

INVESTIGATION COMMITTEE

(Division: Chairperson & Mr. Lowe)

IC Reference: IC/1171

Issue raised at Procedural Hearing on 16th September 2002 (held *in camera*).

Ruling dated 27th November 2002

1. Statutory Framework

- 1.1. The Commission to Inquire into Child Abuse (the Commission) was established on 23rd May 2000 pursuant to the provisions of the Commission to Inquire into Child Abuse Act, 2000 (the Act). The principal functions of the Commission as set out in section 4(1) of the Act are –
 - (a) to provide, for persons who have suffered abuse in childhood in institutions during the relevant period, an opportunity to recount the abuse, and make submissions, to a Committee,

- (b) through a Committee to inquire into the abuse of children in institutions during the relevant period and, where satisfied that such abuse has occurred, to determine the causes, nature, circumstances and extent of such abuse, and
- (c) to prepare and publish a report in writing in relation to the inquiry and the determinations made in the course of the inquiry.

The expression “relevant period” is defined in section 1 of the Act as meaning –

“...the period from and including the year 1940 or such earlier period as the Commission may determine to and including the year 1999 and such later period (if any) as the Commission may determine...”

1.2 The Investigation Committee is one of the two Committees established under the Act, which is currently conducting an inquiry into abuse of children in institutions during the relevant period in accordance with the functions and powers conferred on it by the Act. Prior to this Ruling, in accordance with section 23 of the Act, inquiry officers were carrying out preliminary inquiries into all allegations of ill-treatment of children which *prima facie* come within the definition of “abuse” contained in section 1 of the Act, in institutions, as defined in section 1 of the Act, whether the allegations related to a period before 1st January 1940 or not.

2. The Factual Background

- 2.1 By advertisements published in the print and broadcast media from the end of June 2000 to mid July 2001, the Commission invited any person who had experienced abuse in childhood in an institution to come forward to give evidence. The Commission imposed a deadline of 31st July 2001 for responses to such invitation and the Commission is adhering to that deadline.
- 2.2 On July 18th 2001 the Complainant submitted a request to give evidence to the Investigation Committee. In accordance with section 23 (2)(a) of the Act, the Complainant was asked to submit a statement of the evidence which he proposed to give the Investigation Committee. On 15th March 2002 the Complainant submitted a comprehensive and detailed statement to the Investigation Committee.
- 2.3 In accordance with section 23 (2)(b) of the Act, copies of the statement were made available to the solicitors on record for the two institutions in which the Complainant alleges he was subjected to ill-treatment which constitutes abuse within the meaning of the Act and to the statutory regulator of the two institutions.

2.4 In so far as it is necessary to record them, the relevant facts disclosed in the proceedings before the Investigation Committee in relation to the allegations of the Complainant are as follows:

- The Complainant was born on 10th June 1916, and he is now over 86 years of age.
- The Complainant alleges that he was committed to the first institution about which he complains, an industrial school, which will be referred to as Institution A, in 1918 and remained there until 1925. He alleges that while in Institution A he was subjected to ill-treatment which amounted to abuse. The records maintained by the religious congregation which formerly managed Institution A, which will be referred to as Management Respondent A, indicate that the Complainant was committed to Institution A on 3rd January 1920 when he was 3 years and 234 days old and that he remained there until 4th September 1925.
- The Complainant alleges that when he was approximately 10 years old he was transferred to the second institution about which he complains, another industrial school, which will be referred to as Institution B and that he was subjected to ill-treatment which amounted to abuse in Institution B while he was there between 1925 and 1932. In fact, the records of Management Respondent A would suggest that the Complainant was 9 ¼ years of age when he transferred to Institution

B. The records maintained by the religious congregation which formerly managed Institution B, which will be referred to as Management Respondent B, indicate that the Complainant was discharged from Institution B on 8th June 1932, when he was just approaching his sixteenth birthday.

- The statutory regulator of Institution A and Institution B during the period of the Complainant's residence in the institutions is now represented by the Minister for Education and Science. The database maintained by the Department of Education and Science in relation to persons formerly resident in industrial schools does not contain any record of the Complainant.

3. **The Issue**

The issue raised on behalf of Management Respondent A and Management Respondent B is whether the Investigation Committee has jurisdiction to hear the Complainant's allegations and, as part of its inquiry, to make findings or determinations on foot of such allegations, given that the allegations relate to what happened in Institution A and Institution B prior to 1940. The Investigation Committee invited written submissions from the Complainant, Management Respondent A, Management Respondent B and the Minister for Education and Science on the issue. Written submissions were received from the legal representatives of each of the parties. A procedural hearing was held on 16th

September 2002 at which this division of the Investigation Committee heard submissions from each of the parties and also from the Investigation Committee's legal team.

