can.

Deputy Catherine Byrne: I do not have much to add. Whether the period is 75 years, 100 years or 200 years, the cruelty inflicted on very young and innocent children or young adults can never be forgotten. In reading the submissions from the different organisations, religious orders and individuals, it is clear that they have concerns which must be listened to. We must respect those concerns; this involves some people who participated in the cruelty and others who did not, and they have very real concerns. I am not sure whether keeping records will make any difference as nobody will forget what has happened in this country. We cannot be allowed to forget it and it lives in everybody's memory. It is a generational issue and it will not go away.

The people in question want assurances with respect to confidentiality about what will be kept on file, whether it is for 75 years or longer. We need to take into account what has been said by these organisations and particularly by individuals. It is their lives that have been destroyed. There were good and bad ways. There were many decent religious orders with good priests, nuns and lay people but, unfortunately, a small group of individuals has destroyed their reputation. Unfortunately for the people who have been left scarred, although they may now be older, they and their children, grandchildren and great-grandchildren will always remember the scars. It is not something on which we can toss a coin and the process must be understood properly. The Department and the Minister must take into consideration what is said by those who contributed submissions to the committee.

Senator Gerard P. Craughwell: Is there a need or reason to retain these records? I am not at all convinced there is but if there is a reason to retain them, could they not be sanitised? Could the names be removed, with people referred to as "Victim A, B, C or D", up to 1,500 or 15,547? As some of my colleagues have indicated, we live in a country that is essentially parish-based. People live in parishes that were subjected to this and they have their good name intact. In 75 years, we might hear something akin to a person's grandfather "taking the soup", which is a phrase still thrown around the country. I recall being down the country at one stage and hearing somebody referred to with a particular title. I thought it was the surname but I found out some time later that it was a remark used to reflect the fact that the family "took the soup" several hundred years beforehand.

Senator Marie-Louise O'Donnell: The issue of protecting the right to a good name raises a very important point. Information in those records, such as allegations of abuse, may potentially read as statements of legal fact, rather than a statement of testimony and evidence from victims of abuse in those institutions. Some allegations of abuse were never contested but may be denied. To what extent can it be made clear in 75 years that the records are not legal findings of guilt but a record of evidence? It is a moot point but it is interesting to consider the right to a good name. We are all asking the questions. I understand that we want to protect and preserve, and we want people to be informed about what happened. That is why history is so important, although the Labour Party and our last Minister for education did not think it important enough to be a core subject.

Deputy Michael Conaghan: That was not Deputy Quinn. It was prior to his tenure.

Senator Marie-Louise O'Donnell: Who was it? Anyway, it is a little off the point. History plays a major part. Seventy-five could be the age of one's father, not necessarily one's grandfather. The institutions, such as the Congregation of Our Lady of Charity and the Sisters of Our Lady of Charity, have legitimate points to make. We should be very much aware of them. We should also bear in mind the points of the individuals who have written, who believed they were in one area and now find themselves somewhere else.

Chairman: People do forget. Historical events such as the Great Irish Famine and the Holocaust should be considered in this regard. We are reaching a time when the last survivors of the Holocaust will have passed away. While popular descriptions of events, including reports in newspapers, are available, it is important that people are able to look at the original source material.

Senator Marie-Louise O'Donnell: Nobody is saying that should not happen.

Chairman: My understanding of the law as it stands is that all these records will be de-

stroyed.

Senator Marie-Louise O'Donnell: They may be held and not destroyed.

Chairman: The main point is that something has to be done or the records will be destroyed. That is a point that could be clarified.

An article in *Time* magazine states a baby born today could live to be 140. I do not know whether that is true but life expectancy is increasing all the time. What protections would exist for somebody still alive?

Mr. Dermot Mulligan: I thank the members for their comments and questions, which I appreciate. We are very conscious of how sensitive this area is for individuals and organisations. There are different points of view and different rights involved. Reference was made to the difficulty of balancing those rights. I would not underestimate the difficulty. I will try to address the questions. If I miss any, the members may remind me of them.

One of the core questions concerns why a change is being advocated now. Why was this not thought about back in 2000 and 2002, when the legislation was brought in originally? A watershed moment in the past 15 years was the publication of the Ryan report in 2009. It established, without any shadow of a doubt, the scale and systematic nature of the abuse that took place and the hurt done to so many children. That was not known about in 2000 and 2002. The question of why we are changing now is a fair one. What I have described is the key in this regard.

