



# **Commission to Inquire into Child Abuse**

## **Third Interim Report**

**December 2003**

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
Le ceannach díreach ón  
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,  
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,  
nó tríd an bpost ó  
FOILSEACHÁIN RIALTAIS, AN RANNÓG POST-TRÁCHTA,  
51 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2,  
(Teil: 01 - 6476834/35/36/37; Fax: 01 - 6476843)  
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# Foreword

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Just short of two years ago, a witness who was giving evidence to the Investigation Committee was asked by my colleague, Dr. Imelda Ryan, why she had chosen to come to the Commission. She replied as follows:

“The reason why I came before the Commission is that I read an article to sort of say that the Government were very, very sorry and that there was going to be an inquiry into it and I felt that’s fine, but is this inquiry going to be amongst the politicians or will it involve the actual people who went through what we’ve gone through. And I was given the opportunity of going either for the [Investigation Committee or the Confidential Committee]. And I thought, well I need to face up. I need to move on. I need to tell it how it was because no one believed me when I was younger. Will they believe me now? It is my opportunity to sort of say how it was. Also, the anger I feel because the Government who was in charge of my care failed me miserably. I hadn’t done anything wrong. I hadn’t committed a crime. So why? Why did they subject me to such degradation and humiliation? What’s done is done. It must never, ever, ever, ever be allowed to happen again”.

Later, at the end of her evidence, I asked the witness whether she thought it was a good thing for her to have had to address the emotional turmoil which she spoke of having experienced when the issue of institutional child abuse came to the fore in the media some years earlier, or whether she would have preferred if it had been forgotten. Her answer was as follows:

“No, I did need to address it because, as I said before, when things crop up, smell, times of the year, there is a flicker of what has gone past and what you missed. Time, childhood that was taken away can never be returned. I have my own children and I have never been able to speak about it. I feel that now I have addressed it to you that, hopefully, I won’t be proved to be a liar, stupid. That I was entitled to a life and, even though it happened so long ago, those memories will always be with me. I won’t ever, I don’t think, forget them, even when time passes”.

The witness eloquently articulated the views of most of the witnesses (albeit the too few witnesses) whom the Committee has heard.

In the report which follows, the Commission endeavours to explain to the witnesses and the public, in a fair and balanced manner, why, three and a half years after it was established on a statutory basis, it has not yet got answers for them or for the public to the questions which the Oireachtas posed in the Commission to Inquire into Child Abuse Act 2000.

I wish my successor, Mr. Justice Sean Ryan, success, which has eluded me, in finding the answers and in publishing them in the future.

Finally, I express my sincere gratitude to the members and staff of, and the civil servants seconded to, the Commission and to the members of its legal team, past and present, for all the help and encouragement I have received over the past four and a half years since the Commission was established on a non-statutory basis.

Mary Laffoy  
Chairperson

12<sup>th</sup> December, 2003

# The Commission: Establishment and Functions

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## Establishment

The Commission to Inquire into Child Abuse (the Commission) was established on 23<sup>rd</sup> May, 2000 pursuant to the Commission to Inquire into Child Abuse Act 2000 (the Act). On establishment the Commission consisted of a Chairperson and five ordinary members. Since establishment, the membership of the Commission has varied by resignations and the appointment of additional members. Details of the membership of the Commission since establishment are set out in Table A.

The principal functions conferred on the Commission by the Act are:

1. to hear evidence of abuse from persons who allege they suffered abuse in childhood in institutions during the period from 1940 or earlier to the present day;
2. to conduct an inquiry into abuse of children in institutions during that period and, where satisfied that abuse occurred, to determine the causes, nature, circumstances and extent of such abuse; and
3. to prepare and publish reports on the results of the inquiry and on its recommendations in relation to dealing with the effects of such abuse.

On establishment, the Commission was given two years in which to complete its work and report. However, the Act<sup>1</sup> provided that that period might be extended by the Government. The Government has extended the period for a further three years up to 22<sup>nd</sup> May, 2005.

In the year 2001, the Government conferred additional functions on the Commission. In broad terms, those functions were to conduct an inquiry into the circumstances, legality, conduct, ethical propriety and effects of specified vaccine trials which were conducted in institutions in 1960/1961, 1970 and 1973 and certain other trials conducted in institutions. The additional functions were conferred on the Commission by the Commission to Inquire into Child Abuse Act 2000 (Additional Functions) Order 2001 (S.I. No. 280 of 2001).

The provisions of the Act have been amended by the Residential Institutions Redress Act 2002 (the Act of 2002).

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<sup>1</sup> Section 5(5).

The legislation and secondary legislation which now govern the Commission are summarised in Table B.

The Act provides that the Commission and its Committees shall be independent in the performance of their functions.<sup>2</sup>

## **Pending legal challenges**

At the date of finalisation for publication of this Report two legal actions which affect the work of the Commission are pending in the High Court. Details of the legal actions are set out in Table C.

## **Structure of the Commission**

The Act<sup>3</sup> provides for the establishment of two committees of the Commission. They are:

1. the Confidential Committee and
2. the Investigation Committee.

The Commission's functions of hearing evidence of, and inquiring into, abuse are performed through the Confidential Committee or the Investigation Committee. Members of the Commission are assigned to one or other Committee. They cannot be members of both.<sup>4</sup> The practical effect of the manner in which the Commission is structured by the Act is that a person who wishes to give evidence as to abuse which is within the remit of the Commission must choose to give evidence either to the Confidential Committee or to the Investigation Committee. If the choice is the Confidential Committee, subject to some very limited exceptions, the witness is guaranteed total confidentiality and his or her allegations are not investigated.<sup>5</sup> If the choice is the Investigation Committee, the allegations are investigated and the hearing is conducted in accordance with fair procedures.

The Commission's understanding of its statutory mandate and the respective roles of the Commission and its two statutory committees were outlined in the Commission's Opening Statement delivered at the first public sitting of the Commission held on 29<sup>th</sup> June, 2000.<sup>6</sup>

The additional functions conferred on the Commission in relation to vaccine trials are performed by a division of the Investigation Committee, which has adopted an investigative model similar to that of a tribunal of inquiry established under the Tribunal of Inquiry Acts 1921 to 2002. In this report, that division will be referred to as the Vaccine Trials Division. Reference in this Report to the Investigation Committee means the Investigation Committee performing the functions originally conferred on it by the Act.

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<sup>2</sup> Section 3(3).

<sup>3</sup> Section 10.

<sup>4</sup> Section 10(6).

<sup>5</sup> Section 27.

<sup>6</sup> The text of the Opening Statement is set out in Appendix A.

## Reporting Function

It is a function of each Committee to prepare and furnish a report to the Commission. The report of the Confidential Committee is a report based on the evidence received by it setting out, in general terms, the findings made by it. The Act<sup>7</sup> imposes certain strictures in relation to the reporting function of the Confidential Committee, in that it is provided that the report shall not—

- identify, or contain information that could lead to the identification of witnesses, or the persons against whom they make allegations, or the institutions in which they allege they were abused, or
- contain findings in relation to particular instances of alleged abuse.

The report of the Investigation Committee is a report of the results of its inquiry, specifying the determinations made by it in the course of the inquiry.<sup>8</sup> The Act expressly permits the inclusion in the report of the Investigation Committee of—

- findings that abuse of children, or abuse of children during a particular period, occurred in a particular institution, in which the institution and the person who committed the abuse are identified, and
- findings in relation to the management, administration, operation, supervision and regulation, direct or indirect, of an identified institution and, as respects those functions, the persons in whom they were vested, who may be identified.

The Investigation Committee is prohibited from including in its report findings in relation to particular instances of alleged abuse.

The published report is the report of the Commission. As regards the functions of hearing evidence and conducting the inquiry, which functions are carried out through the Confidential Committee or the Investigation Committee, the published report is based on the reports submitted to the Commission by the Committees. Certain strictures are imposed by the Act<sup>9</sup> in relation to the content of the Commission's report. It is provided that it shall not—

- identify, or contain information that could lead to the identification of, persons the subject of abuse in childhood, or
- contain findings in relation to particular instances of alleged abuse.

Further, insofar as it contains findings that are based on findings in a report of the Confidential Committee, there must be included a statement to the effect that the findings of the Commission are so based and that the evidence on which the findings of the Confidential Committee are based could not be tested or challenged by any person and, if it be the case, was not corroborated.

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<sup>7</sup> Section 16.

<sup>8</sup> Section 13.

<sup>9</sup> Section 5(3) and (4).

## Interim Reports

The Act<sup>10</sup> required the Commission to publish an interim report within one year of establishment and empowered it to publish other interim reports, if and whenever it would consider it appropriate to do so. While there is no requirement on the Commission to publish further interim reports, it has always been the intention of the Commission to publish to the general public interim reports at regular intervals. Two interim reports have been published: the first in May 2001<sup>11</sup> and the second in November 2001.<sup>12</sup> The matters outlined in those reports form the backdrop to the events which have occurred since November 2001.

The Act<sup>13</sup> gives very little guidance as to the content of an interim report and merely provides that the Committee should report “on such matters relating to the inquiry . . . or otherwise relating to its functions as it may determine”. The apparent broad scope of that discretion is cut down by the fundamental requirement that the Commission must conduct its inquiry and fulfil its functions in accordance with the principles of constitutional justice. In its first Interim Report,<sup>14</sup> the Commission declared a policy of not making public any determination or findings until after the inquiry, or in the case of the inquiry conducted by the Investigation Committee, the first phase of the inquiry, had been completed, so as to avoid giving an inaccurate, incomplete or distorted picture of the prevalence of abuse, why it occurred and who was responsible for it and any consequential unfairness or injustice. The Commission had been in existence for one year when that policy was announced. Since then, another two and a half years have elapsed. In preparing this report, the Commission has considered the extent to which it is appropriate to modify the policy formulated in the first year of its existence. It has decided that, where it is in the public interest to publish determinations or findings at an interim stage in the inquiry and it is possible to do so without infringing the principles of natural and constitutional justice, it should do so.

In formulating its approach to reporting on an interim basis, the Commission has had regard to the legislative history of the provisions of the Act in relation to interim reporting and has noted in particular the contributions which were made when a proposed amendment to provide for interim reporting was debated in the Oireachtas Committee on Education and Science on 30<sup>th</sup> March, 2000.<sup>15</sup> It is the intention of the Commission that this Report shall contain as much information as can be given without compromising the integrity of its work in the future in relation to—

- what has been done to date,
- the processes of the Committees and the Vaccine Trials Division, and
- what remains to be done.

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<sup>10</sup> Section 5(6).

<sup>11</sup> The text of the first Interim Report is set out in Appendix B.

<sup>12</sup> The text of the second Interim Report is set out in Appendix C.

<sup>13</sup> Section 5(6).

<sup>14</sup> Appendix B.

<sup>15</sup> Proceedings of 30<sup>th</sup> March, 2000.

## **The Structure of this Report**

This Report is arranged as follows:

### ***The Commission***

- Chapters 1 to 4 inclusive deal with matters which concern the Commission and, in particular, resources and administration.

### ***The Confidential Committee***

- The content of chapter 5 is based on the third Interim Report of the Confidential Committee, which has been adopted by the Commission. As is outlined later,<sup>16</sup> the Confidential Committee has heard all of the witnesses who have proffered evidence to it in relation to their experiences in institutions prior to 1960 and has prepared a report based on that evidence in accordance with the Act.<sup>17</sup> Having taken legal advice from its leading counsel, Frank Clarke, S.C., the Commission has decided that it would be inappropriate to publish findings of the Confidential Committee at a time when, because of the absence of a sufficient body of evidence, it is not in a position to publish the findings of the Investigation Committee in relation to the same period.

### ***The Investigation Committee***

- The content of chapters 6 to 13 inclusive is based on the third Interim Report of the Investigation Committee, which has been adopted by the Commission. Reference to “the Committee” in those chapters means the Investigation Committee.

### ***The Vaccine Trials Division***

- The content of chapter 14 is based on the first Interim Report of the Vaccine Trials Division which has been adopted by the Commission.

Reference in this Report to “the Minister”<sup>18</sup> means the Minister for Education and Science and reference to “the Department” means the Department of Education and Science.

## **Effective date**

This report was passed for publication by the Commission on 12<sup>th</sup> December 2003. It records matters in relation to the performance of the Commission’s functions up to and including that day.

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<sup>16</sup> Chapter 5.

<sup>17</sup> Section 16(1).

<sup>18</sup> See section 1(1) of the Act.

**TABLE A****Members of the Commission**

<b>Member</b>	<b>Date of Appointment</b>	<b>Date of Resignation (if applicable)</b>	<b>Committee</b>
<b>Chairperson of Commission</b> The Honourable Ms. Justice Mary Laffoy, Judge of the High Court	23 <sup>rd</sup> May, 2000	12 <sup>th</sup> December, 2003	Investigation Committee (Chairperson) Vaccine Trials Division (Chairperson)
<b>Ordinary Members</b> Dr. Patrick Deasy, Retired Consultant Paediatrician	23 <sup>rd</sup> May, 2000	30 <sup>th</sup> April, 2003	Confidential Committee
Ms. Norah Gibbons, Childcare Director	23 <sup>rd</sup> May, 2000		Confidential Committee (Chairperson)
Mr. Bob Lewis, CBE Retired Director of Social Services (Stockport, United Kingdom)	23 <sup>rd</sup> May, 2000	19 <sup>th</sup> July, 2000	Confidential Committee
Mr. Fred Lowe, Principal Clinical Psychologist	23 <sup>rd</sup> May, 2000		Investigation Committee
Dr. Imelda Ryan Consultant Child & Adolescent Psychiatrist	23 <sup>rd</sup> May, 2000		Investigation Committee
Dr. Kevin McCoy, Retired Chief Inspector, Social Services Inspectorate, Northern Ireland.	21 <sup>st</sup> November, 2000	30 <sup>th</sup> April, 2003	Confidential Committee
Professor Edward Tempany, Retired Consultant Paediatrician	13 <sup>th</sup> November 2001		Vaccine Trials Division
Ms. Anne McLoughlin Senior Social Worker	23 <sup>rd</sup> January 2002		Confidential Committe

## TABLE B

### Legislation and Secondary Legislation Governing the Commission Acts

1. Commission to Inquire into Child Abuse Act 2000 (No. 7 of 2000) (the Act) enacted on 26<sup>th</sup> April, 2000: the whole Act.
2. Residential Institutions Redress Act 2002 (No. 13 of 2002) enacted on 10<sup>th</sup> April, 2002: Section 32, which amends the Act by—
  1. the substitution for section 20 of the Act of the following sections:
    - Section 20 dealing with **Miscellaneous costs and expenses**
    - Section 20A dealing with **Legal representation and costs and expenses**and
  2. the insertion after section 23 of a new section, section 23A, dealing with **Deciding officers**.

#### Statutory Instrument

Commission to Inquire into Child Abuse Act 2000 (Additional Functions) Order 2001 (S.I. No. 280 of 2001) made on 19<sup>th</sup> June, 2001.

#### Government and Ministerial Orders

1. Commission to Inquire into Child Abuse Act 2000 (Establishment Day) Order 2000 made on 23<sup>rd</sup> May, 2000.
2. Commission to Inquire into Child Abuse Act 2000 (Section 5) (Specified Period) Order 2000, made on 17<sup>th</sup> April, 2002.

## TABLE C

### Pending Legal Challenges

(1) *High Court Proceedings (The Christian Brothers' Proceedings)*

Record No. 2003/1998P

*Plaintiffs:* Michael Murray and David Gibson representing the Congregations of the Christian Brothers.

*Defendants:* The Commission to Inquire into Child Abuse, The Minister for Education and Science, Ireland and the Attorney General.

*Status:* Plenary hearing in the High Court on 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup>, 20<sup>th</sup>, 21<sup>st</sup> and 22<sup>nd</sup> May, 2003 before Mr. Justice Henry Abbott.

Judgment delivered on 17<sup>th</sup> October, 2003.

For mention on 10<sup>th</sup> November, 2003 and adjourned *sine die*.

For judgment on 12<sup>th</sup> January, 2004.

(2) *High Court Proceedings (The Judicial Review Proceedings)*

Record No. 2003/782JR

*Applicant:* Irene Hillary

*Respondents:* The Minister for Education and Science, Ireland, the Attorney General and the Commission to Inquire into Child Abuse.

*Status:* Leave to apply for relief by way of judicial review, including a declaration that the Commission to Inquire into Child Abuse Act 2000 (Additional Functions) Order 2001 (S.I. 280 of 2001) is *ultra vires* the Act, was granted by the High Court on 3<sup>rd</sup> November, 2003. On 25<sup>th</sup> November, 2003, an undertaking was given by the Commission to the High Court that it would not conduct any hearings in relation to matters within the ambit of the Statutory Instrument until the matter is next in the High Court, that is to say, until 20<sup>th</sup> January, 2004.

# The Commission from Establishment to the Present

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## Introduction

The primary focus of this chapter is the relationship of the Commission with the Government and with the Minister for Education and Science and his Department. In effect, the Department of Education and Science is the Commission's sponsoring Department. The Commission is funded through a sub-head in the Vote of the Department.

## Milestones in the life of the Commission from its establishment to the publication of the second interim report

During the first eighteen months of its existence, due primarily to factors outside its control, the Commission's ability to advance fulfilment of its statutory mandate was hindered, as the following outline of the major events which occurred illustrates:

### *First public sitting*

- The first public sitting of the Commission was held on 29<sup>th</sup> June, 2000. The Opening Statement<sup>19</sup> was delivered. Members of the public affected by the work of the Commission were invited to raise by way of submission any matter requiring clarity or determination at the second public sitting, which was scheduled for 20<sup>th</sup> July, 2000.

### *Second public sitting*

- Various legal and procedural matters, of which notice had been received by the Commission, were dealt with at the second public sitting, which was held on the scheduled date, 20<sup>th</sup> July, 2000.<sup>20</sup> The submission which has had the most significant impact on the work of the Commission was made on behalf of a number of solicitors throughout the country who represented the interests of many potential witnesses in the Commission's processes, who have come to be commonly known as "the Survivors' Solicitors". Essentially, the case made in the submission was that the Commission should issue an interim report calling on the Government to provide "an appropriate scheme of compensation to survivors in respect of their losses". Until such time as the issue of such a scheme of compensation was satisfactorily addressed, it was contended

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<sup>19</sup> Appendix A.

<sup>20</sup> A transcript of the hearing is posted on the Commission's website.

that it would be difficult for individual solicitors to advise their clients as to whether participation in the work of the Commission was in their personal or legal interests. The significance of the issue raised in the submission was acknowledged by the Commission, which adjourned the public sitting to enable it to consider the submission and convey the message contained in it to the Government. It was hoped that the public sitting could be resumed before the end of August, 2000.

### *Resumption of second public sitting*

- By letter of 26<sup>th</sup> July, 2000, the Commission informed the Minister of the submission, making it clear that the Commission was not expressing any view, either positive or negative, on the merits of the arguments put forward in the submission. However, the Minister was informed that the matters raised by the Survivors' Solicitors represented potentially a significant barrier to the effective conduct of the business of the Commission. The Commission made a suggestion as to how that barrier might be removed: by the Government committing in principle to the establishment of an appropriate body to deal with compensation issues and the Commission making recommendations on the modalities of the compensation scheme after the completion of Phase I<sup>21</sup> of the work of the Investigation Committee. The Commission sought an early indication of the Government's position on the issues raised. The Commission did not get a response as promptly as had been expected. The second public sitting was resumed on 26<sup>th</sup> September, 2000<sup>22</sup> and, at that hearing, the Commission apprised the public of the then current position.

### *Announcement of compensation scheme*

- On 3<sup>rd</sup> October, 2000 the Minister announced that the Government had agreed in principle to establish a body to compensate people who, as children, were victims of abuse while in the care of institutions in which they were resident and in respect of which State bodies had regulatory or supervisory functions. Compensation would be paid on an *ex gratia* basis. Issues concerning the establishment, funding and operation of the compensation body would be the subject of a further decision in the near future. The decision of the Government agreeing the proposals for the compensation scheme was the subject of a public announcement made by the Minister on 27<sup>th</sup> February, 2001, setting out the main elements of the scheme. Under the proposals, there was to be no direct interface between the proposed compensation scheme and the work of the Commission. The Residential Institutions Redress Bill 2001, the purpose of which was to give effect to the proposals for the compensation or redress scheme, was introduced on the 11<sup>th</sup> June, 2001. However, neither the announcement of the compensation scheme nor the introduction of the Bill removed the barrier to full participation by the Survivors' Solicitors in the work of the Commission. In correspondence with the Commission in July 2001, the Survivors' Solicitors advised the Commission that the point had not arrived whereby the solicitors could with confidence advise their clients in relation to the work of the Commission for the reasons set out: the exclusion from the terms of the Bill of substantial categories of childhood victims and concerns relating to the mode of assessment of compensation

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<sup>21</sup> See Opening Statement in which the two phase nature of the work of the Investigation Committee was explained.

<sup>22</sup> A transcript of the hearing is posted on the Commission's website.

provided for. The Survivors' Solicitors' views were conveyed to the Minister. That was the situation which prevailed when the second Interim Report was published.

### *Costs of legal representation*

- At the second public sitting on 20<sup>th</sup> July, 2000, the Commission ruled on entitlement to legal representation before the Investigation Committee and the provision for the costs of such representation. Under the ruling, any person appearing before the Investigation Committee during Phase 1 of its work, whether as a complainant or as a respondent,<sup>23</sup> would be allowed legal representation by a solicitor and a barrister of his or her choice. The expenses of that legal representation would be defrayed in accordance with a scheme to be made by the Minister under the Act. As originally enacted, the Act<sup>24</sup> empowered the Minister to make a scheme for the payment of witnesses' expenses and the expenses of legal representation. On the day following the second public sitting, the Commission formally advised the Minister of the rulings it had made in relation to legal representation and called on him to make the scheme. It was not until 9<sup>th</sup> May, 2001 that a scheme<sup>25</sup> providing for the costs of legal representation at the Phase 1 hearings of the Investigation Committee, which the Commission considered workable, was made by the Minister. While the Commission was satisfied with, and was prepared to operate, the scheme, it did not find favour with solicitors involved or likely to be involved in the process, including the Survivors' Solicitors. In the correspondence in July 2001, the Survivors' Solicitors had expressed dissatisfaction with the scheme, describing it as "seriously flawed". Prior to the publication of the second Interim Report in November, 2001, the Commission was informed that the Minister was agreeable in principle to the taxation of the costs of legal representation at both phases of the work of the Investigation Committee and proposed to amend the Act to so provide.

### *Volume of complaints*

- The fact that the compensation and legal costs issues raised by the Survivors' Solicitors were not being resolved to their satisfaction adversely impacted on the volume of requests to give evidence which the Commission received during the first year of its existence. By 30<sup>th</sup> April, 2001, one thousand two hundred and thirty-eight (1,238) potential witnesses had submitted requests to be heard, of whom five hundred and twenty-four (524) had chosen the Investigation Committee and the remainder, seven

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<sup>23</sup> The terminology used by the Commission to distinguish parties involved in the process of the Investigation Committee in different capacities is as follows:

- "complainant" refers to a person alleging that he or she was abused.
- "respondent" refers to a person or body against whom the Complainant alleges abuse being—
  - an "individual respondent", i.e. a person who is alleged to have committed the abuse,
  - a "management respondent", i.e. the person or body in charge of the management of the institution in which the abuse is alleged to have occurred at the relevant time, or
  - a "regulatory respondent", i.e. the person or body charged with regulatory responsibility, whether under statute or otherwise, for the institution in which abuse is alleged to have occurred (usually a Department of State or a public or local authority, such as a Health Board) at the relevant time.

<sup>24</sup> Section 20.

<sup>25</sup> The text of the Scheme is set out in Table R.

hundred and fourteen (714), the Confidential Committee. At the end of May 2001, contemporaneous with the publication of the first Interim Report, the Commission imposed a final date for submission of requests to participate in the Commission's inquiry. The deadline was 31<sup>st</sup> July, 2001. Imposition of the deadline resulted in a very substantial increase in the volume of complaints. At the time of the publication of the second Interim Report, the total number of requests before the Commission was three thousand, one hundred and forty-nine (3,149), of which one thousand, one hundred and ninety-two (1,192) related to the Confidential Committee and the balance, one thousand nine hundred and fifty-seven (1,957), to the Investigation Committee.

#### *Substantive work — the Confidential Committee*

- The Confidential Committee commenced hearings in September 2000. By the end of November 2001, 254 hearings had been concluded.

#### *Substantive work — the Investigation Committee*

- In accordance with the provisions of the Act,<sup>26</sup> hearings of the Investigation Committee are preceded by a preliminary inquiry carried out by an Inquiry Officer. Two Inquiry Officers were appointed at the beginning of December 2000 and commenced preliminary investigations. As of 30<sup>th</sup> April, 2001, no preliminary inquiry had been finalised. By November 2001, the Investigation Committee had only been able to schedule five cases for hearing. In many cases, the preliminary inquiry was being stalled at the first stage in the process, the submission of the complainant's statement, because of the attitude of his or her solicitor in relation to the compensation and legal costs issues.

### **Predictions in November 2001 as to completion of the work of the Commission**

In the second Interim Report, the Commission predicted that it would take until June 2004 to afford hearings to all witnesses who had chosen the Confidential Committee. The Commission was unable to predict with any degree of accuracy how long it would take to afford hearings to the witnesses who had chosen the Investigation Committee for a number of reasons: difficulty in determining the length of the preliminary inquiries; difficulty in predicting the number of cases which would proceed to a hearing; and difficulty in assessing the length of each hearing, because of the varying degree of complexity of the complaints. However, the view of the Commission was that, irrespective of the volume and complexity of the cases which the Investigation Committee would ultimately have to deal with, Phase 1 of the work of the Investigation Committee should be completed around the same time as the projected completion of the work of the Confidential Committee, around June 2004. It was considered that any extension of Phase 1 beyond that date could not be regarded as completion of Phase 1 with reasonable expedition. On the assumption that Phase 1 would be completed around June 2004, it was anticipated that Phase 2 would not commence before 2005, the consequence of which was that the Commission would not be in a position to publish its final report until some time in the year 2005 at the earliest.

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<sup>26</sup> Section 23.

It was the Commission's view in November 2001, and it so stated in the second Interim Report, that the necessary resources in terms of personnel, administrative support and legal advisors would have to be made available to the Investigation Committee to enable it to complete Phase 1 with reasonable expedition, which the Commission considered to be the middle of 2004 at the outside. The Commission has not at any time countenanced a scenario in which the work of the Investigation Committee would continue for ten or eleven years as being a viable proposition or as representing a proper fulfilment of its statutory mandate, although it has recognised, and has informed the Minister, that such would be the likely duration of its work, if it was constrained to do its work as constituted in November 2001 and as now constituted.

## **Progress from November 2001 to June 2002**

Prior to the publication of the second Interim Report, the Commission had taken steps to ensure that it would be in a position to complete its work within a reasonable timeframe. Considerable progress was made in the period from November 2001 to June 2002 and at the end of that period the Commission's objective seemed achievable, although the timescale was revised. The major events during the period were:

### *Divisionalisation of the Investigation Committee*

- Prior to the publication of the second Interim Report, the Commission had notified the Department of its view that, if the Commission were to complete its work within a reasonable timeframe, it would be necessary that two or three divisions of the Investigation Committee should sit contemporaneously. It was suggested that, as an alternative to appointing an additional number of ordinary members, consideration might be given to establishing a panel of persons with suitable professional qualifications and expertise, for example, in law, medicine, psychiatry, psychology and social work, from which a person could be selected to sit with a member of the Investigation Committee to hear evidence and make findings of fact on the evidence. It was the view of the Commission that an amendment to the Act would be necessary to give effect to the proposal. The Commission requested that consideration be given to enacting the enabling provision at the earliest possible opportunity. The Commission's suggestion was taken on board. A provision was included in the Act of 2002,<sup>27</sup> which amended the Act by the insertion of a new section<sup>28</sup> which provided for the appointment of "Deciding Officers" and enabled the inclusion of a Deciding Officer in a division of the Investigation Committee, in respect of which he or she would exercise the functions of a member of the division.

### *Extension of Commission's remit*

- In the second Interim Report, the Commission indicated that it would be seeking an extension of the period for completion of its work for three years from the expiry of its existing remit, that is to say, for a further three years from 23<sup>rd</sup> May, 2002. On 17<sup>th</sup> April, 2002, an extension was granted to 22<sup>nd</sup> May, 2005 by Government Order.<sup>29</sup>

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<sup>27</sup> Section 32.

<sup>28</sup> Section 23A.

<sup>29</sup> Commission to Inquire into Child Abuse Act 2000 (Section 5) (Specified Period) Order 2002.

### *Compensation issue*

- The compensation issue was resolved by the enactment of the Act of 2002 on 10<sup>th</sup> April, 2002.

### *Legal costs issue*

- There was included in the Act of 2002<sup>30</sup> a provision which amended the provisions in the Act<sup>31</sup> in relation to payment by the Commission of the costs of legal representation. The amendment provides that the costs of legal representation before the Investigation Committee which are allowed to a party shall be subject to taxation by a Taxing Master of the High Court in default of agreement.

### *Deadline for Complainants' statements*

- By the end of March 2002, less than one-third of the potential witnesses who had submitted requests to testify to the Investigation Committee had submitted statements of their proposed evidence in compliance with a request from an Inquiry Officer in accordance with the Act.<sup>32</sup> At the end of March 2002, when it was apparent that the resolution of the compensation and legal costs issues by virtue of the enactment of the Bill, which became the Act of 2002, was imminent, the Investigation Committee imposed a final date for the provision of Complainants' statements. The deadline was 30<sup>th</sup> June, 2002. When the deadline expired, complainant statements had been provided in respect of approximately 1,800 complaints.

### *Request for additional resources*

- In anticipation of the expiry of the deadline for submission of Complainants' statements, on 10<sup>th</sup> June, 2002 the Commission submitted a request for additional resources to enable it to carry out its statutory functions within the time period allowed by the Oireachtas. In submitting the request, the Commission stressed that what was being sought was the minimal requirement to enable the Investigation Committee to conduct its inquiry through three divisions.

## **Response to request for additional resources — June to December 2002**

In recording the interaction of the Minister and his Department with the Commission in the period between the beginning of June 2002, when the Commission submitted its request for additional resources, and September 2003, when the Minister publicly announced a second review of the Commission's remit, it is necessary to refer to the contents of correspondence and statements. Lest the references give an incomplete, inaccurate or distorted account, the letters which it is considered are of seminal importance in defining the relationship between the Commission and its sponsoring Department, and the relevant statements are set out in their entirety in Appendix D. Of the published letters, those which emanated from the Commission represent only a portion of the

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<sup>30</sup> Section 32.

<sup>31</sup> Section 20 (for which sections 20 and 20A were substituted).

<sup>32</sup> Section 23.

correspondence from the Commission in which the needs of the Commission, the urgency of meeting those needs and the consequences of failing to do so were urged. In addition, during the period between June 2002 and September 2003 the following meetings took place with a view to advancing matters:

- A meeting held on 4<sup>th</sup> November, 2002 attended by the Minister and his officials and the Chairperson and another member of the Commission.
- A meeting held on 9<sup>th</sup> May, 2003 attended by the Minister, the Attorney General and the Chairperson of the Commission.
- A meeting held on 15<sup>th</sup> July, 2003 attended by the Minister, the Attorney General and the Chairperson of the Commission and Counsel to the Commission.

The earliest intimation which the Commission had that it might not get a prompt response to its request for additional resources was contained in a letter dated 21<sup>st</sup> August, 2002<sup>33</sup> from the Department in which it was informed that the matter was to go to Government. The Government was to be apprised of, in addition to the resourcing needs of the Commission, any associated implications for the resourcing of the Department, the cost of legal representation and the duration of the Commission's work. In the letter it was intimated that the Department would like to advise the Government of the likely duration of the Commission's work.

Throughout the period from June to December 2002, the Commission responded promptly to all requests for information from the Department. In response to the letter of 21<sup>st</sup> August, 2002, the Department was informed of the difficulties of predicting the duration of the work of the Commission. However, it was made clear that the Commission was working towards the completion of its work within the extended timeframe given to it by the Oireachtas, i.e. by 23<sup>rd</sup> May, 2005. The Department was informed that because of the nature of the Commission's work and the age profile of the many people affected by it, the Commission considered that it was imperative that the work of the Commission should be completed within a reasonable timeframe.

Following further correspondence and discussions, including discussions between the Commission's legal team and the Department's legal team, on 2<sup>nd</sup> October, 2002,<sup>34</sup> the Secretary General of the Department wrote to the Commission indicating that the Minister intended to seek the views of his Cabinet colleagues on the issue of additional resources within the following few weeks. It was pointed out that examination of the additional requirements provided an opportunity for the Government to consider more generally the work of the Commission and the expected costs and time scale associated with completing the work. The Commission was asked to confirm the Commission's understanding of these issues and, in particular, the Department's understanding that—

- the Commission would be in a position to furnish its Report in mid to late 2007, and
- a reasonable assumption was that legal costs alone could reach approximately €200 million.

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<sup>33</sup> In Appendix D.

<sup>34</sup> In Appendix D.

The Commission responded by letter dated 3<sup>rd</sup> October, 2002,<sup>35</sup> in which it reiterated the urgent necessity for a decision on the Commission's requests for additional resources, without which the Commission simply could not do what it had been mandated by the Oireachtas to do. Having outlined the necessity for divisionalisation of the work of the Investigation Committee, the Commission indicated that it was aiming to complete Phase 1 by July 2005. In its view any prolongation of Phase 1 beyond the middle of 2005 threatened the ability of the Investigation Committee to complete its work and the proper fulfilment of the Commission's mandate. It was acknowledged that it was unlikely that it would be able to publish a report before mid 2007. On the question of legal costs, the Commission could neither agree with nor dispute the Department's estimate of the overall cost which the Exchequer would have to bear for taxed costs of legal representation. It was pointed out that the increase in the overall cost of the Commission was a direct result of the introduction of the provision for taxation of costs of legal representation in the Act of 2002.

Around this time, in October 2002, the Commission was contemplating the publication of an Interim Report. In its letter of 3<sup>rd</sup> October, 2002, the Commission informed the Department that, as it had not reported since November 2001, it was anxious to publish a further Interim Report apprising the public of the then current state of the performance of its statutory remit and its predictions as to the future course of its work as soon as possible and, in any event, no later than November 2002. That did not prove possible, because the issue of additional resources remained unresolved.

The decision of the Government on the Commission's request for additional resources, which was made on 3<sup>rd</sup> December, 2002, was communicated to the Commission by letter dated 5<sup>th</sup> December, 2002<sup>36</sup> from the Minister. In the intervening period since 3<sup>rd</sup> October, 2002, there had been considerable correspondence and contact between the Commission and the Department, and between the Commission and its legal team and the Attorney General and his officials. In its final request for information, in a letter dated 26<sup>th</sup> November, 2002, the Department asked the Commission to furnish clarification—

“... regarding the comparison between the Commission continuing as presently constituted and staffed, how many hearings could be finalised in a year, how long Phase 1 would take, etc. and the same information should the Investigation Committee work in four divisions?”

The Commission furnished the information and clarification sought in a Memorandum dated 29<sup>th</sup> November, 2002.<sup>37</sup> The Commission's conclusion was that it would not be possible for the Investigation Committee, as then constituted, and with the level of staff and legal personnel by which it was then supported, to properly fulfil its statutory remit. It was made clear that such a scenario, in which it was envisaged that it could take between seven and ten years from the commencement of the year 2003 to complete Phase 1 of its work, was considered not to be a viable option. That view had already been expressed publicly in the Final Ruling of the Investigation Committee on the Procedural Hearing on

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<sup>35</sup> In Appendix D.

<sup>36</sup> In Appendix D.

<sup>37</sup> In Appendix D.

lapse of time and allied issues which was issued on 18<sup>th</sup> October, 2002.<sup>38</sup> In the ruling, the Committee dealt with a letter which it had received on 8<sup>th</sup> October, 2002 from a firm of solicitors acting for one of the Congregations which had participated in the Procedural Hearing, requesting the referral of the issues of prejudice caused by lapse of time to the High Court under section 25 of the Act. In the letter, the solicitors had stated that they had been made aware that the Investigation Committee was taking the view that its proceedings could take up to ten years, because of the total number of statements of complaint received by it. In the ruling,<sup>39</sup> the Committee refused the request for a referral to the High Court and stated as follows:

“This Committee wishes to make it clear that it does not take the view that its proceedings could take up to ten years. It is the view of this Committee that it must conclude its inquiry within a reasonable timeframe. It has sought additional resources from the Minister for Education and Science to enable it to do so”.

While the Commission was anxious to publish an Interim Report in November 2002, as had been indicated in the correspondence with the Department, it decided that there was little point in doing so as, in the absence of a decision on its request for additional resources, it was not in a position to indicate to the public in realistic terms and with any degree of certainty its capacity to fulfil its mandate. The letter of 5<sup>th</sup> December, 2002 conveying the Government’s decision magnified the uncertainty. It recorded that the Government had “agreed in principle to the provision of the additional resources as requested”. However, it enjoined the Commission to proceed with the process of filling new posts “in a gradual fashion”. It also disclosed that the Government had directed “a review of the terms of reference of the Commission” which was to be completed by mid-February 2003. It was pointed out that any changes to the mandate of the Commission occasioned by the review might be reflected in the final amount of additional resources provided for the Commission, with adjustments being made at the end of February 2003. That being the case, the Commission was enjoined to consider the appointment of any additional staff on a short contract basis to allow for revised staffing levels when the review was completed.

The coupling of the agreement in principle to provide the additional resources with the outcome of the review, which was interpreted, correctly as it transpired, as being confined to the Investigation Committee, was seen by the Investigation Committee as putting it in an impossible position. The agreement in principle to provide the resources, conditioned as it was, seemed to amount in substance to a refusal of the request for additional resources pending the outcome of the review. Moreover, it seemed that the contemplated outcome of the review was a reduction in the remit of the Commission. The decision created a real dilemma for the Investigation Committee. On the one hand, if it was to continue to operate within its existing remit, it would incur expense and place burdens on third parties by requiring compliance with existing statutory obligations which might turn out to have been incurred and imposed in relation to matters which would cease to be within the Commission’s remit as a result of the review, leaving it open to legitimate criticism that it had imposed an unnecessary burden on the Exchequer and on third parties. On the other hand, the Investigation Committee was bound by its existing

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<sup>38</sup> The Ruling is posted on the Commission’s website.

<sup>39</sup> Paragraph 12.4.

statutory remit. If it did not continue to fulfil that remit, it left itself open to legitimate criticism that it was in breach of its statutory duty and possible exposure to an accusation analogous to prosecutorial delay.

The concerns of the Investigation Committee were outlined in a letter of 6<sup>th</sup> December, 2002<sup>40</sup> from the Chairperson to the Department. A possible resolution of the extreme difficulties in which the Investigation Committee had been placed as a result of the Government decision was suggested: that legislation be introduced which would permit the Investigation Committee to suspend its work until the review was completed and any alterations to its mandate brought into force by legislation. The Investigation Committee was concerned, and the concern was expressed in the letter that, on the basis of its experience, the timeframe for completion of the review envisaged in the Government Decision might not be met.

The Department's response was contained in a letter of 13<sup>th</sup> December, 2002<sup>41</sup> from the Secretary General. In that letter, the Commission was informed that the review was confined to the Investigation Committee and that its purpose was to achieve a situation of the Commission not being required to conduct an investigation in relation to every allegation of abuse. Consideration was to be given to a legislative amendment which would enable findings, at least in relation to residential institutions, to be predicated on a statistically valid sample of allegations. The Commission was also informed that it was clear to the Department that any change in the remit of the Investigation Committee which would emerge from the review could only be effected through amending legislation. The Commission was told that—

- it was not a legal option to suspend the work of the Investigation Committee without legislation,
- legislation would not be introduced, although, if the review process should become protracted, legislation enabling suspension could be considered and the position could be reviewed in January 2003, and
- the Investigation Committee should proceed to take whatever steps it considered appropriate so as to operate within its existing remit.

On 20<sup>th</sup> December, 2002,<sup>42</sup> the Minister issued a press statement announcing the review, which was expected to be concluded in February 2003. It was also announced that, pending the implementation of the recommendations of the review, the Commission would continue to operate under its existing remit.

### **The Review of Mandate — January to July 2003**

The decision of the Government envisaged that the review, which was to be led by the Attorney General, would involve a consultation process with the Commission. The Commission participated in the consultation process and cooperated with the Attorney General and the review body (the Review) in the belief that changes could be introduced which would enable the Commission to complete its inquiry in a more timely, efficient

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<sup>40</sup> In Appendix D.

<sup>41</sup> In Appendix D.

<sup>42</sup> In Appendix D.

and cost-effective manner than would be possible in the absence of such changes. The Commission also believed that the Attorney General should have the benefit of its experience. The consultation process involved:

- meetings of members of the Commission with their legal advisors and the Attorney General and his officials,
- meetings between the Commission’s legal team and the Attorney General and his officials, and
- formal submissions.

Before making any formal submission, the Commission had been informed by the Attorney General of the then current thinking of the Review: that the way forward was to grant a power of choice or selection of the type of cases which would proceed to a full hearing. It was the understanding of the Commission that the concept of “sampling” predicated on a statistically valid sample of allegations, which had been mooted in the Department’s letter of 13<sup>th</sup> December, 2002, was abandoned.

The Commission made two formal submissions to the Review:

- A paper entitled “Position of Commission in relation to Government Review”,<sup>43</sup> which was furnished to the Attorney General on 29<sup>th</sup> January, 2003, and
- A paper entitled “Possible Approach to Selection of Complainant Evidence”, which was originally furnished to the Attorney General on 12<sup>th</sup> February, 2003 and was resubmitted on 4<sup>th</sup> March, 2003<sup>44</sup> with certain statistical data deleted.

On the basis of its awareness of the then current thinking of the Review, the Commission identified the core issues to be addressed as:

1. the manner of selection of complainant evidence, and
2. how complainants whose evidence was not selected might be accommodated in the process of the Investigation Committee.

On the first issue, it was the view of the Commission that the selection criteria should be statute based. The formulation of the precise criteria was fundamentally a matter of policy to be determined by the Government subject to the approval of the Oireachtas, although the Commission offered to consider any criteria which might be under consideration with a view to assisting the Review as to the likely effect of the adoption of the proposed criteria on the scale of the inquiry which would be required to be conducted. On the second issue, the Commission acknowledged that there would be a difficulty in involving complainants whose evidence had not been selected in accordance with the criteria in the process. It admitted to not having a ready solution to the difficulty but indicated a willingness to consider any proposals which the Review should come up with.

The Commission submitted its second paper following a meeting with the Attorney General and his officials at which a proposal was presented by the Attorney General which the Commission considered to be both unworkable and likely to be subject to legal

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<sup>43</sup> The text of the Paper is set out in Appendix E.

<sup>44</sup> The text of the Paper is set out in Appendix E.

challenge. In an effort to resolve the impasse, in its second paper, the Commission suggested an approach to formulating selection criteria. The approach suggested involved identifying criteria which satisfied what was considered to be the fundamental test: enabling the Commission to ascertain the true and full facts in relation to the matters being inquired into. It also involved distinguishing between the various types of abuse encompassed in the definition of “abuse” in the Act,<sup>45</sup> and having regard to the characteristics of each in formulating the criteria. It was also indicated that the Commission did not see any way of involving Complainants whose evidence was not selected by reference to the adopted criteria in the process of the Investigation Committee.

In summary, the position adopted by the Commission in the course of the consultation process was that the core issues were matters of policy for the Government. If there was a policy decision that every complainant was not to have an entitlement to be heard by the Investigation Committee, the criteria for selection of complainant evidence should be fixed by statute. Complainants whose evidence was not selected by reference to the statutory criteria could have no further involvement in the process of the Investigation Committee, although they would be entitled to recount their experiences to the Confidential Committee. The effect of the enactment of such a policy would be that—

- an entitlement or right to be heard would only arise in relation to the Confidential Committee, which would continue to perform the Commission’s listening function as mandated by the Act,<sup>46</sup> in a sympathetic and understanding atmosphere and as informally as possible, bearing in mind the need of persons who have suffered abuse in childhood to recount to others such abuse, their difficulties in so doing and the potential beneficial effect of so doing and
- in fulfilling its investigative function, the Investigation Committee would select evidence in accordance with statute based objective criteria.

Taking into account the procedural changes which the Commission understood the Review to have in contemplation, which it was anticipated would result in a more effective and focused inquiry, provided the selection criteria were not unduly prescriptive, the Commission considered that the implementation of such policy would enable it to complete its work within a reasonable timeframe. That remains the Commission’s position.

It is the Commission’s understanding that the Report of the Review was brought by the Minister to Government on 4<sup>th</sup> March, 2003. In view of the timescale imposed by the Government in its decision and the assurances which the Commission had been given in the letter of 13<sup>th</sup> December, 2002 that the review itself, and any legislation arising from it, would be treated as a matter of priority, the Commission became concerned when the outcome of the review had not been published by the end of March 2003. The Commission’s concerns were conveyed to the Minister in a letter dated 25<sup>th</sup> March, 2003,<sup>47</sup> in which the Commission emphasised the need to bring closure for victims of childhood abuse.

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<sup>45</sup> Section 1(1).

<sup>46</sup> Section 4(6).

<sup>47</sup> In Appendix D.

The Commission's concerns were aggravated when, on 9<sup>th</sup> April, 2003, in response to a notification to the Secretary General of the Department that the Commission intended to appoint two junior counsel on terms which required the junior counsel concerned to give a commitment to exclusive attention to the work of the Commission for a period of not less than eighteen months, the Commission received a response which contained the following statement:

“Pending the outcome of the review process, it is clearly difficult to identify the precise resource requirements needed by the Commission. In such circumstances it is suggested that the Commission consider a provision which would allow for it to foreshorten the length of the appointment or a provision for regular review of the contract . . .”

That statement provoked a further letter of 10<sup>th</sup> April, 2003<sup>48</sup> from the Commission to the Minister, in which the Commission sought, by 29<sup>th</sup> April following, the Department's “best estimate” of—

1. when the outcome of the Review would be published, and
2. the timescale for enacting any consequential amending legislation.

The Minister's response to the Commission's letter of 25<sup>th</sup> March, 2003 was contained in a letter dated 17<sup>th</sup> April, 2003.<sup>49</sup> In that letter, the Minister confirmed that the Report on the Review had been brought to Government on 4<sup>th</sup> March, 2003 and that Heads of a Bill were presented to the Government on 4<sup>th</sup> April, 2003. The Government had approved the draft Heads of a Bill and the legislation was being drafted. The Minister pointed out that the publication of the review was “a matter of political judgement for the Government”. The Government had decided that it would publish the review with the Bill; that decision was a “political decision” that had “been properly made” by the Government.

The two specific questions raised by the Commission in its letter of 10<sup>th</sup> April, 2003, which had not reached the Minister before he issued his letter of 17<sup>th</sup> April, 2003, were dealt with in a letter dated 25<sup>th</sup> April, 2003<sup>50</sup> from the Minister. The Minister's response was as follows:

1. The Government, at its meeting on 4<sup>th</sup> April, 2003, had decided that the review would be published with the Bill.
2. It was not possible for the Minister to give a commitment to an exact timescale to the bringing forward or enactment of amending legislation. However, every effort would be made “to ensure that any proposed legislation would be brought to the Houses of the Oireachtas before the Summer break”.

No legislation to amend the Act was brought to the Houses of the Oireachtas on foot of the review, although a Bill entitled “Commission to Inquire into Child Abuse (Amendment) Bill”, was listed in the Government Legislation Programme for the Dáil session commencing on 7<sup>th</sup> May, 2003. The Bill, which was described as a Bill “to make some technical amendments to the principal Act to allow for more effective and efficient

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<sup>48</sup> In Appendix D.