4. General Conclusions as to Proper Interpretation of the term “Relevant Period”

- 4.1 On the basis of the submissions made to it, this division has reached the conclusions set out in the following paragraphs.
- 4.2 The Commission's remit is limited in time. The Commission's function is to hear persons who allege they suffered abuse in institutions during the relevant period. The inquiry which the Commission is mandated to carry out relates to what occurred in institutions during the relevant period and the determinations and findings which the Commission is empowered to make are similarly limited in time.
- 4.3 The definition of “relevant period” in the Act comprehends the extension of the duration of the functions conferred by the Act beyond the period stipulated, i.e. the period from 1st January 1940 to 31st December 1999, although, in determining whether it would be appropriate to extend the duration and to what extent, significant weight must be attached to the fact that the Oireachtas stipulated that

- period. There is a presumption of constitutionality operating in favour of the provisions of the Act which mandate an inquiry during the stipulated period.
- 4.4 The definition does not admit of an extension of the duration of the functions piecemeal, for example, on a “case by case” basis or on an “institution by institution” basis.
- 4.5 As regards the commencement of the duration of the functions, what is envisaged in the definition is the substitution for the year 1940 of an earlier year.
- 4.6 Whether to substitute an earlier year for the year 1940, and if so, what year, is a matter for determination by the Commission. Such determination must be made in accordance with constitutional principles.
- 4.7 While the Oireachtas has given very little explicit guidance to the Commission as to the basis on which it should make a determination substituting an earlier year for the year 1940, it is reasonable to infer that the Oireachtas recognised that persons who might wish to recount to a Committee of the Commission their experiences in institutions from 1940 onwards may have been in institutions prior to 1940. Common sense and logic suggests that the totality of the experiences of such persons in institutions should be investigated. Therefore, it is considered that the Oireachtas must have had in contemplation the extension of the duration of the functions of the Commission beyond 1940 for a sufficient period to enable

the Commission to investigate the totality of the childhood experiences in institutions of persons who wish to testify and whose period in institutions straddles 1st January 1940 in so far as it is possible to do so in accordance with constitutional principles.

- 4.8 In exercising its discretion to substitute an earlier year for the year 1940, the Commission must act in a rational and proportionate manner. In particular, the Commission must have regard to the following factors which impact on the implementation of the statutory mandate of the Investigation Committee:
- (a) That the further back in time the incident or state of affairs alleged to constitute abuse occurred or existed, the greater the difficulty which is likely to be encountered in reaching a conclusion that an allegation that abuse occurred in an institution is well founded and that it is safe to make a finding of abuse.
 - (b) The likelihood of evidence, both oral and documentary, being available to support a finding of abuse in relation to matters alleged which pre-date 1940.
 - (c) The burden which responding to an allegation is likely to impose on an individual respondent or a management respondent weighed against the

benefit which is likely to accrue from investigating such allegation to the Commission in –

- establishing as complete a picture as possible of the occurrence of abuse in institutions in the State in the past and the causes, nature, circumstances and extent of such abuse and who was responsible for it, and
- making public the result of its inquiries in the context that section 5(3)(c) of the Act prohibits the publication of findings in relation to particular instances of alleged abuse of children.

4.9 Notwithstanding that the Commission's remit is limited in time, the Commission is not precluded from hearing, through its Committees, evidence of fact relating to a period prior to the commencement of the relevant period which is relevant to the investigation of abuse of children in institutions during the relevant period. For example, in the case of an allegation of sexual abuse of a child in an institution during the relevant period, events which occurred prior to commencement of the relevant period may be relevant in determining the state of knowledge of the management of the institution at the time it is alleged the abuse occurred and whether adequate measures were adopted to prevent such abuse.

5. Recommendation of Investigation Committee to Commission in relation to the commencement of the Relevant Period

5.1 Having considered the number of statements it has received from complainants who wish to testify in relation to childhood experiences in institutions before 1940, and the matters in respect of which they wish to testify, in the light of the matters set out in section 4 of this ruling and, in particular, paragraphs 4.7 and 4.8, the Investigation Committee decided to recommend to the Commission that the year 1936 be substituted for the year 1940 as the commencement of the functions of the Investigation Committee. At a meeting held on 26th November 2002, the Commission determined to accept that recommendation.

5.2 In making that recommendation, the Investigation Committee recognises that, in relation to certain allegations of abuse which it investigates, whether dating from before or after 1940, it will not be in a position to make a determination or finding.

6. Application of Determination of Commission to Complainant

6.1 The effect of the determination of the Commission is that the Investigation Committee does not have jurisdiction to inquire into the allegations of the Complainant in relation to either Institution A or Institution B. However, the

Complainant may have evidence which is relevant to the module of inquiry of the Investigation Committee in relation to Institution B. The Investigation Committee's legal team should consider whether the Complainant has such evidence and, if he has, he should be invited to testify in that module.

6.2 This division expresses the hope that the Complainant will understand that this decision is founded on principle and is based on the Commission's understanding of the proper interpretation of the powers which the Oireachtas has conferred on the Commission and its Committees by the Act viewed against the totality of the requests it has received to testify. It is not based on any view of the truth of the Complainant's allegations.

6.3 The investigation of the Complainant's allegations will cease. The parties will be entitled to the legal costs of their participation in the process to date, such costs to be taxed in default of agreement.