If we do not do something, the records will be destroyed, as the Chairman said. The need to remember and to retain the documentation that indicates exactly what happened, the people to whom it happened and the wrong that was done to them is the real reason this Bill is being proposed. Some commentators have talked about the power of personal testimony. As the Chairman said, nothing has the same impact as an individual's story about what happened to him or her. The more we anonymise, sanitise or summarise exactly what happened to individuals, the greater the risk that we will forget what happened. Perhaps that is the key point. Our legal advice is that approximately 75 years is appropriate. Fifty years is probably too short because of the points made on life expectancy. It may be, and I hope it is the case, that average life expectancy will become longer than this. It is a difficult call to make as to how soon to allow access. We are balancing the various rights. I take the point it may be different in 75 years' time and there will be an opportunity to revisit this then.

With regard to the scale, we are speaking about 1 million to 2 million records so it is significant. These records relate to more than 16,000 applicants to the redress board, more than 1,000 applicants to the review committee and approximately 2,500 individuals who engaged with the commission. We have been in intensive discussions with the National Archives about this and the intention is that not all of these records will be retained. Many of them deal with administrative issues such as arranging meetings, which are probably not of archival value. This is certainly the view of the National Archives.

With regard to the change to the provisions on confidentiality under which people made submissions and applied and whether this is a breach of trust, there is a difficulty with balancing where we thought we were as a society in the period from 2000 to 2002 and where we are now, knowing what happened and what the Ryan report clearly states happened, and the imperative that nothing like it can happen again and the protection of the rights of children are paramount. How to do this and where to draw the line is a difficult question. It is one of the issues we have

carefully considered with legal advisers, and the outcome of this is that sealing the records for 75 years gets the balance right.

In terms of consultations, what we planned in this area was the subject of a Dáil motion in 2009 and announcements were made in 2013. When it was published, we circulated the general scheme to congregations and survivor groups for comment. We have not received as many written submissions as the committee has. We received two written submissions from congregation groups, we have had some contact with representatives from survivor groups and have received submissions from two individuals. If the groups which have made submissions to the committee want to send them to the Department, we would be interested in their content and would be willing to meet them to discuss the points raised. This is an important and sensitive issue and we want to consult and engage with the various groups and individuals who have a view on it. In regard to who will be legally responsible for the records, currently this is the responsibility of various bodies. We are working with the National Audit Office on who will bear legal responsibility for them when they move to the National Archives.

In regard to the education and finance board records, following establishment of the residential institutions statutory fund. the property rights and liabilities of the education and finance board were transferred to the residential institutions statutory fund board, which took the decision to destroy those records. The Minister had no particular role in that regard. This may in the future lead to some administrative problems in terms of new applications for services to be funded by Caranua but it is not considered to be an impossible thing to overcome. From the point of view of retention of those records, they were not at that stage considered to be of any particular archival value.

I hope I have answered members' questions.

Senator Gerard P. Craughwell: I am still not satisfied in my mind. The phrase "Lest we forget" has been mentioned many times. If we have done nothing else in this world, we have forgotten. Regardless of the many reports and documents in existence, we continually forget. Our economic crash is an example of us forgetting. I do not understand why we want to do this or who has requested it. Has somebody approached the Minister or the Department indicating that he or she believes that in 50 or 100 years' time we might want to research this area? To help us remember, a copy of the Ryan report could be displayed in every State institution in this country. Why do we want to keep these records and who is asking that they be kept?

Senator Marie-Louise O'Donnell: In regard to the phrase "Lest we forget", I think that sometimes we have to forget because we are not able to live with the abuses of the past. We have to do that from an imaginative point of view at least as otherwise we would not get out of bed in the morning.

The people who gave these most harrowing and appalling testimonies about their lives did so in the knowledge that they would be confidential, or did they not? Did somebody say to them that they would be confidential up to a point or not confidential? I thought they gave these testimonies confidentially. Is that not the point? If they are confidential then they should remain so. Whether people thought that meant they would be held in an archive or destroyed I do not know. I understand the need for preservation but I understood that the testimonies were made in good faith and confidentially. Perhaps I am wrong. I am not too sure the people concerned are aware of what is being proposed given the process has moved on somewhat and brilliantly. In my view, the Government dealt extraordinarily well with this, in so far as it could.

Perhaps I could get an answer to my question, which really is the nub of what is at issue.

Deputy Charlie McConalogue: I understand the rationale for retention of these records. I believe there will be a historical value in these testimonies being available for future generations. However, I do not think that is the point. The key point is that these people told their stories on the basis that they would be confidential. Historically, they were very much failed by the State and by the authorities responsible for looking after them. I have no doubt it took a hell of a lot for these people to come forward and tell their stories and personal experiences in very intimate detail to the commission, but this was on the basis that it would be confidential. I now have grave reservations about any decision to change those terms, allowing their stories to be told in 75 years' time whether they like it or not. As a State, we have an obligation to them on the basis on which they engaged with the State and the inquiries that were established.