<sup>49</sup> In Appendix D.

<sup>50</sup> In Appendix D.

operation of the Commission to Inquire into Child Abuse” was listed in Section A. That section listed bills which the Government expected “to publish from the start of the Dáil session up to the Summer Recess 2003”.

Following receipt of the letter of 13<sup>th</sup> December, 2002 from the Secretary General of the Department, the Commission sought sanction for the elements of its request for additional resources which it required immediately, taking into account the terms of the Government decision of 3<sup>rd</sup> December, 2002. Sanction was immediately granted for the appointment of six barristers. Appointments were made on foot of that sanction in March and April 2003. The other elements sought were never sanctioned, despite an assurance given by the Secretary General of the Department at the end of April 2003 that the matters were being urgently considered and that a meeting had been arranged with the Department of Finance with a view to progressing them.

Through May and June 2003, the Commission continued to endeavour to fulfil its existing mandate in the difficult circumstances prevailing — against a background of knowledge that its mandate was going to be altered to an extent that necessitated legislation to give effect to the changes, but that no assurance could be given as to when the changes would be passed into law. There were fundamental concerns about the potential for damage to the process and the potential for harm to the persons caught up in the process, arising from the prolongation of uncertainty as to the task which the Commission would ultimately be required to perform by the Oireachtas. Apart from those concerns, the principal consideration which weighed heavily with the Commission at this time was the cost implications of its uncertain status, which had been forecast in the letter of 6<sup>th</sup> December, 2002 to the Department. While the Commission was in a position to control its internal costs to some extent, given the uncertainty as to its ultimate task, it could not be confident at that time that it was using its resources in the most efficient and productive manner. The Minister was kept fully apprised of the cost implications of the hiatus in which the Commission found itself, both in relation to its internal costs and the legal costs which were accruing externally. The Commission specifically apprised the Minister of its fear that it might be unwittingly wasting public money.

## **Review — second phase**

By letter dated 4<sup>th</sup> July, 2003,<sup>51</sup> the Minister informed the Commission that—

- it had been decided to engage in a further review of the operations of the Commission,
- the second phase of the review was ongoing,
- it was likely to result in more substantial changes to that envisaged in the first review, and
- the Government considered it appropriate that, before the second phase of the review was completed, it should be in receipt of the judgment of the High Court or, in the event of an appeal, the judgment of the Supreme Court in the Christian Brothers’ Proceedings.<sup>52</sup>

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<sup>51</sup> In Appendix D.

<sup>52</sup> See Table C.

The Minister sought certain information from the Commission “in the form of a report”. Adverting to the fact that, while the review was ongoing, costs were continuing to be incurred, the Minister stated that it was manifestly in the public interest that costs should not continue to be incurred in respect of matters that might not ultimately be investigated. It was suggested that the Commission might wish to take account of the public interest — in the context of the second phase of the review — in the manner in which it ordered its procedures.

Prior to responding to the Minister’s letter, the Commission obtained the advice of its leading Counsel, Frank Clarke S.C., as to the propriety of the Investigation Committee exercising its statutory powers, in particular, its statutory powers under the Act<sup>53</sup> of directing discovery and production of documents, in the context of the ongoing and more radical review of the Commission’s mandate. Mr. Clarke advised the Commission that a strong case could be made that the Investigation Committee would be acting *ultra vires* in making any further discovery or production directions pending the result of the review, on the basis that, in doing so, the Investigation Committee would be making directions under one statutory remit in the knowledge that the results thereof were only likely to be used in a significantly different statutory regime, which he advised could well be argued to be an improper purpose, that is to say, an abuse of process.

In its response dated 10<sup>th</sup> July, 2003,<sup>54</sup> the Commission informed the Minister that, on the basis of its understanding of the then current position and the consequences thereof, the following action was necessary:

- That persons involved in the process of the Investigation Committee should be informed of the then current position without delay.
- That, as the decisions which gave rise to the then current position were Government decisions, it was for the Government to give notice of the decisions to the public.
- That, following a public announcement of the decisions, the Commission should announce the steps it intended taking to ensure that it continued its work in a manner which could not give rise to either an allegation of abuse of process in the future or the accrual of unnecessary costs and expenses, it being envisaged that the parties involved in the process would be notified individually of the approach the Commission intended to adopt in relation to the matters which affected them pending conclusion of the review and that a notice would be posted on the Commission’s website.
- That insofar as it was in a position to do so in a manner consistent with its statutory remit, the Commission should furnish the information sought in the Minister’s letter.<sup>55</sup>

A copy of the Opinion<sup>56</sup> of Mr. Clarke was furnished to the Minister.

Subsequently, the Commission sought to clarify for the Minister the approach it proposed adopting in the light of its knowledge of the further review of its remit in its response to

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<sup>53</sup> Section 14(1).

<sup>54</sup> In Appendix D.

<sup>55</sup> The Commission furnished an information document dated 28<sup>th</sup> July, 2003 to the Minister. The information contained in it had been superseded by subsequent events. Updated information is set out in chapter 12.

<sup>56</sup> In Appendix D.

a letter dated 15<sup>th</sup> July, 2003<sup>57</sup> from the Minister. In his letter, the Minister recorded that the pending review would not encompass any changes that would limit or reduce the remit of the Commission in relation to investigating the responsibility of the State and, in particular, his Department in respect of abuse in institutions. In its response, which was dated 25<sup>th</sup> July, 2003,<sup>58</sup> the Commission stated that, in practical terms, the effect of the Government's decision to embark on a further review of the Commission's mandate was to leave the Investigation Committee extremely restricted in the manner it might go forward with its existing remit confident that it was acting both properly and in the public interest. That decision impacted on the work which the Investigation Committee might usefully do and had implications for persons involved in the work of the Investigation Committee — members of the Commission and the legal and administrative personnel. The Commission informed the Minister that these implications, and the consequences which flowed from them, would have to be addressed once the decision in relation to the review of the Commission's mandate was publicly announced. It was apparent to the Commission that, following the announcement, the Commission would have to suspend the work of the Investigation Committee pending the completion of the further review, as a result of which personnel retained by the Commission would have to be stood down.

That the Commission considered the making of a public announcement to be a matter of urgency was made clear in the Commission's letters of 10<sup>th</sup> July, 2003 and 25<sup>th</sup> July, 2003 to the Minister. When the announcement had not been made by 18<sup>th</sup> August, 2003,<sup>59</sup> the Commission wrote to the Minister inquiring whether it was intended to make a public announcement and, if so, when. On the same day, the Commission was informed<sup>60</sup> that, following the completion of a consultation process with groups representing survivors of child abuse, it was intended that an announcement would be made within a week or ten days thereafter. Arising out of that letter, the Commission informed the Minister, by letter of 19<sup>th</sup> August, 2003,<sup>61</sup> that its understanding was that a Government decision had been taken to embark on the second phase of the review and, based on the legal and practical ramifications of that decision for the work of the Investigation Committee, it was the view of the Commission that all persons involved in the process should be informed of the then current position without delay. The Commission informed the Minister that it was preparing to put in train during the following week the steps which it considered necessary to ensure that the work of the Investigation Committee was conducted in a manner which could not give rise to an allegation of abuse of process in the future, or the accrual of unnecessary costs and expenses, pending the completion of the review.

The Minister advised the Commission by letter of 28<sup>th</sup> August, 2003<sup>62</sup> that a public announcement in relation to the ongoing review would be made on 1<sup>st</sup> September, 2003. It was stated that the Minister intended to consult further with the Commission in the course of the next phase of the review. By way of reply, the Commission informed<sup>63</sup> the Minister that, on the basis of legal advice, it was not satisfied that it would be appropriate for it to engage in any consultation in relation to the further review of its remit.

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<sup>57</sup> In Appendix D.

<sup>58</sup> In Appendix D.

<sup>59</sup> In Appendix D.

<sup>60</sup> See letter of 18<sup>th</sup> August, 2003 from an Assistant Secretary in the Department in Appendix D.

<sup>61</sup> In Appendix D.

<sup>62</sup> In Appendix D.

<sup>63</sup> See letter of 29<sup>th</sup> August, 2003 in Appendix D.

On 1<sup>st</sup> September, 2003, the Minister issued a press release<sup>64</sup> announcing the decision of the Government to engage in a second phase of the review and stating that—

- following on from the first review, further amendments were being considered which were likely to result in more substantial changes to the remit of the Commission to those recommended in the first phase of the review,
- any further changes would be reflected in draft legislation which was being prepared by the Office of the Parliamentary Counsel to the Government, but
- it was intended to await the judgment in the Christian Brothers' Proceedings prior to the enactment of any legislation giving effect to the recommendations of the review.

The approach which the Commission intended to adopt pending conclusion of the further review was outlined in a statement<sup>65</sup> posted on its website on 2<sup>nd</sup> September, 2003 and circulated either directly to the persons involved in the process of the Investigation Committee or, if they were legally represented, to the solicitors on record for them. In the Commission's statement it was noted that, while no final decision had been made as to the precise alterations proposed to the Commission's remit, some significant changes were being considered by the Government. It seemed highly probable that the work of the Investigation Committee would be altered in a way which would mean that some evidence hitherto relevant would cease to be material to the Committee's remit. In the circumstances, the Investigation Committee had decided that, for legal, practical and financial reasons, it would be wrong to continue with the gathering and assessment of evidence (including discovered material), some of which was likely to fall outside the scope of being relevant to the task which it would ultimately be asked to complete. In consequence, the Commission had decided that, pending the announcement of the results of the Government's review, it would not use its power to gather further evidence and it would not plan any further hearings of the Investigation Committee. It was stated that parties involved in the process of the Investigation Committee, whether as complainants or as respondents, should not commit any further resources to preparation for evidence gathering or hearings until the Investigation Committee had an opportunity to consider the matter in the light of the conclusions of the Government's review.

### **November 2001 to date: a summary**

Before summarising the impact of the events of the past two years on the Commission, it is apposite to state the following general propositions:

- Insofar as the Commission has been beset by problems, the problems have largely emanated from external factors, for example, the attitude of the Survivors' Solicitors to the issue of compensation and the attitude of the legal representatives of the various parties involved in the process to the State's liability for the costs of legal representation. While the Commission sought to identify those factors and to apprise the Government of matters which it believed were obstacles to the progress of its work, it adopted a neutral stance in relation to the policy aspects of those factors.
- Similarly, the Commission adopted a neutral stance in relation to the resolution of those issues, which it recognised were matters of policy for the Government.

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<sup>64</sup> In Appendix D.

<sup>65</sup> In Appendix D.

- It follows that the Commission must adopt a neutral stance in relation to financial and like consequences which flow from such resolution, which are matters of policy for the Government.
- While, by statute, the Commission is independent in the performance of its functions, it is reliant on the Minister for the resources to enable it to perform those functions. The formation and content of policies adopted by the Government impact on its ability to perform its functions.
- Where it is argued against a body such as the Commission (as has happened in the case of the Commission practically since its establishment) that prejudice arising from the antiquity of the matters it is investigating affects the manner in which it may perform its functions, it is crucial that policy decisions affecting it, particularly in relation to resourcing it or defining its functions with certainty, are made and implemented promptly.
- As a statutory body, the Commission may only act in accordance with the mandate given to it by the Oireachtas. It must exercise the functions conferred on it by law unless and until such functions are varied by the Oireachtas.
- Further, if a statutory body such as the Commission purports to operate under its existing mandate after having been informed of the probability that such mandate will be substantially altered and reduced (as the Commission was informed in July 2003), it is acting irresponsibly and against the public interest. It is running the risk of its operations being rendered nugatory on the grounds of abuse of process. It is almost certainly burdening the Exchequer with unnecessary cost.

It is also important to emphasise that, while the problems which have beset the work of the Commission over the last two years have had adverse effects on the work of the Investigation Committee, the Confidential Committee has been able to perform its statutory functions unhindered.

In the period from November 2001 to June 2002, the barriers which had hitherto impeded the work of the Commission — the issues of compensation and costs — were resolved by the enactment of the Act of 2002. The way was open for the Commission to impose a deadline in relation to submission of Complainants' statements, which it did. Imposing the deadline was effective and the volume of Complainants' statements submitted to the Commission trebled. The Commission was also given the wherewithal to continue with its work by the extension of its mandate by the Government for a further three years. Moreover, the mechanism which the Commission had considered necessary to enable it to fulfil its mandate within a reasonable period, the availability of a cohort of fact-finders which would augment the membership of the Commission, had been provided for in the Act of 2002. All that remained in relation to empowering the Commission to properly perform the task which the Oireachtas had given to it was to sanction the resources necessary to complete the task within a reasonable timeframe, which was critical given the antiquity of most of the matters being investigated.

Throughout the next six months, from June to December 2002, the Commission's request for the resources, which it considered were the minimum required to enable it to fulfil its mandate within a reasonable timeframe, was being considered by the Department and by the Government. During that period, the Commission was working towards the future on the assumption that the resources would be available. As will be outlined later, during

that period the Investigation Committee resolved to adopt a new approach to hearing complaints, a modular approach. The old approach of scheduling individual complaints for a discrete hearing was discontinued. The future, as then envisaged, would have involved the Committee sitting in three or four divisions, simultaneously hearing complaints which were batched by institution or institution type.

During the first four months of the year 2003, the fact that the Commission's mandate was under review inhibited the Investigation Committee in its work to the extent that no hearings were scheduled because of the uncertainty as to whether evidence gathered at a hearing would be relevant to the fact-finding regime which the Commission would be obliged to operate following the review. Preliminary inquiries and preparation for hearings continued throughout this period. A final date was imposed for submission of statements by persons and bodies against whom allegations had been made by Complainants. The deadline was 2<sup>nd</sup> May, 2003, subject to some derogations which were allowed. The Commission's legal team was augmented by the appointment of additional barristers. The Commission was proceeding on the assumption that the assurances that it had been given that the review would be completed and implemented expeditiously would be honoured and that it would be implementing its altered mandate in the short term.

At the end of April, it became apparent that such an assumption was not correct. However, the prospect of the form and content of the altered mandate being published in the form of a Bill by the following July remained. The preliminary inquiries and preparatory work continued, although no hearings could be scheduled. However, the personnel who provided administrative support in connection with hearings, who were seconded from the public service, not being required in the short term, were given certain options. They chose to return to their parent Departments permanently.

The notification in July 2003 to the Commission of the Government's decision to further review the Commission's mandate left the Commission with no option but to wind down the operations of the Investigation Committee pending the announcement of the results of the further review. It was impossible to predict what the outcome of the review would be. It was impossible to predict when the outcome would be announced, given that the announcement was linked to disposal of the Christian Brothers' Proceedings.<sup>66</sup> The Commission could only continue to use its existing statutory powers to gather evidence at the risk of abuse of process. The work on the preliminary inquiries and preparatory work was nearing completion. The only course open to the Commission was to release personnel, legal and administrative, and to moth-ball the Investigation Committee pending the announcement of the results of the further review. That process commenced on 2<sup>nd</sup> September, 2003. Since then, the personnel who have remained with the Commission have been completing the preliminary inquiries and assisting in the preparation of the data for this Report.

The history of the Commission since its establishment, particularly since early June 2002, considered in the context of the general propositions set out at the commencement of this summary, illustrates the extent to which the Commission has been devoid of any real independent capacity to perform its statutory functions. Because of the antiquity of most

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<sup>66</sup> As of the date of finalisation of this Report, the proceedings are still pending in the High Court, but final judgment is expected on 12<sup>th</sup> January, 2004.

of the matters being investigated, the performance of those functions is inherently difficult and the difficulties are increasing with the passage of time as potential witnesses die, become indisposed or incapacitated, or cannot be traced. The Commission's ability to perform those functions is jeopardized if the organs of State competent to resolve issues of policy — whether the removal of obstacles placed in its way by others, or the level of resources it is appropriate to make available to it, or fixing the parameters of its remit on a review — do not make the necessary decisions or do not make them expeditiously.

## **The future**

On 26<sup>th</sup> September, 2003, the Minister announced the appointment by the Government of Mr. Sean Ryan, S.C. as Chairperson designate of the Commission in succession to the current Chairperson who, on 2<sup>nd</sup> September, 2003, notified the Government of her decision to resign with effect from publication of this Report. The Commission welcomed the appointment of Mr. Ryan. The continuing members of the Commission look forward to working with him.

It was also announced that Mr. Ryan had been requested by the Government to undertake his own independent review of the Commission and to make all necessary recommendations having regard to the following:

- “1. The interests of the victims of abuse;
2. The completion of the Commission's work within a reasonable period of time and in a manner consistent with a proper investigation; and
3. To achieve objectives without incurring exorbitant costs”.

The Commission has given Mr. Ryan every assistance he has sought in conducting the review. The Commission lauds the objectives encapsulated in the terms of reference given to Mr. Ryan and, in particular, the emphasis on the completion of the Commission's work within a reasonable period of time. It avails of this opportunity to reiterate the sentiments which it has expressed on numerous occasions in its correspondence with the Minister and his Department, which it last expressed in the Information Document dated 28<sup>th</sup> July, 2003, which it furnished to the Minister in response to the request for information contained in his letter of 3<sup>rd</sup> July, 2003. In that document, commenting on the consequences of the protraction of its work, the Commission stated:

“The Commission has repeatedly reminded the Department of the probable consequences of failure to meet requests for resources and to address issues in relation to the Commission's remit in a timely fashion. In particular, the Commission has drawn attention to the potential for damage to persons whom the process was intended to benefit and the potential for injustice to persons who are involuntarily drawn into the process. The Commission reiterates these concerns and poses a rhetorical question: of what relevance will a report of the Commission which is published in ten years time be?”

# Administration of the Commission

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## Introduction

The Commission as established under the Act<sup>67</sup> is a body corporate. The expenses incurred in the administration of the Act are paid out of monies provided by the Oireachtas.<sup>68</sup> In effect, the Commission is funded by the Exchequer through a sub-head in the Vote of the Department. In this chapter, the principal features of the administration of the Commission will be outlined, with particular reference to demonstrating the major cost items which have been incurred in fulfilling the Commission's mandate.

This chapter does not address the following costs which have accrued:

- the costs of legal representation of parties, whether complainants or respondents, involved in the proceedings of the Investigation Committee, other than the costs of the Procedural Hearing on lapse of time and allied issues held in public in July 2002, or
- the legal costs of parties who, or interests which, have been granted legal representation by the Vaccine Trials Division.

## Personnel

In addition to the members of the Commission, the Commission personnel includes:

- administrative staff and
- lawyers

### *Administrative personnel*

By virtue of the Act,<sup>69</sup> the Commission may appoint staff or second officers from the public service. In either case, the consent of the Minister and the Minister for Finance must be obtained. Since its establishment, the Commission has availed of both methods of recruitment. It has appointed staff on contract and seconded staff from the public service. When recruiting from the public service, the current practice of the Commission is to exclude personnel who are officers of the Department, the Department of Health and Children, or the Department of Justice, Equality & Law Reform.

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<sup>67</sup> Section 3(2).

<sup>68</sup> Section 36.

<sup>69</sup> Section 9.

The terms and conditions on which public servants are seconded and contract staff are appointed by the Commission are fixed by the Minister with the consent of the Minister for Finance.

The head of administration, who acts as Secretary to the Commission, is an officer seconded from the public service. Between July 2001 and April 2003, the position was occupied by Mr. Finbarr Kelly, a civil servant on secondment from the Department of Finance. The position is currently held by Ms. Brenda McVeigh, a civil servant on secondment from the Department of Finance.

### *Lawyers*

In practice, the retainer of lawyers, including the terms of retainer, is subject to the sanction of the Minister and the Minister for Finance. Lawyers are retained by the Commission in the following capacities:

- Senior and Junior Counsel are retained to advise the Commission and its Committees and to represent the Investigation Committee and the Vaccine Trials Division at hearings.
- Junior Counsel (referred to as Document Juniors) are retained to do documentary work, for example, analysis of discovered documentation.
- Inquiry Officers are retained to conduct preliminary inquiries in accordance with the Act<sup>70</sup> and to do preparatory work.
- Solicitors are retained to act as solicitors to represent a Committee or a Division.

The lawyers retained by the Commission in the period from December 2001 to date, or part of the period, are listed in Table D and the basis on which each was retained is indicated.

The fees payable to lawyers retained by the Commission are fixed by the Minister, with the consent of the Minister for Finance. The fee structure for lawyers in operation since the establishment of the Commission is as follows:

- Senior Counsel: brief fee of €34,917.80 and *per diem* rates of—
  - €2,158.55 for the first twenty sitting days,
  - €2,031.58 for the next twenty sitting days, and
  - €1,904.61 for the remainder of the sitting days and for non-sitting days.
- Junior Counsel: brief fee of €23,278.53 and *per diem* rates of—
  - €1,439.03 for the first twenty sitting days,
  - €1,354.38 for the next twenty sitting days, and
  - €1,269.74 for remainder of the sitting days and for non-sitting days.

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<sup>70</sup> Section 23.

- Document Junior: *per diem* rate of €489.
- Inquiry Officer: *per diem* rate of €253.94, with an entitlement to the statutory rights and privileges of employees in relation to public holidays and holidays.
- Solicitor: *per diem* rate of €698.35.

## Consultants & Research

The Act<sup>71</sup> empowers the Commission to appoint experts to give advice, guidance and assistance on such terms and conditions as it may determine. The Act<sup>72</sup> also empowers the Commission to conduct or commission the conduct of research. In practice, the Commission obtains the sanction of the Minister to:

- appoint consultants, and
- commission research.

## Location

The Commission has conducted its inquiry from two locations:

- St. Stephen's Green House, Earlsfort Terrace, Dublin 2, and
- Arbitration Centre, The Distillery Building, 145-151 Church Street, Dublin 7.

From January 2004 the Commission will conduct its inquiry from St. Stephen's Green House.

The Confidential Committee has conducted hearings outside Dublin at country venues and abroad.<sup>73</sup>

While the Investigation Committee has taken evidence on commission at country venues in the State, it has not conducted any hearings outside Dublin.

## Administration costs

The Commission was originally established on a non-statutory basis following an announcement made by the Taoiseach on 11<sup>th</sup> May, 1999. On the enactment of the Act, the Commission was established on a statutory basis with effect from 23<sup>rd</sup> May, 2000. The costs which have been incurred in the administration of the Commission since its inception are set out in Table E. During the period from July 1999 to April 2000, the costs were incurred by the non-statutory Commission.<sup>74</sup> From May 2000 to the end of November 2003, costs were incurred by the Commission as established by the Act.

The costs of fulfilling the Commission's mandate, as shown in Table E, do not include the following:

- The remuneration of the Chairperson, who is a Judge of the High Court.

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<sup>71</sup> Section 24(1).

<sup>72</sup> Section 24(2).

<sup>73</sup> See chapter 5.

<sup>74</sup> These costs are included for completeness because there may have been some overlap between the costs incurred by the non-statutory Commission and the costs incurred by the statutory Commission.

- The costs payable to the four notice parties awarded by the High Court on the application brought by the Commission under section 25 of the Act, which are agreed and due for payment. The costs aggregate €269,606.04 in the case of three of the notice parties. They remain to be agreed or taxed in the case of the fourth notice party. Details of these costs are set out in Table T.
- The costs of legal representation of the Commission in the High Court on the application under section 25, which have been agreed in the sum of €83,789.92 and are due for payment. The Commission was represented in the High Court by Daly, Lynch, Crowe & Morris, Solicitors, who briefed Brian Murray, S.C. with members of the Commission's legal team.
- The costs of legal representation of the Commission in the High Court as Respondent in the Judicial Review proceedings entitled McD -v- the Commission.<sup>75</sup> The Commission was represented in the High Court by Daly, Lynch, Crowe & Morris, Solicitors, who briefed Brian Murray, S.C. A claim for these costs has been received but the costs have not yet been agreed.
- The costs of legal representation before the Investigation Committee, which were directed to be paid to the parties who participated in the Procedural Hearing on lapse of time and allied issues. These costs are the subject of a direction for payment of costs dated 4<sup>th</sup> December, 2002. The claims which have been received in respect thereof have not yet been agreed or taxed. Details of these costs are set out in Table S.

Liability for the costs of legal representation of the Commission as a defendant to the Christian Brothers' Proceedings has not been determined. The Commission was represented in the proceedings by Daly, Lynch, Crowe & Morris, Solicitors, who briefed Brian Murray, S.C. with members of the Commission's legal team. The Christian Brothers' Proceedings are still pending in the High Court and no order has been made in relation to the costs of any party in the proceedings.

### **Personnel who have left**

The Commission would like to express its gratitude to the administrative and legal personnel who had made a commitment to the Commission, but who have left, either temporarily or permanently, in consequence of the events since April 2003, for their contribution to the work of the Commission and for their understanding of the predicament in which the Commission found itself.

The Commission acknowledges the admirable dedication and loyalty of all its staff, past and present, and wishes those no longer in its employ every success in their future careers.

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<sup>75</sup> [2003] 2 ILRM 503. See chapter 6.

**TABLE D****Lawyers on retainer to Commission in the period from December 2001 to date**

<b>Lawyer</b>	<b>Basis of Retainer</b>
Frank Clarke, S.C.	To advise the Commission and as leader of the legal team to the Investigation Committee and the Vaccine Trials Division
Deirdre Murphy, S.C.	For legal team to Investigation Committee and Vaccine Trials Division.
Mary Ellen Ring, S.C.	To advise the Confidential Committee
John Major, B.L.	For legal team to Investigation Committee
Anne Reilly, B.L.	For legal team to Investigation Committee
Roisin Lacey, B.L.	For legal team to Vaccine Trials Division
Maura McNally, B.L.	For legal team to Investigation Committee
Paul McCarthy, B.L.	For legal team to Investigation Committee
Ciara McGoldrick, B.L.	As Document Junior(Investigation Committee)
Niall Nelligan, B.L.	As Document Junior(Investigation Committee)
Laura Rattigan, B.L.	As Document Junior (formerly Inquiry Officer) (Investigation Committee)
Paul Ward, B.L.	As Inquiry Officer (Investigation Committee)
Cathy Carron, B.L.	As Inquiry Officer (Investigation Committee)
Aidan McCarthy, B.L.	As Inquiry Officer (Investigation Committee)
Aine Shannon, B.L.	As Inquiry Officer (Vaccine Trials Division)
Kieran Kelly, B.L.	As Inquiry Officer (Vaccine Trials Division)
Ciaran Patton, B.L.	As Inquiry Officer (Vaccine Trials Division)
Robert B. Kerr, Solicitor	As Solicitor (Vaccine Trials Division)

**TABLE E**

**Costs of fulfilment of Commission's mandate**

<b>Cost Item</b>	<b>Non-statutory Commission July 1999 to April 2000</b>	<b>Statutory Commission April 2000 to end November 2003</b>	<b>Total to end November 2003</b>
	€	€	€
<b>Personnel:</b>			
Commissioners	3,881	1,862,086	1,865,967
Seconded Civil Servants	105,070	1,360,069	1,465,139
Contract staff		435,508	435,508
<i>Legal Personnel</i>			
Barristers (Note 1)	7,682	2,729,853	2,737,535
Solicitor (Note 1)		57,265	57,265
Inquiry Officers		778,113	778,113
Travel & Subsistence	8,809	122,040	130,849
Consultants (Note 2)		37,084	37,084
<b>Witnesses:</b>			
Travel & Subsistence	249	316,868	317,117
Interpretative services for deaf		453	453
Advertising	60,045	788,394	848,439
Accommodation/furniture	145,045	869,676	1,014,721
<b>Services (including equipment):</b>			
I.T.	69,225	570,294	639,519
Telephone	10,199	113,167	123,366
Sound / Stenography		212,997	212,997
Stationery supplies & Post	8,017	134,109	142,126
Books & papers	2,015	16,929	18,944
Cost of legal representation paid under section 20 scheme (Note 3)		5,308	5,308
Miscellaneous	8,662	123,528	132,190
<b>Total</b>	<b>428,899</b>	<b>10,533,741</b>	<b>10,962,640</b>

*Notes:*

- (1) These figures represent VAT exclusives fees.
- (2) These figures do not include fees which have accrued in connection with the retainer of consultants and experts to advise, and to testify as expert witnesses to, the Vaccine Trials Division. See chapter 14.
- (3) See chapter 13.

## CHAPTER 4 The Commission: Research Project

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The Commission's intention to conduct a research project was outlined in the Opening Statement<sup>76</sup> and at its second public sitting on 20<sup>th</sup> July, 2000. These public statements clearly define the distinction between:

1. evidence of fact on which findings of historic abuse are to be based, and
2. research.

The Act<sup>77</sup> provides that, in complying with its reporting function, the Commission may make recommendations in relation to the action that it considers should be taken, *inter alia*, to alleviate or otherwise address the effects of childhood institutional abuse on those who suffered it. By necessary implication this provision empowers the Commission to ascertain those effects. In order to ascertain those effects, the Commission considers it appropriate to commission research which it is expressly empowered to do under the Act.<sup>78</sup> The purpose of the research would be to inform the making of recommendations for future developments in the areas of prevention, service delivery and policy development relating to childcare, and to increase public awareness of the effects of abuse.

The international literature on institutional child abuse is sparse. However, the literature available highlights the fact that institutional child abuse occurs in many countries, that this abuse arises within organisational contexts which facilitate the abuse of power and that the negative effects of such abuse may be long lasting and seriously compromise psychological adjustment in adulthood.

The overall aim of the Commission's research project is to address the following broad question:

What have been the long term effects, if any, of child abuse and neglect on people who approach the Commission to Inquire into Child Abuse and report to it that they had been abused or neglected in institutions in Ireland from 1936 to the present time?

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<sup>76</sup> Appendix A.

<sup>77</sup> Section 5(2).

<sup>78</sup> Section 24(2).

The Commission is aware that the people who approach it constitute a heterogeneous group. It includes individuals who differ on a wide variety of variables in a number of domains including the following:

- Current and past demographic characteristics.
- Past institutional placements.
- Age of entry into institutional placement.
- Type of child abuse and neglect complained of.
- Abuse parameters.
- Protective factors.

The Commission considers that it has a unique opportunity to study in a systematic way within the Irish context, the impact of such variables on people and their adjustment in adulthood.

The Commission engaged a research consultant to develop a detailed protocol and research design. When the protocol was completed it sought the advice of the Chief State Solicitor in relation to the legal aspects of undertaking the commissioning of the research. The Commission is appreciative of the assistance it has received from the office of the Chief State Solicitor and the office of the Attorney General in drafting the contract documentation and advising.

Following the announcement that the Commission's remit was to be reviewed, the Commission requested in June 2003 that the Government should affirm its commitment to the research project and sanction was again granted in September 2003.

The new mandate may necessitate changes to the original research protocol, either because the role of the Commission may be varied or because the number of subjects to be researched may alter. As soon as there is clarity on this matter, the research protocol and design will be reviewed and tenders will be invited from researchers who would be willing to undertake the project.

The Commission takes this opportunity to assure people who are interested in participating in such research, that any research which is conducted under the aegis of the Commission will be carried out in accordance with best practice and in such a way as to ensure that the anonymity of persons participating in research is absolutely preserved. When including the results of research in its final report, the Commission and its Committees will clearly identify the material as being the result of the research and not proven fact.

# The Confidential Committee: From Establishment to the Present

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## Introduction

This chapter covers the period from the establishment of the Commission to Inquire into Child Abuse (the Commission) until the 31<sup>st</sup> October, 2003. It provides general information about the seven hundred and seventy-one (771) witnesses who have attended for hearing at the Confidential Committee. It also provides some information on the nature and extent of the abuse about which those witnesses registered complaints with the Confidential Committee. Explanatory tables are included at the end of the chapter.

The Confidential Committee has completed a final two-part report. Part one covers two hundred and seventy-two (272) witnesses who had finished their period of care in Industrial or Reformatory Schools before 1960. Part two covers sixty-eight (68) witnesses who had completed their period of care in other institutional settings covered by the Commission to Inquire into Child Abuse Act 2000 (the Act) before 1960. The completed report contains detailed information on the circumstances of the witnesses before their admission to the care of the institutions, their experiences in the institutions and their life after they left the institutions. The Commission has decided, based on legal advice, not to publish that completed report at this time.

The principal functions of the Confidential Committee are: (a) to provide a forum for persons who have suffered abuse in institutions during their childhood to recount their experiences on an entirely confidential basis; (b) to receive evidence of such abuse; (c) to make findings of a general nature in relation to the matters specified in Section 4 (1)(b) of the Act and (d) to prepare and furnish reports pursuant to Section 16 of the Act.

The Confidential Committee is required under Section 16 of the Act, to prepare a report in writing, based on the evidence received from the witnesses at their hearings, and to set out its findings in general terms. The report may not identify or contain information that could lead to the identification of witnesses, or the persons against whom they make allegations, or the institutions in which they allege they were abused. It may not contain findings in relation to particular instances of the alleged abuse of children. There is no opportunity for anyone connected with the institutions involved to challenge the veracity of the statements made.

The Confidential Committee hearings are conducted in an informal manner, in an informal setting and are recorded on an audio system with the witness' consent. In addition, the Commissioners present compile their own notes and on occasion receive copies of

documents from those attending the hearings. The Commissioners may also seek clarification of the accounts given by witnesses in order to fully understand any points they may wish to make.

Witnesses to the Confidential Committee are aware that the hearings of the Committee are entirely confidential and that no material from their hearing can be transferred for use in any other forum. Therefore it appears that there could be no secondary motivation attached to any witness to the Confidential Committee.

Many witnesses found appearing before the Confidential Committee a daunting prospect despite the best efforts of our witness support officers to advise people about the informality of our process and to put them at ease. It was not possible for the Commissioners to get full information from every witness. Some witnesses had difficulty recalling the past and described how they had sought over the years to bury all thoughts of their painful childhoods and were fearful of the personal cost of uncovering their past. Other witnesses had spent short periods in institutions and had limited recall of their time there. Some came very well prepared with information; others found recall difficult due to age and infirmity. A small number of witnesses had learning difficulties and this was taken into consideration in their hearings. The Commissioners were impressed by the capacity of the majority of the witnesses to give clear accounts of their experiences. We would like to place on record our great appreciation for the time taken by witnesses to come and talk to us, for the personal cost experienced by them in terms of anxiety and emotional trauma and for the hours of preparation that preceded the hearings.

The Confidential Committee had one thousand, one hundred and ninety-two (1,192) applications extant at the time of its second interim report in November 2001. In addition, sixty-two (62) applicants to the Investigation Committee transferred to the Confidential Committee. Seventy (70) applicants transferred from the Confidential Committee to the Investigation Committee and ninety-four (94) applicants have withdrawn from the process. The Confidential Committee now has one thousand, and ninety (1,090) applications extant. Seven hundred and seventy-one hearings (771) have been completed with three hundred and nineteen (319) applications remaining to be heard. In preparing its schedule of hearings, the Confidential Committee gave priority to witnesses on the basis of age and state of health. All witnesses aged fifty-three (53) years and over have had their hearings completed with the exception of three witnesses who are recent transfers from the Investigation Committee: their hearings have been scheduled.

The Confidential Committee is now seeing witnesses who are in their late forties (40s) and early fifties (50s). Based on the number of applications to the Confidential Committee now extant, the Committee estimates that it will have its work completed by May 2005.

### *Hearings completed*

The Confidential Committee had heard a total of seven hundred and seventy-one (771) cases by 31<sup>st</sup> October 2003. Four hundred and thirteen (413) witnesses were male<sup>79</sup> and

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<sup>79</sup> Fifty-four (54) per cent.

three hundred and fifty-eight (358) were female.<sup>80</sup> Six witnesses were over eighty-five (85) years of age at the time of their hearing. Table F1 shows the general age breakdown of the witnesses at the time of the hearings.

### *Current place of residence*

Three hundred and seven (307) witnesses were resident outside the State at the time of their hearing. See Table F2.

### *Birth place*

The largest number of witnesses were born in Dublin,<sup>81</sup> followed by Cork,<sup>82</sup> Limerick<sup>83</sup> and Galway.<sup>84</sup>

### *Hearings*

The majority of Confidential Committee hearings were held in the offices of the Commission in Dublin. Some were held at other locations in Ireland, the United Kingdom, mainland Europe and USA to facilitate the particular needs of elderly or infirm witnesses, as shown in Table F3.

Witnesses were generally accompanied to the hearings by a relative or friend. Sometimes a counsellor or other professional accompanied the witness. One hundred and eighty-eight (188) witnesses came to their hearing alone. Five hundred and eighty-three (583) witnesses were accompanied and three hundred and seventeen (317) of them chose to have a companion with them while they spoke to the Commissioners. The other two hundred and sixty-six (266) companions waited in the offices of the Commission until the hearings were completed.

Table F4 shows the reasons given by witnesses for speaking to the Confidential Committee. Family members accounted for the largest group who influenced the sixty-one (61) witnesses who came to the Confidential Committee as a result of persuasion while others said they were advised to do so by counsellors, therapists, other survivors or solicitors. A small number said they had been encouraged to come by ex-members of staff of the institutions with whom they had maintained contact.

## **Care History**

The Confidential Committee heard from seven hundred and seventy-one (771) witnesses.<sup>85</sup> Of those, five hundred and ninety-nine (599) complained solely of abuse in Industrial or Reformatory Schools and seventeen (17) complained of abuse in both Industrial or Reformatory Schools and in other institutions covered by the remit of the Commission. Information on the type of other institutions spoken of is provided in Table F13. One hundred and fifty-five (155) witnesses complained solely of abuse in other institutions.

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<sup>80</sup> Forty-six (46) per cent.

<sup>81</sup> Three hundred and five (305).

<sup>82</sup> Eighty-four (84).

<sup>83</sup> Sixty-one (61).

<sup>84</sup> Thirty-nine (39).

<sup>85</sup> Four hundred and thirteen (413) male and three hundred and fifty-eight (358) female.

There were fourteen (14) representations made to the Confidential Committee by relatives who wished to speak about the childhood experience of a family member and how his or her family were effected by that experience. Table F5 shows the age of first entry to care for the seven hundred and seventy-one (771) witnesses. More than half of the witnesses were admitted to the care system before they were seven years old.

### *Reason for admission*

Six hundred and sixteen (616) witnesses spent some time in Industrial or Reformatory Schools. Of those, four hundred and ninety-eight (498) were admitted by direction of a court. A total of four hundred and fifty-eight (458) orders were made under the provisions of the Children Act 1908<sup>86</sup> and forty (40) orders were made under the School Attendance Acts 1926-1968. Table F6 summarises the statutory provisions under which children were committed to Industrial or Reformatory Schools. There were no records to indicate what, if any, formal arrangements facilitated the admission of the other one hundred and eighteen (118) witnesses who were in Industrial or Reformatory Schools and the witnesses involved have been unable to ascertain how the arrangements for their admissions were made. With one exception, all the orders issued in relation to the forty (40) witnesses to the Confidential Committee under the School Attendance Acts 1926-1968 applied to boys. With one further exception, all the orders made in respect of criminal offences under section 57(1) and section 58 subsections (2), (3) and (4) of the Children Act 1908 applied to boys. The nature of the offences in most cases, as reported by witnesses to the Confidential Committee, was theft of food, fuel, clothing, money and bicycles. There were a small number of more serious offences such as breaking and entering and attacks on the person. Witnesses generally reported that they were sentenced on their first appearance in court.

The majority of witnesses<sup>87</sup> admitted to care were from two-parent families. There were one hundred and ninety-one (191) admissions of children born to single mothers and a further fifty-five (55) witnesses had no knowledge of their parents' marital status. Fifty-five (55) witnesses were admitted to care in the context of family disruption caused by parental separation or as a result of extra-marital relationships.

The death of a parent was a significant factor in the admission of one hundred and seventy-two (172) witnesses, with the death of a mother having the greater influence on this number. The main causes of death were reported as tuberculosis, mother's death in childbirth, cancer and heart problems. The serious illness of a parent or parents was a significant factor in other cases.

Public records available to the Confidential Committee indicate that inspectors from the National Society for the Prevention of Cruelty to Children (NSPCC) were involved in the admissions of two hundred and eighty-one (281) witnesses to Industrial or Reformatory Schools. They were not involved in two hundred and twenty-nine (229) admissions and in one hundred and six (106) cases there is insufficient information available to comment. Involvement of the NSPCC was not applicable in the one hundred and fifty five (155)

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<sup>86</sup> See Table F6.

<sup>87</sup> Four hundred and seventy (470).

admissions that were to other institutional settings alone. The NSPCC became the Irish Society for the Prevention of Cruelty to Children (ISPCC) in 1956.

### *Abuse complaints received*

In total, seven hundred and seventy-one (771) witnesses registered eight hundred and sixty-two (862) complaints against institutions covered by the terms of the Act and in which they spent some time during their childhood. Eighty-six (86) witnesses made complaints against more than one institution including Industrial or Reformatory Schools and other institutions. Six hundred and sixteen (616) witnesses registered six hundred and seventy-four (674) complaints against fifty-one (51) Industrial or Reformatory Schools. There were fifty-five (55) such institutions in the State according to information supplied by the Department of Education and Science. To date, no witness has given evidence in respect of four of the fifty-five (55) Industrial or Reformatory Schools. Although it is possible that some of the witnesses who came to the Confidential Committee were placed in some of those institutions, they were not the subject of any report to the Committee.

One hundred and seventy-two (172) witnesses registered one hundred and eighty-eight (188) complaints against one hundred and nine (109) other institutions covered by the Act. Again, some witnesses made complaints against two or more institutions including a mix of Industrial or Reformatory Schools and other institutions. Both male and female witnesses registered complaints against three specific Industrial Schools and also in respect of five other specific institutions: one of those institutions was a children's home, two were hospitals, one was a National School and one was a residential school for children with special needs.

### **Male Witnesses**

Four hundred and thirteen (413) male witnesses registered complaints against eighty-seven (87) institutions covered by the terms of the Act. Three hundred and thirty-one (331) males registered complaints against nineteen (19) Industrial or Reformatory Schools. Ninety-two (92) male witnesses registered complaints against sixty-eight (68) other institutions. Ten (10) witnesses registered complaints against one or more Industrial or Reformatory Schools and one other institution.

### *Industrial and Reformatory Schools*

Three hundred and thirty-one (331) male witnesses reported abuse in nineteen (19) Industrial and Reformatory Schools. Two hundred and seventy-five (275) witnesses registered a complaint against one Industrial or Reformatory School only. Forty-six (46) witnesses registered complaints against more than one Industrial or Reformatory School.

### *Nature and extent of abuse*

The abuse reported includes all categories of abuse as defined by the Act, which are physical, sexual, emotional abuse and neglect. Table F7 shows the nature of the abuse witnesses complained of and the number of reports made in respect of each type of abuse. Reports of abuse were made in relation to single types of abuse and combinations of the four types.

Table F8 shows the number of witnesses who registered complaints with the Confidential Committee concerning Industrial or Reformatory Schools. Complaints ranged from one institution that had reports of abuse from eighty-two (82) witnesses to five institutions, which had between one and four reports of abuse made against them.

### *Physical Abuse*

*“The wilful, reckless or negligent infliction of physical injury on, or failure to prevent such injury to, the child” (Section 1(1) of the Act)*

There were three hundred and thirty (330) accounts of physical abuse involving nineteen (19) institutions. Witnesses to the Confidential Committee described a daily existence that involved the possibility of being hit by any staff member at any time for any reason. Random and continuous abuse towards themselves or others created an environment of pervasive fear.

Witnesses described the reasons they were beaten as including: inattention at lessons, not knowing the answer to a question, left-handedness, absconding, not obeying instructions quickly enough, bedwetting, general wear and tear on clothing and footwear, talking at meals or in bed, playing soccer, not being able to carry out work tasks, particularly farm work, quickly and properly. All of the witnesses were clear that much of the time they did not know why they were being beaten.

Witnesses described being beaten on every part of their body: the front and back of hands, wrists, legs, back, buttocks, head, face and feet. Some beatings were administered in public and witnesses reported that they were sometimes made to remove all their clothing for these public beatings.

A variety of instruments used to enforce discipline were described to the Confidential Committee. The ‘leather’ (leather strap) was the most commonly reported instrument. Also reported were a variety of sticks and other instruments including ash plants, blackthorn sticks, brush handles, pointers, farm implements, drain rods, rubber tyres, fan belts, horse tackle, sliotars and hurling sticks.

Witnesses also spoke of other punishments and physical deprivation they experienced including: standing to attention facing a wall for hours at night, kneeling for long periods in yards and corridors, hard physical labour such as picking stones, tree felling, raking hay and harvesting crops by hand and working on bogs, and being deprived of food and sleep.

### *Sexual abuse*

*“The use of the child by a person for sexual arousal or sexual gratification of that person or another person” (Section 1(1) of the Act)*

The Confidential Committee heard one hundred and seventy-five (175) reports of sexual abuse in relation to sixteen (16) institutions. Reporting sexual abuse was a clearly distressing experience for witnesses. The sexual abuse described ranged from detailed interrogation about sexual activity, inspection of genitalia, kissing, fondling of genitalia, masturbation of witness by abuser and vice versa, oral intercourse, rape and gang rape. Witnesses described their sexual abuse as sometimes a single event while for others the abuse lasted for their entire stay in the institution. Sexual abuse reported to the Confidential Committee was commonly associated with physical violence.

Witnesses reported that they were abused by members of religious congregations, by lay workers and by older residents. Those identified by witnesses as people who abused them were reported to hold the following positions in the institutions: authority figures, members of the care staff team both lay and religious, teachers, lay ancillary workers, visiting professionals, trade instructors, night watchmen and farm workers. In addition, some male witnesses reported that they were sexually abused by men who took them out of the institution for the day or for holidays.

### *Neglect*

*“Failure to care for the child which results in serious impairment of the physical or mental health or development of the child or serious adverse effects on his or her behaviour or welfare” (Section 1(1) of the Act)*

The Confidential Committee heard two hundred and eighty-six (286) reports of neglect relating to eighteen (18) institutions. Reports of neglect referred to five necessary and basic areas of care provision in the institutions, specifically food, clothing, heat, hygiene and bedding. In general food, heat and hygiene were reported as poorly provided in the institutions. Being cold and hungry were dominant memories for many witnesses. Food was complained about in relation to both its poor quality and scarcity. Clothing and bedding were complained about less often.

A lack of adequate education, medical attention, preparation for discharge and aftercare were also highlighted by witnesses as significant areas of neglect, which have had profound effects on their later lives.

### *Emotional Abuse*

*“Any other act or omission towards the child which results in serious impairment of the physical or mental health or development of the child or serious adverse effects on his or her welfare” (Section 1(1) of the Act)*

There were two hundred twenty-eight (228) reports of emotional abuse in relation to eighteen (18) institutions reported to the Confidential Committee. The reports covered a range of experiences including public humiliation, personal ridicule and denigration and family denigration. Witnesses described being constantly told they were unwanted and worthless. Name calling of a derogatory nature was reported as commonplace. Witnesses reported unnecessary exposure to frightening experiences, particularly the witnessing of ritual beatings and the requirement to restrain others who were being beaten. Countless individual acts of emotional abuse were reported.

### *Extent of Abuse*

In total, three hundred and thirty-one (331) witnesses reported to the Confidential Committee that four hundred and forty-five (445) people associated with Industrial or Reformatory Schools abused them. Four hundred and two (402) males and forty-three (43) females were identified. Table F9 sets out the number of male witnesses who made reports of abuse in relation to each identified person who worked in or was associated with an Industrial or Reformatory School. Three individuals were identified by a total of eighty-six (86) witnesses and sixty-six (66) witnesses identified a further ten individuals. Forty-one (41) witnesses identified a total of one hundred and eighty (180) individuals who

abused them. The remaining two hundred and fifty-one (251) witnesses each identified one individual.

## **Female Witnesses**

Three hundred and fifty-eight (358) female witnesses registered complaints against eighty-two (82) institutions covered by the terms of the Act. Two hundred and eighty-five (285) females registered complaints against thirty-five (35) separate Industrial or Reformatory Schools. Eighty (80) female witnesses registered complaints against forty-seven (47) other institutions. Seven witnesses registered complaints against one Industrial or Reformatory School and against one other institution.

### ***Industrial and Reformatory Schools***

Two hundred and eighty-five (285) witnesses described abuse in a total of thirty-five (35) Industrial or Reformatory Schools. Two hundred and sixty-nine witnesses (269) registered a complaint against one Industrial or Reformatory School only. Nine witnesses registered a complaint against more than one Industrial or Reformatory School.

### ***Nature and extent of abuse***

The abuse reported includes all categories of abuse as defined by the Act, that is, physical, sexual, emotional abuse and neglect. Reports of abuse were made either singly or in combinations of types of abuse. Table F10 shows the number of reports in respect of each type of abuse registered with the Confidential Committee. Table F11 shows the number and type of abuse complaints per institution reported by this group of witnesses. One institution had forty-six (46) complaints against it registered with the Confidential Committee while at the other end of the scale, fifteen (15) institutions each had between one and four complaints registered against them.

### ***Physical Abuse***

***“The wilful, reckless or negligent infliction of physical injury on, or failure to prevent such injury to, the child”***

There were two hundred and eighty-one (281) accounts of physical abuse involving thirty-five (35) institutions. Witnesses described becoming accustomed to being hit as staff passed by, or in the classroom, as their daily lot and believed that life everywhere was like that. The complaints most often made to the Confidential Committee concerned the more extreme beatings witnesses were subjected to, or those that they were made to witness. Witnesses reported that they were hit on all areas of the body: the fingers, hands, wrists, shoulders, ears, face, head, trunk, feet, legs and thighs. Among the instruments witnesses described as being used were: canes, sticks, pointers, chair legs, sewing machine treadle belts, leather straps, rulers, scissors, keys, rosary beads, coat-hangers, hand-brushes, hairbrushes, yard-brushes, rungs of chairs, broom handles and tree branches.

Other forms of punishment and physical deprivation described included: being locked in dark rooms or coal sheds, kneeling on stone floors in corridors and steps for long periods, standing in cold, dark corridors for hours or, on occasions, all night or being put outside all night on fire escapes, or the pig sty and being placed in a cold bath as a remedy for enuresis. There were reports of food or sleep deprivation and of being force-fed.

Inappropriate work was often assigned and witnesses described working in the kitchen, laundry, garden, farm and bog often from the age of five or six. They were given responsibility for the care and upbringing of young children often without supervision and with little food, nappies or clothing to meet the needs of their charges. Some witnesses were placed alone in work settings outside the institution at an inappropriate age e.g. girls of twelve (12) or thirteen (13) years of age were sent to housekeep for local families or clergy.

### *Sexual Abuse*

*“The use of the child by a person for sexual arousal or sexual gratification of that person or another person,”*

There were eighty-three (83) reports of sexual abuse made in respect of twenty-seven (27) institutions. Sexual abuse complained of ranged from inappropriate kissing, fondling, and masturbation of abuser by the child, oral intercourse, use of instruments for vaginal penetration and rape by one or more people. All of the witnesses who were sexually abused were very upset when describing their abuse and some spoke of the abuse for the first time at their hearing. Witnesses reported that they were abused by members of religious congregations and lay people who were members of the care team, by authority figures and by other residents. Among the positions held by those who were reported as being abusive were authority figures, members of the care team both religious and lay, ancillary workers and tradesmen, employers while on licence from the institution and foster carers or ‘god parents’ who took them out for short or long holiday periods.

### *Emotional Abuse*

*“Any other act or omission towards the child which results in serious impairment of the physical or mental health or development of the child or serious adverse effects on his or her behaviour or welfare”*

There were two hundred and sixty-one (261) reports of emotional abuse made in respect of thirty-five (35) institutions. All witnesses who described emotional abuse spoke of being unloved, deprived of affection and feeling unwanted throughout their stay in the institution. They reported that they were told they were only there because no one in their family cared about them. The other main aspects of emotional abuse complained of were: personal denigration, family denigration, public humiliation, being subjected without explanation to fearful situations and having irrational fears instilled in them by a strong negative emphasis on religion.

### *Neglect*

*“Failure to care for the child which results in serious impairment of the physical or mental health or development of the child or serious adverse effects on his or her behaviour or welfare”*

There were two hundred and seventy-seven (277) reports of neglect in respect of thirty-five (35) institutions. The most common forms of neglect complained of include: lack of adequate and edible food, poor clothing in terms of appearance, suitability for the seasons and materials used, institutions being inadequately heated, poor hygiene practices and poor bedding particularly in relation to children who wet the bed. A lack of adequate

education, medical attention, appropriate play and recreational facilities and no preparation for leaving the institution were among other forms of neglect complained of.

### *Extent of Abuse*

In total, two hundred and eighty-five (285) witnesses reported that they were abused by three hundred and twenty-five (325) people associated with Industrial and Reformatory Schools. Table F12 below sets out the number of female witnesses who made reports in relation to each identified individual who worked in, or was associated with, an Industrial or Reformatory School. Two hundred and two (202) witnesses identified one individual each while, at the other end of the scale, more than twenty (20) witnesses each identified two specific individuals. Female witnesses from Industrial or Reformatory Schools identified two hundred and eighty-nine (289) females and thirty-six (36) males as people who abused them.

### *Disclosure of Abuse*

One hundred and seventy-eight (178) of the six hundred and sixteen (616) witnesses who reported abuse in Industrial or Reformatory Schools disclosed that they were being abused during their time in the institution. Among those to whom they reported their abuse were: people in positions of authority, teaching staff, care staff and ancillary staff within the institution and members of the Gardaí as well as to parents and other adults outside the institutions. Fifty-one (51) of the one hundred and seventy-eight (178) witnesses who spoke about their abuse reported that they were punished as a direct result of their disclosure. In fifteen (15) cases, the individual reported as an abuser was removed from the institution or from dealing with the witness, while in twelve (12) cases, witnesses reported that the individual was admonished by an authority figure within the institution. In a further eleven (11) cases, the child was moved either within the institution or, in some situations, discharged early. In seven cases, witnesses reported that the abuse was disclosed to the Gardaí but they were unable to say what the outcome of that report was. Eighty-two (82) witnesses believed that no action was taken as a result of their disclosures; abuse for them was part of the culture of the institution.

### **Other institutions**

One hundred and seventy-two (172) witnesses<sup>88</sup> made one hundred and eighty-eight (188) complaints of abuse in relation to one hundred and nine (109) other institutions covered by the terms of the Act. Of those, one hundred and forty-one (141) witnesses registered a complaint against a single institution. Seventeen (17) witnesses registered a complaint against an Industrial or Reformatory School in addition to an institution in this category. Fourteen (14) witnesses registered complaints in relation to two or more other institutions in this category. Table F13 shows the number and type of other institution complained of.

### *Nature and Extent of abuse Complained of*

The witnesses in this group complained of all four types of abuse covered in the Act, that is, physical abuse, sexual abuse, emotional abuse and neglect. The reports were made either singly or in combinations. Table F14 shows the number of reports in respect of each type of abuse registered with the Confidential Committee. In relation to other institutions,

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<sup>88</sup> Ninety-two (92) male and sixty-three (63) female.

witnesses identified two hundred and thirty-six (236) individuals who abused them, of whom one hundred and forty-eight (148) were female and eighty-eight (88) were male. Of those, one hundred and fifty-eight (158) were identified by male witnesses and seventy-eight (78) by female witnesses. Table F15 shows the number of complaints and the number of individuals who were complained of in relation to each type of institution.

### *Disclosure*

Fifty (50) of the one hundred and seventy-two (172) witnesses who spoke to the Confidential Committee concerning abuse in other institutions reported that they disclosed their abuse during their time in the institution. They listed professionals; teaching staff, nursing staff, care staff, members of the Gardai and parents as among those they told. The disclosure of abuse in eight cases resulted in the witnesses being punished; in six cases the individual reported as an abuser was removed from the institution or from dealing with the witness and in a further four cases, the individual was admonished. Six witnesses reported that they were moved following their disclosure and in one case the matter was reported to an outside authority. In twenty-five (25) cases, no action was taken as a result of the disclosure.

### *Conclusion*

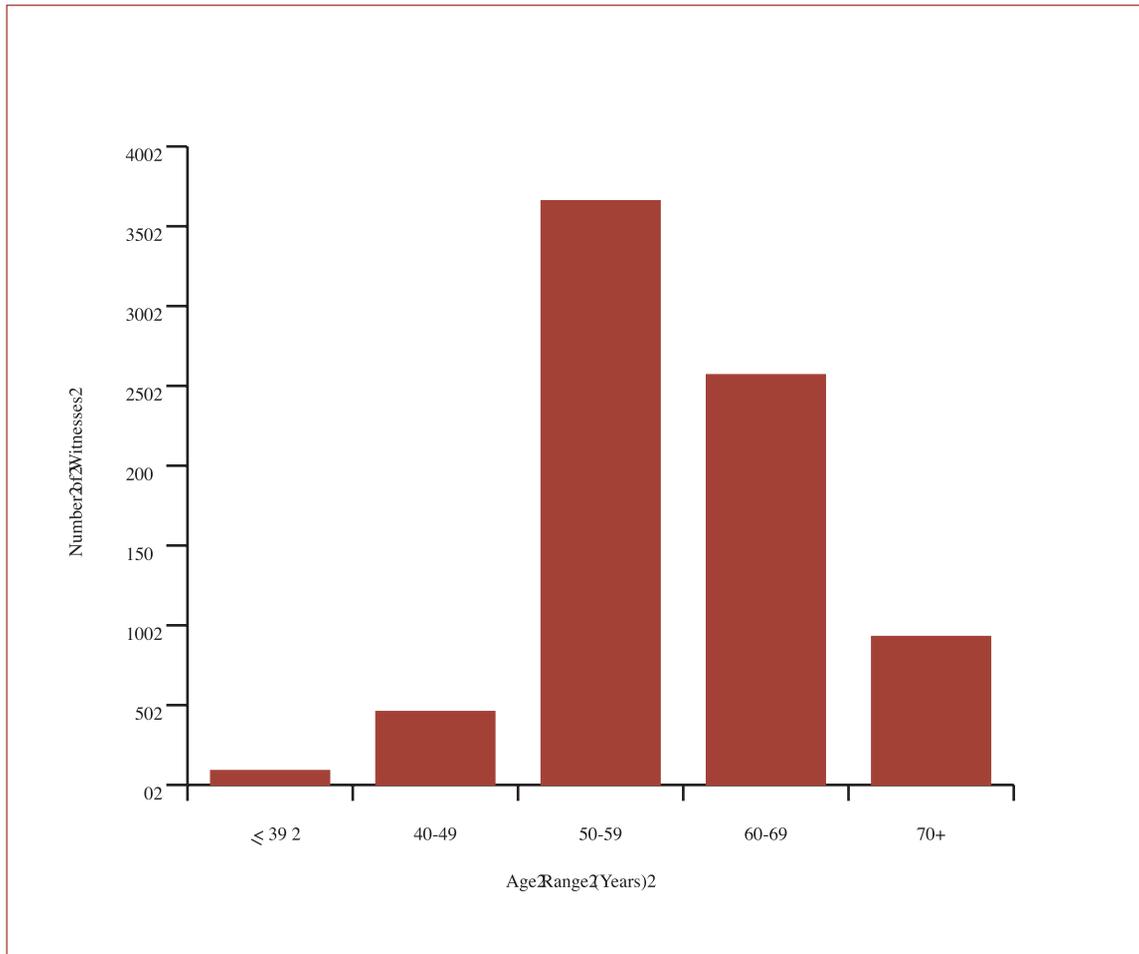
This chapter provides information on some aspects of the care and abuse experience of seven hundred and seventy-one (771) witnesses who gave evidence to the Confidential Committee before the 31<sup>st</sup> October, 2003. The Committee will continue to complete full reports covering specific periods when the evidence of all witnesses for that period has been heard.

**TABLE F1**

**Age Range of Witnesses**

<b>Age Range (years)</b>	<b>Number of Witnesses</b>	<b>Approximate Percentage %</b>
≤39	9	1.17
40-49	46	5.97
50-59	366	47.47
60-69	257	33.33
70+	93	12.06
<b>TOTAL</b>	<b>771</b>	<b>100</b>

**Age Range of Witnesses**

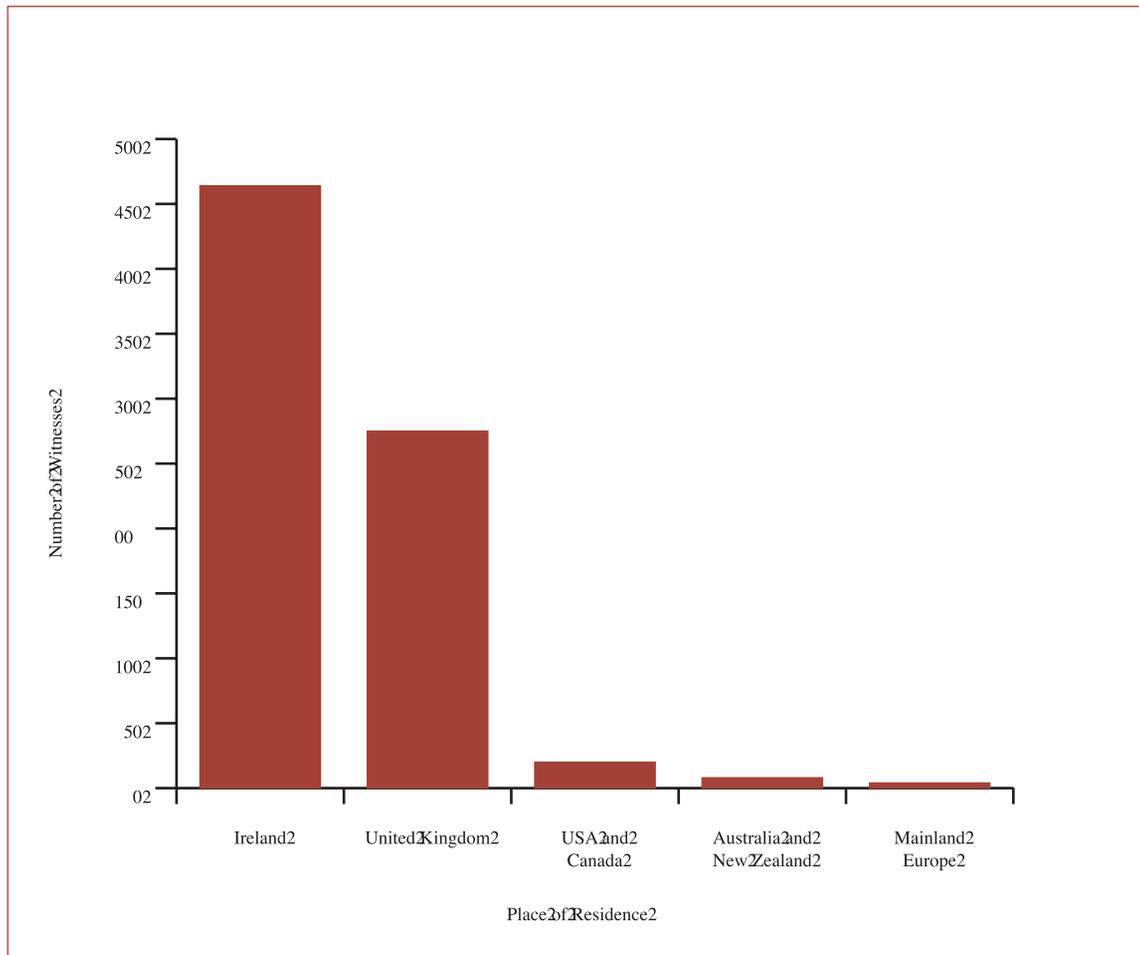


**TABLE F2**

**Place of Residence of Witnesses**

<b>Place of Residence</b>	<b>Number of Witnesses</b>	<b>Approximate Percentage %</b>
Ireland	464	60.18
United Kingdom	275	35.67
USA & Canada	20	2.59
Australia & New Zealand	8	1.04
Mainland Europe	4	0.52
<b>TOTAL</b>	<b>771</b>	<b>100</b>

**Place of Residence of Witnesses**

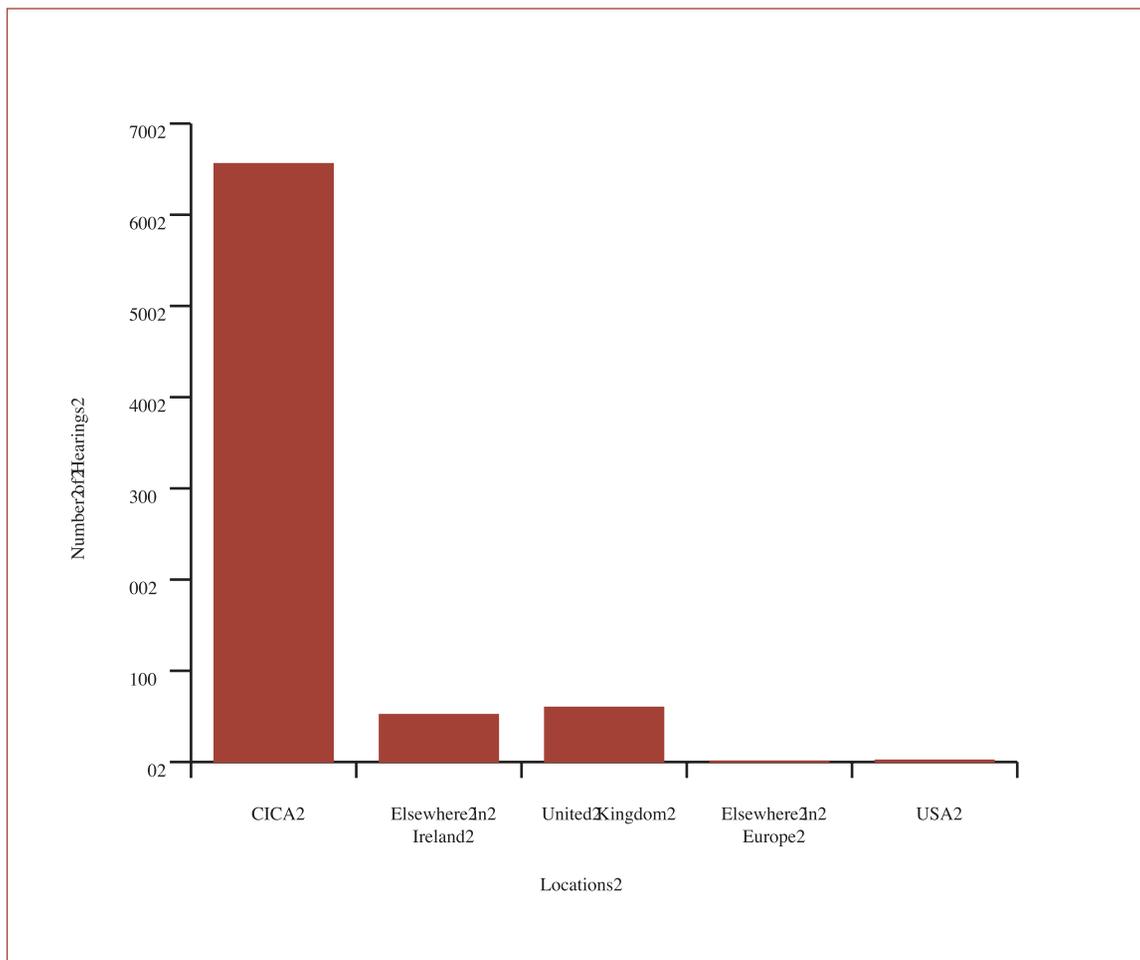


**TABLE F3**

**Locations and Number of Hearings**

<b>Location</b>	<b>Number of Hearings</b>	<b>Approximate Percentage %</b>
CICA	656	85.09
Elsewhere In Ireland	52	6.74
United Kingdom	60	7.78
Elsewhere In Europe	1	0.13
USA	2	0.26
<b>TOTAL</b>	<b>771</b>	<b>100</b>

**Location and Number of Hearings**

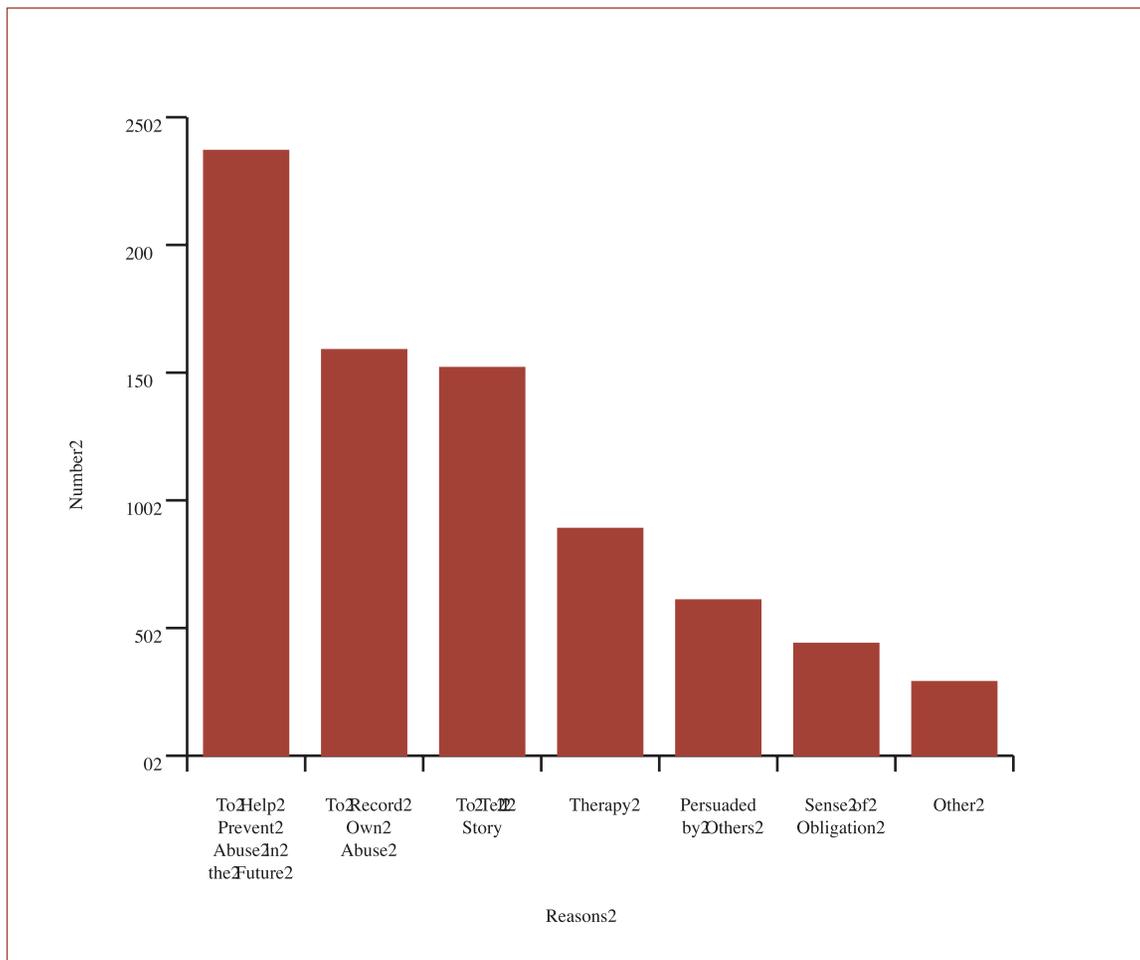


**TABLE F4**

**Reasons for Speaking with the Confidential Committee**

<b>Reason</b>	<b>Number</b>
To Help Prevent Abuse In The Future	237
To Record Own Abuse	159
To Tell Story	152
Therapy	89
Persuaded By Others	61
Sense Of Obligation	44
Other	29

**Reasons for Speaking with the Confidential Committee**

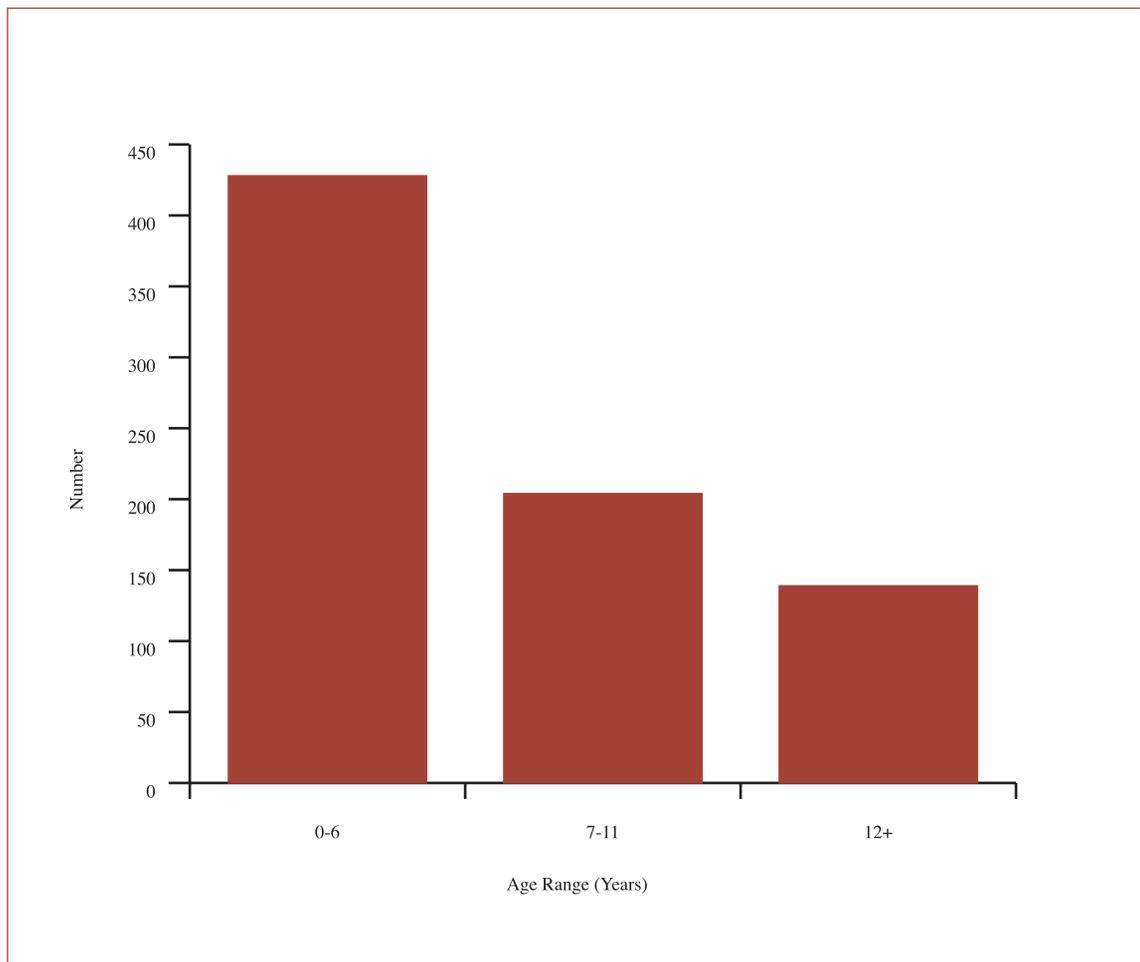


**TABLE F5**

**Age of Entry into Care**

<b>Age Range (years)</b>	<b>Number</b>
≤6	428
7-11	204
12+	139

**Age of Entry into Care**



**TABLE F6**

**Summary of Statutory Provisions in force during the Relevant Period governing Committal of Children to Industrial and Reformatory Schools.**

**(1) Committal by Court to Industrial School (Note A)**

Source of Jurisdiction	Grounds
<p><b>Children Act, 1908</b></p> <p>Section 58(1)(a)</p> <p>Section 58(1)(b)</p> <p>Section 58(1)(c)</p> <p>Section 133(17)</p> <p>Section 58(1)(d)</p> <p>Section 58(1)(e)</p> <p>Section 58(1)(f)</p> <p>Section 58(1)(g)</p> <p>Section 58(1)(h) (Note D)</p> <p>Consent 58(1)(i) (Note E)</p>	<p><b>In need of Care/Protection</b></p> <p><b>Under fifteen</b> (Note B) — expedient to deal by committing to industrial school — where any of the following circumstances established:</p> <p>Found <b>begging or receiving alms</b> or being in any street etc for the purpose of so begging or receiving alms.</p> <p>Found <b>not having any home</b> or settled place of abode, or visible means of subsistence, or <b>having a parent or guardian who does not exercise proper guardianship.</b></p> <p>Found <b>destitute</b> not being an orphan and having both <b>parents</b> or surviving parent or, in the case of an illegitimate child, mother <b>undergoing penal servitude or imprisonment.</b></p> <p>Found <b>destitute</b> being an <b>orphan</b> (Note C).</p> <p>Under care of a <b>parent</b> or guardian who by reason of <b>reputed criminal or drunken habits is unfit</b> to have the care of the child.</p> <p>The <b>daughter of a father</b> who has been <b>convicted</b> of an offence under Criminal Law Amendments Acts, 1885 to 1935 in respect of any of his daughters.</p> <p><b>Frequents the company of any reputed thief, or any common or reputed prostitute</b> (other than a common or reputed prostitute who is the mother of the child and exercises proper guardianship and due care to protect the child from contamination).</p> <p>Lodging or <b>residing in a house used by any prostitute</b> for the purposes of prostitution or otherwise <b>living in circumstances</b> calculated to cause, <b>encourage or favour the seduction or prostitution of the child.</b></p> <p>Found <b>destitute</b> and not an orphan and <b>parents</b> or surviving parent or, in the case of an illegitimate child, mother are or is <b>unable to support him</b> but subject to provisos in relation to parental consent or dispensation with such consent.</p> <p>Under care of <b>parent</b> or guardian who has been <b>convicted</b> of an offence under Part II or mentioned in the First Schedule in relation to any of his children.</p>
<p><b>Children Act, 1908</b></p> <p>Section 58(2)</p>	<p><b>Offender (Note F)</b></p> <p>Child apparently <b>under the age of twelve charged with an offence</b> punishable in the case of an adult by penal servitude or less punishment if the Court is satisfied on inquiry that it is expedient to deal with him by ordering him to be sent to a certified Industrial School.</p>

TABLE F6—continued

Source of Jurisdiction	Grounds
Section 58(3)	<b>A child apparently of the age of twelve, thirteen or fourteen (Note G) not previously convicted charged with an offence punishable in the case of an adult by penal servitude or less punishment if the Court is satisfied because of the special circumstances that he should not be sent to a certified Reformatory School and is also satisfied that the character and antecedents of the child are such that he will not exercise an evil influence over other children in the certified Industrial School.</b>
<b>Children Act, 1908</b>	<b>Uncontrollable</b>
Section 58(4)	<b>Parent</b> or guardian establishes that he is <b>unable to control the child</b> , desires the child to be sent to an Industrial School and understands the results which will follow and the Court is satisfied that it is expedient.
Section 58(5)	Where Guardians of a <b>County Home</b> satisfy the Court that child maintained by them is <b>refractory</b> or is the child of <b>parents</b> either of whom have been <b>convicted</b> of an offence punishable with penal servitude or imprisonment if the Court is satisfied that it is expedient to send the child to a certified Industrial School.
<b>Employment of Children Act, 1903 (Note H)</b>	Found guilty of a contravention (second or subsequent offence) of the provisions of any bye-law as to street trading made under the Act of 1903.
<b>School Attendance Acts 1926-1968</b>	Where—
Section 17(4)	(a) <b>Parent</b> satisfies the Court that he has <b>used all reasonable efforts</b> to cause the child to attend school; <b>or</b>  (b) <b>Parent</b> is <b>convicted</b> for a second time;  the Court may order the child to be sent to a certified Industrial School, in which case the provisions of Part IV of the Children Act, 1908 apply.

*Notes*

- A. The expression “industrial school” is defined in Section 44(1) of the Act of 1908 as meaning a school for industrial training of children, in which children are lodged, clothed and fed as well as taught.
- B. Prior to the coming into operation of the Children Act, 1941 the relevant age threshold was fourteen. The definition of “child” in the Act of 1908, as enacted, was a person under fourteen years of age and a “young person” was a person between fourteen and sixteen years of age. The Act of 1941 amended the definitions to extend the age threshold for a “child” to fifteen years and to amend the definition of “young person” as being between fifteen and seventeen years of age.
- C. Section 133(17) of the Act of 1908 provided that the provisions of that Act relating to children liable to be sent to Industrial Schools should extend and apply “to any child who was found destitute, being an orphan”.
- D. As originally enacted, section 58(1) of the Act of 1908 did not contain paragraph (h). Paragraph (h) was added to section 58(1) by the Children Act, 1929 which also added a proviso qualifying paragraph (h). Paragraph (h) and the proviso were amended by the Act of 1941 (section 10 (1)(d) and section 10(1)(e)). After 1941 the proviso contained three variables in relation to parental consent. The Supreme Court In *Re Doyle, an Infant*, (unreported), in which judgment was delivered on 21<sup>st</sup> December, 1955, found that part of the proviso was repugnant to the Constitution but, as the repugnant portion was not severable, the entirety of paragraph (h) and the proviso were declared invalid. Therefore, between 1929 and 1955 a child could have been committed in the circumstances outlined in paragraph (h).

- E. As originally enacted section 58(1) did not contain a paragraph (i). This paragraph was added to section 58(1) by the Act of 1941. Therefore, a child could have been committed in the circumstances outlined in paragraph (i) after 1941. The offences referred to in paragraph (i) are offences against or involving children.
- F. Sending a child to an Industrial School was one of the methods available for dealing with a child who was charged with an offence (section 107 of the Act of 1908). Section 65 of the Act of 1908 provided that the Court could not order a child to be detained in an Industrial School beyond the time when the child would be sixteen years of age. However section 12 of the Act of 1941 empowered the Minister, with the consent of the parents, to extend the period of detention. Sub-sections (2), (3) and (4) of section 58 were not repealed by the Childcare Act, 1991.
- G. Section 58(3) as originally enacted, applied to a child of twelve or thirteen. The provision was amended by the Act of 1941 to apply to a child of twelve, thirteen or fourteen years, in other words, a child aged between twelve and fifteen years.
- H. This provision is included because it was included in Appendix G of “The Reformatory and Industrial Schools Systems Report 1970” (the Kennedy Report) (PRL 1342).

*(2) Committal by Court to Reformatory School (Note A)*

Source of Jurisdiction	Grounds
<p><b>Children Act, 1908</b></p> <p>Section 57(1)</p>	<p style="text-align: center;"><u>Offender</u></p> <p>Empowered the Court to send a <b>youthful offender twelve years</b> of age or upwards <b>but less than seventeen years</b> of age (Note B) to a certified Reformatory School but—</p> <ul style="list-style-type: none"> <li>(i) the <b>period of detention was limited</b> by section 65 of the Act of 1908 as amended by the Act of 1941 to not less than two years and not more than four years, and</li> <li>(ii) Section 58(3) in the case of a child between twelve and fifteen on the occasion of a <b>first conviction</b> and where satisfied that the child <b>would not exercise an evil</b> influence over the other children empowered the Court to send the child to a certified Industrial School instead.</li> </ul>
<p><b>Children (Amendment) Act, 1949</b></p> <p>Section 4</p>	<p><u>St Anne’s Reformatory School, Kilmacud.</u></p> <p>Where a Court had power under any sub-section of section 58 of the Act of 1908 to order a person to be sent to a certified Industrial School and the Court had previously ascertained that the Managers of St Anne’s were willing to receive the person, it might, in lieu of ordering the person to be sent to an Industrial School, order the person to be sent to St Anne’s (Note C).</p>

*Notes:*

- A. In section 44(1) of the Act of 1908 the expression “reformatory school” is defined as meaning a school for the industrial training of youthful offenders in which youthful offenders are lodged, clothed and fed as well as taught. Under section 107 of the Act of 1908 one of the methods available to a Court for dealing with children and young persons charged with offences was by sending the offender to a Reformatory School.
- B. As originally enacted section 57(1) provided for an upper age limit of sixteen years but this was amended to seventeen years by the Act of 1941.
- C. St Anne’s Reformatory School, Kilmacud was a reformatory school for girls.

**TABLE F7**

**Industrial and Reformatory Schools — Male Witnesses**

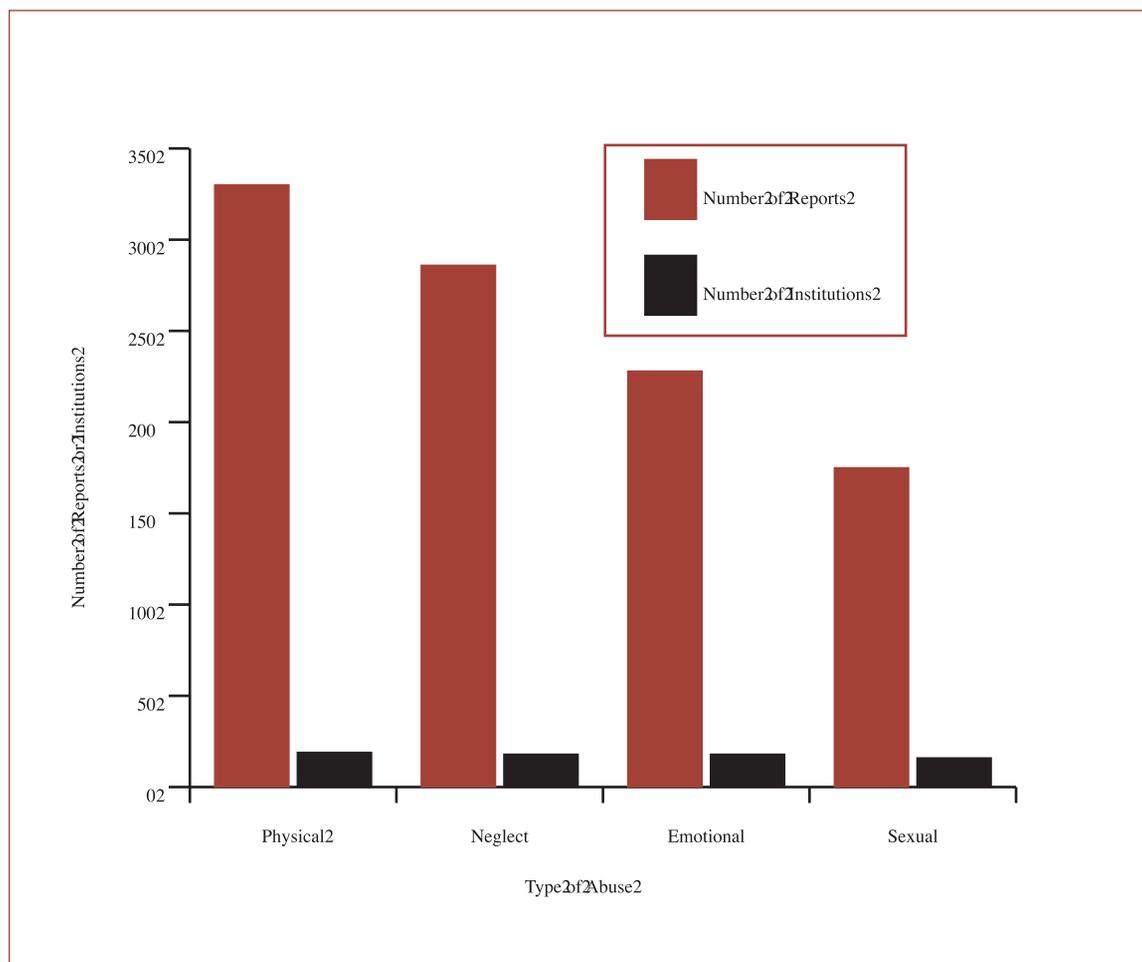
*Number of Reports of Types of Abuse*

*Number of Institutions per Type of Abuse*

Number of Reports	Type of Abuse	Number Of Institutions
330	Physical	19
286	Neglect	18
228	Emotional	18
175	Sexual	16

**Number of Reports of Type of Abuse**

**Number of Institutions per Type of Abuse**

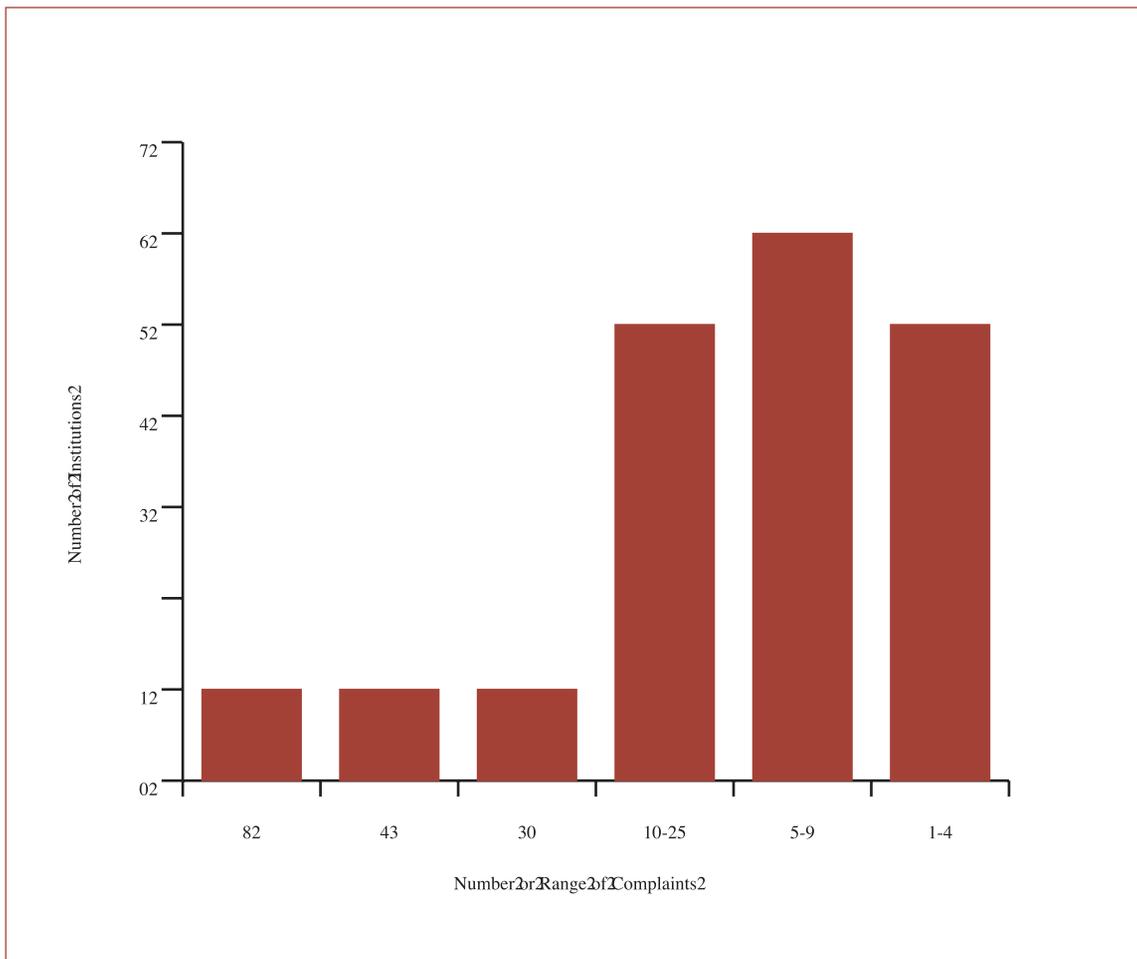


**TABLE F8**

**Industrial and Reformatory Schools — Male Witnesses**  
*Number of Institutions per Number or Range of Complaints*

<b>Number or Range of Complaints</b>	<b>Number of Institutions</b>
82	1
43	1
30	1
10-25	5
5-9	6
1-4	5

**Number of Institutions per Number or Range of Complaints**



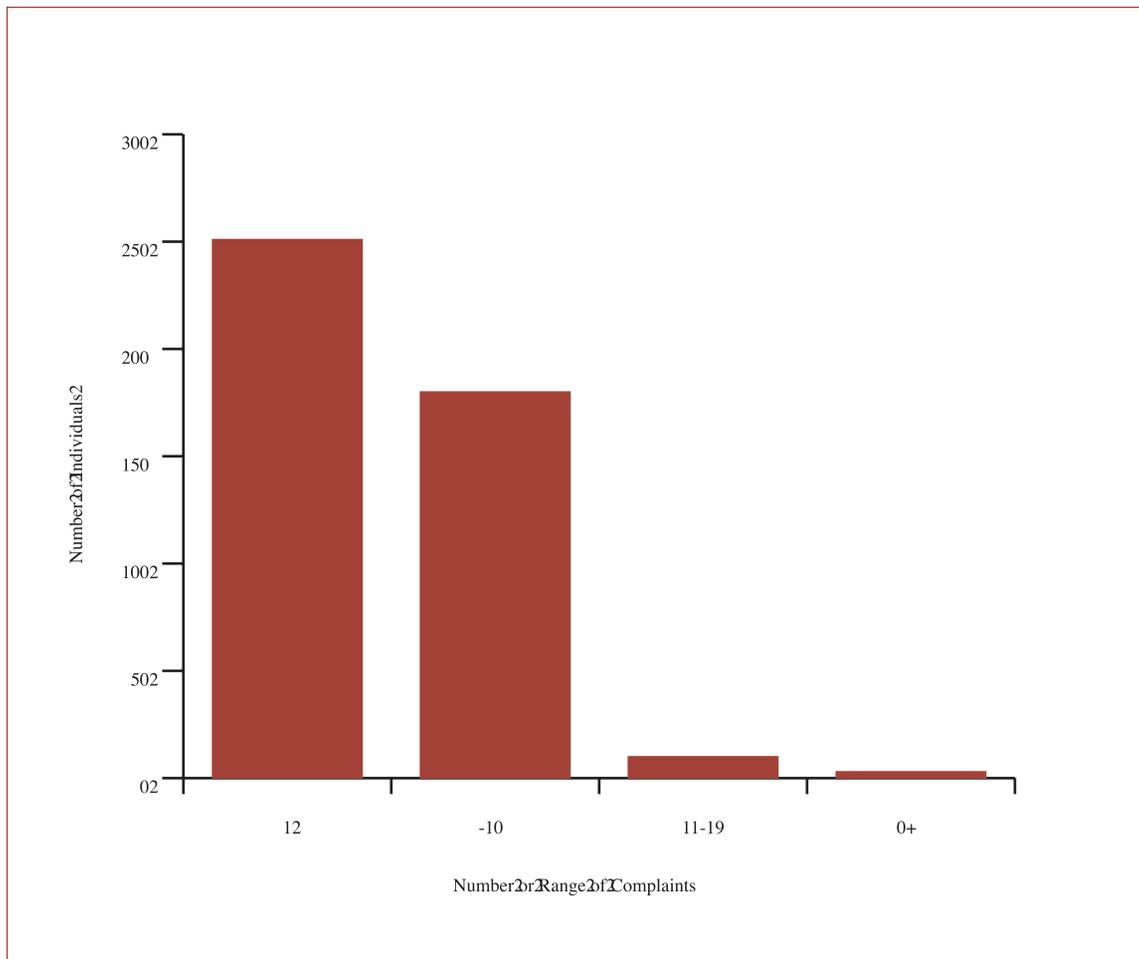
**TABLE F9**

**Industrial and Reformatory Schools — Male Witnesses**

*Number of Individuals with the Relevant Number or Range of Complaints*

Number or Range of Complaints	Number of Individuals Complained of
1	251
2-10	180
11-19	10
20+	3