Some of the people who gave testimonies are now deceased and there is no basis on which we can inquire retrospectively what their view would have been. However, they certainly would have departed this world believing that their engagement with the State under law was confidential and would not go any further. As we know, one of the things that is hardest to come across in life is discretion, and if you want to keep a secret, you keep it to yourself. People would think that if their engagement was based on law it would be pretty watertight and that it was unlikely that the State would then breach the terms of its engagement and commitment to them.

For those who are deceased, there is certainly a big issue. For those who, thankfully, are in good health and continue to be with us, I would imagine there is, at a minimum, a responsibility on the State to engage with them. We should put to them the rationale for the State's seeking to change the terms of its engagement with the commission and why it feels this would be valuable, and ask for their response and consent. As I said, I do not think it should be the case that we are going to do this whether people like it or not. We have an obligation to all citizens to respect their wishes, particularly those we have failed in the past.

Mr. Mulligan made the point that the more we anonymise, the more the value of the testimony diminishes. Names are very important because they continue on and, in 75 years, it will be difficult without names to trace who the person was. Where a name is given, it will be very straightforward and easy, but much of the impact of these stories could be protected and preserved without the name being there. It is more tricky in regard to the deceased members but, at a minimum, for those members who are willing to engage with the State at this stage, I would have thought their consent would be an important factor and that they should be consulted. Has the Department given consideration to this? What are its considerations and is it something to which it is still open?

Senator Marie-Louise O'Donnell: To add one sentence to what Deputy McConalogue has said, some of the stories are about familial abuse, parental neglect, psychiatric and learning difficulties and drug and alcohol abuse, so it is not just about abuses by institutions.

Deputy Noel Harrington: Arising from the discussion, I believe there is huge merit in the retention of the information. If the choice was that the records were to be destroyed or not, I do not think they should be destroyed. The difficulty is the potential for the release of the information. The reality is that access to information in Ireland has been revolutionised in the past 30 years and has changed enormously even in the past ten years, whether through freedom of information legislation or otherwise. The technological advances in the area of information have been enormous and 99% of that has been positive. The difficulty is the interpretation of

the information. We can get almost any kind of information we want in a household but how we interpret it is a major difficulty. How can we future-proof or predict how people will access and use information in 2080 or 2081? It is something we cannot consider in 2015. We could not consider ten years ago how we could access information today. Can there be some kind of provision in the legislation to future-proof members' concerns and those of the public and the survivors in balancing the public right to information and the individual's right to protection?

Deputy Michael Conaghan: We cannot be the arbiter of what people in the future will do with this information. There is no way of putting cotton wool around this and protecting it. These records are a valuable resource because they shine a light on an area of Irish life of which no one is proud. They shine a light on things that happened. Dreadful things happened to young people and we must confront it, internalise it and come to terms with the fact that our culture is not always a pretty thing. There is an ugliness running through it, as there is in most societies. Putting it back for another 100 years or putting Tipp-Ex through people's names in the records does not deal with things. Dreadful things happened in our society, as in other societies, but the last thing we should do is pretend they did not happen or that these things happened to anonymous people. These things happened to people with names.

Senator Marie-Louise O'Donnell: They gave their names confidentially.

Deputy Michael Conaghan: They gave their names.

Senator Marie-Louise O'Donnell: We are arguing at cross purposes.

Deputy Michael Conaghan: We must learn from it and not just pretend this is not there. That is the point of bringing it to the surface, so that it is not forever kept underwater by tying big stones to it. That is what happened in the past and it is part of the problem we have today. We buried things, hid things and pretended things did not happen. All kinds of things happen in society and we must take account of that.

Deputy Seán Crowe: For some of us, it is not an intellectual argument as some of us know intimately some of the people who went through these experiences. Anyone who has been involved in politics will have met many of the survivors groups. Like it or lump it, we agreed to the legislation. As legislators, we are saying that we are conscious of the impact on survivors. That is my main concern. I do not want to compound the hurt of anyone who has been hurt. We gave them guarantees that we would take a particular route, even though some of us might not have agreed that some groups or individuals were excluded from some of the redress schemes established but that is an argument for another day. What we are saying is that we know best but I genuinely do not think I can make that decision on behalf of those individuals. In 75 years' time, if legislators decide to open it up, that will be a matter for them but we gave that guarantee. Again, I did not agree with the confession box system where one could tell one's story but it would never be on record. That did not work for many people. The processes which we established did not work for many people. I have met quite a number of people over recent years who curse the day they actually went to these different structures because it opened up old wounds and did not make them feel better. What impact will this legislation have on many of these individuals? If it is only one that says he or she does not agree with this, we have to take cognisance of that individual's position.