**Number of Individuals and the Number or Range of Complaints Against Them**



**TABLE F10**

**Industrial and Reformatory Schools — Female Witnesses**

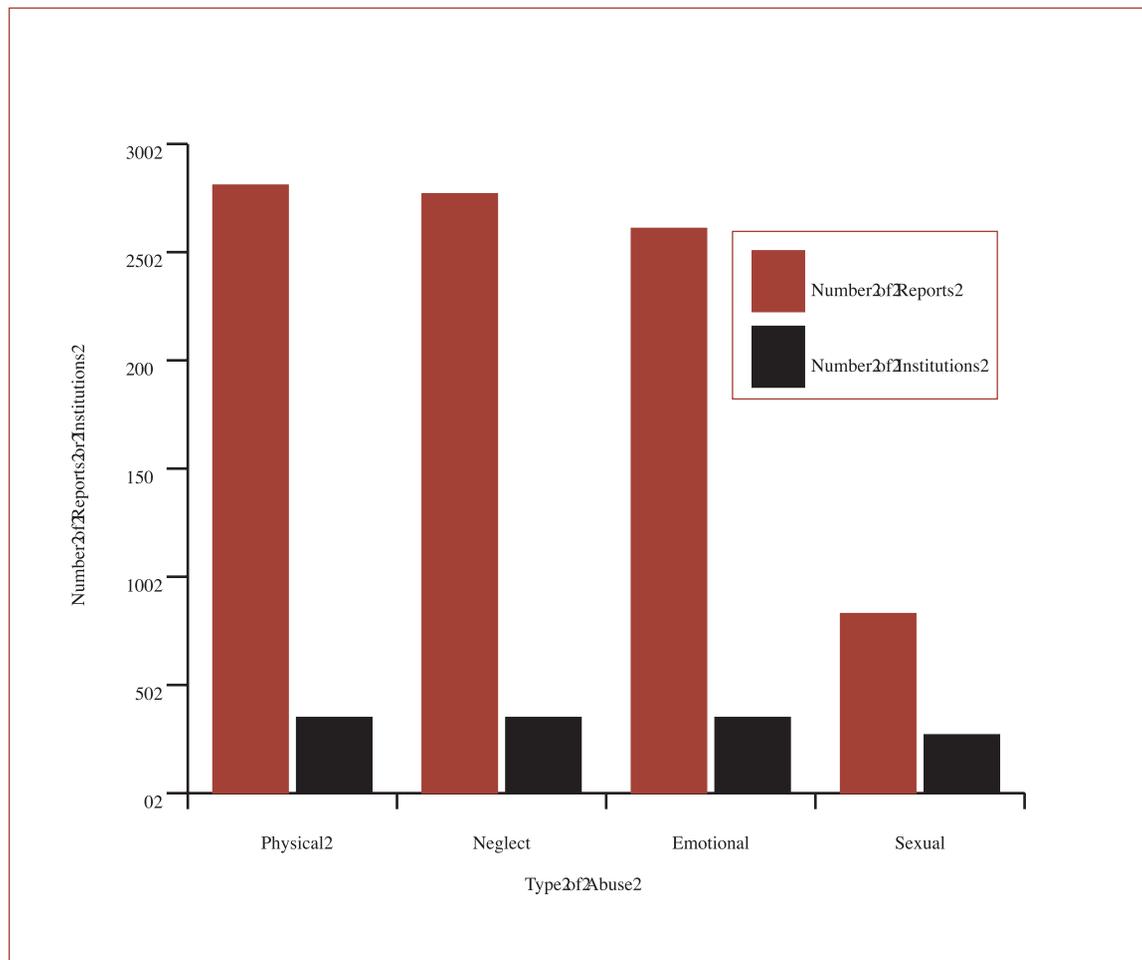
*Number of Reports of Type of Abuse*

*Number of Institutions per Type of Abuse*

Number of Reports	Type of Abuse	Number of Institutions
281	Physical	35
277	Neglect	35
261	Emotional	35
83	Sexual	27

**Number of Reports of Type of Abuse**

**Number of Institutions per Type of Abuse**

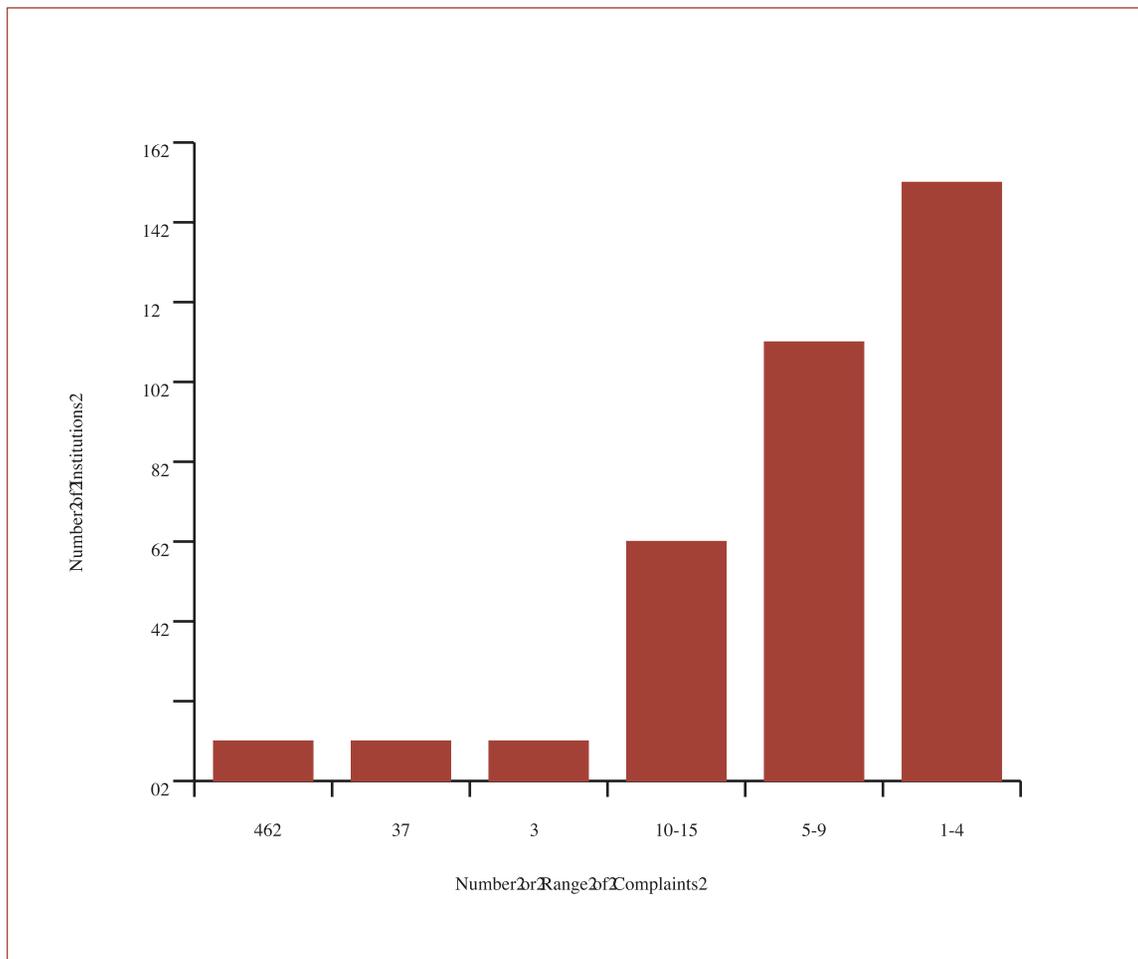


**TABLE F11**

**Industrial and Reformatory Schools — Female Witnesses**  
*Number of Institutions per Number or Range of Complaints*

Number or Range of Complaints	Number of Institutions
46	1
37	1
23	1
10-15	6
5-9	11
1-4	15

**Number of Institutions per Number or Range of Complaints**



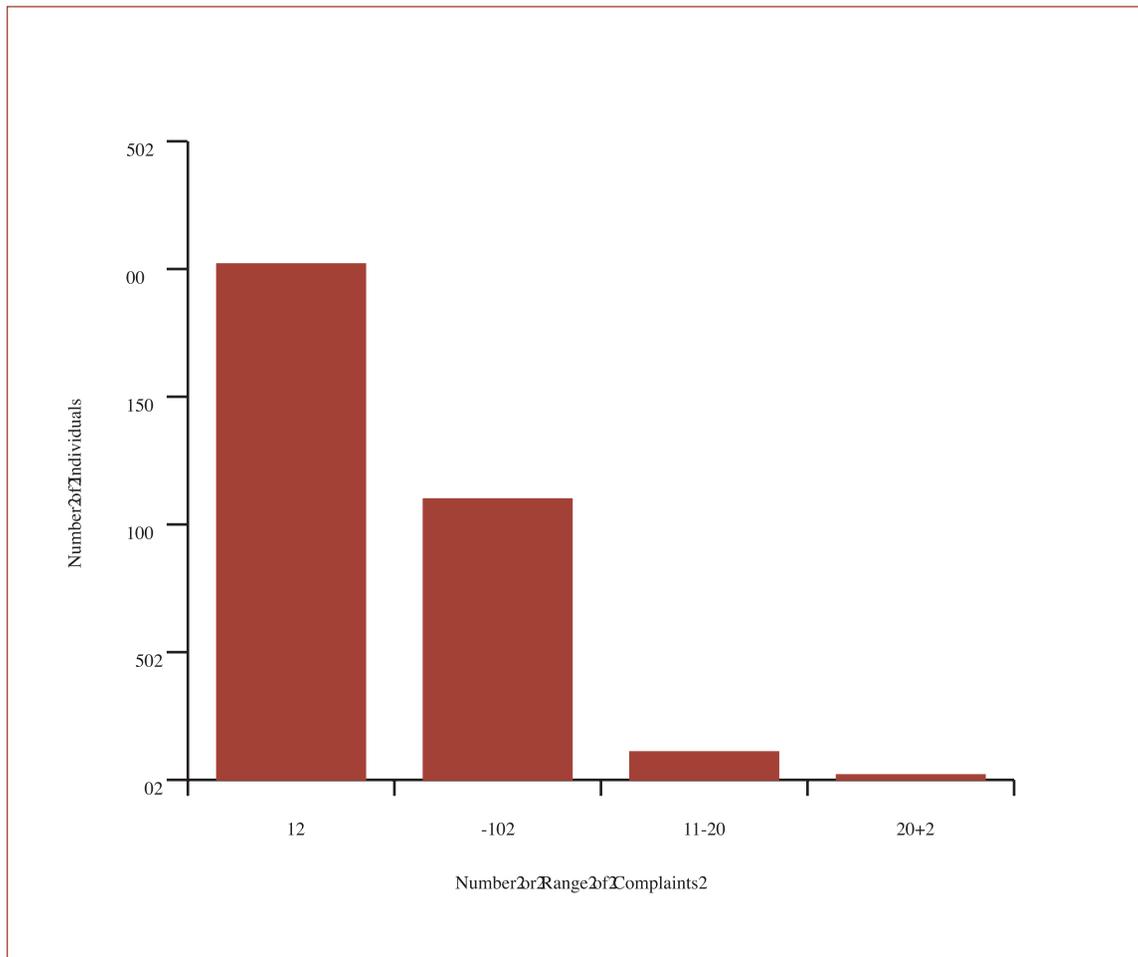
**TABLE F12**

**Industrial and Reformatory Schools — Female Witnesses**

*Number of Individuals with the Relevant Number or Range of Complaints*

Number or Range of Complaints	Number of Individuals Complained of
1	202
2-10	110
11-20	11
20+	2

**Number of Individuals with the Relevant Number or Range of Complaints Against Them**



**TABLE F13**

**Other Institutions — Male and Female Witnesses**

*Number of Complaints per Institution Type*

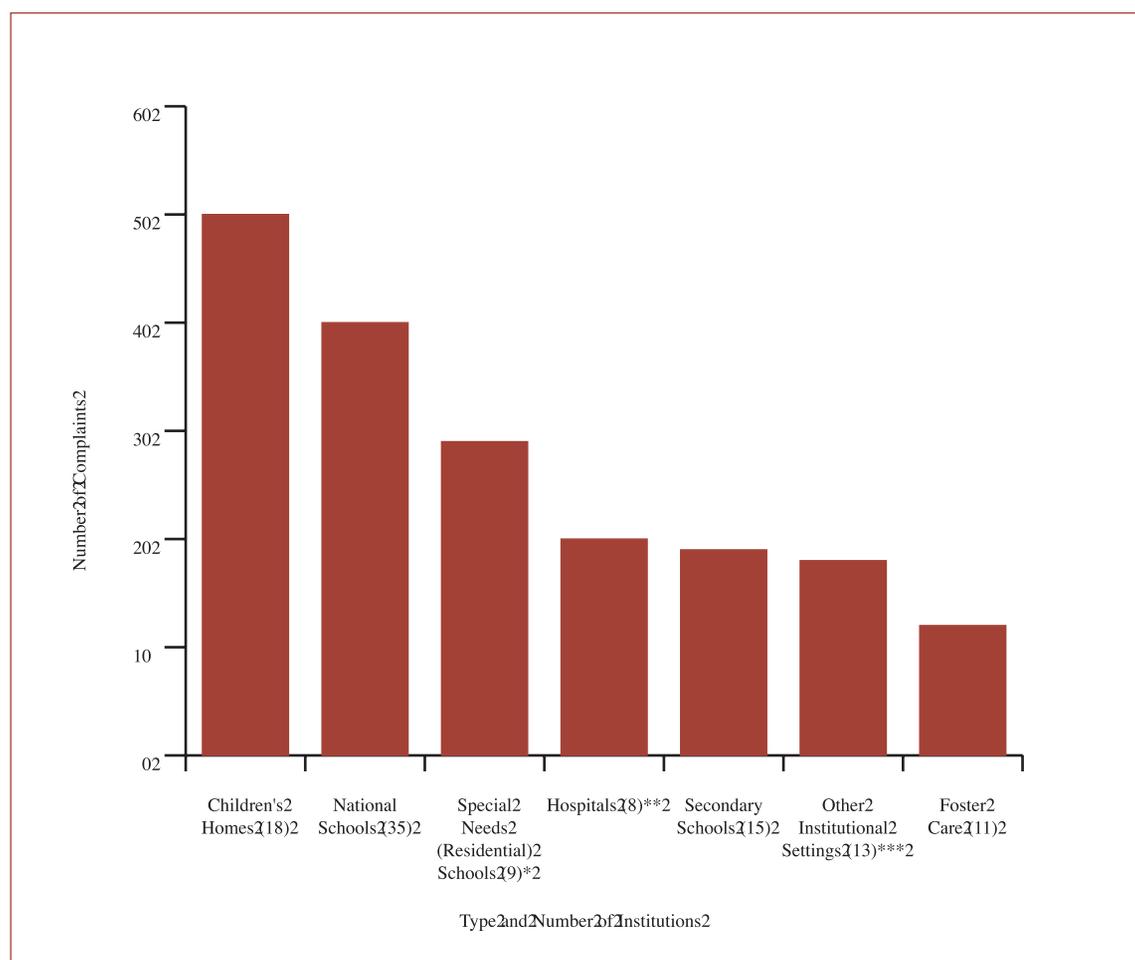
Type and Number of Institutions	Number of Complaints
Children’s Homes (18)	50
National Schools (35)	40
Special Needs (Residential) Schools (9)*	29
Hospitals (8)**	20
Secondary Schools (15)	19
Other Institutional Settings (13)***	18
Foster Care (11)	12

\* This term covers residential schools that provided care and education on the premises for children who had a learning difficulty, which may have been caused by intellectual, visual, hearing or speech disability

\*\* This term covers general hospitals, specialist and rehabilitation hospitals and county homes

\*\*\* This term covers institutions that fall within the remit of the Act, but outside the main groupings already covered in this report. An example would be a hostel for adolescents

**Number of Complaints per Institution Type**



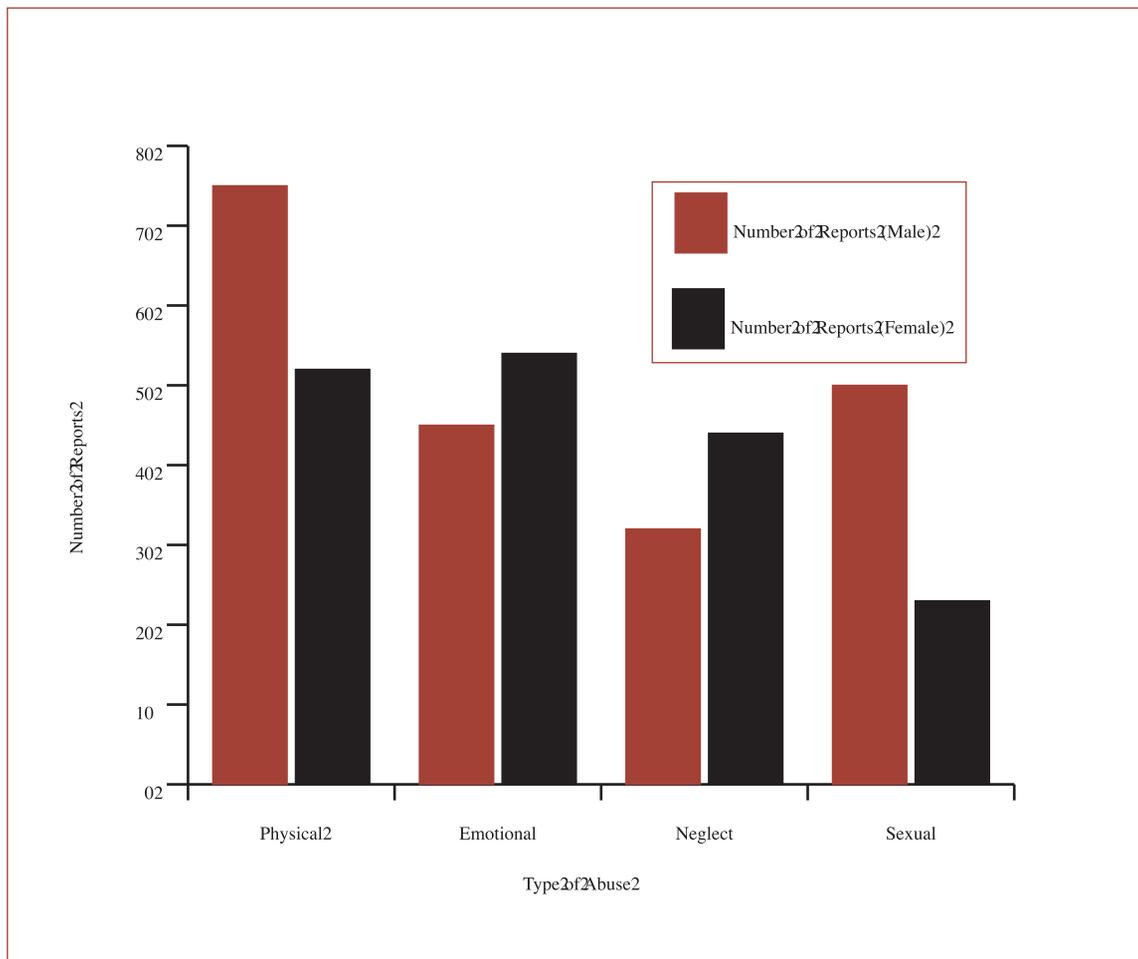
**TABLE F14**

**Other Institutions — Male And Female Witnesses**

*Number of Reports of Types of Abuse*

Type of Abuse	Number of Reports Male	Number of Reports Female
Physical	75	52
Emotional	45	54
Neglect	32	44
Sexual	50	23

**Number of Reports of Type of Abuse**



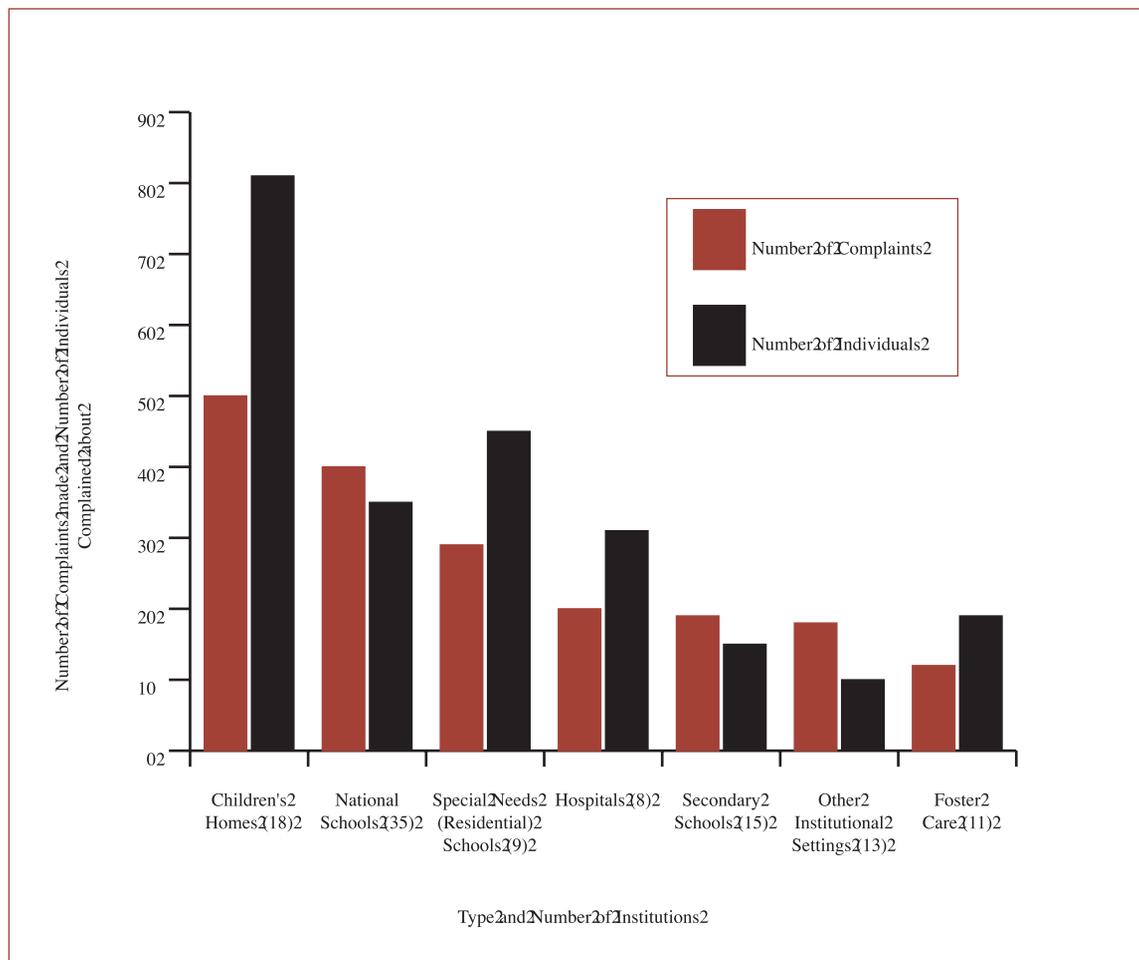
**TABLE F15**

**Other Institutions — Male and Female Witnesses**

*Number of Complaints per Institution Type and Number and Number of Individuals complained about*

Type and Number of Institutions	Number of Complaints	Number of Individuals
Children’s Homes (18)	50	81
National Schools (35)	40	35
Special Needs (Residential) Schools (9)	29	45
Hospitals (8)	20	31
Secondary Schools (15)	19	15
Other Institutional Settings (13)	18	10
Foster Care (11)	12	19

**Number of Complaints made and Individuals Complained about per Institution Type and Number**



# The Investigation Committee: From Establishment to the Present

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## Introduction

As over three and a half years have elapsed since the Committee commenced its work, it is anxious to furnish as much information to the public in this report as it may properly give, having regard to the interim nature of the report. The first and second Interim Reports gave snapshots of the work in progress at the end of May 2001 and at the end of November 2001, respectively. In this report, in broad terms, the approach which will be adopted is as follows:

- The work done to date will be outlined, giving as much detail as is possible.
- The current “case load” will be profiled so that there will be a clear picture of what remains to be done and that decisions as to how best to do it can be based on accurate information in relation to the volume and complexity of complaints which are before the Committee.

While, because it has conducted so few evidential hearings, the Committee is constrained in reporting in relation to the inquiry, nonetheless, it considers it should report on what has been learned about the process and the manner in which the main players in the process have engaged with the Committee. Most of the Committee’s hearings, both evidential and procedural, have been held otherwise than in public. Although the Act<sup>89</sup> requires that a hearing, or part of a hearing, at which evidence relating to particular instances of alleged abuse of children is being given shall be held otherwise than in public, it gives the Committee a discretion as to whether to hold other hearings in private or in public, while reminding the Committee of the desirability of holding hearings in public. Many of the hearings which the Committee has held in private could have been held wholly or partly in public. On the basis of experience, it is the view of the Committee that, in many instances, the attitude of parties to the process would probably have been different if such hearings had been held in public.

The Committee would wish that parties who have committed to its work, in all cases for over two years, and have assisted it or are anxious to assist it by recounting their childhood experiences, would feel that their commitment and assistance have been sufficiently acknowledged. Those who are disappointed must recognise that there are legal constraints which must be observed by the Committee in reporting on an interim basis. The objective of the Committee is to furnish a factually accurate record of its work to date, incorporating

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<sup>89</sup> Section 11(3).

a fair and reasonable appraisal of the process and the parties involved in it in such a way as not to compromise its future work. It is hoped that by doing so it will enable any policy decisions made in the future in relation to its mandate by the Government and the Oireachtas to be fully informed.

## **Milestones in the work of the Committee to date**

The fortunes of the Committee and the fortunes of the Commission have been intertwined since establishment. The real impact of the obstacles, recounted earlier,<sup>90</sup> which have impeded progress of the work of the Commission, has been the inability of the Committee to advance its work. While it is not intended to reiterate in this chapter matters which have been dealt with earlier, the practical implications of the various obstacles which the Commission has encountered on the work of the Committee will be amplified. Against the background of those obstacles, the following were the main events in the progression of the Committee's work:

### ***Procedures***

- On 29<sup>th</sup> June, 2000, in the Opening Statement,<sup>91</sup> the manner in which the Committee proposed to conduct its inquiry and the principles which would guide it in fulfilling its remit were set out. Proposed Rules of Procedure were made public. At the second public sitting, entitlement to legal representation before the Committee was ruled on. Following the second public sitting, the Rules of Procedure were finalised, taking into account submissions which had been made to the Committee. By August 2000, the structure of, and procedures for, Phase 1 of the Committee's inquiry were in place.

### ***Requests to testify***

- Between the beginning of July 2000 and 31<sup>st</sup> July, 2001, requests to give evidence to the Committee were accepted. A final date for acceptance of requests was imposed in May 2001. Thereafter, approximately three quarters of all the requests received were submitted before the deadline of 31<sup>st</sup> July, 2001.

### ***Commencement of preliminary inquiries***

- Preliminary inquiries by Inquiry Officers carried out under the Act<sup>92</sup> commenced at the beginning of December 2000 in relation to complaints of which the Committee was on notice by reason of submission of requests to give evidence. The first step in the preliminary inquiry was to obtain the statement of his or her proposed evidence from the Complainant. Because of the stance being adopted by the Survivors' Solicitors, the majority of statements were not forthcoming. A final date for acceptance of statements was imposed in March 2002. Thereafter, approximately two-thirds of all Complainants' statements were submitted before the deadline of 30<sup>th</sup> June, 2002.

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<sup>90</sup> See chapter 2.

<sup>91</sup> Appendix A.

<sup>92</sup> Section 23.

### *Commencement of scheduling hearings*

- The first evidential hearing was scheduled for the end of June 2001 but on the day of the hearing the Complainant withdrew. The antiquity of the majority of the allegations being investigated and the age profile and the state of health of many of the witnesses indicated the necessity to expedite evidential hearings. That was difficult to achieve for the following reasons:
  - The real starting point of a preliminary inquiry was the Complainant's statement, which was not forthcoming in the majority of cases until May and June 2002;
  - If it was forthcoming, in many cases there was difficulty procuring the statement or statements in response from the persons and bodies against whom allegations were made; and
  - In some cases, procuring compliance with discovery directions proved difficult.

To deal with these difficulties, procedural hearings were convened, either to deal with specific legal issues in relation to statements, discovery and such like or to get an explanation for delay, for example, delay in submitting Respondents' statements, and to ensure that any default was remedied. By the beginning of 2002, procedural issues were being disposed of and preliminary inquiries were being advanced sufficiently to enable the Committee to schedule evidential hearings. However, when evidential hearings in relation to Industrial Schools came on stream, the Committee had to confront a legal issue raised by the Congregations of Religious (the Congregations) who managed the Industrial Schools in the past.

### *Procedural Hearing on lapse of time*

- The legal issue, in broad terms, is the effect of the passage of time since many of the events which the Committee is investigating occurred on the ability of the Committee to fulfil its mandate properly and as envisaged by the Oireachtas. It is an issue which has been a matter of controversy from the outset and which has been consistently and repeatedly raised by the Congregations which managed the institutions in which the abuse is alleged to have occurred, the Management Respondents. In order to avoid repetition and in the interests of consistency, it was decided in the second quarter of 2002 that the Committee should attempt to formulate general principles on the issue of prejudice arising from lapse of time and allied issues. A procedural hearing was convened at which the Committee heard submissions from the following parties who represented the principal interests involved in the Committee's work:
  1. The Management Respondent of an Industrial School for girls;
  2. A Complainant who was alleging she had suffered abuse while resident in the Industrial School referred to at (1);
  3. The Congregations of Christian Brothers who were the Management Respondents of both residential and day schools in respect of which allegations were pending before the Committee;
  4. A Complainant who alleged abuse as a day pupil in a school managed by the Christian Brothers;

5. The Minister for Education and Science, as the statutory regulator of the majority of the institutions which featured in the Committee's inquiry; and
6. The Attorney General representing the public interest.

### *Deadline for Complainants' statements*

- The Committee also heard submissions from the Commission's legal team. The Procedural Hearing took place over four days ending on 31<sup>st</sup> July, 2002. It was conducted in public. A provisional ruling of the Committee on the issues raised at the Procedural Hearing (the Provisional Ruling) was published on 9<sup>th</sup> September, 2002. In it, any party on record with the Committee, who was not represented at the Procedural Hearing, was invited to make submissions in writing on the Provisional Ruling by 4<sup>th</sup> October, 2002. Submissions which were received were considered by the Committee. A final ruling of the Committee issued on 18<sup>th</sup> October, 2002 (the Final Ruling).<sup>93</sup> In it, the Committee set out the general principles which it proposed to apply in relation to the issues in controversy, but emphasised that, where the interests of fairness so dictated, such principles would not be applied to a particular decision or determination. A direction for payment of the legal costs of the representative parties who were involved in the Procedural Hearing was made on 4<sup>th</sup> December, 2002.<sup>94</sup> The correctness in law of the Final Ruling was subsequently challenged in the Christian Brothers' Proceedings.

Apart from the Procedural Hearing on lapse of time, the other major event in the life of the Committee in the summer of 2002 was the expiration of the deadline for receipt of Complainants' statements on 30<sup>th</sup> June, 2002. For the first time, the Committee was able to assess the total number of Complainants who remained committed to the process following the enactment of the Act of 2002. At that juncture, the figure was approximately 1,800.

### *Review of procedures*

- When all the Complainants' statements had been submitted, the Committee, also for the first time, was able to get an overview of the institutions which featured in the allegations and the number of individuals against whom abuse was alleged, although at that stage it had no way of assessing whether those individuals were alive or dead and if alive, whether they were traceable and, if so, whether they were capable of giving evidence. On the basis of the information then available, the Committee decided, as was announced in the Provisional Ruling of 9<sup>th</sup> September, 2002, to review its procedures.

### *Effect of decision to review procedures*

- As a consequence of the decision to review the procedures of the Committee, no individual hearings, other than hearings which had already been listed for September 2002, were scheduled. Thereafter, the work of the Committee was concentrated on preparing complaints for hearing in batches where the complaints were linked by

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<sup>93</sup> Posted on the Commission's website.

<sup>94</sup> Posted on the Commission's website.

institution or institution type, rather than for individual hearing. Because of the intervention of the Government review, no further evidential hearings were conducted.

### *Framework of procedures*

- The Commission's legal team consulted with the legal teams for representative Complainants and Respondents in September 2002. Following the consultation process, a Framework of Procedures was drawn up which envisaged the inquiry being conducted on a modular basis, the unit of the inquiry being a specific institution (for example, a specific Industrial School) or a type of institution (for example, National Schools). While under the procedures which had previously been applied, each Complainant had his or her own discrete hearing, under the Framework, a Complainant would give evidence in the module or modules to which his or her allegations related. For convenience of reference the text of the Framework is set out in Appendix E. The Framework was circulated to all parties on record with the Committee on 18<sup>th</sup> November, 2002.<sup>95</sup> Submissions in relation to the procedures outlined in the document were invited from parties involved in the process by 5<sup>th</sup> December, 2002. As was stated in the Framework, the implementation of the procedures envisaged in it was wholly contingent on resources which the Commission had sought from the Minister for Education and Science being made available as a matter of urgency. The resources which the Committee considered it needed and which it applied for were sufficient resources to enable the Committee to conduct its hearings through four divisions working simultaneously preparing for hearing, and hearing, modules. The Commission received twenty-eight submissions on the Framework, of which twenty-two, which were submitted by the following parties, required consideration:
  - Complainants (2)
  - Solicitors for Complainants (6)
  - Solicitors for Individual Respondents (3)
  - Solicitors for Congregations, who are Management Respondents in the process (8)
  - Solicitors for Health Boards, who are Management or Regulatory Respondents in the process (2)
  - The Chief State Solicitor for the Minister.

### *Transfers from the Confidential Committee*

- The Act<sup>96</sup> enables a person to transfer from his or her Committee of first choice to the other Committee. From time to time, witnesses who initially had chosen to give evidence to the Confidential Committee have transferred to the Investigation Committee. Being conscious of the fact that all complaints which related to a particular module required to be before the Committee when modules were being identified and assigned, the Commission imposed a final date for transfer from the Confidential

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<sup>95</sup> It was also posted on the Commission's website.

<sup>96</sup> Section 19.

Committee to the Investigation Committee. The deadline was 31<sup>st</sup> January, 2003. From that date onwards, the case load of the Investigation Committee could not increase.

### *Government review of mandate*

- On the final date for submissions in relation to the Framework, 5<sup>th</sup> December, 2002, the Commission received notification of the Government's decision on its request for resources and of its decision to review the Commission's mandate. The ensuing interaction between the Commission and the Department and the Commission's involvement with the Review has been outlined earlier.<sup>97</sup> The practical effect of the announcement of the review on the work of the Committee was that finalisation of the Framework was deferred pending the completion of the review. In the event, the outcome of that review was never published. As a consequence:
  - The Framework was never finalised.
  - No evidential hearings were convened thereafter.
  - The focus of directions for discovery which issued thereafter was predominantly on State parties.

### *Deadline for Respondents' statements.*

- At the beginning of 2003, steps were taken to accelerate the completion of the preliminary inquiries. A final date for submission of Respondents' statements was imposed in March 2003. The deadline was 2<sup>nd</sup> May, 2003. However, in the case of the Respondents with the greatest number of complaints to respond to, the deadline was extended. In particular, following a procedural hearing which was held in public on 20<sup>th</sup> March, 2003,<sup>98</sup> the Christian Brothers were allowed the following extensions:
  - until 31<sup>st</sup> July, 2003 to submit statements in relation to Artane Industrial School, and
  - until 30<sup>th</sup> September, 2003 to submit statements in relation to St. Joseph's Industrial School, Letterfrack.

### *Preparation of modules*

- In anticipation of the outcome of the review, preparatory work continued on modules which had been identified, including the Newtownforbes Industrial School module.<sup>99</sup> The Commission's legal team was expanded to facilitate the preparation of modules.

### *Christian Brothers' proceedings*

- In February 2003, the Congregations of Christian Brothers initiated a plenary action in the High Court seeking various declaratory reliefs, including a declaration that the Committee's Final Ruling of 18<sup>th</sup> October, 2002 on lapse of time and allied issues is wrong in law in certain respects and offends the principles of natural and constitutional justice in other respects. In the alternative, the validity of certain provisions of the Act

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<sup>97</sup> See chapter 2.

<sup>98</sup> The Ruling of the Committee dated 27<sup>th</sup> March, 2003 is posted on the Commission's website.

<sup>99</sup> See chapter 9.

having regard to the provisions of the Constitution is impugned. The proceedings are still pending in the High Court.<sup>100</sup>

### *Further review*

- On 2<sup>nd</sup> September, 2003, following the public announcement by the Minister of a further review of the Commission's mandate, the Committee announced its decision not to use its power to gather further evidence or to plan further hearings of the Committee pending the announcement of the results of the further review. Thereafter, the legal and administrative personnel who remained with the Committee concentrated on completing the preliminary inquiries and assembling the data for this report.

### **Preliminary inquiries — substantive work**

To date, the main thrust of the Committee's work has been conducting preliminary investigations into the complaints which have been submitted by Complainants to the Committee and gathering evidence in relation to those complaints and abuse in institutions generally.

The Act<sup>101</sup> contains specific provisions in relation to preliminary inquiries. These provisions enable personnel, other than the members of the Committee, to exercise certain powers, for example, to request statements, take statements and conduct interviews. In practice, the preliminary inquiries have been much more complex than the provisions of the Act envisaged. Apart from being part of the evidence gathering process, the preliminary inquiries are the means by which the Committee ensures that fair procedures are observed. The Committee recognises that a person whose conduct is impugned as part of the investigation must be afforded a reasonable means of defending himself or herself. At a minimum, he or she must be—

- furnished with a statement of the evidence which reflects on his or her good name,
- allowed to cross-examine, by Counsel, his or her accuser or accusers,
- allowed to give rebutting evidence, and
- permitted to address, by Counsel, the Committee in his or her own defence.<sup>102</sup>

As part of the preliminary inquiry, every person against whom an adverse finding could be made arising out of a Complainant's evidence must be identified and furnished with a copy of the Complainant's statement. As the data on the Committee's complaint profile illustrates,<sup>103</sup> identifying the number of Complainants in the process is not an accurate measure of the volume of work which faces the Committee or any indication of the timescale it will take to complete it.

A complicating factor is that approximately twenty-two per cent of Complainants have registered complaints in relation to more than one institution. In the case of each

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<sup>100</sup> Details of the Christian Brothers' proceedings are set out in Table C.

<sup>101</sup> Section 23.

<sup>102</sup> Re Haughey [1971] I.R. 217 at page 263.

<sup>103</sup> See chapter 12.

institution, the management and the statutory or other regulator (in most cases, the Department) requires to be given an opportunity to answer the allegations. For example, one of the Complainants participating in the Newtownforbes Module wishes to give evidence in relation to two other institutions, both of which were Industrial Schools. A statement in response to her allegations has had to be obtained from the Management Respondent in relation to each of those Industrial Schools. The Department, as the statutory regulator of Industrial Schools, has had to submit three statements in response to her complaint.

A factor which adds even more complexity to the process and increases the volume and duration of the work is the number of individuals against whom allegations are made and the aggregate number of allegations against those individuals. Some Complainants name several individuals as having committed abuse. Some Individual Respondents have multiple allegations pending against them, each made by a different Complainant. Where, for example, sixty-one (61) Complainants have alleged abuse against an individual, it has been necessary to notify that individual of each of the sixty-one allegations separately. A further complication is that, because of the antiquity of the allegations, frequently there has been difficulty in ascertaining whether a person named by a Complainant as a perpetrator of abuse is alive or dead. There has also been difficulty tracing the current whereabouts of individuals named who are believed to be still alive, but have moved on from the positions they were in at the time of the events the subject of the allegations. This difficulty has been encountered, for example, in relation to former members of Congregations and retired teachers. As part of its preliminary inquiries, the Committee takes reasonable steps to trace such persons. In some cases, a difficulty arises because the Complainant remembers an individual whom he or she accuses of abuse by a “nickname” only. As part of the preliminary inquiries, the Committee endeavours to identify and trace the individual in question.

Responding to allegations of abuse which is alleged to have occurred thirty or more years ago understandably has given rise to difficulties and has contributed to the degree of work involved in, and the protraction of, the preliminary inquiries. As has been stated, where delay in furnishing Respondents’ statements has required an explanation, the Committee has convened a procedural hearing to deal with the issue,<sup>104</sup> with a view to expediting the completion of the preliminary inquiry and the preparation of the complaint for hearing.

In the course of the evidence gathering phase of the Committee’s inquiry, the following steps have also been taken:

#### *Discovery directions issued*

- Discovery directions have been made with a view to procuring documents and records relevant to the issues raised on the inquiry. Directions which have been made to date have been directed to:
  - Complainants,
  - Individuals named by Complainants as alleged perpetrators of abuse,

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<sup>104</sup> See chapter 11.

- Congregations which managed institutions in which abuse is alleged to have taken place,
- Boards of Management of National Schools in which abuse is alleged to have taken place,
- The Departments of State with regulatory responsibility for institutions in which abuse is alleged to have taken place, primarily, the Department and the Department of Health and Children,
- Bishops,
- Diocesan Archives,
- Hospitals and clinics which treated Complainants,
- Health Boards which had responsibility for Complainants while children,
- An Garda Síochana,
- The Director of Public Prosecutions, and
- A coroner.

That list is not exhaustive. It is recognised that requiring documentation which was generated a long time ago, in some cases up to sixty years ago, to be discovered and produced is burdensome, even if the costs of making discovery may be recouped from the Commission. It has not been the practice of the Committee to direct that discovery be made, if it is of the opinion that the burden imposed on the person to whom the direction would be given is disproportionate to the benefit likely to accrue in advancing the Committee's inquiry, notwithstanding that a party involved in the process has requested that a direction be made.

### *Diocesan Archives*

- The Committee has identified Diocesan Archives of the Catholic Church as a source of information which might assist the Committee in its work. The majority of the institutions being investigated by the Committee were managed by Congregations. In each diocese, the Congregations were subject to the ecclesiastical authority of the bishop in matters temporal as well as pastoral. Each Congregation was obliged to give the bishop an account of its administration annually. Of the twenty-four dioceses which are located wholly or partially within the State, twenty-one had Industrial or Reformatory Schools within their boundaries. In the case of each of those dioceses, the Committee has notified the bishop of the intention of the Committee to issue directions for discovery seeking discovery of documents relevant to the Committee's inquiry. In the case of each diocese, the Committee either has received a formal undertaking from the diocese to preserve all documents in or under the control of the diocese relating to institutions which come within the ambit of the Act or, alternatively, has been promised cooperation in relation to compliance with directions for discovery which are properly made.

### *Constitution/Rule of Congregations*

- Mindful of the fact that the care afforded to children in institutions managed by Congregations was likely to have been materially affected by the training, formation

and aspirations of the members of the Congregations charged with their care, in the course of the preliminary inquiries, the Constitution and Rule of each of the twenty-seven Congregations involved in the process of the Committee has been sought. The Constitution and Rule for the relevant period deals with the structure and governance of the Congregation and the religious life of its members. Most Congregations revised their Constitutions and Rules in the period after 1917 to bring them into conformity with the new Code of Law first promulgated in 1917, which remained in force until 1983.

### *Potential Witnesses*

- The legal team has identified potential witnesses who have not been proffered either by Complainants or Respondents, a number of whom have been interviewed.

### *Alleged incapacity*

- The Committee has put in place arrangements for procuring independent assessment, by a Consultant Psychiatrist, of persons whom, if they were capable of doing so, it would require to attend and give evidence, but whom the Committee is informed are not capable of attending or giving evidence. The Committee wishes to express its appreciation of the assistance it has received from the Old Age Section of the Royal College of Psychiatry in this connection.

## **Complaints outside Committee's Remit**

In the course of the preliminary inquiries, allegations made by Complainants have been identified which do not come within the Committee's statutory functions. In such cases, the investigation of the allegations has been terminated.<sup>105</sup>

## **Hearings — substantive work**

It is a matter of considerable regret to the Committee that it has been in a position to conduct so few hearings since its establishment over three and a half years ago. The hearings which have taken place can be categorised as follows:

- Evidential hearings and procedural hearings to address issues which arose in relation to specific allegations.<sup>106</sup>
- Procedural hearings to address the participation of certain Management Respondents (Congregations) in the process.<sup>107</sup>
- Procedural hearings to address the participation of the Department in the process.<sup>108</sup>

That less than three per cent of the Complainants who have committed to the process have been afforded any form of hearing is, as regards the past, extremely disappointing and, as regards the future, daunting.

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<sup>105</sup> See chapter 12 in relation to complaints not proceeding.

<sup>106</sup> See chapter 7 and chapter 8.

<sup>107</sup> See chapter 11.

<sup>108</sup> See chapter 10.

## Litigation

Apart from the Christian Brothers' proceedings, the Commission has been involved in proceedings in the High Court on two occasions, once at its own instigation, by availing of the procedure provided in section 25 of the Act and, on the other occasion, in judicial review proceedings.

### *Section 25 application*

Section 25 of the Act provides that the Commission may apply to the High Court in a summary manner for directions in relation to the performance of any functions of the Commission or a Committee or for its approval of an act or omission proposed to be done or made by the Commission or a Committee for the purposes of such performance. The Commission has availed of this procedure only once. The application is reported in the official law reports as Re Commission to Inquire into Child Abuse.<sup>109</sup> The application arose out of the interpretation of the Committee of section 4(6) of the Act which requires the Committee to endeavour to ensure that its hearings are conducted—

- “(a) so as to afford to persons who have suffered . . . abuse in institutions during the relevant period an opportunity to recount in full the abuse suffered in an atmosphere that is as sympathetic to, and as understanding of, them as is compatible with the rights of others and the requirements of justice and as informally as possible in the circumstances”.

The Committee sought to give effect to that requirement by limiting attendance of legal representatives at evidential hearings to one solicitor and one counsel on behalf of each party, whether Complainant or Respondent. The Committee's decision was the source of frequent controversy at the commencement of evidential hearings, which the Committee believed to be inimical to the interest of the witnesses. To resolve the controversy, the Committee applied to the High Court under section 25 for approval of its decision. The proceedings were initiated in May 2002. The High Court gave directions as to the procedure to be adopted and, in particular, directed the participation of five notice parties: two parties who were representative of the managers of institutions — one the manager of an Industrial School for girls and the other the manager of an Industrial School for boys; a party who was representative of individuals against whom allegations were made — a former teacher in an Industrial School for girls; a party who was representative of Complainants; and the Minister. None of the notice parties, other than the Minister, supported the Committee's position. The High Court (in a judgment delivered on 9<sup>th</sup> October, 2002) refused to approve the decision of the Committee concluding as follows:

- (a) That the Committee did not have jurisdiction to make the direction which it had purported to make.
- (b) If it had such jurisdiction, it was one which had to be exercised in such a manner as not to interfere substantially with the rights of the notice parties and the interests of justice. It did interfere, substantially and, therefore, was not justified, having regard to the terms of section 4(6) of the Act.

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<sup>109</sup> [2002] 3 I.R. 459.

### *Judicial review proceedings*

- In these proceedings entitled McD -v- the Commission to Inquire into Child Abuse and another,<sup>110</sup> the applicant, Mr. McD, failed to meet the deadline of 31<sup>st</sup> July, 2001 for submission of a request to give evidence to the Committee. The Committee refused to accept his request, which had been sent to the Committee on 23<sup>rd</sup> August, 2001. On 24<sup>th</sup> June, 2002, Mr. McD was given leave by the High Court to apply to quash the Committee's decision refusing to accept his request. Subsequently, in a judgment delivered on 7<sup>th</sup> February, 2003, the High Court held that Mr. McD's application to the High Court was out of time and that Mr. McD had not established a good reason why the time should be extended.

### **Guiding principles in relation to evidence**

The Committee has adopted certain guiding principles which govern the manner in which it receives and evaluates evidence. In formulating those principles, the primary consideration has been to fulfil the Committee's obligation to act fairly and judicially in accordance with the Constitution and, in particular, to apply fair procedures in implementing its statutory mandate to inquire into abuse and to report on the result of the inquiry. The Committee has had regard to the gravity of the matters it is inquiring into, the abuse of children in institutions and the risk of, and the potential for, serious injustice if it reaches and publishes conclusions which are incorrect.

The principles which guide the Committee are as follows:

#### *Evidence on oath*

- In all cases, witnesses who testify to the Committee are required to give evidence on oath.<sup>111</sup>

#### *Standard of proof*

- In making its findings of fact, the Committee—
  - (i) applies the standard of proof applicable in civil proceedings in a court, proof on the balance of probabilities, and
  - (ii) the findings are based only on evidence which would be admissible in a court, so that, for example, the Committee does not make a finding based on hearsay evidence.<sup>112</sup>

#### *Lapse of time since events complained of*

- The principles which the Committee has adopted in relation to making findings concerning matters complained of which occurred a long time ago were formulated as a result of the Procedural Hearing on lapse of time and allied issues in July 2002 and were set out in the Final Ruling of 18<sup>th</sup> October, 2002. In summary, in considering

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<sup>110</sup> [2003] 21 LRM 503.

<sup>111</sup> See the Opening statement.

<sup>112</sup> See the Opening Statement.

whether to make a determination or finding which identifies a person as being responsible for abuse and/or identifies the institution in which the abuse occurred, where the passage of time between the events alleged to constitute the abuse and the determination is significant, the question of prejudice flowing from the effects of passage of time must be considered by the Committee before making the determination or finding. The test which is to be applied is whether it is safe or unsafe to make the determination. If the conclusion is that it is unsafe, the determination will not be made. The test is to be applied taking into account the totality of the evidence which the Committee has gathered in relation to the module of the inquiry, whether a particular institution and its personnel, or particular institution and its personnel within a particular timeframe, or an alleged perpetrator of abuse. Where a determination of abuse, identifying a person or persons and / or an institution is made, as a general rule, the determination or finding will be made public in the course of Phase 2 of the work of the Committee and through its published report.

As aspects of the Christian Brothers' Proceedings remain pending in the High Court at the date of the passing of this Report for publication, it is important to point out that whether the foregoing principles are correct was questioned by the plaintiffs in the Christian Brothers' Proceedings.

### *Meaning of "abuse"*

- In the Act,<sup>113</sup> "abuse" is given a special meaning. In addition to including behaviour which is commonly regarded as sexual abuse and physical abuse, it includes the following behaviour:

“(c) failure to care for the child which results in serious impairment of the physical or mental health or development of the child or serious adverse effects on his or her behaviour or welfare, or

(d) any other act or omission towards the child which results in serious impairment of the physical or mental health or the development of the child or serious adverse effects on his or her behaviour or welfare. . .”.

The Committee has recognised that the definition of "abuse" encompasses a broad spectrum of types of conduct of varying degrees of gravity. It has also recognised that there is inbuilt in paragraphs (c) and (d) of the definition a threshold which is not a low threshold. Further, in applying the provisions of the Act and, in particular, paragraphs (c) and (d) of the definition, the Committee has recognised that, in determining whether behaviour which is known to have occurred in the past constitutes abuse, the behaviour must be measured against the prevailing norms and standards of the period to which it relates. In other words, in relation to determining whether an incident or behaviour which has been proved to have happened, or a particular institutional regime which has been proved to have existed, constitutes abuse, the historical and economic context of the time is relevant.<sup>114</sup>

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<sup>113</sup> Section 1(1)

<sup>114</sup> See Final Ruling of 18<sup>th</sup> October, 2002 — paragraphs 3.14 and 4.3.

### *“relevant period”*

- The Committee’s functions in relation to hearing evidence and inquiring into abuse relate to events which occurred during the “relevant period”. That expression is defined in the Act<sup>115</sup> as meaning the period from 1940 “or such earlier year as the Commission may determine” to the year 1999 and such later period (if any) as the Commission may determine. In accordance with a determination made by the Commission, it has been decided that the Committee should hear evidence and conduct its inquiry on the basis that commencement of the relevant period in relation to the functions of the Committee is the year 1936, rather than the year 1940. Regrettably, the application of this principle has excluded some potential witnesses, including the Complainant whose request to testify gave rise to an issue in relation to the definition of “relevant period”, which was dealt with at a Procedural Hearing on 16<sup>th</sup> September, 2002. That Procedural Hearing was held in private. The issue was the subject of a ruling dated 27<sup>th</sup> November, 2002.<sup>116</sup> The Complainant was born in 1916. He spent most of his childhood in two Industrial Schools: in the first from January 1920 until September 1925; and in the second from September 1925 until June 1932, when he was approaching his sixteenth birthday.

### *Other legal issues*

- Other legal issues have been the subject of rulings of the Committee, which have general application. All published<sup>117</sup> rulings of the Committee are listed in Table G.

## **Application of guiding principles**

The application of the foregoing principles determines what findings the Committee can make and what findings it can report. Until the evidence has been gathered, it is not possible to predict how the application of the principles will affect the Committee’s ability to report. It is important, however, that it is appreciated that there are legal constraints on the Committee’s ability to report, which do not inhibit news and public affairs reportage and historians.

## **Committee’s value as a forum of inquiry**

The Act<sup>118</sup> provides that a person who gives evidence to the Committee may not rely on privilege against self-incrimination. In other words, a person giving evidence to the Committee is not entitled to refuse to answer any question put to him or her on the ground that his or her answer might incriminate him or her. Similarly, a person is not entitled to refuse to produce a document pursuant to a direction for production on the ground that the document might incriminate him or her. There is protection for the person who is compelled to answer or produce the document in that an admission, or the document, as the case may be, is not admissible in evidence against him or her in criminal proceedings, civil proceedings or before a tribunal. It is the Committee’s experience that for many of the witnesses who have come to the Committee the big issue is: why? Why

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<sup>115</sup> Section 1(1).

<sup>116</sup> Posted on the Commission’s website.

<sup>117</sup> By posting on the Commission’s website.

<sup>118</sup> Section 21.

was I sent there? Why did it happen to me? The answers to such questions cannot be compelled in a criminal or civil court. The Committee is the only forum in which the answers to these important questions can be compelled, assuming the person whose testimony it is sought to compel is within the jurisdiction and amenable to a direction to attend.

**TABLE G**

**Rulings published by the Investigation Committee in relation to legal issues**

(Posted on the Commission's website — [www.childabusecommission.ie](http://www.childabusecommission.ie))

	<b>Date of the Ruling</b>	<b>Issue(s)</b>
1	26 <sup>th</sup> February, 2002	(a) Circumstances in which a Complainant should be allowed to submit a supplemental statement.  (b) Whether the Investigation Committee has jurisdiction under section 14(1)(e) to direct a person to create a document, such as a list of members of a Congregation or the plan of a building, at a particular time.
2	3 <sup>rd</sup> May, 2002	Discovery Direction: (a) Application of fair procedures/principle enunciated in Haughey - v - Moriarty [1999] 3 I.R. 1  (b) Application of the Rules of the Superior Courts No. (2) (Discovery), 1999 (S.I. No. 233 of 1999).
3	16 <sup>th</sup> May, 2002	Application of doctrine of <i>res judicata</i> where the trial of the Individual Respondent on criminal charges has been prohibited by the High Court.
4	9 <sup>th</sup> September, 2002	Lapse of time and allied issues ( Provisional Ruling)
5	18 <sup>th</sup> October, 2002	Lapse of time and allied issues (Final Ruling)
6	26 <sup>th</sup> November, 2002	Discovery Directions (a) General principles applicable in an inquisitorial process  (b) Discovery of medical and psychiatric records of Complainant.
7	27 <sup>th</sup> November, 2002	Meaning of “relevant period” in the Act.
8	27 <sup>th</sup> March, 2003	Extension of time limits.
9	10 <sup>th</sup> December, 2003	Discovery: Format and substantive content of discovery affidavit.



# Investigation Committee: Complainant specific hearings

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## Introduction

As has been stated,<sup>119</sup> it is a matter of considerable regret to the Committee that it has conducted so few hearings. In the case of the evidential hearings, with the exception of the hearings in relation to Baltimore Fisheries School, which are dealt with later,<sup>120</sup> the Committee, having regard to the policy in relation to interim reporting outlined in the first Interim Report,<sup>121</sup> as modified in this report, does not consider it appropriate to publish any determinations or findings at this interim stage. In relation to evidential hearings, other than the hearings in relation to Baltimore Fisheries School, apart from the risk of unfairness and injustice which might ensue from reporting piecemeal, the Committee is not in a position to consider whether to make findings or reportable findings that abuse occurred for the following reasons:

- In relation to some complaints all of the relevant evidence has not been received. For example, in relation to complaints which involve allegations of neglect and emotional abuse, evidence of context has not been received.
- Even where all of the evidence has been received in respect of a complaint, the evidence constitutes only a small fraction of the evidence which has been proffered to the Committee in relation to the relevant institution or the relevant individual named by the Complainant as the perpetrator of the abuse.
- In the case of hearings involving institutions in respect of which there is one complaint only, for example, National Schools, as will be explained later, the application of the Act<sup>122</sup> to the circumstances of the complaints imposes a constraint in relation to reporting.

In this chapter, all the Committee can usefully do is to furnish such information as may properly be furnished at this interim stage in relation to the hearings and to explain how the process has operated in practice. The fact that all of the evidential hearings were held in private, as required by the Act,<sup>123</sup> means that there is little information in the public domain as to what happens at hearings. The Committee considers that it is in both the interest of persons involved in the process, either voluntarily or under compulsion, as well as in the public interest, that there should be a public awareness of the nature of the

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<sup>119</sup> See chapter 6.

<sup>120</sup> See chapter 8.

<sup>121</sup> See Appendix B.

<sup>122</sup> Section 13(2)(c).

<sup>123</sup> Section 11(3).

process and its practical implementation. It avails of this opportunity to inform the persons involved in the process and the public about what happens in private.

## **Two-stage hearing: Core facts/Context**

In scheduling evidential hearings, the Committee adopted a two-stage approach in relation to complaints other than those which involved allegations of sexual abuse only. In relation to other types of abuse, the Committee considered that it would be useful, and in some cases necessary, to hear “context” evidence, that is to say, evidence which might be necessary to place what actually happened in the context of the time in which the abuse is alleged to have occurred. Such evidence of context would be heard in Phase 1<sup>124</sup> only for the purpose of deciding whether the facts alleged to have taken place constitute abuse as defined in the Act.

As the relevant context evidence might well be applicable across a whole range of complaints, it was the view of the Committee that it would be neither sensible nor convenient to have that evidence repeated in relation to every complaint. Therefore, where the Complainant alleged neglect, a harsh abusive regime or emotional abuse, the Committee scheduled hearings on the basis that it would hear all of the evidence specific to the accusations made by the Complainant at an initial hearing. It was envisaged that a further hearing to receive evidence of context, which would be relevant not only to that Complainant, but to any other Complainants making allegations of a similar nature within a similar timeframe, would be scheduled. At the context hearing, all interested parties, who would have had initial hearings, would be entitled to participate. In the event, while initial hearings were conducted, no context hearing has been conducted.

The Committee recognised, and apprised the parties involved, that, in relation to all evidential hearings, fair procedures required that all evidence against a Respondent should be heard (including cross-examination) before the Respondent was obliged to go into evidence. The Committee scheduled and conducted its hearings on the basis that, if there were logistical reasons which rendered it appropriate to depart from that procedure, the agreement of the Respondent was necessary.

## **The Hearings**

Information in relation to evidential hearings, including the hearings in relation to Baltimore Fisheries School, which have been conducted and which it is considered it would be useful to put into the public domain and which it is possible to furnish without breaching any provision of the Act or infringing fair procedures and, in particular, without identifying an individual, whether Complainant or Respondent, or an institution, is summarised in Table H. Table H also contains similar information in relation to complaint specific procedural hearings which have been conducted.

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<sup>124</sup> The two-phased structure of the process of the Committee is explained in the Opening Statement (Appendix A).

The information given in Table H indicates:

- The nature of the hearing and, in particular, whether it was an initial hearing to receive core evidence, leaving context evidence for a later hearing.
- The duration of the hearing.
- The level of involvement of legal personnel in the hearing.
- The number of witnesses heard and the year of birth of each witness, where known.
- Whether the making of discovery relevant to the issues preceded the hearing.
- The outcome of the hearing and, in particular, whether the evidence was completed.
- Other relevant factors.

In practice, when, at the end of a hearing, it was apparent that there was no evidence before the Committee on the basis of which it would be safe to make a finding of abuse and it appeared that it was improbable that receiving any further evidence would alter that situation, the parties were informed of the view of the Committee and the hearing, as regards the institution or the person impugned, was regarded as concluded. However, the Committee recognises the possibility of any matter, which is regarded as having been concluded, being re-opened, in the event of further information coming to light.

The Committee, or the division of the Committee which conducted an evidential hearing has arranged for the recording of findings of fact to the extent that to do so is appropriate having regard to the state of the evidence.

There is a transcript of the evidence taken at each hearing.

## **General information in relation to the complaints**

Because of the slow rate of active participation of the legal representatives of the majority of Complainants in the process, the Committee had very little choice in terms of selecting and prioritising complaints for hearing. In practice, while conscious of the age profile of the participants in the process and the antiquity of some of the complaints, until September 2002 when it ceased scheduling individual hearings following the decision to review its procedures, the Committee scheduled complaints for hearing as the preliminary inquiries were completed. Consequently, the hearings ranged widely over the Committee's remit, as the following factual data indicates:

### ***Institution type***

- The institutions which featured in the hearings, both evidential and procedural, summarised in Table H, were:
  - Industrial Schools for boys, including Baltimore Fisheries School, which will be dealt with later.<sup>125</sup>
  - Industrial Schools for girls.

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<sup>125</sup> Chapter 8.

- A Special School for boys with intellectual disability.
- A Children's Home
- National Schools, which will be dealt with later.

The factual data which follows relates to the complaints of fifteen Complainants, in which the following institutions featured:

- Two Industrial Schools for boys
- Three Industrial Schools for girls
- A Special School for boys with intellectual disability

All of the institutions were residential institutions.

### *Decades to which the complaints related*

- The Committee heard:
  - Complaints dating from the 1940s in relation to an Industrial School for boys and two Industrial Schools for girls.
  - Complaints dating from the 1950s and 1960s in relation to a Special School for boys and an Industrial School for girls.
  - Complaints dating from the late 1960s and early 1970s in relation to an Industrial School for boys.

### *The Complainants*

- In the case of Complainants whose complaints related to Industrial Schools, only one Complainant was a voluntary placement. All of the others had been committed by the Courts, the majority having been committed under the Children Act 1908 (the Act of 1908), in broad terms, on the ground that their parents, or the surviving parent, was unable to provide for them. The other committals to Industrial School were for truancy or infringement of the criminal law at an early age. The year of birth of each Complainant is given in Table H.

### *Current residence of Complainants*

- Five of the Complainants have resided outside the State for most of their lives, four in the United Kingdom and one in Canada.

### *Allegations*

- The Committee considers that it would be inappropriate to particularise the allegations of abuse at this interim stage. Generally, the complaints in relation to institutions for girls involved allegations of neglect and harsh regime, excessive physical punishment and emotional abuse. In general, allegations of sexual abuse predominated in the complaints in relation to institutions for boys. There were also allegations of physical abuse and, to a lesser extent, particularly in relation to the 1940s, of neglect.

### *Individual Respondents*

- In the case of individuals named as perpetrators of abuse in the complaints, insofar as they are alive and their age is known, the year of birth is set out in Table H together with a general description of the status or position of the individual in the institution. Two of the named individuals against whom twenty or more allegations have been made, as shown on Table P, have given evidence to the Committee. The evidence of a third named individual, who appears in Table P, has been taken on commission, in relation to two complaints against him. Three of the Individual Respondents have been convicted for offences committed in the relevant institutions but not in all cases on foot of charges which relate to the Complainants whom the Committee has heard. While abuse of some, but not all, of the Complainants whom the Committee heard was admitted by those individual Respondents, some admissions did not cover the full range of sexual abuse alleged. One of the Individual Respondents who has been convicted of abuse in the relevant institution was himself a former pupil of that institution. One of the Complainants was convicted of indecent assault of a fellow pupil in the institution in which he alleged he was sexually abused by “older boys”.

### **The Process**

In explaining how the process has been implemented in practice, reference will be made to two examples:

- A complaint involving an Industrial School for girls (example 1), and
- A complaint involving an Industrial School for boys (example 2).

Each of the institutions appears on the list in Table Q of Industrial and Reformatory Schools in relation to which twenty or more complaints are pending.

#### *Example 1*

The issues which gave rise to the procedural hearing on lapse of time and allied issues in July 2002 were raised at the hearing of the complaint in relation to the Industrial School for girls and the Complainant and the Management Respondent were representative parties in the procedural hearing. They also participated as notice parties in the section 25 application to the High Court, as did a teacher in the institution who, as a witness, was allowed legal representation at the hearing of the complaint on the ground that she was likely to be an Individual Respondent in other hearings in relation to the institution.

The initial hearing of the core evidence in relation to the complaint took place over four days. The following parties testified:

- The Complainant, who was in her late fifties, whose evidence, including cross-examination by Counsel for the Management Respondent and Counsel for the teacher, was taken over approximately six and a half hours.
- One of the managers of the Industrial School in the period during which the Complainant was a pupil there, who at the time of the hearing was eighty-four years of age and who gave evidence for approximately ten hours over two days. The other person who held the position of manager during the period was dead.

- The teacher, who was eighty-seven years of age at the time of the hearing, and who gave evidence for approximately three hours. She had been in attendance earlier for the Complainant's evidence.

The division which conducted the hearing was conscious of the age of the witnesses. It was not suggested on their behalf, and the members of the division did not form the view, that the manner or duration of the hearing was oppressive to them.

Evidence of context remains to be heard in relation to this complaint.

### *Example 2*

The initial hearing of the core evidence in relation to the complaint concerning the Industrial School for boys was heard over two and a half days. The following witnesses gave evidence:

- The Complainant, who was almost seventy years of age at the time of the hearing, whose evidence, including cross examination by Counsel for the Management Respondent, Counsel for the Individual Respondent and Counsel for the Department, was taken over approximately six hours.
- A former pupil, who was sixty-nine years of age at the time of the hearing, who is a Complainant in his own right.
- An Individual Respondent whom the Complainant alleged physically abused him, who was seventy-nine years of age at the time of the hearing, whose evidence, including cross examination by Counsel for the Complainant, Counsel for the Management Respondent and Counsel for the Department took approximately three hours.
- A member of the Congregation which managed the institution, who was eighty-two years of age at the time of the hearing, and who had travelled from Rome to give evidence.
- A representative of the Congregation which managed the institution at the relevant time.

Two members of the Congregation whom the Complainant named as perpetrators of sexual abuse were dead. Evidence of context remains to be heard in relation to this complaint.

It is not suggested that the duration of the initial hearing of the core evidence in the two examples given is likely to represent the norm. The duration of each initial hearing was undoubtedly extended because of the desire of all the parties, including the Committee, to get as much information as possible on the record, having regard to the age of some of the witnesses. Nonetheless, the two examples indicate the nature of the process and what is expected of parties participating in the process.

## **National Schools**

The Committee has conducted four hearings at which Complainants gave evidence as to their experiences in National Schools. All four Complainants were women. The Committee also has complaints pending in relation to National Schools from men. The

factual bases of their allegations varied considerably. The periods to which the complaints related were:

- the early 1940s,
- in the case of two Complainants, the early 1960s, and
- the late 1960s through the early 1970s.

The Complainants' ages ranged from early forties to late sixties. The schools to which the complaints related were, in three cases, small rural schools. In the fourth case, the school was located in a provincial town and, at the time of the complaint, it was managed by a Congregation. Two of the Complainants made allegations of sexual abuse and, in one of those cases, physical abuse was also alleged. The allegations of the other two Complainants were of physical abuse in a fear-inducing atmosphere.

That broad outline of the matters about which the Complainants' testified, and of their circumstances, is included as a backdrop to outlining the following features which the Committee believes are common to many of the complaints in relation to National Schools which are pending before the Committee:

### *Section 13(2)(c)*

- That provision prohibits the inclusion in a report from the Investigation Committee to the Commission of "findings in relation to particular instances of alleged abuse of children". A provision in identical terms prohibits the inclusion of such findings in a published report of the Commission. In relation to three of the National Schools, the subject of the complaints which have been heard, no other complaints are pending before the Committee. Therefore, if the Committee was to determine in any of those cases that, on the evidence, it was safe to make a finding that an instance of abuse occurred, the finding could not be reported by the Committee to the Commission, nor could it be included in the published report of the Commission.

### *Boards of Management*

- By law,<sup>126</sup> the patron of a recognised National School is now required to appoint a Board of Management which is a body corporate with perpetual succession and to which management functions are assigned. Prior to the coming into operation of the Education Act, 1998, from around 1975 onwards, unincorporated Boards of Management of National Schools were constituted. Prior to 1975 the Parish Priest of the parish in which the School was situated was usually the manager of the School. While the Committee may look to the Chairman of the current Board of Management for discovery of relevant documents which may be in his possession in relation to a matter being investigated by the Committee, the Committee must and does recognise that no responsibility for any abuse, which the Committee finds occurred in the school before the Board came into existence, may be ascribed to it.

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<sup>126</sup> Section 14 of the Education Act, 1998.

### *Individual Respondents*

- Each of the Complainants identified an individual against whom abuse was alleged. All of the individuals were teachers, three being lay teachers and one being a member of the Congregation which managed the school at the relevant time but no longer manages it. All of the individuals were elderly, having been born in 1911, 1916, 1926 and 1928, respectively. On the basis of medical certificates submitted, the Committee was satisfied that two of the individuals were not capable of attending a hearing or testifying. As a general proposition, even if the constraint in relation to reporting findings imposed by the Act did not exist, in the case of many complaints in relation to National Schools, the circumstances of the Individual Respondents are such that extreme caution would require to be observed in determining whether it was safe to make a finding. There may be exceptions to that general proposition. For example, there may be a conviction recorded against an Individual Respondent. There was no conviction recorded in relation to any of the complaints which were the subject of the hearings of the Committee, but the evidence in relation to one of the complaints established that the individual named by one of the Complainants as perpetrator had been convicted of indecent assault of pupils of a school in which he taught after transferring from the school in which the Complainant was a pupil.

### *Reports of complaints to the Department/Documentary Corroboration*

- In the case of three of the individuals named by the Complainants, the Department has furnished a statement to the effect that it has no knowledge of any complaints having been made against the individual during his or her teaching career. The veracity of the Department's statement has been confirmed by the Department on the basis that all relevant files have been checked. As has been stated, one of the individuals has been convicted of indecent assault of pupils in a school, other than the school to which the complaint before the Committee relates, but, nonetheless, the Department has no record of a complaint against that individual during his career. As a general proposition, it does not seem likely that there exists contemporaneous documentation which corroborates allegations made in circumstances similar to the circumstances which were under consideration at the hearings which have taken place. This is consistent with the general thrust of the evidence which the Committee has heard, which suggests that reporting alleged abuse, in particular, sexual abuse, was not the norm prior to 1970. It is recognised that there may be exceptions to the general proposition and, in fact, in the case of an individual named by one of the Complainants, there were complaints to the Department concerning the teacher during his teaching career.

### *Corporal punishment*

- In considering the allegations of physical abuse, the Committee has had to take account of the fact that corporal punishment was not abolished in National Schools until 1982. During the early part of the period under consideration, corporal punishment in National Schools was regulated by the "Rules and Regulations for National Schools under the Department of Education" of 1946 and for the remainder of the period, the corresponding Rules of 1965. The relevant rule in the 1946 Rules was rule 96, which provided:
  - “1. Corporal punishment should be administered only for grave transgression. In no circumstances should corporal punishment be administered for failure at lessons.

2. Only the principal teacher, or such other member of the staff as may be duly authorised by the Manager for the purpose, should inflict corporal punishment.
3. Only a light cane or rod may be used for the purpose of corporal punishment which should be inflicted only on the open hand. The boxing of children's ears, the pulling of their hair, or similar ill-treatment is absolutely forbidden and will be visited with severe penalties.
4. No teacher should carry about a cane or other instrument of punishment.
5. Frequent recourse to corporal punishment will be considered by the Minister as indicating bad tone and ineffective discipline."

That rule was headed "Instructions in regard to infliction of Corporal Punishment in National Schools". In the 1965 Rules, the relevant rule, Rule 130, was headed "School Discipline" and provided as follows:

- "1. Teachers should have a lively regard for the improvement and general welfare of their pupils, treat them with kindness combined with firmness and should aim at governing them with their affections and reason and not by harshness and severity. Ridicule, sarcasm or remarks likely to undermine pupils' self confidence should be avoided.
2. Corporal punishment should be administered only in cases of serious misbehaviour and should not be administered for mere failure at lessons.
3. Corporal punishment should be administered only by the principal teacher or other member of the school staff authorised by the manager for the purpose.
4. Any teacher who inflicts improper or excessive punishment will be regarded as guilty of conduct unbecoming a teacher and will be subject to severe disciplinary action".

The Committee refers to the Rules, not by way of comment, implicitly or otherwise, on any evidence it has heard in relation to physical abuse or punishment in National Schools, but to point, in a general way, to the existence of the rules and the distinction between corporal punishment and physical abuse within the meaning of the Act. The latter is defined<sup>127</sup> as "the wilful, reckless or negligent infliction of physical injury, or the failure to prevent such injury to, the child".

## **National Schools: the Evidence**

At two of the hearings, the Committee heard evidence from both the Complainant and the individual against whom the Complainant had made allegations, but no other evidence. At the other hearings, only the evidence of the Complainant was available.

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<sup>127</sup> Section 1(1).

## National Schools: Conclusion

Subject to the possibility of reopening the matter in the event of further information, as regards the allegations of each of the Complainants, the Committee considers the inquiry to be concluded, although its investigations as to one of the schools continues. The testimony of the Complainants is part of the record of the Committee. While, because of the constraints imposed on the Committee in relation to reporting findings in relation to particular instances of alleged abuse, the testimony cannot be the subject of specific findings, it is part of the body of evidence which will be available to the Committee in formulating its general findings on the treatment of children in institutions in the past.

**TABLE H**

**Investigation Committee: Complainant Specific Hearings (Evidential and Procedural)**

*\*Signifies that direction(s) for payment of costs has/have been made*

(1) Complainant's Reference Number (2) Date(s) of Hearing	Legal Representation at hearings	Witnesses & year of birth of witnesses	(1) Type of hearing (2) Discovery (3) Outcome (4) Other matters
(1) IC/0103 (2) 05/03/2002 06/03/2002 07/03/2002 27/03/2002	<p><i>For Complainant:</i> David McGrath S.C. Lavelle Coleman, Solicitors.</p> <p><i>For Individual Respondent:</i> Kevin Feeney, S.C. Arthur O'Hagan, Solicitors (Edward Gleeson)</p> <p><i>For Management Respondent:</i> Una Ni Raifeartaigh B.L. Arthur O'Hagan, Solicitors (Paul McDonald)</p> <p><i>For Witness:</i> John O'Donnell, S.C. Dermot Fullam, Solicitor</p> <p><i>For Department:</i> Barry Halton B.L. Chief State Solicitor</p> <p><i>For Commission:</i> Anne Reilly B.L.</p>	(1) Complainant (1944). (2) Manager (1918) (3) Teacher (1915)	(1) Initial evidential hearing to take core evidence. (2) Documents furnished by Department, but no affidavit (3) Principal witnesses heard. (4) All parties participated in section 25 application to High Court.  Complainant and Respondents participated in Procedural Hearing on lapse of time and allied issues.
(1) IC/0104 (2) 14/03/2002 15/03/2002	<p><i>For Complainant:</i> Paul Kavanagh B.L. Frizelle O'Leary, Solicitors</p> <p><i>For Individual Respondents:</i> Pearse Sreenan B.L. O'Flynn Exhams, Solicitors</p> <p><i>For Management Respondent:</i> Michael O'Donoghue S.C. Mason, Hayes &amp; Curran, Solicitors</p> <p><i>For Department:</i> Barry Halton B.L. Chief State Solicitor</p> <p><i>For Commission:</i> John Major B.L.</p>	(1) Complainant (1952) (2) Teacher / Carer (1915) (3) Teacher / Carer (1925) (4) Representative of Management Respondent (5) Solicitor	(1) To hear evidence. (2) No discovery (3) Evidence of complaint completed. Further evidence to be heard in relation to institution.

TABLE H—continued.

(1) Complainant's Reference Number (2) Date(s) of Hearing	Legal Representation at hearings	Witnesses & year of birth of witnesses	(1) Type of hearing (2) Discovery (3) Outcome (4) Other matters
<p>(1) IC/0113* (2) 16/01/2002</p> <p>*Re participation of Management Respondent (2nd Institution)</p>	<p><i>For Complainant:</i> Paul Kavanagh B.L. Frizelle O'Leary, Solicitors</p> <p><i>For Individual Respondent:</i> Peggy O'Rourke B.L. Millett &amp; Matthews, Solicitors</p> <p><i>For Management Respondent (1<sup>st</sup> institution):</i> Aedan McGovern S.C. Millett &amp; Matthews, Solicitors</p> <p><i>For Management Respondent (2<sup>nd</sup> institution):</i> Kevin Feeney S.C., / Jonathan Newman B.L. Barry C. Galvin, Solicitors</p> <p><i>For Department:</i> Barry Halton B.L. Chief State Solicitor</p> <p><i>For Commission:</i> Anne Reilly B.L.</p>	<p>(1) Complainant (1961) (2) Manager (1924)</p>	<p>(1) Initial evidential hearing to take core evidence.</p> <p>(2) Discovery directions made against: (1) The Complainant (2) Management Respondent (1<sup>st</sup> institution)</p> <p>(3) Core evidence completed.</p> <p>(4) Management Respondent (2<sup>nd</sup> institution) to have no further involvement.</p>
<p>(1) IC/0115 (2) 30/01/2002</p>	<p><i>For Complainant:</i> Michael Hourican, B.L. Beauchamps, Solicitors</p> <p><i>For Individual Respondent / Management Respondent:</i> Denis McCullough, S.C. Maxwell, Weldon &amp; Darley, Solicitors</p> <p><i>For Department:</i> Barry Halton B.L. Chief State Solicitor</p> <p><i>For Commission:</i> John Major B.L.</p>	<p>30<sup>th</sup> January, 2002: Individual Respondent (1914)</p>	<p>30<sup>th</sup> January, 2002:</p> <p>(1) To take evidence on commission from Individual Respondent.</p> <p>(2) Discovery direction issued was the subject of the procedural hearing</p> <p>(3) Evidence completed.</p>
<p>(2) 19/02/2002</p>	<p><i>For Management Respondent:</i> Mary Irvine, S.C. Maxwell, Weldon &amp; Darley, Solicitors</p> <p><i>For the Complainant:</i> Donagh McDonagh, S.C. Beauchamps, Solicitors</p> <p><i>For Commission:</i> Frank Clarke, S.C. John Major, B.L.</p>	<p>19<sup>th</sup> February, 2002</p>	<p>19<sup>th</sup> February, 2002</p> <p>(1) Procedural Hearing to deal with issues raised by Management Respondent in relation to:</p> <ul style="list-style-type: none"> <li>• Supplemental Complainant's statement</li> <li>• Discovery</li> </ul> <p>(3) Ruling dated 26<sup>th</sup> February, 2002 posted on Commission's website.</p>

TABLE H—continued.

(1) Complainant's Reference Number (2) Date(s) of Hearing	Legal Representation at hearings	Witnesses & year of birth of witnesses	(1) Type of hearing (2) Discovery (3) Outcome (4) Other matters
(1) IC/0128 (2) 15/03/2002 26/04/2002	<p><i>For Complainant:</i> Marjorie Farrelly B.L. Martin A. Harvey, Solicitors</p> <p><i>For Individual Respondents:</i> Pearse Sreenan B.L. O'Flynn Exhams, Solicitors</p> <p><i>For Management Respondent:</i> Michael O'Donoghue, S.C. Mason, Hayes &amp; Curran, Solicitors</p> <p><i>For Department:</i> Barry Halton B.L. Chief State Solicitor</p> <p><i>For Commission:</i> John Major B.L.</p>	(1) Complainant (1951) (2) Teacher / Carer (1925) (3) Representative of Management Respondent	(1) To hear evidence. (2) Discovery against Management Respondent. (3) Evidence of complaint completed. Further evidence to be heard in relation to institution. (4) Procedural issue: issue re discovery. Ruling dated 3 <sup>rd</sup> May, 2002 posted on Commission's website
(1) IC/0140* (2) 17/10/2002	<p><i>For Complainant:</i> Michael O'Connor B.L. McInerney, Solicitors</p> <p><i>For Individual Respondent:</i> Kevin Feeney, S.C. Jonathan Newman, B.L. William Semple, Solicitors</p> <p><i>For Department:</i> Barry Halton, B.L. Chief State Solicitor</p> <p><i>For Commission:</i> Anne Reilly, B.L.</p>	(1) Complainant (1948) (2) Teacher (1926)	(1) To hear evidence (2) Discovery against Department (3) Evidence and matter completed
(1) IC/0152* (2) 28/06/2001	<p><i>For Complainant:</i> James Philips, B.L. Murray Flynn, Solicitors</p> <p><i>For Individual / Management Respondent:</i> Patrick McIntee, S.C. Kevin Feeney, S.C. Una Ní Raifeartaigh, B.L. Jonathan Newman, B.L. Arthur O'Hagan, Solicitors</p> <p><i>For Department:</i> Barry Halton, B.L. Chief State Solicitor</p> <p><i>For Commission:</i> Isobel Kennedy, B.L.</p>	None	(1) Initial evidential hearing to take core evidence (2) No discovery (3) Complainant withdrew from the process of the Committee

TABLE H—continued.

(1) Complainant's Reference Number (2) Date(s) of Hearing	Legal Representation at hearings	Witnesses & year of birth of witnesses	(1) Type of hearing (2) Discovery (3) Outcome (4) Other matters
(1) IC/0184* (2) 15/01/2002  *Re participation of Management Respondent (2nd Institution)	<p><i>For Complainant:</i> Paul Kavanagh B.L. Frizelle O'Leary, Solicitors</p> <p><i>For Individual Respondent:</i> Peggy O'Rourke B.L. Millett &amp; Matthews, Solicitors</p> <p><i>For Management Respondent (1<sup>st</sup> institution):</i> Aedan McGovern S.C. Millett &amp; Matthews, Solicitors</p> <p><i>For Management Respondent (2<sup>nd</sup> institution):</i> Kevin Feeney S.C., / Jonathan Newman B.L. Barry C. Galvin, Solicitors</p> <p><i>For Department:</i> Barry Halton B.L. Chief State Solicitor</p> <p><i>For Commission:</i> Anne Reilly B.L.</p>	(1) Complainant (1956). (2) Manager (1924)	(1) Initial evidential hearing to take core evidence (2) No discovery (3) Core evidence completed (4) Management Respondent (2 <sup>nd</sup> institution) to have no further involvement
(1) IC/0192 (2) 18/07/2002	<p><i>For Complainant:</i> Catherine Connolly, B.L. Sarah O'Shea, Solicitor</p> <p><i>For Management Respondent:</i> Kevin Feeney, S.C. Florence McCarthy, Solicitors</p> <p><i>For Department:</i> Dóirbhile Flanagan, S.C. Chief State Solicitor</p> <p><i>For Commission:</i> Deirdre Murphy, S.C.</p>	Complainant (1931)	(1) Initial evidential hearing. (2) Discovery direction against Department (3) Core evidence completed
(1) IC/0193 * (2) 09/04/2002	<p><i>For Complainant:</i> Miriam O'Regan, B.L. Wolfe, Solicitors</p> <p><i>For Department:</i> Barry Halton, B.L. Chief State Solicitor</p> <p><i>For Commission:</i> John Major, B.L.</p>	Complainant (1934)	(1) To take evidence (2) Discovery by Department (3) Evidence and matter completed

TABLE H—continued.

(1) Complainant's Reference Number (2) Date(s) of Hearing	Legal Representation at hearings	Witnesses & year of birth of witnesses	(1) Type of hearing (2) Discovery (3) Outcome (4) Other matters
(1) IC/0214 (2) 11/09/01	<p><i>For Management Respondent:</i> Kevin Feeney, S.C. Una Ni Raiftearaigh, B.L. Arthur O'Hagan, Solicitors</p> <p><i>For Commission:</i> Frank Clarke, S.C. Laura Rattigan, B.L.</p>	None	<p>(1) Procedural hearing: Management Respondent requesting that discovery direction be issued against Department</p> <p>(3) Discovery direction issued against Department dated 12<sup>th</sup> September, 2001.</p>
(2) 21/11/01	<p><i>For Complainant:</i> Ursula Finlay, B.L. O'Leary Maher, Solicitors</p> <p><i>For Management Respondent:</i> Una Ni Raiftearaigh, B.L. Arthur O'Hagan, Solicitors</p> <p><i>For Department:</i> Barry Halton Chief State Solicitor</p> <p><i>For Commission:</i> Anne Reilly, B.L.</p>		<p>(1) Initial evidential hearing to take core evidence</p> <p>(2) Discovery directions against:</p> <ul style="list-style-type: none"> <li>• Department and</li> <li>• Management Respondent</li> </ul> <p>(3) Hearing adjourned on application of Complainant on medical grounds.</p>
(1) IC/0218 (2) 30/01/2002	<p><i>For Complainant:</i> Aileen Donnelly, B.L. Lavelle Coleman, Solicitors</p> <p><i>For Individual/ Management Respondent:</i> Denis McCullagh, S.C. Maxwell, Weldon &amp; Darley, Solicitors</p> <p><i>For Department:</i> Barry Halton, B.L. Chief State Solicitor</p> <p><i>For Commission:</i> John Major, B.L.</p>	Individual Respondent (1914)	<p>(1) To take evidence of Individual Respondent on commission.</p> <p>(2) Discovery direction against Management Respondent</p> <p>(3) Evidence completed</p>
(1) IC/0223 (2) 15/11/2001	<p><i>For Complainant:</i> No legal representation</p> <p><i>For Individual Respondent:</i> No legal representation</p> <p><i>For Department:</i> Barry Halton, B.L. Chief State Solicitor</p> <p><i>For Commission:</i> Anne Reilly, B.L.</p>	(1) Complainant (1956) (2) Individual Respondent (Teacher) (1928)	<p>(1) To hear evidence</p> <p>(2) No discovery</p> <p>(3) Evidence and matter completed.</p>

TABLE H—*continued.*

(1) Complainant's Reference Number (2) Date(s) of Hearing	Legal Representation at hearings	Witnesses & year of birth of witnesses	(1) Type of hearing (2) Discovery (3) Outcome (4) Other matters
(1) IC/0242 (2) 01/05/2002	<p><i>For Complainant:</i> Timothy Bracken, B.L. Margaret Campbell, Solicitor</p> <p><i>For Management Respondent:</i> Denis McCullagh, S.C. O'Flynn Exhams, Solicitors</p> <p><i>For Department:</i> Barry Halton, B.L. Chief State Solicitor</p> <p><i>For Commission:</i> John Major, B.L.</p>	The Complainant (1942)	<p>(1) To hear evidence</p> <p>(2) No discovery</p> <p>(3) Evidence of complaint completed. Further evidence to be heard in relation to the institution.</p>
(1) IC/0243 (2) 26/09/2001	<p><i>For Complainant:</i> Elizabeth Maguire, B.L. Egan, Solicitors</p> <p><i>For Management Respondent:</i> Barra Faughnan, B.L. Arthur O'Hagan</p> <p><i>For Individual Respondent:</i> Kennedy Frewen O'Sullivan, Solicitors</p> <p><i>For Department:</i> Barry Halton, B.L. Chief State Solicitor</p> <p><i>For Commission:</i> Bernard Condon, B.L.</p>	Complainant (1934)	<p>(1) To hear evidence</p> <p>(2) No discovery</p> <p>(3) Evidence and matter completed</p> <p>(4) Attendance of Individual Respondent (1916) excused on ground of incapacity to give evidence</p>
(1) IC/0302 (2) 16/04/2002	<p><i>For Complainant:</i> Brian Kennedy, B.L. Lavelle Coleman, Solicitors</p> <p><i>For Management Respondent:</i> David Hardiman, S.C. O'Donovan, Solicitors</p> <p><i>For Individual Respondent:</i> Sean O Siothcháin, B.L. J. F. Williams, Solicitors</p> <p><i>For Department:</i> Barry Halton, B.L. Chief State Solicitor</p> <p><i>For Commission:</i> Anne Reilly, B.L.</p>	<p>(1) Complainant (1957)</p> <p>(2) Representative of Management Respondent</p> <p>(3) Individual Respondent (1944)</p>	<p>(1) To hear evidence</p> <p>(2) Discovery: against Management Respondent</p> <p>(3) Evidence completed. Further evidence to be heard in relation to institution</p>

**TABLE H—continued.**

(1) Complainant's Reference Number (2) Date(s) of Hearing	Legal Representation at hearings	Witnesses & year of birth of witnesses	(1) Type of hearing (2) Discovery (3) Outcome (4) Other matters
(1) IC/0322* (2) 25/09/2002	<p><i>For Complainant:</i> Miriam O'Regan, B.L. Wolfe, Solicitors</p> <p><i>For Department:</i> Barry Halton, B.L. Chief State Solicitor</p> <p><i>For Commission:</i> John Major, B.L.</p>	Complainant (1927)	(1) To hear evidence (2) Discovery by Department (3) Evidence and matter completed
(1) IC/0437* (2) 24/07/2002	<p><i>For Complainant:</i> Miriam O'Regan, B.L. Wolfe, Solicitors</p> <p><i>For Department:</i> Barry Halton, B.L. Chief State Solicitor</p> <p><i>For Commission:</i> John Major, B.L.</p>	Complainant (1932)	(1) To hear evidence (2) Discovery by Department (3) Evidence and matter completed
(1) IC/0438* (2) 18/09/2002	<p><i>For Complainant:</i> Miriam O'Regan, B.L. Wolfe, Solicitors</p> <p><i>For Department:</i> Barry Halton, B.L. Chief State Solicitor</p> <p><i>For Commission:</i> John Major, B.L.</p>	Complainant (1932)	(1) To hear evidence (2) Discovery by Department (3) Evidence and matter completed
(1) IC/0439* (2) 09/04/2002	<p><i>For Complainant:</i> Miriam O'Regan, B.L. Wolfe, Solicitors</p> <p><i>For Department:</i> Barry Halton, B.L. Chief State Solicitor</p> <p><i>For Commission:</i> Anne Reilly, B.L.</p>	Complainant (1934)	(1) To hear evidence (2) Discovery by Department (3) Evidence and matter completed
(1) IC/0440* (2) 11/09/2002	<p><i>For Complainant:</i> Miriam O'Regan, B.L. Wolfe, Solicitors</p> <p><i>For Department:</i> Barry Halton, B.L. Chief State Solicitor</p> <p><i>For Commission:</i> John Major, B.L.</p>	Complainant (1934)	(1) To hear evidence (2) Discovery by Department (3) Evidence and matter completed

TABLE H—continued.

(1) Complainant's Reference Number (2) Date(s) of Hearing	Legal Representation at hearings	Witnesses & year of birth of witnesses	(1) Type of hearing (2) Discovery (3) Outcome (4) Other matters
(1) IC/0441* (2) 12/09/2002	<p><i>For Complainant:</i> Miriam O'Regan, B.L. Wolfe, Solicitors</p> <p><i>For Department:</i> Barry Halton, B.L. Chief State Solicitor</p> <p><i>For Commission:</i> John Major, B.L.</p>	Complainant (1935)	(1) To hear evidence (2) Discovery by Department (3) Evidence and matter completed
(1) IC/0442* (2) 06/06/2002	<p><i>For Complainant:</i> Miriam O'Regan, B.L. Wolfe, Solicitors</p> <p><i>For Department:</i> Barry Halton, B.L. Chief State Solicitor</p> <p><i>For Commission:</i> John Major, B.L.</p>	Complainant (1927)	(1) To hear evidence (2) Discovery by Department (3) Evidence and matter completed
(1) IC/0443* (2) 19/09/2002	<p><i>For Complainant:</i> Miriam O'Regan, B.L. Wolfe, Solicitors</p> <p><i>For Department:</i> Barry Halton, B.L. Chief State Solicitor</p> <p><i>For Commission:</i> John Major, B.L.</p>	Complainant (1935)	(1) To hear evidence (2) Discovery by Department (3) Evidence and matter completed
(1) IC/0444* (2) 30/05/2002	<p><i>For Complainant:</i> Miriam O'Regan, B.L. Wolfe, Solicitors</p> <p><i>For Management Respondent:</i> Mark Harty, B.L. Collins Brooks, Solicitors</p> <p><i>For Department:</i> Frank Griffin, B.L. Chief State Solicitor</p> <p><i>For Commission:</i> John Major, B.L.</p>	Complainant (1930)	(1) To hear evidence (2) Discovery by Department (3) Evidence and matter completed

TABLE H—continued.

(1) Complainant's Reference Number (2) Date(s) of Hearing	Legal Representation at hearings	Witnesses & year of birth of witnesses	(1) Type of hearing (2) Discovery (3) Outcome (4) Other matters
(1) IC/0461 (2) 06/02/2002	<p><i>For Complainant:</i> Miriam O'Regan, B.L. Margaret Campbell, Solicitor</p> <p><i>For Management Respondent:</i> Una Ni Raifeartaigh, B.L. Barry Galvin, Solicitors</p> <p><i>For Individual Respondent:</i> Una Ni Raifeartaigh, B.L. Barry Galvin, Solicitors</p> <p><i>For Department:</i> Barry Halton, B.L. Chief State Solicitor</p> <p><i>For Commission:</i> Anne Reilly, B.L.</p>	Manager (1911)	(1) To take evidence on commission. (2) No discovery (3) Evidence on commission completed.
(1) IC/0476 (2) 20/03/2002	<p><i>For Complainant:</i> Maire King, B.L. Paul Foley, Solicitors</p> <p><i>For Management Respondent / Individual Respondent:</i> Una Ni Raifeartaigh, B.L. Arthur O'Hagan, Solicitors</p> <p><i>For Department:</i> Barry Halton, B.L. Chief State Solicitor</p> <p><i>For Commission:</i> Anne Reilly, B.L.</p>	(1) Complainant (1931) (2) Manager (1918)	(1) Initial evidential hearing to hear core evidence (2) No discovery (3) Principal evidence heard.
(1) IC/0495 (2) 19/07/2002	<p><i>For Complainant:</i> Catherine Connolly, B.L. Sarah O'Shea, Solicitor</p> <p><i>For Management Respondent:</i> Kevin Feeney, S.C. Florence McCarthy, Solicitors</p> <p><i>For Department:</i> Doiribhile Flanagan, S.C. Chief State Solicitor</p> <p><i>For Commission:</i> Deirdre Murphy, S.C.</p>	Complainant (1934)	(1) Initial evidential hearing to hear core evidence (2) Discovery direction against Department (3) Core evidence completed

TABLE H—continued.