Chairman: I have a different view on this. I recall one newspaper article in which a woman from One in Four supported this legislation. I am of the view that there are survivors who are favourable to this legislation. On the one hand, people are arguing that we cannot trust people

in the future while, on the other hand, they are arguing we should abdicate our responsibilities to the legislators of the future. Most people are in favour of retaining the records which means some people will have access. I can understand the argument against freedom of information access to these records now while the people affected are still alive. If it is going to be available to people in the future, then it should be available to the public.

If we were to support this legislation, we would be setting a value, stating the information should be available in the future on the basis of freedom of information but, to keep in mind the sensitivities of the people alive now, it should be made available in 75 years time. That would be taking responsibility as legislators and setting a benchmark rather than leaving it to somebody in the future to set that benchmark.

Senator Gerard P. Craughwell: On a point of order-----

Chairman: A point of disagreement is what the Senator means.

Senator Marie-Louise O'Donnell: It is a good argument and I am convinced by it.

Senator Gerard P. Craughwell: We are essentially saying that we gave our word but we want to change it now. That is exactly what happened to the people in question.

Chairman: Maybe the issue was kicked to touch by the legislators.

Deputy Charlie McConalogue: The legislation seemed clear at the time that these testimonies were for the purposes of the use of the inquiry only. That was the basis on which people engaged.

Chairman: But was it?

Deputy Charlie McConalogue: I have no doubt that many of those who gave testimony to the inquiry would be happy for their names to be attached to it for posterity. For anyone who came forward, part of them wanted to tell that story. We do not know, however, to what extent they wanted that story to be acknowledged or to be disseminated further. The option we are discussing here today was not available to the people at the time they engaged with the inquiry. We simply do not know the answer to the question as to how far they wanted the information to go.

We do not know the answer for those who did not engage if the terms were different. For those who are deceased, we will never know. For those who are still with us, the question should be put to them. While many will say they believe this is sensible, if there are any who would not have engaged had they known the terms were different, then we have to respect that. It cannot be a matter of we know what is best for them. We need to be cognisant of that and, at a minimum, seek consent before their names would be included and available in the future.

Has this happened with legislation in the past? What consideration has been given by the Department and the Government into this setting a precedent for the future? Does it mean that legislation can be similarly changed in the future? It will certainly be looked upon in the future as something that can happen.

Chairman: In that regard, is there a precedent for this in Britain? As our neighbour, it is the most likely to have had something similar to this. I have heard that records or transcripts dating back to the 19th century have been released later. Is Mr. Mulligan aware of any precedents, not only here but in the United Kingdom?

Mr. Dermot Mulligan: In this part we were asked about where the demand was for this. I would draw attention to my statement where I indicated that there was a motion passed by the Dáil that looked for the documentation of the commission to be preserved for posterity and not destroyed. In relation to the commission documentation, there was a key motion passed by the Dail in that respect.

Chairman: Was it a unanimous motion?

Mr. Dermot Mulligan: Yes.

Chairman: That is important.

Mr. Dermot Mulligan: This would apply that principle to the redress board and the review committee. I acknowledge that the issue regarding confidentiality and the terms in which persons made applications, gave evidence, etc. is a particularly difficult and sensitive one for the individuals concerned and their families. It is correct that what we are talking about in this part of the discussion is not so much whether the records would be retained but rather how and when they would be released. There is a variety of opinion, for example, among survivor groups, in relation to the length of time. Some would like the records released right away. Some think 100 years is too short. There is a range of views on that. There is a range of views also on whether particular individuals would like their own records to be released and when. I am not minimising this as an issue. It is a really sensitive one. The way that the general scheme has been prepared is that the conditions on the release of records will be stipulated by the director of the National Archives office at the time; in 75 years or whenever. It is open to consider whether there would be other restrictions or guarantees on that, and maybe that is what some of those who have expressed opinions on it might be interested in. I am not in a position to say anything particular about it, except that an important factor in the consideration of this is that people gave evidence on the basis that it would be confidential. In the submissions we have received to date on this, we have heard that message from only one individual. It is something we need to consider carefully and we probably need to reflect a little further on it whenever we hear the committee's final views.

Chairman: I thank the representatives, Mr. Mulligan, Ms McGarry and Mr. Ó hAonghusa, for their attendance today. We will be looking at the issue further. We will look at it in private session and we will be in touch with them. If we have any other issues, we will be able to contact them in the meantime.

Mr. Dermot Mulligan: I thank the Chairman.

The joint committee went into private session at 2.35 p.m. and adjourned at 2.45 p.m. until 1 p.m. on Wednesday, 22 April 2015.