(1) Complainant's Reference Number (2) Date(s) of Hearing	Legal Representation at hearings	Witnesses & year of birth of witnesses	(1) Type of hearing (2) Discovery (3) Outcome (4) Other matters
(1) IC/0510 (2) 21/03/2002 22/03/2002	<p><i>For Complainant:</i> Marjorie Farrelly, B.L. Martin A. Harvey, Solicitors</p> <p><i>For Individual Respondents:</i> Pearse Sreenan, B.L. O'Flynn Exhams, Solicitors</p> <p><i>For Management Respondent:</i> Michael O'Donoghue, S.C. Mason Hayes &amp; Curran, Solicitors</p> <p><i>For Department:</i> Barry Halton, B.L. Chief State Solicitor</p> <p><i>For Commission:</i> John Major, B.L.</p>	<p>(1) Complainant (1943)</p> <p>(2) Teacher / Carer (1915)</p> <p>(3) Teacher / Carer (1925)</p> <p>(4) Teacher / Carer (1925)</p> <p>(5) Representative of Management Respondent</p>	<p>(1) To hear evidence</p> <p>(2) No discovery</p> <p>(3) Evidence of complaint completed. Further evidence to be heard in relation to the institution.</p>
(1) IC/0518* (2) 21/06/2002	<p><i>For Complainant:</i> Miriam O'Regan, B.L. Wolfe, Solicitors</p> <p><i>For Department:</i> Barry Halton, B.L. Chief State Solicitor</p> <p><i>For Commission:</i> John Major B.L.</p>	Complainant (1926)	<p>(1) To hear evidence</p> <p>(2) Discovery by Department</p> <p>(3) Evidence and matter completed</p>
(1) IC/0519* (2) 14/06/2002	<p><i>For Complainant:</i> Miriam O'Regan, B.L. Wolfe, Solicitors</p> <p><i>For Department:</i> Barry Halton, B.L. Chief State Solicitor</p> <p><i>For Commission:</i> John Major B.L.</p>	Complainant (1929)	<p>(1) To hear evidence</p> <p>(2) Discovery by Department</p> <p>(3) Evidence and matter completed</p>
(1) IC/0520* (2) 29/05/2002	<p><i>For Complainant:</i> Miriam O'Regan, B.L. Wolfe, Solicitors</p> <p><i>For Management Respondent:</i> Mark Harty, B.L. Collins Brooks, Solicitors</p> <p><i>For Department:</i> Barry Halton, B.L. Chief State Solicitor</p> <p><i>For Commission:</i> John Major B.L.</p>	Complainant (1926)	<p>(1) To hear evidence</p> <p>(2) Discovery by Department</p> <p>(3) Evidence and matter completed</p>

**TABLE H—continued.**

(1) Complainant's Reference Number (2) Date(s) of Hearing	Legal Representation at hearings	Witnesses & year of birth of witnesses	(1) Type of hearing (2) Discovery (3) Outcome (4) Other matters
(1) IC/0554* (2) 09/05/2002	<i>For Complainant:</i> Miriam O'Regan, B.L. Wolfe, Solicitors  <i>For Department:</i> Barry Halton, B.L. Chief State Solicitor  <i>For Commission:</i> John Major B.L.	Complainant (1931)	(1) To hear evidence (2) Discovery by Department (3) Evidence and matter completed
(1) IC/0573* (2) 24/07/2002	<i>For Complainant:</i> Miriam O'Regan, B.L. Wolfe, Solicitors  <i>For Department:</i> Barry Halton, B.L. Chief State Solicitor  <i>For Commission:</i> John Major B.L.	Complainant (1928)	(1) To hear evidence (2) Discovery by Department (3) Evidence and matter completed
(1) IC/0575 * (2) 18/09/2002	<i>For Complainant:</i> Miriam O'Regan, B.L. Wolfe, Solicitors  <i>For Department:</i> Barry Halton, B.L. Chief State Solicitor  <i>For Commission:</i> John Major B.L.	Complainant (1931)	(1) To hear evidence (2) Discovery by Department (3) Evidence and matter completed
(1) IC/0586* (2) 24/04/2002	<i>For Complainant:</i> John Hannan, B.L. John Reedy, Solicitors  <i>For Representative of Individual Respondent:</i> Michael O'Connor, B.L. McInerney, Solicitors  <i>For Department:</i> Barry Halton, B.L. Chief State Solicitor  <i>For Commission:</i> John Major, B.L.	Complainant (1961)	(1) To hear evidence (2) Discovery by Department (3) Evidence and matter completed (4) Attendance of Individual Respondent (1911) excused on the ground of incapacity to give evidence.
(1) IC/0597* (2) 22/07/2002	<i>For Complainant:</i> Miriam O'Regan, B.L. Wolfe, Solicitors  <i>For Department:</i> Barry Halton, B.L. Chief State Solicitor  <i>For Commission:</i> John Major B.L.	Complainant (1926)	(1) To hear evidence (2) Discovery by Department (3) Evidence and matter completed

TABLE H—continued.

(1) Complainant's Reference Number (2) Date(s) of Hearing	Legal Representation at hearings	Witnesses & year of birth of witnesses	(1) Type of hearing (2) Discovery (3) Outcome (4) Other matters
(1) IC/0618* (2) 24/10/2002	<p><i>For Complainant:</i> Miriam O'Regan, B.L. Wolfe, Solicitors</p> <p><i>For Department:</i> Barry Halton, B.L. Chief State Solicitor</p> <p><i>For Commission:</i> John Major B.L.</p>	Complainant (1932)	<p>(1) To hear evidence</p> <p>(2) Discovery direction by Department</p> <p>(3) Evidence and matter completed</p>
(1) IC/0626 (2) 15/05/2002	<p><i>For Applicant / Individual Respondent:</i> John O'Kelly, S.C. Sean O'Siothchain, B.L. J. F. Williams, Solicitors</p> <p><i>For Complainant:</i> Miriam O'Regan, B.L. Timothy Bracken B.L. Margaret Campbell, Solicitors</p> <p><i>For Management Respondent:</i> David Hardiman, S.C. Eithne Leahy, B.L. O'Donovans, Solicitors</p> <p><i>For Department:</i> John MacMenamin, S.C. Dóirbhle Flanagan, S.C. Barry Halton, B.L. Chief State Solicitor</p> <p><i>For Commission:</i> Frank Clarke, S.C. Anne Reilly B.L. Paul Ward, B.L.</p> <p>IC/0626 continued on next page</p>	None	<p>15<sup>th</sup> May, 2002:</p> <p>(1) Procedural Hearing held in <b>public</b> to deal with issues in relation to discovery raised by the Applicant.</p> <p>(3) Ruling dated 16<sup>th</sup> May, 2002 on Commission's website</p>

TABLE H—continued.

(1) Complainant's Reference Number (2) Date(s) of Hearing	Legal Representation at hearings	Witnesses & year of birth of witnesses	(1) Type of hearing (2) Discovery (3) Outcome (4) Other matters
<p>IC/0626 <i>continued</i> (2) 25/07/2002</p>	<p><i>For Complainant:</i> Miriam O'Regan, B.L. Margaret Campbell, Solicitors</p> <p><i>For Management Respondent:</i> David Hardiman S.C. O'Donovans, Solicitors</p> <p><i>For Individual Respondent (first):</i> Sean O Siothchain, B.L. J.F. Williams, Solicitors</p> <p><i>For Individual Respondent (second):</i> David Keane, B.L. Garret Sheehan, Solicitors</p> <p><i>For Department:</i> Anne Power, B.L. Chief State Solicitor</p> <p><i>For Commission:</i> Anne Reilly, B.L.</p>	<p>(1) Complainant (1958)</p> <p>(2) A Representative of the Management Respondent</p> <p>(3) Individual Respondent (first) (1944)</p>	<p>25<sup>th</sup> July, 2002:</p> <p>(1) To hear evidence</p> <p>(2) <i>Discovery:</i></p> <ul style="list-style-type: none"> <li>• against the Management Respondent</li> <li>• against Individual Respondent (first)</li> </ul> <p>(3) Evidence completed. Further evidence to be heard in relation to institution.</p> <p>(4) Individual Respondent (second) (1945) did not attend: outside the State.</p>
<p>(1) IC/0659 (2) 26/06/2002 27/06/2002 26/09/2002</p>	<p><i>For Complainant:</i> Oonagh McCrann, B.L. Pearse Mehigan, Solicitors</p> <p><i>For Individual Respondent:</i> David Keane, B.L. Garret Sheehan, Solicitors</p> <p><i>For Management Respondent:</i> David Hardiman, S.C. O'Donovan, Solicitors</p> <p><i>For Department:</i> John MacMenamin, S.C. Chief State Solicitor</p> <p><i>For Commission:</i> Anne Reilly, B.L.</p>	<p>(1) Complainant (1933)</p> <p>(2) Former pupil (1934)</p> <p>(3) Representative of the Management Respondent</p> <p>(4) Individual Respondent (1923)</p> <p>(5) Member of Congregation (1920)</p>	<p>(1) Initial evidential hearing to take core evidence</p> <p>(2) No discovery</p> <p>(3) Hearing of core evidence completed</p>

TABLE H—continued.

(1) Complainant's Reference Number (2) Date(s) of Hearing	Legal Representation at hearings	Witnesses & year of birth of witnesses	(1) Type of hearing (2) Discovery (3) Outcome (4) Other matters
(1) IC/0736 (2) 10/09/2002	<p><i>For Complainant:</i> Paul Kavanagh, B.L. Frizelle O'Leary, Solicitors</p> <p><i>For Management Respondent:</i> David Hardiman, S.C. O'Donovan, Solicitors</p> <p><i>For Department:</i> Barry Halton, B.L. Chief State Solicitor</p> <p><i>For Commission:</i> Anne Reilly, B.L.</p>	(1) Complainant (1934) (2) Representative of Management Respondent	(1) Initial evidential hearing to take core evidence (2) <i>Discovery:</i> <ul style="list-style-type: none"> <li>• against the Management Respondent</li> <li>• against Department</li> </ul> (3) Core evidence completed
(1) IC/0762* (2) 19/03/2002	<p><i>For Complainant:</i> No legal representation</p> <p><i>For Management Respondent:</i> Una Ni Raifeartaigh, B.L. Arthur O'Hagan, Solicitors</p> <p><i>For Department:</i> Barry Halton, B.L. Chief State Solicitor</p> <p><i>For Commission:</i> Anne Reilly, B.L.</p>	(1) Complainant (1958) (2) Teacher / Carer (c. 1940)	(1) To hear evidence (2) No discovery (3) Evidence and matter completed
(1) IC/0781* (2) 09/11/2002	<p><i>For Complainant:</i> Miriam O'Regan, B.L. Wolfe, Solicitors</p> <p><i>For Department:</i> Barry Halton, B.L. Chief State Solicitor</p> <p><i>For Commission:</i> John Major B.L.</p>	Complainant (1935)	(1) To hear evidence (2) Discovery by Department (3) Evidence and matter completed
(1) IC/0919* (2) 25/09/2002	<p><i>For Complainant:</i> Miriam O'Regan, B.L. Wolfe, Solicitors</p> <p><i>For Department:</i> Barry Halton, B.L. Chief State Solicitor</p> <p><i>For Commission:</i> John Major B.L.</p>	Complainant (1931)	(1) To hear evidence (2) Discovery by Department (3) Evidence and matter completed

TABLE H—continued.

(1) Complainant's Reference Number (2) Date(s) of Hearing	Legal Representation at hearings	Witnesses & year of birth of witnesses	(1) Type of hearing (2) Discovery (3) Outcome (4) Other matters
(1) IC/1021 (2) 24/06/2002	<p><i>For Complainant:</i> Niall O'Hanlon, B.L. Edward O'Neill, Solicitors</p> <p><i>For Management Respondent:</i> Kevin Feeney, S.C. McCann Fitzgerald, Solicitor</p> <p><i>For Department:</i> Barry Halton, B.L. Chief State Solicitor</p> <p><i>For Commission:</i> Anne Reilly, B.L.</p>	None	<p>(1) To hear evidence</p> <p>(2) No discovery prior to hearing</p> <p>(3) Issues arose in relation to discovery. Hearing adjourned pending making and compliance with discovery directions.</p> <p>(4) Five discovery directions issued.</p>
(1) IC/1062* (2) 22/07/2002	<p><i>For Complainant:</i> Miriam O'Regan, B.L. Wolfe, Solicitors</p> <p><i>For Department:</i> Barry Halton, B.L. Chief State Solicitor</p> <p><i>For Commission:</i> John Major B.L.</p>	Complainant (1931)	<p>(1) To hear evidence</p> <p>(2) Discovery by Department</p> <p>(3) Evidence and matter completed</p>
(1) IC/1171* (2) 16/09/2002	<p><i>For Complainant:</i> David McGrath, S.C. Eugene Murphy, Solicitors</p> <p><i>For Management Respondent (first):</i> Kevin Feeney, S.C. Jonathan Newman, B.L. Arthur O'Hagan, Solicitors</p> <p><i>For Management Respondent (second):</i> Anthony Collins, S.C. O'Flynn Exhams, Solicitors</p> <p><i>For Department:</i> John MacMenamin, S.C. Frank Griffin, B.L. Chief State Solicitor</p> <p><i>For Commission:</i> Frank Clarke, S.C. Deirdre Murphy, S.C. Anne Reilly, B.L.</p>	None	<p>(1) Procedural Hearing Issue: meaning of "relevant period".</p> <p>(3) Ruling 27<sup>th</sup> November, 2002 (posted on Commission's website.)</p>

# The Investigation Committee: Baltimore Fisheries School

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## Introduction

“I have no time really to wait for three or four [or] five years for a finding . . . I only hope that somebody has the courage to take on board these things.”

These words come from the transcript of a hearing of the Committee held in late September 2002 at which a former pupil of the Baltimore Fisheries School (Baltimore School) recounted on oath his experiences of life in that institution in the 1940s. At the time of hearing, the witness was seventy-one years of age and he had experienced medical problems.

The Committee considers that its inquiry into Baltimore School is a discrete segment of its work in respect of which it is in the public interest to publish determinations and findings at this interim stage. Moreover it is possible to do so without infringing the rules of constitutional and natural justice. In reaching these conclusions, the Committee has had regard to the following matters:

1. The Committee has heard all of the former pupils of the Baltimore School who have offered to testify as to their experiences.
2. It has conducted such inquiries, gathered such evidence and made such discovery directions as it thinks are likely to assist in establishing the true facts in relation to life in the institution in the period with which it is concerned, insofar as it is possible to do so at this remove.
3. The Respondents to the complaints, the Governors of Baltimore School and the Department, although notified of the Committee’s intention to treat this report as its final report on Baltimore School, are not in a position to proffer any further evidence or submissions in relation to the inquiry.
4. Because of the age profile and circumstances of the witnesses it has heard, the Committee considers that it is in their interest that this should be its definitive and final report on Baltimore School, as is to be inferred from the quotation at the commencement of this chapter.
5. It is considered that it is unlikely that the involvement of the legal representatives of the parties who participated in the evidential hearings in any further hearings, for example, in context hearings, or hearings dealing with issues of responsibility, would result in findings which would differ to any significant degree from the findings made on the evidence the Committee has received to date.

For all the foregoing reasons the Commission and the Committee consider that it is in the public interest to treat this report as the final report in relation to Baltimore School. In so deciding, the Commission and the Committee, conscious of the constraints which the application of principles of natural and constitutional justice impose in relation to reporting findings, propose to do so in a manner which will not infringe the rights of any party.

It is hoped that by reporting on its inquiry into Baltimore School, some insight will be provided into the difficulties to which an inquiry which ranges back in time for over sixty years gives rise. However, it is important that the Committee emphasises that its inquiry into Baltimore School was uniquely difficult, because the school ceased to operate over fifty years ago. As it was not managed by a Congregation, on its closure, its personnel were dispersed and it has been difficult to ascertain their current status. Moreover, with the exception of some registers and documents which are held in the Diocesan Archive of the Diocese of Cork and Ross, it would appear that the records which were maintained by the school are no longer available.

## The School

The Baltimore School was established in 1887 with the assistance of a Government grant and various charitable endowments. It operated from 1887 to 1950.

The Governors of Baltimore School were and are a body corporate regulated by a Scheme framed under the Educational Endowments (Ireland) Act, 1885. Subsequent to the closure of the school in 1950, the school property was sold with the consent of the Commissioners of Charitable Donations and Bequests for Ireland (the Charity Commissioners) and the proceeds of the sale were lodged with the Charity Commissioners. By order of the Charity Commissioners made in 1968 the original Scheme was varied and it was provided that the income arising from the endowments (i.e. from the proceeds of sale) would be used to provide a bursary to be known as “The Baltimore Award”.

The governing body of the Baltimore School (the Governors) consisted of two *ex officio* Governors, a Governor representing the Carberry Estate (the person holding the title Baron Carberry or a nominee) and four co-opted Governors, and such additional Governors, if any, as might be elected from time to time. The *ex officio* Governors were:

- the Roman Catholic Bishop of Ross for the time being, who was also *ex officio* Chairman of the Governors and
- the Parish Priest of Baltimore for the time being.

The *ex officio* Chairmen of the Governors during the period with which the Committee is concerned were:

- The Most Reverend Patrick Casey (Dr. Casey), Bishop of Ross from 1935 to 1940 and
- The Most Reverend Denis Moynihan (Dr. Moynihan), Bishop of Ross from 1941 to 1953.

Both are long since dead, as is the other *ex officio* Governor during the period in question, Fr. Thomas J. Hill, who was Parish Priest of Baltimore from 1936 to 1951. Fr. Hill died in 1971.

By reason of reorganisation at diocesan and parochial level in the past, the *ex-officio* Governors are now represented by:

- the Bishop, for the time being, of the Diocese of Cork and Ross and
- the Parish Priest, for the time being, of the Parish of Rath and the Islands.

The present representative of the Carberry Estate is the current Baron Carberry who resides in London. The Committee has made contact with him and accepts that he is unable to give any assistance in relation to the inquiry. Further, the Committee accepts that the Baron Carberry who would have been a Governor in the 1930's and 1940's resided in Kenya and it is unlikely that he had any involvement whatsoever with Baltimore School.

The most recently co-opted Governors, on the basis of information furnished by the Charity Commissioners in 1991, are known to be dead, believed to be dead or untraced.

Messrs. Collins Brooks and Associates, Solicitors, acted for the Baltimore School in the past in relation to property transactions, the charitable trusts and such like. Most of the information in relation to the history of the Baltimore School set out in this chapter has been supplied by that firm. The Committee wishes to express its gratitude to that firm, to the Most Reverend John Buckley D.D. (the current Bishop of Cork and Ross), and Fr. Ted O'Sullivan (the Diocesan Secretary of the Diocese of Cork and Ross) for the assistance they have given. In particular, the Committee wishes to record that it received on loan two registers in relation to Baltimore School and a collection of loose documents, mainly orders of committal under the Act of 1908, from the Diocesan Archive of the Diocese of Cork and Ross. These papers have been of some assistance in identifying former pupils of Baltimore School.

On the basis of the information gathered by the Committee as a result of its investigations, it is of the view that it would serve no useful purpose to make a discovery direction against the Diocese of Cork and Ross or any person or body in relation to the records of Baltimore School formerly maintained in the institution.

Baltimore School was first certified as an Industrial School on 12<sup>th</sup> August, 1887. In 1933, "Rules and Regulations for the Certified Industrial Schools in SaorStát Éireann" approved by the then Minister for Education under the Act of 1908 were adopted by all Industrial Schools. The Rules<sup>128</sup> which were signed by the then Resident Manager of Baltimore School on 11<sup>th</sup> January, 1933, and approved by the then Minister on 4<sup>th</sup> February, 1933, give the name and object of Baltimore Schools as follows:

"Baltimore Fishery Industrial School, Co. Cork, for Roman Catholic boys for training in trades connected with the capture and curing of fish".

At that time, Baltimore School was certified for accommodating 170 children. Baltimore School continued in existence as a certified Industrial School for a further seventeen years. During that period the total population of pupils in residence at any time fluctuated, ranging from one hundred and seventy-three pupils (173) in 1943 to ninety-five (95) pupils

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<sup>128</sup> The text of the Rules is set out in Table I.

in 1948. The then Minister for Education ultimately withdrew the certificate under the Act of 1908 with effect from 30<sup>th</sup> September, 1950.

## Overall approach

The only sources of information which the Committee has in relation to life in Baltimore School during the last fourteen years of its existence are:

- the evidence of the former pupils who testified to the Committee, and
- the records in relation to the school which have survived in the Department.

The evidence of the witnesses will be summarised first. Thereafter, the relevant historical information which can be gleaned from the surviving records will be outlined, with a view to giving as complete an account as possible of the matters being investigated. The forensic inadequacies of this approach are fully appreciated and have been taken into account in reaching the conclusions which are set out later.

## Evidence: The Witnesses

The Committee received twenty-six (26) requests to give evidence from former pupils of Baltimore School. Regrettably two former pupils had died before hearings were scheduled. Three decided not to testify to the Committee, as they were entitled to do. The remaining twenty-one former pupils gave sworn testimony at hearings scheduled through the summer of 2002.<sup>129</sup>

## Evidential hearings

Although many of the witnesses spent part of their childhood in institutions other than Baltimore School and had signified a wish to recount their experiences in those other institutions, they consented to their evidence being confined to their experiences in Baltimore School, to enable their hearings to be expedited. While the Governors of Baltimore School, which still exists as a corporation, was granted legal representation, it did not seek to contest the evidence presented by any of the former pupils, nor did it seek to adduce any evidence, which is understandable, given that for a half a century its only function has been to act as trustee of the proceeds of sale. Baltimore School was represented at only two of the hearings. The Department, as the statutory regulator of Industrial Schools, was represented at all of the hearings. All of the individuals against whom allegations were made at the hearings are known or believed to be dead, or are untraceable. The Resident Managers who were in charge of the management of the Baltimore School during the period with which the Committee is concerned are dead. As has been stated previously, the *ex officio* governors of Baltimore School during the period in question are also dead. In the circumstances, the evidence presented by the witnesses to the Committee could not be contested or challenged by, or on behalf of, persons against whom the witnesses made allegations or the management during the period being investigated.

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<sup>129</sup> The details of the hearings are included in Table H.

Each hearing was held in private in Dublin. Ten of the witnesses who now reside abroad (seven in the United Kingdom, two in the United States of America and one in New Zealand) travelled to Dublin for the hearings. Others of the witnesses have lived and worked abroad. Four of them, who have spent significant periods of their lives living and working outside the State, are now living in retirement in West Cork.

There is a transcript of the evidence taken at each hearing.

### **Evidence as to personal circumstances of witnesses prior to admission**

The periods of residence of the witnesses in Baltimore School straddled the years 1936 to 1950, when the school was closed. Seven were born in the years 1926 to 1929 and the remaining fourteen were born in the years 1930 to 1935. Baltimore School was categorised by the then Department of Education as an Industrial School for senior boys. That notwithstanding, one of the witnesses was only seven years of age when he was admitted and spent nine years of his childhood in the school. Another of the witnesses was eight years of age when he was admitted and he spent eight years in the school. While the average age of admission was ten years, one witness had been transferred from another Industrial School at fourteen years of age.

The circumstances in which the witnesses were admitted to Baltimore School varied. A number of broad categories of admissions are identifiable:

#### ***Admissions from Children's Homes***

- Of the twenty-one witnesses, eleven were transferred from Children's Homes in Dublin. These children were maintained by the South Dublin Union under the Public Assistance Acts. Most of them were non-marital children who had no contact with their families of origin. They were very much alone in the world. The records which will be referred to later suggest that most of them were transferred to Baltimore School pursuant to an informal arrangement made between Baltimore School and the persons in whose charge they were prior to the transfer. In some cases, children from Children's Homes were committed pursuant to the Act of 1908. In one case, for instance, a boy, who had been in a children's home in Dublin, was committed to Baltimore School by Order of the District Court ten days after his tenth birthday. The application to the District Court was made by an inspector of the N.S.P.C.C. and the ground cited in the Court Order for his committal was having "been found . . . receiving alms".

#### ***Admissions from foster care***

- Two of the witnesses had been in foster care before they were transferred to Baltimore School.

#### ***Admissions under the Act of 1908***

- Other witnesses were committed by the Courts under the Act of 1908. These children were admitted as destitute orphans, both parents being dead, or the mother being dead.

### *Other Court committals*

- Only three of the witnesses were committed by the Courts in circumstances other than under the Act of 1908: two were committed for truancy<sup>130</sup> and one, at eleven years of age, was committed for house breaking.

Given that only three of the witnesses were admitted from, and on discharge returned to, their own family homes, it may be that the witnesses who came forward were not, as regards their background, truly representative of the generality of the pupils of Baltimore School during the period being considered.

Three of the witnesses had a sibling or siblings in Baltimore School contemporaneously with them.

### **Life in Baltimore School as described by the witnesses**

Experience of life in Baltimore School as recounted by the witnesses was so harsh and deprived by the standards of today as to verge on the unbelievable, were it not for the fact that a contemporaneous record is available to give credence to the testimony.

It is recognised by the Committee that, in determining whether evidence of neglect and the prevalence of a harsh regime in an institution in the past constitutes abuse, the evidence must be evaluated having regard to the norms and standards of the time. In other words, as a matter of general principle, the historic, economic, social and medical context is relevant in considering how the physical, psychological and emotional development of a child was cared for and protected in an residential institution in the past.

The contemporaneous record which is available in relation to life in Baltimore School in the late 1930s and throughout the 1940s comprises reports of inspections of the institution carried out by a medical inspector of the then Department of Education, which was charged under the Act of 1908 with regulatory responsibility for Industrial Schools, including Baltimore School, and related documentation. It is clear on the face of the reports that, in making her observations and comments, the medical inspector was conscious of the social and economic circumstances prevailing and, in particular, the difficulties created by the rationing regime in force during World War II.

For the reasons set out at the commencement of this chapter, the Committee has decided that this report of its inquiry into Baltimore School will be its final report on the institution. In reaching this decision, the Committee is satisfied that it is not prejudicing any person or body by not postponing making its determinations in relation to Baltimore School until there has been a hearing in relation to context issues<sup>131</sup> concerning the late 1930s and the 1940s.

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<sup>130</sup> Under the School Attendance Act 1926.

<sup>131</sup> As envisaged in the Opening Statement (Appendix A).

The evidence of the witnesses in relation to life as they experienced it in Baltimore School, although occasionally more graphic, is closely mirrored in the inspection reports which have survived.

For most of the witnesses their first sight of Baltimore School was preceded by a long train journey from Dublin. At the time, there was a rail link between Cork and Baltimore. The remoteness of the location and the bleakness of the surroundings was recalled by many of the witnesses.

The witnesses described the appalling accommodation they were living in: the large dirty dormitories; the poor quality beds with flea infested and urine saturated mattresses and bedding; the refectory, which doubled as an oratory, and in which the drinking utensils over the span of time with which the Committee is concerned ranged from cracked enamel mugs to pottery mugs to jam jars; the primitive and inadequate sanitary accommodation which included outside dry closets; the primitive and inadequate washroom which was serviced with hot water if a cart load of dry turf was to hand but not otherwise. The lack of heating is deeply ingrained in the minds of many of the witnesses. They remember the chilblains. They remember the winter of 1947. For one witness his worst experience of life in Baltimore School was living through that winter dressed only in light clothes in a building with no heating, feeling, as he put it, “perished”.

As the witnesses recalled, the clothing provided for the pupils was not only inadequate but also a source of embarrassment. They were provided with pants, a shirt and a jersey or geansaí. The garments might or might not be patched when they became worn or torn. The boys went barefoot for most of the year. A number of witnesses described the embarrassment of having to wear short pants. One witness said that he felt terrible having to walk from Kingsbridge station to his home in the north inner city of Dublin in short pants when, at the age of sixteen, he was discharged in 1947.

Even by the standards of the time, the lack of hygiene and the unhygienic practices described by the witnesses seem remarkable. On bathing day the bath water was changed after five or six boys had bathed. There were no toothbrushes or toothpaste, combs, soaps or personal towels. The clothing and the bedding was verminous. There were outbreaks of scabies.

The evidence indicates that neglect and lack of care extended to essential, basic needs. One witness testified that he had extreme myopia, but did not get glasses until he was fifteen and a half ( $15\frac{1}{2}$ ) years of age, a few months before he left the School. He arrived in Baltimore at the age of 10, already experiencing difficulties with his sight, and spent a further five and a half years in class, learning nothing because he could not see what was going on. A similar complaint was made in a letter written by a former pupil in 1953, which will be referred to later.

On the evidence, the most startling failure in the treatment of the pupils in Baltimore School related to food and diet. Every witness commented on the inadequacy of the food. The witnesses recalled that the pupils were not merely hungry, they were literally starving. They were compelled to supplement their diet by eating raw vegetables and vegetation — potatoes, turnips, mangolds, carrots and sorrel, by eating barnacles at the seashore and by scavenging, begging and stealing in the village of Baltimore. Many of the witnesses

commented on their lack of physical stature, which they believed was attributable to the inadequate diet they received in their formative years in Baltimore. Over half a century later, the Committee noted that the lack of physical stature was still observable.

There was not a common thread in the evidence as to whether the education which was available to the pupils in Baltimore was adequate. Although some former pupils thought it was, others thought it was not. What the evidence did indicate was that training for a trade was illusory. Training for housework in reality was working in the laundry or in the kitchen. One witness eloquently expressed regret that the opportunities which were in Baltimore School for developing a skill were not utilised: the net loft, which was in disuse in his time (the mid-1940s); the tailor shop, which was closed; and the boatshed, which employed villagers and in which the pupils could have been given opportunity to learn a trade. Another witness said that, having worked in the tailor's shop, he would have liked to have become a tailor, but he did not know how to go about it. He was discharged to farm work.

The physical hardship and deprivation described by the witnesses was observed and reported on in the course of the general and medical inspections carried out by the departmental medical inspector. The bleakness of the boys' existence was also observed. However, it is unlikely that the persistent joylessness and drudgery of the institution, as described by the witnesses, would have been obvious on an annual inspection. Some of the witnesses have no good memories at all of Baltimore School. Others remember the annual visit to Sherkin Island or regatta day in Baltimore or outings with the band. For all, there were very few treats. Christmas was a non-event. For most there were no letters, no visitors and no holidays.

## **Discharge from Baltimore School**

The evidence shows that the witnesses were discharged from Baltimore School without any adequate preparation. Generally, on the day he was being discharged, a pupil was told where he was being sent.

The three witnesses who had been admitted from their own homes returned to their families when their time in Baltimore School was up. The two witnesses who had been in foster care returned to their foster homes. The remainder were placed by the Manager "in some employment or service" as provided by the Rules adopted in 1933.<sup>132</sup> Farm work, housework and hotel work were the employments in which most of the boys were placed. Eleven were placed with farmers and, of those, five testified that they received no wages for periods varying from two to three to six years, although the witness who would have liked to become a tailor was positive about the nine years he spent doing farm work with a "marvellous" farming family.

A common theme in the evidence of the witnesses who had no families was how ill-equipped they were socially and emotionally for adult life when they were discharged. They had been institutionalised from birth. They had no frame of reference for dealing with interpersonal and social relationships. While they were in Baltimore School, no steps were taken to remedy these handicaps. In particular, they had very little contact with

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<sup>132</sup> Rule 18.

women while there. They received no guidance on how to interact with the opposite sex and establish an appropriate sexual relationship. One witness, who described himself as timid and as having been left out of things (although he also testified to having been bullied a lot by older boys — “big hefty fellows”) testified that when, at about twenty years of age, he was told that, if he wanted to get a wife, he would have to pay £500 for a girl, he really believed what he had been told.

## **Allegations of Physical Abuse: the Evidence**

The evidence of the witnesses suggests that the method of enforcing discipline employed in Baltimore School, both in the classroom and in the school generally, was the infliction of physical punishment. Up to 1946, maintenance of discipline and infliction of punishment in the school were regulated by the Rules adopted in 1933.<sup>133</sup> The records of the Department indicate that the rules in relation to discipline and punishment were modified in 1946 when Circular No. 11/1946<sup>134</sup> was directed to the managers of all Industrial Schools. The Committee does not have evidence that the Resident Manager of Baltimore School actually received Circular No. 11/1946.

Many of the witnesses testified to having suffered severe physical punishment themselves, or to having seen severe physical punishment inflicted on fellow pupils, by two of the teachers who taught in the National School within Baltimore School. Their recollection was of severe physical punishment being meted to pupils for failure at school lessons, although such punishment was expressly proscribed from 1946 onwards. The punishment in the classroom described by some of the witnesses was severe beating with a strap or a cane, on occasions indiscriminately to any part of the body. The punishment regime described involved particular forms of punishment which were not only severe but sometimes involved other boys in a restraining role. Humiliation of the boy being punished was also a feature of the punishment as described. The type of punishment described by the witnesses, its frequency and its severity was suggestive of a regime in which infliction of severe physical punishment in the classroom was systemic.

The teachers in the classroom were subject to inspection by the National Schools inspectorate of the Department. Both teachers about whom the witnesses complained were the subject of inspections by a Department inspector, one in 1943 and the other in 1944. Both inspection reports survive. Both teachers were rated as “efficient”. In the report of the inspection carried out in 1944, the inspector recorded the fact that some pupils did not get a proper education prior to being admitted to Baltimore School. It was also recorded that the pupils did not have the opportunity of doing homework. Nothing in the evidence indicated an awareness on the part of any Inspector of the then Department that punishment of the type described by the witnesses was resorted to in the classroom.

It is considered appropriate to record that the Principal Teacher in the National School was remembered by all of the witnesses with respect and affection, as a good teacher who did not resort to corporal punishment.

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<sup>133</sup> Rules 12 and 13.

<sup>134</sup> The text of Circular No. 11/1946 is set out in Table J.

According to the evidence, discipline outside the classroom was enforced by the Resident Manager, the Assistant Manager who was appointed to assist the Manager in 1943, and by other personnel who were in charge of the pupils in particular settings and at particular times. In the dormitory, discipline was enforced by an elderly man who was in charge at night. He was described as “a hard, seasoned man”. Witnesses described his habit of pulling down the bed clothes and beating a boy with a stick indiscriminately on any part of the body. One witness recalled that he had received such a beating for no reason at all. Another recalled that laughing and jumping and fooling around in the dormitory provoked such punishment. A significant feature of the evidence was the fear which the enforcement of discipline engendered in the pupils. Witnesses testified that in later life, they had nightmares about being beaten.

Understandably, perhaps, the major transgression which the former pupils recall for which severe punishment was inflicted was being caught “out of bounds”. Being “out of bounds” was frequently associated with stealing food. Daily discipline was conducted along military lines with regular, and sometimes unexpected, parades in the drill yard. Some witnesses recounted that pupils who were found to have transgressed were subjected to physical punishment in public in the drill yard. Others described formal punishment being administered in the office, but informal punishment being administered where the transgression took place. A common theme of the evidence was that the most serious form of punishment was severe beating on bare buttocks with a strap, stick or cane.

In assessing the evidence of the manner in which punishment was administered in Baltimore School in the late 1930s and throughout the late 1940s, the Committee is acutely conscious of the fact that it has been presented only with the perspective of the former pupils who were recounting events which occurred more than a half a century ago. An issue which has been addressed is whether punishment of the type and severity described could have been justified by any standard. One witness described one of the school teachers as being “tough” and as “needing to be tough”. He recounted an incident of a pupil, “a giant of a fella”, challenging the teacher for having given him “a few belts”. Another witness, who recounted that a pupil took a hurling stick to the same teacher, remarked “and you would want to see the walloping he got after that”. In general, the witnesses subjectively considered that the severity of the punishment which, in their experience, was prevalent in Baltimore School, was not justified. Even the “Dublin boys”, boys who had been committed by the Courts for infractions of the criminal law and truancy and who had arrived confident and streetwise, were stated to have had “the stuffing hammered out of them”. One witness recalled that the remaining pupils “went riot” during the last year of the school’s existence.<sup>135</sup> His recollection was that they were all lined up in the corridor and brought individually into the Resident Manager’s office where their pants were taken down and they had the “living daylights” “walloped” out of them. The witness felt that such severe punishment could not be justified “. . . because we were hungry seven days a week, three hundred and sixty-five days of the year. We never had enough to eat”.

Two witnesses described incidents in which a person in a position of authority spontaneously struck the witness causing him an injury. While these incidents cannot be

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<sup>135</sup> The witnesses explained the reason for the riot as follows: “. . . we got so fed up because you couldn’t eat the food . . .”

condoned, they were isolated incidents. The general thrust of the evidence was that severe physical punishment was a constant feature of life. Various epithets were used by the witnesses to describe the attitude and behaviour of the persons in authority and the employees who punished the pupils in Baltimore School: brutal, cruel and sadistic.

Bullying of younger boys by older boys was a recurring theme in the evidence, as was fear and anxiety engendered by bullying.

### **Allegations of Sexual Abuse: the Evidence**

Before summarising the evidence given by the witnesses in support of the allegations they made of sexual abuse, it is important that the Committee emphasises again that the evidence could not be challenged or contested by the persons implicated in the allegations or on their behalf. The overall picture which emerged from the totality of the evidence was of widespread and pervasive sexual abuse perpetrated by—

- adults in positions of authority,
- employees of Baltimore School, some of whom had been, or were believed to have been, former pupils, and
- peers (older fellow pupils against younger pupils),

over the period to which the evidence related, from the late 1930s to the late 1940s.

As a general proposition, it is the view of the Committee that a distinction has to be drawn between sexual interference of a pupil by an adult, particularly an adult in a position of authority, and sexual interference by a fellow pupil. It is also considered that a greater weight is to be attached to evidence which relates to a witness's own experience than to evidence which relates to observation of the experiences of other pupils.

Of the twenty-one witnesses who testified to the Committee, six gave evidence of not having themselves experienced any abusive or inappropriate sexual interference while in Baltimore School. One of the witnesses testified that, not only had he not himself experienced sexual interference, but he could not say that any fellow pupil was abused.

There was evidence from the remaining fifteen witnesses of personal experience of either sexual interference by an adult in a position of authority or an employee (in some cases by more than one adult), or by a fellow pupil, usually an older boy.

Articulating their own sexual experiences in childhood was extremely difficult for most of the witnesses. From their hesitancy to recount their experiences and from their reticence about articulating the details, it was patently obvious that they were not accustomed to discussing such matters, although some had attended a counsellor, a psychologist or a psychiatrist. A common thread running through the evidence was that a witness had not told his wife about these experiences or, alternatively, that he had only told her in the recent past. The Committee did not get the sense that the evidence of the witnesses was contaminated. Nor did the evidence suggest that the recollections of the witnesses had been suppressed or repressed during adulthood and only triggered by recent controversies in the media. In recounting their personal experiences, notwithstanding the passage of time, witnesses demonstrated a convincing and clear recollection of the core events. The

evidence was characterised by idiosyncratic, unsolicited detail. The Committee did not get a sense of embellishment.

The evidence of the witnesses who testified as to their own experiences implicated a number of adults. In the case of one adult, who was employed in Baltimore School, there was credible evidence from a significant number of witnesses that they were subjected to gross sexual abuse, including anal and oral intercourse, by him. There was also credible evidence of attempted sexual abuse and sexual advances which were successfully rebuffed. There was consistency between the accounts of the witnesses, each of whom gave his evidence to the Committee in private. From the evidence, a picture emerged which is consistent with the presence in Baltimore School of a sexual predator, probably a homosexual paedophile, who systematically preyed on and sexually abused vulnerable children in a pervasive and indiscriminate manner, regularly and over a period of time; a perpetrator whose *modus operandi* was the inducement of fear and apprehension in the victim and who had a reputation in Baltimore School as a sexual abuser and as somebody to be avoided.

There was also credible evidence of sexual abuse, including anal penetration, by other individuals implicated by the witnesses. A feature of the evidence was that former pupils, who were employed in or in connection with the school, were in charge of the boys on occasions and were the perpetrators of abuse on the boys.

A significant number of witnesses recorded personal experiences of sexual interference by fellow pupils. While one witness referred to “horse play”, there was credible evidence of witnesses having been forcibly subjected to sexual interference, including anal penetration, by older boys.

As a general proposition, in determining whether inappropriate sexual activity among peers constitutes abusive behaviour, the Committee considers that the questions which should be addressed are whether—

- there were elements of coercion, whether overt or covert, bribery or persuasion present,
- there was an age difference of significance separating the peers, an age difference of three years being generally regarded as significant,
- the initiation of the activity was unilateral,
- the initiator elicited fear and anxiety in the person,
- the behaviour comprised acts of adult-like sexuality,
- the behaviour was aggressive
- there was a lack of consent,
- there was a lack of equality, which might occur in a number of different domains, for example, in relation to physical size, intellectual abilities, perceived status or power, as well as age.

While the evidence from the witnesses who experienced sexual interference by fellow pupils in Baltimore School was lacking in precision in relation to matters such as chronological age, physical size and such like, the evidence conveyed a sense of bullying,

aggression and fear inducing behaviour accompanying sexual activity of a type which was indicative of abuse.

Subjectively, the witnesses considered that the interference by older boys was abusive. On the issue of whether the persons in authority in Baltimore School knew what was going on, one witness testified that he told the Resident Manager and the night carer that, shortly after he arrived in Baltimore School, when he was eleven years of age, he was abused by older boys and one had penetrated him. His impression was that they were not interested. However, other witnesses recalled that the Resident Manager and the assistant Resident Manager, both priests, were continuously preaching against sexual activity among the boys. On the evidence, it is probable that there was an awareness of sexual abuse and bullying of younger boys by older boys. That awareness may explain the need for discipline in the dormitories, but, of course, it would not justify excessive physical punishment.

### **The legacy of an institutionalised childhood**

While most of the witnesses ascribe the problems which they have encountered in life to their experiences in Baltimore School, given that so many of them were separated from their families of origin and placed in an institution at a very young age, the Committee is of the view that it would not be proper to attribute the adverse adult life experiences which many of them undoubtedly experienced solely to their experiences in Baltimore School. It is considered that it is more appropriate to regard the problems which many encountered in adult life as the legacy of an institutionalised childhood and of the system of childcare which prevailed at the time.

The focus in this chapter is on the negative aspects of the experiences of the former pupils after they left Baltimore School. However, that is only part of the picture. Most of the witnesses have succeeded in overcoming, or coping with, the effects of an institutionalised childhood. Before retirement they worked in various occupations in Ireland, in the United Kingdom, in Germany, the United States of America, the Middle East, Australia and New Zealand. Most have married and have had successful marriages and raised successful families. Many attribute their survival to having been able to establish a loving relationship in adult life.

Lack of confidence and lack of self-esteem have characterised the adult lives of many of the witnesses. They described the legacy of their institutionalised childhood in different ways. One witness said it left him with what he described as an “unmerciful inferiority complex”. Another described himself as embarking on adulthood “socially handicapped”. The evidence showed that their childhood experiences impacted on the ability of some of the witnesses to form relationships in adult life and, in particular, to form relationships with women.

Many emphasised the stigma attached to having been in an Industrial School. For some the biggest issue, and the greatest injustice, was having been sent to an Industrial School. The following words of one witness represent the sentiments expressed by many:

“Why were we sent there? I know I was born illegitimate but why should I have been sent to a place like that for no reason”.

The answer to that question, and to the even more puzzling question as to why children were taken out of foster homes in south Dublin and sent to Baltimore School and then returned to foster homes, may be a matter for inference from the records retained by the Department which will be considered later.

For the witnesses who spoke of the stigma of having been in an Industrial School, the stigma was perceived as having real effects on family life, on social life and on work life. They lived with a sense of shame and embarrassment, which some never succeeded in staving off. For a former pupil who joined the armed services, there was the concern that his superior officer would have known that he was out of an Industrial School. For another, there was the belief that the mere fact that he had been in an Industrial School impeded the advancement of his career.<sup>136</sup>

For some witnesses the mere fact of having been in an Industrial School gave rise to a feeling of marginalisation and stigmatisation. For others, their experiences in the institution have given rise to shame and embarrassment to the extent that they have kept them secret and not disclosed them to close family members. Keeping their secrets has placed stress on their relationships. The negative cognitions discernible from the evidence are well recognised in the literature as sequelae for children who have been abused.

For some witnesses, the biggest issue was having been separated from their parents and siblings and having been deprived of information about their origins. One witness testified that “not having people, not having relations” was the greatest source of embarrassment and shame. Apart from the emotional problems they experienced, witnesses recounted the practical difficulties they encountered, for example, in obtaining a birth certificate or a passport. Until recently, those who attempted to trace their roots and to be united with family members encountered many obstacles. While some have succeeded in their quest, others have not. A lesson to be learned from the evidence is that, if the basic human need to know one’s origins is not satisfied, the sense of shame and embarrassment and the associated emotional problems are prolonged and may endure for life. In the case of some of the witnesses, it has been unnecessarily prolonged because of an absence until recently of a service to assist them to trace their roots.<sup>137</sup> One witness described tracing his roots as—

“... a terrible, hurtful thing for me all through my life . . . to me that was dreadful. I would not wish any child to go through that again”.

There was a perception among the witnesses that pupils who had siblings in Baltimore School at the same time fared better while there. Insofar as this perception reflects reality, they feel credit is due to the pupils themselves. As the records which survive in the Department in relation to home leave illustrate, very little effort was made to ensure that children in Baltimore School maintained contact with siblings and other family members. One witness, who was admitted to Baltimore in 1943 when he was eight years old, was

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<sup>136</sup> In the Report of the “Commission of Inquiry into Reformatory and Industrial School System, 1934–1936” (The Cussen Report) (P. No. 2225), which was published in 1936, it is commented (at page 10) that the prevailing public misconception, “which linked industrial schools to the prison system, prejudiced very seriously the prospects of the children in after-life”.

<sup>137</sup> In 2002, Barnardos, with the support of the Department, expanded the independent information, advice and counselling service it had provided since 1977 for persons separated from their families of origin.

separated from his six year old sister, who was sent to the Good Shepherd Convent in Cork. He forgot about her until he was sent to St. Patrick's Industrial School, Upton, in 1950 on the closure of Baltimore School. A member of the Congregation there asked him if he had a sister, and he arranged a reunion. They did not recognise each other, but got to know each other again and have been close since.

The membership of every division of the Committee which received the testimony of the witnesses included a consultant psychiatrist or a clinical psychologist. While no expert psychiatric or psychological evidence was received, it is the view of the Committee that, on the evidence, it is in a position to reach the following conclusions. A significant percentage of the witnesses who testified have suffered from psychiatric illness, in some cases severe psychiatric illness. The Committee also noted a significant incidence of psychological problems, including psycho-sexual problems. These sequelae are consistent with childhood experience of a harsh institutionalised regime which deprived the child of any positive nurturing experience and which was characterised by severe discipline, bullying, fear and sexual abuse.

The witnesses who recounted their life experiences after leaving Baltimore School ranged in age from sixty-seven to seventy-six at the time of the hearings. Each in his own way has tried to cope with the legacy of the past. One witness said:

“I realised early on that if I dwelled on it too much it would give me an unhappy life on top of an unhappy childhood”.

Some saw themselves as survivors, in the sense of survivors of what they recollect as a cruel and brutal childhood. The evidence indicates to the Committee that most have come to accept their past, even if they have not forgiven those whom they consider are responsible for an unhappy, neglected and emotionally deprived childhood. In the main their anger has been dissipated, but they are left with a sense of loss akin to bereavement.

### **What the records of the Department show: the records**

The records held by the Department in relation to Baltimore School during the period with which the Committee has been concerned, the late 1930s and the 1940s, are not complete. However, having obtained an affidavit of discovery from the Department, the Committee is satisfied that it has received all of the relevant documents which have survived and that, given that the institution was closed upwards of fifty years ago, there is little point in trying to trace the missing documents.

The documents which have survived include—

- the reports of the general and medical inspections conducted by the Department's medical inspector, Dr. Anna McCabe, following her appointment in 1938,
- memoranda and correspondence between the Department's inspectorate and Baltimore School following the inspections,
- memoranda and correspondence between Baltimore School (including the Chairman of the Governors) and the Department in relation to the financial viability of Baltimore School, the number of pupils in residence, the amount of the capitation grant, occupational training, home leave, discharge of pupils and such like, and

- correspondence and memoranda in relation to the closure of Baltimore School in September 1950 and the practical consequences of such a closure.

The records also contain one extant complaint made by a former pupil to the Department less than three years after Baltimore School was closed.

### **Life in Baltimore School: What Departmental Inspection Reports reveal**

The earliest record available of an inspection carried out by Dr. McCabe of Baltimore School is a report she wrote following a visit in June 1939. While she made the general observation that she found the school in fairly good condition, she recorded that the building needed some repair and the indoor sanitary arrangements were very antiquated. She specifically referred to the fact that the enamel cups which the boys used were in a very stained condition and suggested that they be replaced by delph cups. She found the Resident Manager to be a young, keen man who was anxious to improve the conditions. The Resident Manager was Fr. John McCarthy. He had been the de facto manager since 1938, although not formally appointed. The records indicate that in June 1939, he had just turned 30 years of age. Dr. McCabe recorded that the health of the boys was good.

The next inspection by Dr. McCabe of which a record survives was conducted in November 1940. Dr. McCabe's general observation was that the school was good on the whole. The Resident Manager had made many improvements since her last inspection. The boys looked well, clean and happy. However, she was critical of some aspects of the care. She highlighted the fact that the boys' clothes were "too patched". They needed "individual toothbrushes". She noted that the condition of the premises was "fairly satisfactory."

It is clear from the records that Dr. McCabe returned to Baltimore School two years later, in November 1942. While no record survives of the general inspection she conducted on that visit, her report of her medical inspection survives. In it she recorded that the health of the boys was good on the whole. However, medical records were not kept, so she had no way of judging the weight progress of the boys. Dental treatment was badly supervised and she identified thirty-one cases for dental treatment. She also recorded four cases for treatment for gingivitis.<sup>138</sup>

Following her inspection a year later, in November 1943, Dr. McCabe reported that she was not pleased with the progress of the school. While she gave the Resident Manager credit for the improvements he had carried out following her earlier inspections, which she acknowledged was all up-hill work, she remarked that he had become a little slack and needed a reminder about his responsibilities. She considered the condition of the premises to be unsatisfactory and inadequate for the number of children then residing there. The equipment was poor. While the clothing was fairly good, it could have been cleaner. The sheets on the beds were not changed often enough. She was not satisfied with the diet and specifically commented on the fact that one meal, lunch, had been stopped recently. While the health of the boys was good on the whole, she remarked that

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<sup>138</sup> Gingivitis is an inflammatory lesion of the gums. It can be acute or chronic. Chronic gingivitis is usually associated with neglect of oral hygiene.

the medical charts had not been kept. The boys were untidy and dirty looking. On that occasion, Dr McCabe called on the then Chairman of Governors, Dr. Moynihan. He indicated that he was prepared to help in any way he could in improving conditions.

The Inspector of Industrial and Reformatory Schools<sup>139</sup> vigorously pursued the issues raised by Dr. McCabe in her report with the Resident Manager and kept the Chairman of the Governors informed of the situation. In the course of the correspondence which ensued, the Resident Manager sought an explanation of the suggestion that meals should be served in a better manner. The Inspector's response in April 1944 is revealing. Having recorded that it had been reported that the crockery at table was badly cracked and broken, he went on to say:

“It would be desirable that articles were replaced according as they become seriously damaged. When salt is used at table it should be served in salt cellars or plates and not scattered on the table. The boards of the dining tables should also be scrubbed after each meal”.

The strict approach adopted by the Department's inspectorate yielded results in the short term. Following her inspection in August 1944, Dr. McCabe was able to report that the condition of the premises had improved slightly, although there was still much room for improvement. The food and diet had also improved and the pupils were being given four meals. She was still of the view that the accommodation was not adequate for the number of pupils in the school. She recorded that the boys looked badly dressed and careless when she arrived. The following day, they had improved and looked much cleaner and better dressed. It is not apparent whether her arrival had been announced in advance or was unexpected. She also recorded that she had been present at several meals when ample food was provided, but, despite this, lots of the boys were not progressing well in weight. She noticed that a lot of the bread issued for the boys was “really mouldy”. When she drew the attention of the Resident Manager to this, he blamed the manner of delivery of the bread and the difficulty in having it otherwise “as evidently the bakery the school deals with has a monopoly for bread in Skibereen”. The Resident Manager blamed other shortcomings noted by Dr. McCabe on war-time restrictions: the fact that the boys went barefooted in the summer months and the fact that the jerseys worn by them were “very tattered”.

Dr. McCabe's criticisms were taken up by the Inspector with the Resident Manager. By October of that year, the Resident Manager informed the inspectorate that a new supply of clothes had been procured and that the boys had been supplied with boots and had been wearing them. The problem in relation to the bread had been a temporary matter due, for the most part, to the difficulty of transport prevailing at the time. The bread then in use was “quite free from any trace whatsoever of mouldiness”.

Despite the assurances of the Resident Manager, when Dr. McCabe carried out her next inspection in July 1945 she reported that thus far nothing had been done to the school. She recorded that she had a long, earnest talk with the Resident Manager. She told him that she was not pleased with the running of the school and the general slackness that

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<sup>139</sup> The Inspector was a statutory officer: section 46(1) and section 133(13) of the Children Act 1908. Every certified school was to be inspected by the Inspector or an Assistant Inspector at least once in every year: section 46(3).

prevailed. The pupils' clothing was still very bad — tattered and torn. The children were still barefooted. The sanitary accommodation was not adequate for the numbers in the school. On this occasion, Dr. McCabe visited the Chairman of the Governors again and advised him of her displeasure. She reported that he told her he was far from satisfied himself, but would do his best to speed up improvements.

Once again the inspectorate took a strong line with the Resident Manager. In relation to the need for additional dormitory accommodation, a new sanitary annex and the provision of a fire escape, which had been the subject of correspondence for over a year, the inspector requested the submission to the Department of plans for the proposed additions. He required that arrangements be made for regular visits by the dentist, at least once a quarter, because Dr. McCabe had reported that there were up to forty-seven cases in the school for dental treatment on her most recent visit. He also invited the Resident Manager to consider the suggestion that facilities should be provided in the school to give courses in manual instruction, for example woodwork, to the senior boys. The response of the Resident Manager was that the Governors felt that there was not justification for any extension of dormitory space because numbers were falling. The sanitary annex and the fire escape would be installed. These works, for which a building grant was paid by the Department to Baltimore School, were completed by the time of Dr. McCabe's next inspection.

Dr. McCabe's next inspection was in August 1946. She acknowledged that there had been a slight endeavour to make improvements. However, she still considered that the accommodation was overcrowded. She did not see any improvement in the area of clothing and footwear. While the children appeared healthy, they were rather thin. She recorded that medical records were not kept and added the comment — "perhaps too revealing". In relation to food and diet, she expressed the opinion that not enough meat, butter or milk was being given to the pupils.

In setting out her general observations and suggestions, Dr. McCabe portrayed a sense of total dejection and frustration in the following passage in her report:

"I am not satisfied with this school and never have been. It is easily the worst of all the schools and stands alone for inefficiency, slackness and neglect. I have had long discussions with the Manager, who always appears to be kindly and well disposed towards the boys and he has made promises to improve the school. This year a fire escape and sanitary annex have been added. But that is only a beginning. It would take a tremendous amount of reorganisation to improve this school. It is in a bleak, desolate spot — a cement building in the middle of a field with a school which used to be an Isolation Hospital in an adjoining field. It is a most uncivilised place. There is no oratory and the refectory has to be used as a chapel for Mass. There are no trades for the boys except eternal net making. There is very little assistance in the school — a matron and a woman in the mending room. The beds are not well equipped — poor mattresses, torn sheets and poor blankets. There is an Infirmary of sorts but of no comfort. It is a cheerless spot and I really sympathise with a child placed in it or indeed in this school".

Dr. McCabe's sympathy for the boys emerged again later in her report. She said they looked a "peculiar lot" and, while she could not say they looked cowed or unhappy, still she would not compare them with the boys in other schools. They were thin. The supplies

given to them were not adequate. Having stated that the laundry facilities were poor, she added the comment—

“... to see the children washing there has to be seen to be believed!”

Dr. McCabe went to see the Chairman of the Governors on this occasion. He professed an interest in the school. However, again evincing total frustration, Dr. McCabe commented that candidly she did not think he had the slightest interest in the place. Dr. McCabe concluded her report by saying that there was really no organisation in the school and she could not see that it served any useful purpose.

The complaints made by Dr. McCabe were taken up by the Inspector with the Resident Manager in correspondence the following month. The defects and inadequacies which should be remedied were outlined: the inadequacy of the diet; the failure to keep medical records; the poor condition of the boys' clothing; the practice of allowing the boys to go barefoot, which was to be discontinued; the necessity for the provision (and instruction in regular use) of a toothbrush for each boy; the poor condition of the bedding — mattresses, sheets, blankets and towels; the lack of an oratory; the cheerless nature of the infirmary; and the need for an alternative exit from a dormitory. Following reminders, the decision of the Governors was conveyed by the Resident Manager to the Department at the end of January 1947. Dietary would be improved as far as possible. However, the Governors did not think it possible to supply one pint of milk per boy per day all year round, as the inspectorate had stipulated. The boys' clothes would be carefully attended to and a supply of boots and shoes, which would be suitable for the summer, would be procured. The bedding would be attended to. The infirmary would be put in order. The exit from the dormitory would be attended to. However, the Governors could not see their way to undertake the building of a chapel.

Almost immediately, the Resident Manager was given a peremptory instruction by the inspectorate that each boy was to receive the allocation of milk stipulated the whole year round.

The concern in the Department about the management of Baltimore School throughout this period is evident not only from internal memoranda which have survived but also from the fact that Dr. McCabe inspected Baltimore School twice in 1947. Her first visit was in March 1947. On that occasion Dr. McCabe reported that she had not seen many improvements in the school. Her primary concern was the food situation. At the time the school was getting only half the number of loaves usually supplied. This was subsequently disputed by the Resident Manager, who contended that each boy was getting his actual ration of bread and that the bread for the school was supplemented by bread from Fr. McCarthy's own house. No porridge or meal was available. The boys were fed mostly potatoes. They got no milk except in tea. The clothing was still not satisfactory. It was all tattered and worn. Dr. McCabe recorded:

“Shoes for my benefit but I feel sure all do not wear shoes daily!”

The new sanitary annex had been added, but it could be kept in better condition. The bedding required to be improved. A proper heating system, proper cooking facilities and proper laundry facilities were needed and improvements were required to the wash house. On the positive side, Dr. McCabe recorded that the boys appeared healthy and happy and

there was no record of illness. She also commented that Baltimore School was the only school in the district that had not closed during the severe weather conditions of the winter of 1947.

Dr. McCabe had an interview with the Chairman of the Governors following her inspection. He told her that he really had taken an interest in the school. She commented that she had certainly seen evidence of his visits. It emerged from the interview that Dr. Moynihan was not in favour of spending money “on a forlorn hope”. The Resident Manager had incurred debt in running the school. Dr. Moynihan indicated that, if the debt could be paid off, he would have no reluctance in recommending the closure of the school. Dr. McCabe was in agreement.

By October 1947, when she next inspected Baltimore School, Dr. McCabe was able to record some slight improvement since her last visit. Nonetheless, approximately half of the boys were still in tattered and worn jerseys. The food and diet were not good. The boys were getting neither porridge nor milk. They were feeling the loss of bread because of war-time rationing. Meat was said to be given three times a week, but Dr. McCabe’s view was that they mostly got potatoes. She described the food as “very poor variety”. She reported that she had talked to the boys and the only complaint they had was the food.

The final surviving report of an inspection of Baltimore School conducted by Dr. McCabe dates from July 1948. On that occasion, she noticed a small improvement in the boys. On the whole, however, there was very little advance since her previous visit. The “so called laundry” was derelict and all the washing for the school was being carried out in the kitchen. The refectory was just the same. The sanitary annex was not in good condition. The recreation hall was not in good condition. The dormitories were not well equipped and the mattresses were very poor and the sheets looked brown and discoloured, which she ascribed to “the poor washing arrangements”. The equipment in the school was poor but the clothing situation it had improved a little. The kitchen was inadequate. The potato cauldron was out of action. Dr. McCabe enquired of the boys about the food and whether it had improved. She recorded their response as follows:

“All stated that it had much improved and they got porridge in the evenings now. But all complained about the shortage of potatoes. I asked did they not get them at their dinner and I was told no, that since the potato-boiler had been out of action that they got extra bread at dinner and sometimes in the evenings they got potatoes cooked on the kitchen range. They never get fish which surprises me as Baltimore is a fishing centre. Eggs very seldom, about twice in the year. Indeed, the catering in this school is totally different to any other boys’ schools that I visit. I really think conditions even in Baltimore need not be so primitive”.

Later in her report, Dr. McCabe commented that she had never seen any genuine effort to improve conditions in Baltimore School. It had been steadily deteriorating for years and she added—

“... it is only by the greatest effort I get the boys any way fed”.

Dr. McCabe concluded her report by recording her view that it would not be advisable to sink money into Baltimore School. She had learned from the Resident Manager that the

Chairman of the Governors was anxious to keep the school open subject to the debt being cleared off by the Resident Manager, which surprised her.

In her last inspection report, Dr. McCabe said of Baltimore School:

“It has to be seen to be believed. The conditions are primitive and I really am sorry for any boy placed in such an Institution”.

Another two years passed before it was closed, although following Dr. McCabe’s first report in 1947, the Inspector had recommended that its certificate as an Industrial School under the Act of 1908 be withdrawn. The records indicate that a decision in relation to closure was postponed pending the outcome of a proposal to establish a new school in Celbridge, Co. Kildare.

### **What led to deterioration and ultimate closure: what the records show**

The records held by the Department provide an insight into the circumstances which led to the wretched conditions in Baltimore School in the 1940s on which Dr. McCabe reported. They also give an insight into the circumstances in which some of the witnesses came to be there.

From June 1937 onwards, the then Chairman of the Governors, Dr. Casey, was making representations both in writing and in person to the Department of Education seeking to increase the numbers in the school with a view to achieving a corresponding increase in the capitation grants received from the Department. One source of pupils was transfers from junior Industrial Schools, which transfers were made by the Minister exercising a statutory power.<sup>140</sup> The view of the then Resident Manager, was that Baltimore was not getting its fair share of transfers. The records disclose that the policy in the Department was to have regard to the natural desire of parents to have their children where they could be visited with the least expense and trouble. Moreover, when a family was divided on committal, as where some children were sent to junior schools and others were sent to senior schools, it was the invariable rule to transfer the junior boy to the school in which the older brother was detained. The clash between Departmental policy, on the one hand, and the need of management of Baltimore School for more children and more capitation grants, on the other hand, is represented as a clash of principles in the acrimonious correspondence which survives. Departmental policy was articulated in a letter sent in September 1937 to Dr. Casey, who was informed that, while the question of accessibility of children in Industrial Schools to their parents and relatives was a matter on which differences of opinion were expressed, there were strong moral and human reasons for ensuring that the principle that, unless there was a definite reason for removing children from all association with their parents or relatives, they should be sent to the nearest available school, was followed as far as possible. Two days later, in a letter to the Department, Dr. Casey stated his view of the applicable principle as follows:

“The fundamental virtue of civil administration is ‘distributive justice’. That means that the *onera* and *favores* i.e. the burdens and the amenities are distributed in due proportion, amongst the citizens, without fear or favour.

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<sup>140</sup> Under the Children Act 1908.

I shall be interested to learn from you, on what principle, save the one suggested by me, you suggest that fair play is being used in the matter of the Industrial Schools”.

Dr. Casey made his case to the officials of the Department in person in late 1937. He was promised that, in addition to children from the district, as many children as possible “who have no homes or relatives” would be sent to Baltimore on transfer from junior schools in order to bring the number of children residing there, if possible, up to eighty (80). In 1938, when Dr. Casey renewed his representations, he was promised as many transfers as possible.

Between 1938 and 1943 numbers had increased in Baltimore to the extent that Dr. McCabe found in 1943 that the accommodation was not adequate for the number of children in residence there. In her report on her inspection in November 1943, Dr. McCabe diagnosed the accommodation problem. The then Resident Manager, had looked about for increases in the number of boys. In particular, she referred to the fact that he had contacted a Children’s Home in Dublin and had got some children from there and gradually built up the numbers. In fact, in subsequent correspondence the Resident Manager acknowledged that Baltimore School was overcrowded at the time of that inspection. There were one hundred and seventy-three boys (173) in residence, although the school was only certified for one hundred and seventy (170).

By 1947, the number of boys in residence had decreased to one hundred and twenty-three (123); eighty-three (83) of whom were committed by the courts and forty (40) placed by Public Assistance Boards. By mid-1948 the number had dropped to ninety-five. At that stage, the Resident Manager made representations to the Minister for Local Government seeking assistance on a number of issues: whether the Department of Education wished to close Baltimore School; whether there had been transfers from junior schools to senior schools since September 1946 and if so, why Baltimore School had not been considered; whether the Minister for Justice could get more boys committed there from the Children’s Court; whether the Minister for Health could increase the weekly allowance for boys placed by Public Assistance Boards; and whether he (the Minister) could find out whether more boys could be sent from the Children’s Home in Dublin. In a memorandum sent to the Minister for Local Government in June 1948, the Resident Manager ascribed the school debt partly to the rise in living costs during World War II, without a corresponding rise in the sum allowed for the maintenance of the boys, and partly to his own mismanagement of the situation during the critical war years.

Later that summer, the Resident Manager got little sympathy from Dr. McCabe when, as she recorded, he complained to her about not having received any children on transfer since 1946 and suggested that, if he got twenty or thirty boys as transfers per year, he could improve conditions. In her last report, she commented that she reminded him that, when he had one hundred and eighty (180) boys, conditions were, if anything, worse.

The surviving records bear out that the Resident Manager’s implicit criticism of the maintenance payment in his memorandum of June 1948 was justified. Just a month later, in July 1948, referring to the Resident Manager’s memorandum to the Minister for Local Government, the Inspector recorded that the Department exercised no control over the acceptance by Baltimore School of boys sent by the Boards of Health. He recorded that

the Department objected to an Industrial School accepting children at lower rates of payment for maintenance than those paid for children committed by the courts. The rate then being paid to Baltimore School for Board of Health children was 15 shillings per week, whereas it received 19 shillings per week in respect of each child committed by a court. It was commented that this was a matter which the Resident Manager himself should have taken up with the Minister for Health or the Board of Health.

In the memorandum of July 1948, the Inspector referred to “many complaints” which had been received from parents and relatives of boys in Baltimore School that their correspondence with their children had not been answered. The Inspector commented that from their remarks, it would appear that they were far from satisfied at the treatment their children received. No record of the complaints survives.

### **Occupational Training: The Boatshed Enterprise**

Attached to Baltimore School there was an enterprise which was variously described in the evidence and in the records as the boatshed, the boathouse and the boatyard. The records of the Department throw some light on the connection between the school and the enterprise, both in financial and practical terms. That it is properly described as an enterprise is clear from a letter from Dr. Casey to the Department in 1937.<sup>141</sup> In making his case for more transfers, he told the Department that, as a matter of fact, they were running the school on the savings of past years and on profits from the boat-shed and their capital was nearly exhausted. An enquiry from the Department at that time elicited the information that two ex-pupils (committed cases) were working in the boat-shed, one as foreman and the other as a trained carpenter. The following year, the Resident Manager informed the Department that he had to run the boat-shed “more or less on commercial lines”. He had to tender for the business. The work was carried out by skilled and trained boat carpenters — some of them trained by Baltimore School formerly. However, having to run the boat repair department on commercial lines did not permit the time he would like to give to instruction and training of the pupils.

When Dr. McCabe reported on her last visit in July 1948, she gave an account of what she described as “the boat repairing department”. It was mostly involved in repair work but some new boats were made there. It was very busy at that time — repairing all of the lifeboats from Rosslare round to Galway. When she was there, two lifeboats were in for repair. At that time there were sixteen men employed in the boat-house. The Departmental records from 1948 show that one of the Resident Manager’s chief objections to the closure of Baltimore School was that it would cause a certain amount of unemployment, including unemployment at the boat-yard. In a memorandum to the Minister, it was commented by an official of the Department that the work in the boatyard had little real connection with the Industrial School. On the potential unemployment problem it was commented as follows:

“Besides it would be gravely unjust to penalise a number of the most unfortunate boys from Dublin in order to provide employment for a few persons at Baltimore”.

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<sup>141</sup> A “Report on Occupational Training provided in Senior Boys Industrial School and Glenree Reformatory” appended to the Cussen Report (P No. 2225) confirms this in relation to the period before 1936.

## **Other Occupational Training**

As has been stated, the evidence of the witnesses suggests that there was no real occupational training provided in Baltimore School. In the memorandum for the Minister of August 1948, it was stated that for many years past Baltimore School had made no pretence of carrying out the purpose for which it was established and was certified, the capture and curing of fish. By 1948, the industries connected with that purpose which were being carried on at the school were boat building and repairing and net-making. Very few of the boys were occupied at those trades. Of the ninety-one boys discharged from Baltimore School in the three years from 1945 to 1947, only one was apprenticed to boat building. In relation to net-making, the comment was that as a trade it was normally carried out by women and "the instructor at the school is a woman!".

A fuller picture of trades taught in Baltimore School and the trades or occupations followed by pupils who were discharged in the 1940s is available in the records of the Department. In 1946, in response to a circular letter to all Industrial Schools, the Resident Manager furnished to the Department a list of the pupils who had been discharged during the period from 31<sup>st</sup> July, 1942 to 31<sup>st</sup> July, 1945, the trade each was employed at while in Baltimore School and the position to which each went when he left the school. According to this list, the pupils partook of one of six trades: boat-building, tailoring, net-making, shoe-making, farming and housework. Of the seventy-five pupils listed, after leaving Baltimore School, only thirteen were apprenticed to a trade or worked in an industrial or trade setting. The vast majority of the boys were employed in farm work or housework, (including hotel work). Two had joined the navy and two had joined the army.

In the three calendar years 1945, 1946 and 1947, ninety-one (91) pupils were discharged from Baltimore School. Forty (40) were discharged to parents or relatives. The remaining forty-nine (49) were discharged to various occupations: twenty-seven (27) to housework, fifteen (15) to farm work, one to blacksmith's work, two to net work, one to boat-building and three to factory work. An interesting feature of the list of boys discharged to employment in the calendar years 1945, 1946 and 1947 furnished by Baltimore School to the Department is that it indicated the weekly wage of which each boy was in receipt, farm work and housework being paid, in the main, at the rate of 7 shillings and 6 pence per week. This information is at variance with the testimony of witnesses who were discharged to house and farm work, many of whom testified that they received no wages. The Committee cannot resolve this conflict because, in the case of Baltimore School, the Committee has not pursued independent inquiries to ascertain whether, in the case of pupils discharged to farm work, the Agricultural Wages Acts, 1936 to 1945 and subsequent legislation in relation to agricultural workers, were complied with, nor has the Committee made any discovery direction directed specifically to discovering the agreements under which former pupils were employed or interventions by the Agricultural Wages Board or an Agricultural Inspector. These lines of inquiry will be open in relation to other institutions.

## **Home leave**

A disturbing feature of the records in relation to Baltimore School held by the Department is that they disclose the existence of a policy (albeit a policy which was reluctantly applied) of satisfying the need of the management to increase numbers by sending there young boys who had no parents, relatives or homes. It is hardly surprising that the records reveal

that home leave was not, and could not be, availed of by many pupils in Baltimore School. In 1944, for instance, the Resident Manager reported to the Department that eighty-three boys were not allowed home. Of those, twenty boys were "Poor Law cases" who had no homes to go to. The remainder were unable to produce the consent of their parents and the Resident Manager surmised that they had no homes to go to either.

### **Complaint in 1953**

The significance of the correspondence in 1953 from a former pupil of Baltimore School, apart from the content and the manner it was dealt with, is the fact that it is the only record of a complaint received by the Department in the 1940s and 1950s from a former pupil complaining about conditions which has been discovered to the Committee by the Department.

In April 1953, the Department received the letter from the former pupil of Baltimore School. The records available disclose that the former pupil was born in 1933, so that he was twenty years of age when he wrote the letter. He had been committed to Baltimore School in 1939, when he was only six and a half years of age, pursuant to the provisions of the Act of 1908, the ground of committal being "found destitute being an orphan". He was committed at the instance of an inspector of the N.S.P.C.C. He was illegitimate. His mother had died when he was three years old. Before committal he was residing with his grandmother who was destitute and in receipt of home assistance.<sup>142</sup> The former pupil described his experience of life in Baltimore School as follows:

"I have been brought up in the Industrial School at Baltimore and during my long term in that Institution I endured very severe sufferings as I was very badly fed, badly clad, perhaps a little bit better than a dog I was fed. It was very difficult for me to learn my lessons at school owing to a hungry stomach. Hunger is a very severe suffering you know, but I suppose you do not know as you have never been that way yourself. I was very weak going in there, and was not much improved getting out. I was sixteen years then. I was very small. I had very bad sight too. That too made it very difficult for me to learn my lessons and the manager neglected to get me seen after. From time to time he was told by the lady doctor to look after me, but he did not until the last couple of years before I left. All the other boys were as hungry and as badly off as me too. So hungry that we had to go roaming the village and the country seeking a bit of bread to keep ourselves alive. It was an awful thing for so many children being in that state and our country flooding with food and money. There is somebody or bodies in the nation that are responsible before God for such past occurrence.

Well what I really want to make known to you is that all that thing has left a mark on me that can never be effaced. Please let me know can you do anything for me or about it. Could the situation be altered".

A short time later, a second letter was received in the Department from the former pupil in which he stated as follows:

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<sup>142</sup> This information was recorded in the context of a report from the Garda Síochána, which concluded: "she has no means and there would be no justification in applying for a maintenance order".

“The lady doctor that visited our school twice a year was Dr. McCabe. She saw how hungry looking we were, how weak and how thin-looking we were. She saw what we were getting to eat. It was easy to know that she wasn’t eating it herself. If she was sh’d comprehend better the situation we were in. If Dr. McCabe have certified above in the office in Dublin that we were getting on alright in the school, she is guilty of a mortal sin and will render an account before God on judgement day”.

The letters were considered in the Department at the highest level, by the Inspector of Industrial Schools, by an Assistant Secretary and by the then Secretary of the Department. The initial assessment of the writer was that he had a “persecution complex” or, alternatively that somebody put him up to it. In the course of the internal communications, the Inspector noted that he had recommended that the school be closed in April 1947 because of its unsatisfactory nature. He stated that the Department had no letters of complaint about the condition of the school—

“... ach bhí fios ag ‘fiadh is fiolar’ ná raibh an scoil le moladh le fada an lá sarar dunadh í...”

The translation provided by the Department of that comment is: “. . . but the dogs in the street knew that the school was not the best for many a day before it closed . . .”. In the course of the communications, a distinction was made between the official reasons (big debts and the complement of children falling because of the school being located so far west) and the other reason for closure of the school. It is to be inferred that the other reason was the unsatisfactory nature of the school. The then Secretary decided that no action was necessary in relation to the letter of complaint. He took solace from the fact that, even though the school was in bad shape, the boys were healthy and the Manager was kind, apparently in reliance on Dr. McCabe’s reports.

The internal communications indicate that the question of responsibility was addressed. It could not be said, it was recorded, that the Minister had no responsibility in the matter and that the former pupil should be told to address his grievance to Dr. Moynihan, the Chairman of the Governors—

“... because the Minister gave a grant for the school and he was responsible for its inspection and at any rate we cannot now put the blame on the bishop three years after the school has closed.”<sup>143</sup>

## Conclusions

The issues which the Committee are mandated by the Act to determine are:

- Did abuse, as defined in the Act, occur in the institution?
- If it did, what was—
  - the nature of the abuse and
  - the extent of the abuse?

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<sup>143</sup> Translation from Irish provided by the Department.

- If it did occur, where does responsibility lie:
  - Does it lie with the management of the institution and, in particular, does responsibility repose in certain persons involved in the management?
  - Does it lie with the regulator of the institution, in this case, the statutory regulator, which was the Department of Education and, in particular, are any officials of the Department answerable for the abuse?

Having identified the issues which the Committee is required to consider and determine, it is necessary to outline the approach to be adopted by the Committee to such consideration and the basis on which a determination may be made, if it is to be made. The principles which the Committee has adopted in relation to receiving evidence and evaluation of evidence have been summarised earlier.<sup>144</sup> The Committee's findings are based only on evidence which would be admissible in a court and the standard applied is proof on the balance of probabilities. In deciding whether to make a finding which identifies an institution in which abuse occurred or an individual responsible for the abuse, in circumstances where the passage of time since the occurrence of the events under scrutiny, and the consequences which flow from that passage of time, are such as to be prejudicial to the institution and/or the individual, the test is whether it is safe to make the finding.

In relation to Baltimore School, it must also be borne in mind that the Committee has not heard evidence of context. However, the Committee has the benefit of the historical record of inspections carried out by a professional, Dr. McCabe, which is arguably of greater probative value than evidence of context given by an expert in the twenty-first century would be.

Moreover, the Committee has not heard evidence or submissions on the issue of responsibility as envisaged in the two phased procedures adopted to give effect to the provisions of the Act.<sup>145</sup> On the other hand, as was indicated earlier,<sup>146</sup> it is considered that to postpone the making of findings until further hearings were conducted would be unlikely to serve any useful purpose.

The only evidence which the Committee has is the sworn testimony of the twenty-one witnesses, the main elements of which have been summarised. The Committee is satisfied that the witnesses were honest and truthful. While not corroborative of each other in the strict sense, the evidence of the witnesses is characterised by similarity of fact and consistency. The Committee is also satisfied that, far from having any ulterior or secondary motivation for giving evidence to the Committee, the motivation of the witnesses was wholly altruistic: it was to ensure the children of today and tomorrow do not experience what they experienced in childhood. As one witness, who echoed what most witnesses expressed put it: "if I saved one child from ever going through Baltimore and the likes, it would be a good thing".

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<sup>144</sup> See chapter 6.

<sup>145</sup> See Opening Statement in Appendix A.

<sup>146</sup> See page 105.

On the other hand, every witness was testifying as to events which occurred more than fifty years ago and some were testifying as to events which occurred sixty years ago, when they were children. Unfortunately, the adversities they experienced did not begin and end with Baltimore School. Some have suffered and continue to suffer from psychiatric illnesses. Some were on medication at the time of hearings. For the avoidance of doubt, it is recorded that the Committee took into account those factors in evaluating the evidence given by the witnesses of their own experiences in childhood, of being subjected to sexual interference and abuse.

As has been stated, there is no admissible evidence apart from the evidence of the witnesses who were pupils in Baltimore School. In particular, those who might have challenged or contested the evidence, the persons who managed Baltimore School at the time, and the persons in authority, the employees, and the fellow pupils in the School who were named by the witnesses as the perpetrators of physical and sexual abuse on pupils, are not available. Given the structure of the ownership and management of Baltimore School, there is no one to put their case. The position of the current Governors is distinguishable from that of Congregations which managed Industrial Schools in the past: for over a half a century, the Governors have merely been trustees of a fund.

The records of the Department are available. While they do not constitute evidence, they are authentic records. Moreover, they are records which were maintained in connection with the fulfilment of the statutory obligations imposed by law<sup>147</sup> on the Minister and his Department. However, those records, including the correspondence from the former pupil in 1953, do not touch on the issues of sexual or physical abuse.

Applying the principles which the Committee has adopted to the evidence which it has heard in relation to the four elements in the definition of abuse<sup>148</sup> the Committee finds:

### *Physical abuse*

- The definition of abuse includes “the wilful, reckless or negligent infliction of physical injury on, or failure to prevent such injury to, the child”.

On the evidence, the Committee accepts that severe physical punishment was a constant feature of discipline in Baltimore School in the late 1930s and in the 1940s and that by its nature and severity it was of an order that by today’s standards could not be regarded as being justified and would properly be categorised as abusive. In endeavouring to adjudicate on the evidence in relation to Baltimore School in isolation, and without hearing evidence of prevailing attitudes to corporal punishment in the 1930s and 1940s, the Committee is at a disadvantage. Nonetheless, it has material available to put the evidence in the context of the times: the Rules adopted in 1933 and the Circular 11/1946. Under the 1933 Rules, punishment in the form of “chastisement with a cane, strap or birch” was permitted, as was “moderate childish punishment with the hand” and “forfeiture of rewards”, but no other punishment. The tenor of the 1946 circular suggests an awareness that, in general, in Industrial Schools the official regulations in relation to discipline and punishment were not being

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<sup>147</sup> The Act of 1908 as amended by the Children Act, 1929 and the Children (Amendment) Act, 1941.

<sup>148</sup> Section 1(1).

faithfully observed. The 1946 circular stipulated that corporal punishment was a punishment of last resort, to be administered only for grave transgressions and never for mere failure at school lessons or industrial training. It further stipulated that in the future corporal punishment should be confined to slapping on the open palm with a light cane or strap.

The question which the Committee has had to address is whether the severe physical punishment which it finds was resorted to in Baltimore School exceeded what was permitted under the rules regulating Industrial Schools at the relevant time. The Committee concludes that the type of punishment described by the witnesses was qualitatively and quantitatively different from the type of personal chastisement envisaged in the 1933 Rules. The Committee also concludes that after 1946, punishment was meted to boys in Baltimore School in excess of what was permitted under the regulations then in force. However, the Committee has no proof that the Resident Manager of Baltimore School actually received the 1946 circular.

Applying the principles which it has adopted, the Committee finds that physical abuse was prevalent in Baltimore School in the 1930s and 1940s.

### *Sexual abuse*

- The definition of abuse includes “the use of the child by a person for sexual arousal or sexual gratification of that person or another person”.

The Committee has already recorded its opinion of the testimony of witnesses who alleged that they themselves had been sexually abused in Baltimore School. It would be trite to say that the Committee found the witnesses to be honest, truthful and convincing witnesses, but that it is not in a position to say that what they described happened. The Committee is satisfied that there was in Baltimore School during the late 1930s and the 1940s one serial abuser and, as a matter of probability, there were other abusers. The abusers were persons employed in the School, who exercised some degree of authority over the boys. The sexual activity involved ranged from fondling to masturbation to oral sexual interference to anal penetration. The abuse was attended by aggression and violence. On the evidence, the Committee is also satisfied that older pupils sexually abused younger pupils. Bullying and physical and sexual aggression inducing fear and anxiety were a common feature of life in Baltimore School.

### *Identifying Perpetrators*

- It is the view of the Committee that it would not be safe to name the persons whom the Committee considers, as a matter of probability, were the perpetrators of physical and sexual abuse for the following reasons:
  - In the case of sexual abuse, the gravity of a finding of the most serious forms of abuse.
  - In the case of physical abuse, the fact that the Committee has no evidence that the perpetrator was aware of the relevant regulations.

- The fact that the evidence to support the findings could not be challenged or contested by the perpetrators.
- The fact that there is no person or body who could challenge or contest the evidence on behalf of the alleged perpetrators,
- The absence of any contemporaneous written account of the existence of abuse.

Subject to one exception, for the same reasons, it is the view of the Committee that it would be unsafe to make a finding ascribing knowledge of the existence, extent and nature of the physical and sexual abuse perpetrated by others to named persons in charge of the management, administration and operation of Baltimore School. The exception is that, as has already been stated, it is probable that the Resident Manager and his assistant were aware of the occurrence of peer abuse.

There is no evidence that any official of the Department had any knowledge of the existence of such abuse and it was not suggested by the witnesses that there was such knowledge.

### *Neglect and emotional abuse*

- The definition of abuse includes—
  - “(c) failure to care for the child which results in serious impairment of the physical or mental health or development of the child or serious adverse effects on his or her behaviour or welfare, or
  - (d) any other act of omission towards the child which results in serious impairment of the physical or mental health or development of the child or serious adverse effects on his or her behaviour or welfare”.

The Committee is satisfied on the evidence that the living conditions which prevailed in Baltimore School through the late 1930s and 1940s until the closure of the School in September 1950 were so bad and the care of the children so deficient and neglectful as to constitute abuse of the children. The Committee considers that it is not improper to make such a finding in the absence of evidence of context, because the surviving records of the Department so unequivocally provide the context.

As to why the children were treated so badly, all the Committee can do is to make a judgment based on the historical record, such as it is. It appears to the Committee that the appalling conditions and deprivation which evolved through the 1940s were due to a combination of factors:

- As acknowledged by the Resident Manager himself, to some extent bad management, which gave rise to debt.
- Insufficient pupil numbers because of the remoteness of the institution which, in turn, resulted in insufficient funding.
- The inadequacy of the capitation fee and, in particular, the capitation fee payable in relation to children placed by the Public Assistance Boards, a fact acknowledged in the Department.
- Insufficient numbers of, and untrained and unsuitable, personnel.

The tenor of the internal communications within the Department following a receipt of the complaint from the former pupil in 1953 was that responsibility for the treatment of the boys in Baltimore School was shared by the Department and the management of the school. It is impossible to gainsay that assessment at this remove, save to say that the historical record vindicates Dr. McCabe and the inspector in the Department.

In August 1948, when the representations made to the Minister for Local Government were being considered, a memorandum was prepared for the then Minister by an Assistant Secretary in the Department, who expressed the opinion that the failure of Baltimore School was inevitable, and, in support of his opinion, quoted from a minute of 8<sup>th</sup> February, 1897 of the then Inspector of Industrial Schools, Sir Rowland Blennerhassett, who wrote:

“... I desire however to lay stress on the circumstances that I have continually stated my settled conviction that Baltimore can never fulfil the end for which it was founded as long as it is administered as an Industrial School”.

It is a fair assumption that neither author would have anticipated that a statutory commission of inquiry would be noting his views fifty-five years or one hundred and six years later. It is also a fair assumption that neither would have envisaged that former pupils would be listened to and weight given to their testimony.

That there are important lessons to be learned from the Committee's inquiry into Baltimore School is undoubtedly the case. However, it is the view of the Committee that, rather than extrapolate from the evidence gathered and the findings made by the Committee in relation to Baltimore School in isolation, it would be preferable if these issues were considered in a broader factual matrix when the Committee has had an opportunity to inquire into a number of Industrial Schools and has an overview of the “bigger picture”. The witnesses who came forward have made a valuable contribution to the bigger picture.

**TABLE I**  
**RULES AND REGULATIONS**  
**FOR THE**  
**CERTIFIED INDUSTRIAL SCHOOLS**  
**IN SAORSTÁT ÉIREANN**

Approved by the Minister for Education, under the 54<sup>th</sup>

Section of the Act, 8 Edw. VII., Ch. 67.

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**1. NAME AND OBJECT OF SCHOOL.**

Baltimore Fishery Industrial School, Co. Cork, for Roman Catholic Boys, for training in trades connected with the capture and curing of Fish.

**Date of Certificate.** 12<sup>th</sup> August, 1887.

Number for which Certified . . . . Accommodation is provided in this School for only 170 children. This number shall not be exceeded at any one time. No child under the age of six years is chargeable to the State Grant, and of the children of the age of six years and upwards not more than 150 are chargeable to that Grant.

**2. CONSTITUTION AND MANAGEMENT.** A Committee of Management

**3. CONDITIONS OF ADMISSION.**

Being Roman Catholic Boys sent under the provisions of the Children Act, 1908, or the School Attendance Act, 1926, or the Children Act, 1929, or otherwise as the Management may determine.

**4. LODGING.**

The children lodged in the School shall have separate beds. Every decision to board out a Child, under the 53<sup>rd</sup> Section of the Children Act, 1908, shall have received previous sanction from the Minister for Education, through the Inspector of Industrial Schools.

**5. CLOTHING.**

The children shall be supplied with neat, comfortable clothing in good repair, suitable to the season of the year, not necessarily uniform either in material or colour.

**6. DIETARY.**

The Children shall be supplied with plain wholesome food, according to a Scale of Dietary to be drawn up by the Medical Officer of the School and approved by the Inspector. Such food shall be suitable in every respect for growing children actively employed and supplemented in the case of delicate or physically under-developed

children with such special food as individual needs require. No substantial alterations in the Dietary shall be made without previous notice to the Inspector. A copy of the Dietary shall be given to the Cook and a further copy kept in the Manager's Office.

**7. LITERARY INSTRUCTION.**

Subject to Rule 8, all children shall be instructed in accordance with the programme prescribed for National Schools, Juniors (that is, children under 14 years of age) shall have for literary instruction and study not less than four and a half hours five days a week and Seniors (that is children of 14 years of age and upwards) shall have for the same purpose not less than three hours, five days a week; at least two-thirds of the periods mentioned to be at suitable hours between breakfast and dinner, when the most beneficial results are likely to be obtained. Religious Instruction may be included in those periods, and, in the case of Seniors, reasonable time may be allotted to approved general reading. Should the case of any individual pupil call for the modification of this Rule it is to be submitted to the Inspector for approval. Senior boys shall receive lessons in Manual Instruction which may be interpreted to mean training in the use of carpenter's tools.

**8. SCHOOLS.**

The Manager may arrange for children to attend conveniently situated schools, whether Primary, Continuation, Secondary or Technical, but always subject to (a) the sanction of the Inspector in each case, and (b) the condition that no increased cost is incurred by the State.

**9. INDUSTRIAL TRAINING.**

Industrial employment shall not exceed three and a half hours daily for Juniors or six hours daily for Seniors. The training shall, in the case of boys, be directed towards the acquisition of skill in and knowledge of farm and garden work or such handicraft as can be taught, due regard being given to fitting the boys for the most advantageous employment procurable. The training for girls shall in all cases be in accordance with the Domestic Economy Syllabus, and shall also include, where practicable, the milking of cows, care of poultry and cottage gardening.

Each school shall submit for approval by the Inspector a list setting forth the occupations which constitute the industrial training of the children and the qualifications of the Instructors employed to direct the work. Should additional subjects be added or any subject be withdrawn or suspended, notification shall be made to the Inspector without delay.

**10. INSPECTION.**

The progress of the children in the Literary Classes of the Schools and their proficiency in Industrial Training will be tested from time to time by Examination and Inspection.

**11. RELIGIOUS EXERCISES AND WORSHIP.**

Each day shall be begun and ended with Prayer. On Sundays and Holidays the Children shall attend Public Worship at some convenient Church or Chapel.

**12. DISCIPLINE.**

The Manager or his Deputy shall be authorised to punish the Children detained in the School in case of misconduct. All serious misconduct, and the Punishments inflicted for it, shall be entered in a book to be kept for that purpose, which, shall be laid before the Inspector when he visits. The Manager must, however, remember that the more closely the School is modelled on a principle of judicious family government the more salutary will be its discipline, and the fewer occasions will arise for resort to punishment.

**13. PUNISHMENTS.**

Punishments shall consist of:—

- (a) Forfeiture of rewards and privileges, or degradation from rank, previously attained by good conduct.
- (b) Moderate childish punishment with the hand.
- (c) Chastisement with the cane, strap or birch.

Referring to (c) personal chastisement may be inflicted by the Manager, or, in his presence, by an Officer specially authorised by him, and in no case may it be inflicted upon girls over 15 years of age. In the cases of girls under 15, it shall not be inflicted except in cases of urgent necessity, each of which must be at once fully reported to the Inspector. Caning on the hand is forbidden.

No punishment not mentioned above shall be inflicted.

**14. RECREATION.**

Seniors shall be allowed at least two hours daily, and Juniors at least three hours daily, for recreation and shall be taken out occasionally for exercise beyond the boundaries of the school, but shall be forbidden to pass the limits assigned to them without permission.

Games, both indoor and outdoor, shall be encouraged ; the required equipment shall be provided ; and supervision shall be exercised to secure that all children shall take part in the Games.

Fire Drill shall be held once at the least in every three months, and each alternate Drill shall take place at night after the children have retired to the dormitories. A record of the date and hour of each Drill shall be kept in the School Diary.

**15. VISITS (RELATIVES AND FRIENDS).**

Parents, other Relations, or intimate Friends, shall be allowed to visit the children at convenient times, to be regulated by the Committee or Manager. Such privilege is liable to be forfeited by misconduct or interference with the discipline of the School by the Parents, Relatives, or Friends. The Manager is authorised to read all Letters which pass to or from the Children in the School, and to withhold any which are objectionable.

Subject to the approval of the Inspector, holiday leave to parents or friends may be allowed to every well conducted child who has been under detention for at least one year, provided the home conditions are found on investigation to be satisfactory. Such leave shall be limited to seven days annually.

In a very special or urgent case, such as the serious illness or death of a parent, the Manager may also, at his discretion, if applied to, grant to any child such brief leave of absence as will enable the child to spend not more than one night at home: the circumstances to be reported forthwith to the Inspector's Office.

**16. CHILDREN PLACED OUT ON LICENCE OR APPRENTICED.**

Should the Manager of a School permit a Child, by Licence under the 67<sup>th</sup> Section of the Children Act of 1908, to live with a trustworthy and respectable person, or apprentice the Child to any trade or calling under the 70<sup>th</sup> Section of the Act, notice of such placing out on Licence, or apprenticeship of the Child, accompanied by a clear account of the conditions attaching thereto, shall be sent, without delay, to the Office of the Inspector.

**17. STATE GRANT.**

Under the present financial arrangement no Child will be paid for out of the Funds voted by the Oireachtas until it has reached the age of Six Years. A Child, however, under the age of Six Years may be sent to the School under an Order of Detention signed by a District Justice ; but in such case the State allowance for maintenance will not be made until it shall appear from the Order of Detention that the Child is Six Years old — from that date only will it be regularly paid for.

**18. PROVISION ON DISCHARGE.**

On the discharge of a Child from the School, at the expiration of the period of Detention, or when Apprenticed, he (or she) shall be provided, at the cost of the Institution, with a sufficient outfit, according to the circumstances of the discharge. Children when discharged shall be placed, as far as practicable, in some employment or service. If returned to relatives or friends, the travelling expenses shall be defrayed by the Manager, unless the relatives or friends are willing to do so. A Licence Form shall be issued in every case and the Manager shall maintain communication with discharged children for the full period of supervision prescribed in Section 68 (2) of the Children Act, 1908. The Manager shall recall from the home or from employment any child whose occupation or circumstances are unsatisfactory, and he shall in due course make more suitable disposal.

**19. VISITORS.**

The School shall be open to Visitors at convenient times, to be regulated by the Committee (or Manager), and a Visitors' Book shall be kept. The term "visitors" means members of the Public interested in the school.

**20. TIME TABLE.**

A Time Table, showing the Hours of Rising, Work, School Instruction, Meals, Recreation, Retiring, etc., shall be drawn up, shall be approved by the Inspector of Industrial Schools, and shall be fixed in the Schoolroom, and carefully adhered to on all occasions. All important deviations from it shall be recorded in the School Diary.

**21. JOURNALS, etc.**

The Manager (or Master or Matron) shall keep a Journal or Diary of everything important or exceptional that passes in the School. All admissions, discharges, licences and escapes shall be recorded therein, and all Record Books shall be laid before the Inspector when he visits the School.

**22. MEDICAL OFFICER.**

- I. A Medical Officer shall be appointed who shall visit the school periodically, a record of his visits being kept in a book to be provided for the purpose.
- II. Each child shall be medically examined on admission to the School, and the M.O.'s written report on the physical condition of the Child should be carefully preserved.

A record of all admissions to the School Infirmary shall be kept, giving information as to ailment, treatment, and dates of admission and discharge in each case. Infirmary cases of a serious nature and cases of more than three days duration shall be notified to the Inspector's Office.

The M.O. shall make a quarterly examination of each child individually, and give a quarterly report as to the fitness of the children for the training of the school, their general health, and the sanitary state of the school. The quarterly report shall be in such form as may be prescribed from time to time by the Minister for Education. Application shall be made to the Minister for the discharge of any child certified by the M.O. as medically unfit for detention.

Dental treatment and periodic visits by a Dentist shall be provided and records of such visits shall be kept.

In the event of the serious illness of any child, notice shall be sent to the nearest relatives or guardian and special visits allowed.

**23. INQUESTS.**

In the case of violent death, or of sudden death, not arising in the course of an illness while the child is under treatment by the M.O., a report of the circumstances shall be at once made to the local Gardaí for the information of the Coroner, a similar report being at the same time sent to the Inspector.

**24. RETURNS, etc.**

The Manager (or Secretary) shall keep a Register of admissions and discharges, with particulars of the parentage, previous circumstances, etc., of each Child admitted, and of the disposal of each Child discharged, and such information as may afterwards

be obtained regarding him, and shall regularly send to the Office of the Inspector the Returns of Admission and Discharge, the Quarterly List of Children under detention, and the Quarterly Accounts for their maintenance, and any other returns that may be required by the Inspector. All Orders of Detention shall be carefully kept amongst the Records of the School.

**25. INSPECTOR.**

All Books and Journals of the School shall be open to the Inspector for examination. Any teacher employed in the school who does not hold recognised qualifications may be examined by the Inspector, if he thinks it necessary, and he shall be informed of the qualifications of new teachers on their appointment. Immediate notice shall be given to him of the appointment, death, resignation, or dismissal of the Manager and Members of the School Staff.

**26. GENERAL REGULATIONS.**

The Officers and Teachers of the School shall be careful to maintain discipline and order, and to attend to the instruction and training of the Children, in conformity with these Regulations. The Children shall be required to be respectful and obedient to all those entrusted with their management and training, and to comply with the regulations of the School.

**27. REMOVAL TO A REFORMATORY.**

Whenever a Child is sent to a Reformatory School, under the provisions of the 71<sup>st</sup> or 72<sup>nd</sup> Sections of the Children Act of 1908, the Manager shall, without delay, report the case to the Inspector.

**28. CHILD NOT PROFESSING RELIGIOUS PERSUASION OF THE MANAGER TO BE REMOVED BY THE SCHOOL.**

In order to insure a strict and effectual observance of the provisions of the 68<sup>th</sup> Section of the Children Act of 1908, in every case in which a Child shall be ordered to be detained in a School managed by Persons of a different Religious Persuasion from that professed by the Parents, or surviving Parent, or (should that be unknown), by the Guardians or Guardian of such Child; (or should that be unknown) different from that in which the Child appears to have been baptized or (that not appearing), different from that professed by the Child the Manager or Teachers of such School shall, upon becoming acquainted with the fact, or having reason to believe that such is the fact, give notice in writing, without delay, to the Inspector, who will thereupon immediately take any necessary steps in the matter.

**29. ESCAPES.**

Should any Escape from the School occur, the Manager shall, with as little delay as possible, notify the particulars to the nearest Gardaí Station, to the Gardaí Superintendents of the County and adjoining Counties, and to the Inspector's Office.

**These Rules have been adopted by the Managers of**

Baltimore Industrial School, Co. Cork.

T. Coakley C.C.

**Corresponding Manager.**

11<sup>th</sup> Jan 1933.

**Approved under the 54<sup>th</sup> Section of the Children Act of 1908.**

T Ó Deirg

**Minister for Education**

4 Feb 1933.

## TABLE J

AN ROINN OIDEACHAIS,  
BRAINSE IN SCOILEANNA CEARTÚCHÁIN  
AGUS NA SCOILEANNA SAOTHAIR,  
TEACH TALBÓID,  
SRÁID TALBÓID,  
BAILE ÁTHA CLIATH  
1 Samhain, 1946.

### Cir. No. 11/1946

Don Bhainisteoir Comhruitheach  
Scoil Saothair

#### Discipline and Punishment in Certified Schools

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The Minister for Education has had under consideration the question of discipline and punishment in Certified Schools, and he desires to impress on the Resident Managers their personal responsibility to ensure that the official regulations on this matter are faithfully observed by all the members of the staffs of these schools.

It is appreciated that the maintenance of discipline in these schools presents considerable difficulty. Many of the children committed to them come from unsatisfactory homes, where discipline, if not altogether lacking, is very defective. Moreover some of them may have acquired bad habits which are difficult to cure. The inculcation of principles of obedience, truthfulness, and good conduct in children thus handicapped is naturally a slow process which calls for much sympathy, understanding, patience, and tact on the part of those entrusted with their training.

It is only natural to expect that some of these children, owing to their family background, will respond but slowly to the best efforts of their teachers: speedy reforms cannot be expected in such cases. Due recognition should be given to every effort at improvement which a child makes. Encouragement by way of rewards, privileges, etc., is useful stimulus to good behaviour, and should be employed as much as possible. This principle in the training of the young is well expressed in the Irish saying:— “Mol an óige agus tiocfaidh sí”.

While it is true that punishment plays an important part in the training and discipline of the young, its use as a means of correction demands much discretion, especially in the case of children detained in Certified Schools. Where punishment has to be resorted to, it should be confined, as far as possible, to the forfeiture of rewards and privileges obtained by good conduct. The privilege of home-leave should not, however, be withdrawn as a punishment for misconduct except in very special cases and where the Manager has serious reason to anticipate a repetition of misconduct during the period of home leave.

Corporal punishment should be resorted to only where other forms of punishment have been found unsuccessful as a means of correction. It should be administered only for grave

transgressions, and in no circumstances for mere failure at school lessons or industrial training. Corporal punishment should in future be confined to the form usually employed in schools, viz., slapping on the open palm with a light cane or strap. This punishment should be inflicted only by the Resident Manager or by a member of the school staff specially authorised by him for the purpose. Any form of corporal punishment not in accordance with the terms of this circular is strictly prohibited.

Any other form of punishment which tends to humiliate a child, or to expose him (or her) to ridicule before the other children, is also forbidden. Such forms of punishment would include special clothing, cutting off of a girl's hair (as a punishment), exceptional treatment at meals, etc. Resident Managers will recognise that any instances of improper treatment and punishment in Certified Schools tend to cast an undeserved reflection on their schools generally, and the Minister relies on their co-operation in seeing that such instances do not occur in the future.

The Department's Medical Inspector is willing to advise Resident Managers regarding any children who are specially troublesome or difficult to control if her attention is drawn to such cases when she visits a school in the course of her inspection.

You are requested to acknowledge receipt of this circular and to bring it to the notice of all the members of the staff of your school, especially those directly concerned with the maintenance of discipline.

M. Ó Siocfradha  
CIGIRE.

# Newtownforbes Industrial School Module

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## Introduction

The Committee has already publicised the fact that it is investigating allegations of abuse in Our Lady of Succour Industrial School, Newtownforbes, Co. Longford, (the School) by the publication of advertisements in national and local newspapers in February 2003. It had been intended to conduct the hearings in relation to those allegations in accordance with the procedures outlined in the Framework of Procedures. The pre-hearing procedures outlined in the Framework have been followed. But for the intervention of the review process, the Books of Documents for the module would have been circulated by now.

The process of evidence gathering in preparation for the hearings which has taken place in relation to the module gives a valuable insight into the process by which the Committee's inquiry was intended to be fulfilled. Therefore, it is the view of the Committee that it is in the interest of the participants in the Committee's work and the general public that the process involved in bringing the module to the stage it has reached is outlined.

## Caveat

It is important that the following matters are stressed:

### *Allegations remain allegations*

- The Committee has not heard any evidence or made any finding in relation to the School. Allegations made in relation to the School remain allegations and have not acquired any other status in the course of the preliminary investigations. The identification of the School leads to the identification of the managers of the School, the Congregation of the Sisters of Mercy. No criticism whatsoever of the Congregation, which is referred to as the "Management Respondent", is implicit in publicising the fact that the Committee is investigating allegations in relation to the School or in furnishing the information contained in this chapter.

### *Sensitivity of Complainants*

- The Committee is acutely conscious of the sensitivities of former pupils of Industrial Schools in relation to being identified by number and treated as part of a process. The Committee hopes that the Complainants who have come forward to recount their

experiences in the School will not be offended by the manner in which the information contained in this chapter is conveyed.

## **The School**

The School was certified as an Industrial School for girls in 1869. It closed in 1969. It was under the management of the Management Respondent at all times.

The School received children committed by the Courts, children placed by local authorities under Public Assistance Acts, and later Health Acts, and it also accepted voluntary admissions. The information available to the Committee indicates that over the period from 1939 to 1969 the total number of children who resided in the School exceeded three hundred and fifty (350). The numbers in residence fluctuated from time to time. For instance, at the end of 1947 the total number of children in residence was one hundred and seventy (170), of whom one hundred and fifty-four (154) had been committed by the Courts and nine placed under Public Assistance Acts. The remaining seven were voluntary admissions. At the end of 1957, the total number in residence had dropped to seventy-two (72): forty-nine (49) children committed by the Courts; sixteen (16) children placed under the Health Acts and seven voluntary admissions. Eight years later, at the end of 1965, the total had dropped to thirty (30).

## **The Complainants**

Six Complainants wish to give evidence in relation to the School. Their combined periods of residence extend from 1939 to 1965, the individual periods being:

- From 1939 to 1948
- From 1939 to 1949
- From 1942 to 1956
- From 1944 to 1956
- From 1946 to 1954
- From 1951 to 1965

The year of birth of the oldest Complainant is 1932.

## **Submission of Complainants' statements**

Only two statements had been received when the deadline for submission of Complainants' statements was imposed: one in November 2001 and the other in December 2001. Of the remaining Complainants' statements, three were submitted in May 2002 and one at the end of June 2002. One Complainant wishes to give evidence about two other Industrial Schools in which she spent periods of her childhood.

## **Respondents**

The Complainants have made allegations against twelve individuals. Three of the individuals are named by more than one Complainant. Of the twelve individuals, all but three are dead. The respective years of birth of the surviving three individuals are: 1912,

1920 and 1922. All three were members of the Congregation at the relevant period. One is no longer a member of the Congregation.

The Management Respondent and the Department, as the statutory regulator of Industrial Schools, are also answering the Complainants' allegations as Respondents and have submitted statements.

## **Legal representations**

In addition to the legal representation of the Committee, it was envisaged that the following parties would each have legal representation before the Committee in the module:

- Each of the six Complainants.
- The Management Respondent, whose legal representatives also represent the two surviving members of the Congregation who are named in the process.
- The individual who is named and is no longer a member of the Congregation.
- The Department.

It was also envisaged that the Management Respondents of the two other institutions in which one of the Complainants spent part of her childhood would seek some level of representation at the hearing of the module, as provided in the Framework document.

## **Procedural hearings**

There were two procedural hearings in relation to the module at the end of 2002, which dealt with the following issues:

### ***Application of Management Respondent***

- The first procedural hearing was at the instigation of the Management Respondent and dealt with issues in relation to discovery, including its application that the Committee make directions for discovery pursuant to the Act<sup>149</sup> in respect of:
  1. Records in the possession of the I.S.P.C.C. and the N.S.P.C.C. concerning each of the six Complainants in the module;
  2. Court records concerning the detention of each of the six Complainants; and
  3. Medical and psychiatric records of three of the Complainants.

The application was heard at a procedural hearing held in private on 14<sup>th</sup> November, 2002, at which all of the interested parties were legally represented as follows:

- the Management Respondent by Senior Counsel and Junior Counsel, instructed by a firm of solicitors,

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<sup>149</sup> Section 14(1).

- three of the Complainants by Junior Counsel, instructed by a firm of solicitors, and
- two of the Complainants by Junior Counsel, instructed by a firm of solicitors.

The Committee's legal team also appeared. The Committee ruled on the application in a ruling of 26<sup>th</sup> November, 2002, which was furnished to the parties and published on the Commission's website. The Committee refused to make discovery directions in relation to I.S.P.C.C. records, N.S.P.C.C. records or Court records. However, the Committee, by a majority, decided in principle that discovery directions should be made in relation to medical and psychiatric records of Complainants. One member of the Committee dissented in point of principle from the decision to direct discovery of medical and psychiatric records, on the ground that disclosure of contemporary notes and records in relation to treatment or counselling of a patient might impact adversely on the therapeutic relationship between the particular clinician and the particular patient or, in general, ethically compromise members of a caring profession.

### *Application of the Department*

- The second procedural hearing was held at the instigation of the Department on 6<sup>th</sup> December, 2002. It was held in private. It dealt with an application by the Department to vary a direction for discovery made on 8<sup>th</sup> October, 2002 in relation to the School. The discovery direction was varied in some minor respects.

### **Discovery directions issued**

The following directions for discovery and production of documents relevant to the module have been made, and affidavits of discovery and copy documents have been submitted on foot thereof:

- A direction dated 8<sup>th</sup> October, 2002, which issued to the Department.
- A direction dated 8<sup>th</sup> October, 2002, which issued to the Management Respondent.
- A direction dated 25<sup>th</sup> November, 2002, which issued to the Bishop of Ardagh and Clonmacnoise.
- The directions which issued to the three Complainants following the ruling of 26<sup>th</sup> November, 2002 on the application of the Management Respondent in the first procedural hearing.

The volume of documentation discovered is indicative of the level of work involved in preparing and submitting an affidavit of discovery and in analysing the discovery. The discovery by the Management Respondent, the Bishop of Ardagh and Clonmacnoise and the three Complainants together yielded documents which comprised 11,000 pages. The documentation discovered by the Department comprised four thousand, eight hundred and eighty-eight (4,888) documents, containing approximately twenty thousand, five hundred and sixty-six (20,566) pages. On analysis, it was found that some of the material discovered by the Department was not pertinent to the issues which arise in the module. The Committee ascribes this to a cautious approach on the part of the Department. A considerable portion of the material discovered by the Department is common to all Industrial Schools and only a small portion is specifically related to the School.

## **Advertisement**

In February 2003, the Committee advertised in the national newspapers and in local newspapers in circulation in the Co. Longford area inviting contacts from persons who have evidence relevant to the module. The advertisement was directed at the following categories of potential witnesses:

- Professional and other persons who worked in or had contact with the School or its pupils.
- Persons who had commercial dealings with the School.
- Residents of Newtownforbes and the surrounding area who are familiar with the role of the School in their community.
- Persons who, as children, resided in the School and consider that their experience of life in the School was positive or benign.

The intention of the Committee to seek to elicit relevant testimony from all sources was announced in the Framework and the intention to place advertisements of the type placed in relation to the School was notified publicly.

The Committee is aware that its policy of inviting persons whose perception of their experiences in an Industrial School is positive to make contact with the Committee has angered and distressed former pupils. The Committee regrets that and avails of this opportunity to explain why it considers it should ascertain whatever evidence exists as to life in institutions in the past. It is not because of any concern that witnesses who have offered to testify as to abuse they have suffered may not be telling the truth. It is because the Committee is charged with establishing the whole picture, including how much abuse occurred in an institution and why it occurred. If there are people who have good memories of childhood in a particular institution, while other former pupils have bad memories, part of the whole picture is finding out why that is the position.

In relation to the level of response to the advertisement, in broad terms, twice as many former pupils of the School who indicated that they wished to relate negative experiences made contact as former pupils who indicated that they wished to relate positive or good experiences. There was only one contact from a person who was not a former pupil.

## **What the process illustrates**

In examining the process in relation to this module, one sees the whole process in microcosm. The features which the Committee considers should be noted are as follows:

- The fact that a period of three years had elapsed from the announcement of the establishment of this Commission before the majority of the Complainants' statements were submitted. Because of her age, the Committee tried to expedite the hearing of the Complainant whose statement was first received, but was unsuccessful. When the Committee decided to prioritise this module, it decided to commence the evidential hearings in December 2002. This was not possible. Irrespective of the level of resources available to the Commission, the Complainants who have committed to the process for so long could not have got a hearing before 2003.

- This module illustrates the volume of work involved in preparing for a hearing, not only on the part of the Committee’s legal team, but also on the part of the parties in the process. It is recognised that the Management Respondent and the Department had to deploy considerable resources to meeting the deadlines imposed by the Committee in relation to production of statements and making discovery. The Committee considers that discovery of documents is an important element in the gathering of evidence in relation to the matters it is investigating and cannot be curtailed. It brings to the fore issues which are relevant to the Committee’s inquiry, which may not be raised by Complainants in their statements. Lines of inquiry are often indicated in discovered documentation, of which Complainants may be unaware. The answers to the big questions which are posed in the Committee’s mandate are probably only ascertainable at this remove with the aid of contemporaneous records, the big questions being—
  - what was the extent of abuse in institutions?
  - why did it occur?
- The process to date in this module illustrates the extent to which the Management Respondent, as it is entitled to do, requires the Committee to adopt a forensic approach to the investigation. It also illustrates the extent to which adopting such an approach may intrude into areas which some Complainants might not wish to open up.
- The level of probable involvement of legal personnel in the hearings in a module is indicated.

While the Committee can identify the foregoing features of the process, it cannot indicate the extent to which this module reflects issues which arise across the board in relation to residential institutions. The Committee is advised by its legal team that it does reflect most of the issues which recur in relation to neglect and emotional abuse.

CHAPTER **10** **The Investigation Committee:  
Department of Education &  
Science as Respondent to  
Allegations of Abuse**

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### **The Department as a Respondent**

As the data set out in Chapter 12 illustrates, the Department has, or has had, regulatory responsibility for institutions in relation to which Complainants have made one thousand, nine hundred and twenty-one (1,921) complaints, which is equivalent to 91 per cent of all complaints. The institutions in respect of which the complaints are made are, or were, classifiable as follows:

- Industrial School
- Place of Detention
- Reformatory School
- Secure unit
- Special School
- Day Primary or Secondary School
- Residential Home for children with sight and hearing disability.

Therefore, as regards the Committee's mandate to determine the extent to which systems of supervision, inspection and regulation of institutions contributed to the occurrence or incidence of abuse in the past, the major player is the Department. The ability of the Committee to do its work in a fair, proper, efficient and cost-effective manner from the outset has been contingent on the Department in its role as a Respondent engaging fully with the Committee and promptly and properly fulfilling its statutory obligations in that role.

The principal statutory obligations of the Department, as Respondent, are to—

- provide (subject to the entitlement to refuse) statements in response to requests pursuant to the Act,<sup>150</sup> and
- comply with directions for discovery and production of documents made under the Act.<sup>151</sup>

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<sup>150</sup> Section 23(2)(b).

<sup>151</sup> Section 14.

Apart from fulfilling its statutory obligations, the Department, as the repository of information in relation to institutions and the personnel who worked in institutions in the past, is in a position to furnish information to the Committee which will enable it to advance its investigations and, in particular, to trace individuals who have been named by Complainants as having committed abuse.

The Committee is not satisfied that, since its establishment, it has received the level of cooperation which it is entitled to expect to receive from the Department of State which is its statutory sponsor. Moreover, it has experienced difficulty in securing compliance with its statutory requests and directions by the Department in its role as Respondent.

Responses to requests for information, for example, information in relation to teachers who are named by Complainants, have not been furnished promptly. It is fair to record that the stance of the Department is that it was not possible for it to respond promptly due to increased demands placed on it by the Commission.

It has been necessary for the Committee to schedule procedural hearings to procure the cooperation of the Department and secure compliance with statutory requests and directions. Table K<sup>152</sup> contains details of the procedural hearings in which the Department has been involved. On two occasions, on 24<sup>th</sup> January, 2002 and on 4<sup>th</sup> March, 2003, the Committee has considered it necessary to require the attendance of the Secretary General of the Department on foot of a direction to attend under the Act.<sup>153</sup>

In relation to the submission of Respondents' statements, the Committee acknowledges that there are currently no outstanding issues. All of the statements which were requested, approximately one thousand, nine hundred (1,900), were received by the Committee by mid July 2003. However, as with all areas of interaction of the Department, as Respondent, with the Committee, the performance of the Department has to be measured against the fact that initially the Commission was given two years to complete its work and its current mandate only extends to the 22<sup>nd</sup> of May, 2005. The performance of the Department must also be measured against the fact that the Department is fully conversant with the issues in relation to the antiquity of the complaints being investigated, which the Committee has had to confront practically since its establishment.

The Committee's principal area of concern in relation to the performance by the Department of its obligations as Respondent relates to the manner in which the Department has complied with directions for discovery and production of documents. While issues have arisen in relation to compliance with discovery directions in relation to National Schools, in this chapter, the emphasis will be on directions for discovery in relation to the fifty-two Industrial Schools and the two Reformatory Schools which were in existence in 1940 and the Reformatory School for girls which was subsequently established. The Department had direct regulatory responsibility for children committed by the Courts to these fifty-five residential schools.

The Committee recognises the enormity of the task which the management of the records of Industrial and Reformatory Schools involves. It also recognises the difficulties which

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<sup>152</sup> Table K is at the end of this chapter.

<sup>153</sup> Section 14.

the Department has faced in meeting the competing demands in relation to those records: requests from the Garda Síochána in relation to criminal proceedings; complying with orders for discovery in civil litigation; dealing with requests under the Freedom of Information Act 1997; and complying with discovery directions issued by the Committee. Notwithstanding that, it is essential to the fulfilment of the Committee's mandate that the Department is properly resourced to deal with directions for discovery and for production of documents. In the Commission's Memorandum of 29<sup>th</sup> November, 2002<sup>154</sup> in relation to its request for additional resources, the view was expressed that, up to that time, there had been an absence of Departmental policy to deploy sufficient appropriate resources to ensure that the Department could comply with its statutory obligations as Respondent in the process. The Memorandum concluded that, if the situation was not remedied, the work of the Committee would be put in jeopardy.

### **Statutory powers of the Committee in relation to discovery**

Under the Act<sup>155</sup> the Chairperson of the Committee is empowered, for the purposes of the functions of the Committee, to direct a person to make discovery on oath of any documents that are or have been in the possession or control of the person relating to any matter relevant to the functions of the Committee and to specify in the affidavit any documents which the person objects to produce and the grounds for the objections. It is provided that the rules of court relating to the discovery of documents in proceedings in the High Court shall apply in relation to such discovery with any necessary modifications. The Committee has ruled, in a ruling dated 3<sup>rd</sup> May, 2002,<sup>156</sup> that the exclusion of the application of the Rules of the Superior Courts No. 2 (Discovery) 1999 (S.I. No. 233 of 1999) is a necessary modification in the application of the rules of court to the making of directions under the Act. That Statutory Instrument stipulates that a party in civil litigation seeking an order for discovery should first issue a letter requesting voluntary discovery and specify the precise categories of documents of which discovery is sought, outlining the reasons why each category is relevant and required. The requirement of a pre-application request for voluntary discovery is clearly designed to avoid unnecessary Court applications and regulate *inter partes* litigation in a fair and cost effective manner. It cannot have been the intention of the Oireachtas that the Statutory Instrument would apply, either in whole or in part, to an inquisitorial body such as the Commission. If it were otherwise, the fulfilment of the Commission's functions efficiently and with reasonable expedition would be an impossibility.

In determining whether to make a discovery direction and the ambit of the direction, the Committee has regard to, but is not bound by, suggestions made by parties involved in the process, whether as Complainants or as Respondents. The Committee has particular regard to the submissions of a co-respondent, for example, a Management Respondent which managed an institution for which the Department had regulatory responsibility, in determining the scope of a discovery direction against the Department.

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<sup>154</sup> In Appendix D.

<sup>155</sup> Section 14(1)(d).

<sup>156</sup> The text of the ruling is published on the Commission's website.

## Importance of discovery

As has been stated,<sup>157</sup> in its ruling dated 18<sup>th</sup> October, 2002 on lapse of time and allied issues, the test which the Committee has adopted in relation to making determinations as to the occurrence of abuse in a particular institution and the identification of the institution or the person who committed abuse, is whether it is unsafe to make such determination. The test is applied having regard to the totality of the evidence, whether documentary evidence or oral testimony. The Committee recognises that the availability of documentary evidence and, in particular, documentary evidence contemporaneous with the events being investigated, may be a significant factor in determining whether it is safe or unsafe to make a determination. It is the view of the Committee that, if documentary evidence is available, it is incumbent on the Committee to procure it.

The principal sources of documentary evidence in relation to Industrial and Reformatory Schools are:

- the Department,
- other Departments of State which had an involvement with such schools, whose functions are now vested in the Department of Health and Children and the Department of Justice, Equality and Law Reform, and
- the archives of the Congregations which managed the institutions in the past.

It is the view of the Committee that a person or body involved in the process against whom allegations are made would have a legitimate ground of complaint if the Committee was not to ensure that all relevant available documentation is produced before a hearing into the allegations commences. To obviate that possibility, it is the view of the Committee that the rules in relation to making discovery must be applied strictly and uniformly to all persons or bodies who are required to make discovery.

For over two years, the form of affidavit of discovery which must be submitted by the Department in compliance with a direction for discovery has been a source of contention between the Committee and the Department. The Committee has consistently indicated that the affidavit must be in the form prescribed by the Rules of the Superior Courts. In the prescribed form, the deponent is required to aver that he or she has had, but has not now, in his or her possession or power the documents relating to the matters in question which are itemised in a schedule to the affidavit. Further, he or she is required to aver as to when those documents were last in his or her possession or power and to state in whose possession they currently are. As will be outlined later, the Department, despite clear indications from the Committee that the prescribed form should be followed, has unilaterally omitted those averments from an affidavit of discovery sworn pursuant to a direction. This is not a state of affairs which the Committee finds acceptable, no more than, if it were to occur, it could find acceptable the failure of a deponent for a Congregation against whom a direction had been issued to itemise relevant documents which were formerly in the Congregation's possession but, for example, are currently in an archive in Rome.

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<sup>157</sup> See chapter 6.

## **Provision of documentation voluntarily**

In the Opening Statement of the Commission,<sup>158</sup> it was stated that the Commission understood that all documentation in relation to Industrial and Reformatory Schools held in the Special Education Branch of the Department in Athlone was in the course of being scanned and that it anticipated that by August, 2000 the documentation would be available to the Commission in electronic form. The Commission was immediately informed by the Department that its statement was based on a misunderstanding of information which the Department had furnished to the Commission. The timescale for converting all documentation into electronic format, including individual pupil files, was longer than had been represented in the Opening Statement and would probably run into the following year. The Commission requested that the process be expedited.

In July 2000, the Commission received a copy of the Department's 'Database of Former Residents of Reformatory and Industrial Schools', which contains approximately 42,000 entries of pupils who were committed by the Courts to Industrial and Reformatory Schools during the period with which the Commission is concerned. The database does not record pupils who were placed in Industrial Schools by local authorities under the Public Assistance Acts or the Health Acts, nor does it contain details of voluntary placements.

The first tranche of images of documents from Departmental files, containing almost 50,000 documents, was received by the Commission on 14<sup>th</sup> December, 2000. The Commission acknowledged that the data would be treated in the same manner as if it had been produced pursuant to a direction for discovery made under section 14(1) of the Act; that it would be used only for the purposes of the functions of the Commission and subject to the rules and principles which govern the use of documentation or data produced or discovered under an order of the High Court in civil litigation. It was further acknowledged that any further data furnished by the Department would be received on the same basis.

Through the years 2001 and 2002, the Commission received further documentation in e-format: general administration files, individual pupil files, registers and kardex entries. The Commission has used this data for verifying personal information in relation to witnesses, conducting research and such like.

The process of producing the data to the Commission on a voluntary basis took considerably longer than had been anticipated. In its first Interim Report in May 2001, the Commission expressed the view that this was attributable to the enormity of the task involved. It has since become clear that there was another reason: there were also aspects of the task which had not been foreseen. Throughout most of the period with which the Commission is concerned, pupils in an Industrial School attended a National School within that Industrial School. The National School was subject to supervision by the primary branch inspectorate of the Department. Issues have arisen in the complaints to the Committee in relation to the adequacy of the education which pupils received in Industrial Schools, the quality of the teaching and the infliction of punishment in the classroom. It is the understanding of the Committee that some documentation held by the Department relevant to those issues (for example, records in relation to National Schools' inspections,

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<sup>158</sup> Appendix A.

the Primary Certificate examination and such like) was not traditionally held by the Special Education Branch and, understandably, it was not foreseen that it would be relevant to the Committee's work.

### **Specific discovery directions**

As preliminary investigations of the allegations of specific Complainants progressed in the year 2001, the Committee issued specific discovery directions to the Department seeking discovery of documents relevant to the Phase 1 hearing of the Complainant's complaint. Difficulties arose in relation to compliance with such directions. It must be acknowledged that some of the difficulties were caused, or contributed to, by the Committee in that, for example, there was not sufficient clarity in the direction as to what was sought or insufficient time was being allowed for compliance. However, the degree and duration of the difficulties which the Committee has encountered in relation to compliance with discovery directions by the Department has given rise to a perception on the part of the Committee that the attitude of the Department is that the Committee should take by way of discovery what the Department says it has and proffers and should not seek to look beyond that. That perception has been reinforced as a result of the attitude adopted by the Department in complying with the abuse specific discovery direction which issued on 10<sup>th</sup> March, 2003, which is referred to later, and its reaction to the Committee's assessment that there was not proper compliance with the direction.

The procedural hearings which involved the Department,<sup>159</sup> were primarily concerned with compliance by the Department with discovery directions. With the exception of the procedural hearing which was held on 31<sup>st</sup> March, 2003, the hearings were held in private.

The first procedural hearing on 31<sup>st</sup> October, 2001 was scheduled to deal with, among other things, compliance with a direction for discovery which had been issued arising out of the allegations made by a specific Complainant in relation to an Industrial School for girls, the hearing of which the Committee was anxious to expedite because of the age profile of the witnesses. At that hearing, Counsel for the Committee, having acknowledged that a very large amount of documentation had been made available by the Department on a voluntary basis, emphasised that, before the Committee embarked on any individual hearing, it was vital that it had available to it a "sworn signed-off statement", in other words, an affidavit of discovery which complied with the Rules of the Superior Court, 1986. If it were not to do so, the Committee could expose itself to legitimate criticism that material which might be relevant to considering the truth or falsehood of the allegations, the subject of a particular complaint, had not been obtained. It was made clear that what was required was an affidavit which contained explanations in relation to gaps in the documentation.

At subsequent procedural hearings, it was made clear by the Committee that proper compliance with directions for discovery issued to the Department required that—

- the affidavit should comply with the rules and jurisprudence of the Superior Courts, including the itemisation of documents in respect of which privilege was being claimed,

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<sup>159</sup> See Table K.

- the affidavit should contain a proper explanation of real or apparent gaps in the documentation, and
- all documentation relevant to an issue being inquired into, whether archival or current, should be discovered.

Time and again it has been made clear to the representatives of the Department that, in relation to compliance with discovery directions, not only has the Committee to be satisfied, but the other parties involved in the process and, in particular, persons or bodies answering allegations of abuse, have to be satisfied that there is proper compliance. It has been made clear that the manner of compliance which is being required from the Department is consistent with the manner of compliance being required from the other parties in the process. Moreover, the representatives of the Department have had first hand knowledge of the attitude of the other Respondents, because the Department has been represented at evidential hearings at which issues in relation to discovery were canvassed by other Respondents.

The Committee appreciates that the volume of allegations in relation to institutions for which the Department had in the past, or currently has, regulatory responsibility, which are being investigated by the Committee, may not have been anticipated and that the burdensome nature of compliance with statutory requests and directions by the Committee to the Department may not have been foreseen. In November 2001, the explanation advanced for delay in submitting statements was lack of resources and, in particular, lack of resources during the summer months because of annual leave and such like. The Committee was assured that the issue of resources would be addressed. Over a year later, resources were still an issue, although it did appear to the Committee that by the beginning of 2003 the Department was at last putting itself in the position of being able to engage constructively with the Commission. It is fair to record that the Committee is conscious that the Department has had to deploy considerable resources in terms of administrative and legal personnel to service the Committee's inquiry. That is unavoidable, if the Committee is to fulfil its mandate properly, which means that it be fulfilled in a timely fashion.

Some procedural hearings in which the Department has been involved were convened at the request of the Department to address discovery issues. The Committee has always been open to suggestions from the Department which will have the effect of easing the burden of the Department in relation to making discovery and avoiding unnecessary work, provided the ability of the Committee to fulfil its functions properly is not compromised. Moreover, the Committee has encouraged contacts between its legal team and the Department's legal team with a view to resolving discovery issues and easing the burden of the Department.

The culmination of these endeavours was an application made by the Department to the Committee on 5<sup>th</sup> March, 2003, in which it was proposed that the Department make discovery by submitting the following affidavits of discovery:

1. an affidavit in relation to documents of general application to all institutions; and
2. in respect of each institution, a supplemental affidavit of the further documents relevant to the specific institution.

It was envisaged that the general affidavit would be furnished to the Committee in e-format. There were obvious merits in the proposal. For instance, in the case of the fifty-five Industrial and Reformatory Schools which are the focus of this chapter, it would have the merit of avoiding having to schedule documents of general application fifty-five times. However, when the proposal was examined, it transpired that the Department was not in a position to furnish either a general affidavit or institution-specific affidavits which would comply with the rules and jurisprudence of the Superior Courts. In particular, apart from the documents in the first tranche furnished to the Committee on a voluntary basis on 14<sup>th</sup> December, 2000, the Department was not in a position to index or schedule records on a document basis. In other words, what the proposal envisaged was that other records would be indexed or scheduled on a file basis, but not by reference to the individual documents on the file. The legal requirement that, in making discovery, the deponent must list each individual document and not merely produce a file, is based on sound common sense: it removes any doubt that every document which was on the file is being discovered and obviates the possibility of a dispute later. Moreover, the proposal did not in any way adequately deal with the issue of real or apparent gaps in the documentation, nor was it clear how documents which were once in the possession of the Department, but were no longer available, would be dealt with and their absence explained.

The evidence adduced at the hearing on behalf of the Department was that to require records to be indexed or scheduled on a document basis would place a very heavy burden on the Department because the process was not in any way complete at the time and would result in delay. The unsatisfactory nature of the proposal having been outlined to the Committee by its Counsel, at the request of Counsel for the Department, the hearing was adjourned until 10<sup>th</sup> March, 2003.

On 10<sup>th</sup> March, 2003, Counsel for the Department told the Committee that she had been instructed to inform the Committee that the Department accepted fully that it must comply with the High Court rules in relation to discovery, that it was for the Department to decide on the relevance of the documents to be discovered and that it was accepted that they required to be indexed on a document basis. The Committee was requested to issue discovery directions.

### **Abuse specific discovery directions**

Following the hearing on 10<sup>th</sup> March, 2003, a discovery direction, which was specifically directed to obtaining disclosure of documents and records held by the Department evidencing abuse, or possible abuse, in certain institutions, was issued.

This was the second occasion on which the Committee attempted to elicit disclosure of documents held by the Department which pointed to abuse having occurred, as distinct from documents which evidenced the living conditions and nature of life in institutions in the past and the complaint-specific relevant material.

At the beginning of February 2002, the Committee became aware of statements being attributed in the media to the then Minister and spokespersons of the Department as to the prevalence of abuse in institutions which were to be the subject of the redress scheme eventually enacted in the Residential Institutions Redress Act 2002. At the beginning of June of the same year, the Committee became aware of media statements attributed to

the then Minister in relation to the State's responsibility for abuse in institutions, which suggested that the Department might have been in possession of records which would assist the Committee in its inquiry.<sup>160</sup> The Committee was not aware of the precise documents to which the Minister was referring. On 2<sup>nd</sup> July, 2002, a discovery direction was issued to the Department seeking discovery of all documents and records of whatever nature that were or had been in the possession or control of the Department, on the basis of which the Minister and/or his officials reached the conclusions—

- (a) as to the culpability of the State and the regulatory authorities in the State for abuse of children in institutions, the investigation of which is within the statutory remit of the Commission, and
- (b) the apportionment of blame between the State and the said regulatory authorities, on the one hand, and the managers of the institutions, on the other hand,

which were reflected in—

1. the agreement between the Minister and the Conference of Religious of Ireland, on behalf of eighteen Religious Congregations, made in June 2002, and
2. the statements and comments made by the Minister and his spokesperson reported in the broadcast and print media concerning that agreement and matters within the statutory remit of the Commission on or about 30<sup>th</sup> January, 2002, 1<sup>st</sup> February, 2002, 5<sup>th</sup> June, 2002 and 6<sup>th</sup> June, 2002.

Pursuant to that direction, an affidavit was sworn on 18<sup>th</sup> October, 2002 by the Director of Strategic Policy and Legal Services in the Department. Four hundred and fifty-seven documents were indexed in the schedule to the affidavit, which were described as “primary source” documents, which might be of assistance to the Commission's work and might enable the Committee to expedite its work. The Committee questioned the adequacy of the affidavit and the issues raised by the Department in connection with the affidavit were considered at a procedural hearing on 31<sup>st</sup> October, 2002. Among the issues considered was the materiality to the Committee's inquiry of certain documents in the possession of the Department and whether such documents would, in any event, be privileged. In order to avoid acquiring knowledge of documents which might be irrelevant or, if relevant, might be privileged, the Committee decided that the documents should be perused by the Committee's leading Counsel in conjunction with the Department's leading Counsel. Subsequently, the Committee's leading Counsel, Frank Clarke S.C., reported to the Committee on those issues. His report was accepted by the Committee as having resolved the issues which had arisen at the Procedural Hearing.

However, of the documents scheduled in the affidavit of 18<sup>th</sup> October, 2002, some had no relevance whatsoever to the work of the Committee. Less than three hundred of the

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<sup>160</sup> In an interview on “Morning Ireland” on RTE Radio 1 on 6<sup>th</sup> June, 2002, the then Minister for Education, Dr. Michael Woods stated: “. . . ultimately here the State will pay and the State again as the Laffoy Commission I think will show in time because we have supplied a lot of information to the Laffoy Commission. We'll show that the State carry responsibility and Laffoy, the Laffoy Commission, Judge Laffoy will in due course report on all of that in great detail . . . There was cases of abuse that were reported back and nothing was done about it but all that will come with the Laffoy Report”. (Transcript provided by RTE).

documents had a bearing on issues with which the Committee is concerned in relation to the Industrial and Reformatory Schools. Consideration of the documents discovered suggests that there is little contemporaneous documentation held by the Department evidencing the existence or possible existence of abuse in Industrial Schools and Reformatory Schools during the period with which the Commission is concerned, other than general and medical inspection reports. In particular, no record of contemporaneous knowledge of sexual abuse by a person in authority is revealed.

The abuse specific discovery direction which was issued on 10<sup>th</sup> March, 2003 sought discovery of documents and records of whatever nature that were, or had been, in the possession or control of the Department in relation to the existence, or possible or suspected existence, or occurrence or possible or suspected occurrence, of abuse of children, whether sexual, physical, or emotional abuse, or neglect during the period from 1936 to the date of swearing of the affidavit in residential institutions of the types listed, which included Industrial and Reformatory Schools. The discovery direction was accompanied by a letter from Counsel to the Committee, which explained what the Committee expected and which stated that, in accordance with the commitment given to the Committee at that morning's hearing, the affidavit should comply with the rules and principles applied by the Superior Courts in relation to making discovery. It was expressly stipulated that any documentation no longer available should be itemised and its absence explained. The words "itemised" and "explained" were emphasised in the letter.

The Department applied to the Committee to vary the terms of the direction for discovery which issued on 10<sup>th</sup> March, 2003. That application was heard in public on 31<sup>st</sup> March, 2003. At the hearing, the application to vary, save as regards an extension of time for compliance, was withdrawn by the Department. The period for compliance was extended to 27<sup>th</sup> June, 2003.

### **Examination of witnesses in aid of discovery**

Because of concerns about the completeness of the Department's archive, in January 2003, the Committee decided to examine on oath serving and retired personnel of the Department in aid of discovery. Three serving officers, including the Secretary General, and two retired officers were examined. The Committee is grateful for the considerable assistance which it received from the two retired officers who testified. The examination of two further retired officers was deferred because of their personal circumstances.

### **Abuse specific discovery direction: the Affidavit**

The affidavit in compliance with the direction dated the 10<sup>th</sup> day of March, 2003 was sworn by the Secretary General of the Department and furnished to the Committee on 27<sup>th</sup> June, 2003.

Despite the commitment given to the Committee at the procedural hearing on 10<sup>th</sup> March, 2003, the affidavit did not appear to comply with the rules and principles applied by the Superior Courts in relation to making discovery. In particular, and despite the explicit requirement set out in the letter of 10<sup>th</sup> March, 2003 which accompanied the direction, documentation no longer available was not itemised nor was its absence explained. In fact,

the affidavit contained no second schedule and the format of the prescribed affidavit was unilaterally altered.

Whether the affidavit of the Secretary General furnished to the Committee on 27<sup>th</sup> June, 2003 was a proper fulfilment of the obligation to make discovery in accordance with the direction issued on 10<sup>th</sup> March, 2003 was the subject of a procedural hearing held on 5<sup>th</sup> December, 2003 in private, at which submissions were heard from Counsel for the Department and Counsel for the Committee. Following the hearing, the Committee issued a ruling<sup>161</sup> on 10<sup>th</sup> December, 2003 in which it ruled that there had not been proper compliance with the direction and directed that further and better discovery be made by 28<sup>th</sup> February, 2004.

### **Analysis of the abuse specific discovery**

A detailed analysis of the material discovered on foot of the direction of 10<sup>th</sup> March, 2003 is ongoing. A preliminary analysis of the material discovered in relation to the fifty-five Industrial and Reformatory Schools being focused on in this chapter raises the question: why is there an inconsistency between what has been disclosed and what the Committee might have expected to be disclosed having regard to the statements attributed to the former Minister and the Department's spokesperson in 2002?

Only one instance has been disclosed of the contemporaneous reporting by the management of an Industrial School for boys of sexual abuse of pupils in the institution by a person in authority. The Committee first became aware of this instance in the following circumstances: in January 2003, the Committee received a statement from the former manager of an Industrial School for boys of the circumstances in which he learned in 1980 that a person in authority in the school had been sexually abusing two boys for a number of years. In the statement, the former manager recounted that he had travelled to Dublin and reported the matter to a senior official in the Department. The statement also disclosed that, many years later, in the 1990s, when the subject of child sexual abuse had become a specific issue in childcare and he had become acquainted with the guidelines being prepared for dealing with abuse, the former manager felt that he should report the matter again and he did so to a senior officer in the Department and to the Gardaí. On receipt of the statement, the Committee's legal team raised with the Department the fact that no reference to the reports in 1980 or the 1990s could be traced in the data which had been submitted to the Committee on a voluntary basis and indicated that, if the relevant documentation had not been provided, an explanation would be required at a forthcoming procedural hearing on 20<sup>th</sup> January, 2003.

The Committee subsequently fully investigated the matter. It is important to emphasise that the purpose of the investigation was not related to the manner in which the reports were dealt with, about which the Committee expresses no view; it was exclusively directed to ascertaining why the Committee had not become aware of the reports earlier. It transpired that the report in 1980 was not recorded in writing but was verbally communicated at the highest level within the Department. The report in the 1990s which, in fact, was made in 1996, was recorded. However, the record was maintained in a file which primarily held papers of a type which are of no relevance to the work of the

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<sup>161</sup> The ruling is posted on the Commission's website.

Committee. The file was produced at the procedural hearing. The only reference number it carried was a number which was preceded by “TN”, signifying that it had been assigned a temporary number. The explanation proffered by the Department for non-production of the 1996 record and other papers on the file which are of relevance to the Committee’s work, was that no discovery direction had been made in relation to the institution in question during the period in question and that, in responding to statements in relation to the institution, current files were not checked.

## **The Current Position**

For over two years, the manner in which the Committee requires the Department to fulfil its statutory obligations in relation to complying with discovery directions issued to it under the Act has been clearly communicated to the Department, both in correspondence and at procedural hearings. Despite that, as of now, the direction issued on 10<sup>th</sup> March, 2003 has not been properly complied with and the Department has been directed to make further and better discovery.

While acknowledging the enormity of the task which the Department has faced, the difficulties which may not have been foreseen and the Committee’s own shortcomings, it has to be observed that, in general, the Department, as Respondent to the vast majority of allegations which the Committee is investigating, has not adopted a constructive approach to dealing with its role in the inquiry.

The vast amount of resources which the Department deployed in the production of the affidavit submitted on 27<sup>th</sup> June, 2003 in compliance with the discovery direction on 10<sup>th</sup> March, 2003 was disclosed at the procedural hearing on 5<sup>th</sup> December, 2003. The Committee was informed that fourteen lawyers and thirty-five Departmental officials were involved at an ultimate cost to the State of €650,000. That is part of the price which has to be paid for the implementation of legislation which provides for the investigation of and reporting (in a manner which may involve naming an individual and an institution) on activity and behaviour which, at its most serious level, the community considers to be odious. At the public hearing on 31<sup>st</sup> March, 2003 in relation to the discovery direction of 10<sup>th</sup> March, 2003, Counsel for the Committee made a submission which succinctly encapsulated the reasons why the proper and timely fulfilment by the Department of its obligations in relation to discovery is of the utmost importance. Because of the force of the passage, the Committee quotes it from the transcript and adopts it. Counsel said:

“The difficulty with all of this is that it would be extremely dangerous for the Investigation Committee to embark upon potentially adversarial hearings until such time as it has done everything that it can to ensure that it has all the documents relevant to those hearings. It is inevitable that those hearings have the potential to be fraught. The nature of certainly some of the accusations being made is extremely serious, serious from the perspective of those making them and from the perspective of those against whom they are made. Some of them, as we know, are strenuously denied, and there is no two ways about it, a hearing involving very serious allegations with serious denials and doubtless contentions that the accusations are being wrongly put up are going to be fraught at the best of times.

The last thing one would want is to have to revisit any such application a second time. It would be bad enough for the parties having to go through it once without

them having to go through it a second time. It is for that reason most particularly that it would be extremely dangerous for the Commission to start putting people through going through those hearings without being sure or as sure as it can be . . . that it had all the documents because inevitably if important documents come to light after the hearing, it might mean that the hearing would have to be reopened”.

**TABLE K**

**Procedural Hearings involving Department of Education and Science as Respondent**

<b>Date of Hearing</b>	<b>Issue(s) dealt with</b>	<b>Witnesses * Signifies sworn testimony</b>	<b>Legal Representation</b>	<b>Outcome</b>
31 <sup>st</sup> October, 2001	<p>(1) Submission of outstanding Respondent statements</p> <p>(2) Compliance with direction for discovery of documents made on 12<sup>th</sup> September, 2001 in relation to a specific Complainant.</p> <p>(3) Putting in place procedures for ensuring discovery directions would be properly complied with.</p>	None.	<p><i>For the Department:</i> David Goldberg S.C.  Barry Halton B.L. Instructed by Chief State Solicitor</p> <p><i>For the Commission:</i> Frank Clarke S.C. John Major B.L.</p>	Adjourned until 12 <sup>th</sup> November, 2001 for attendance of senior official of the Department, not below rank of Principal Officer to explain the systems to be put in place by the Department to deal with its obligations to the Committee in relation to the inquiry mandated by the Oireachtas.
12 <sup>th</sup> November, 2001	<p>(1) Issues which arose at hearing of 31<sup>st</sup> October, 2001.</p> <p>(2) Specific issues in relation to—</p> <p>(a) Adequacy of a statement submitted in relation to a specific Complainant,</p> <p>(b) Delay in furnishing information sought in relation to personnel, and</p> <p>(c) Delay in dealing with a request by the Oblates of Mary Immaculate in relation to access to school records furnished by the Order to the Department on closure of schools.</p>	<p>(1) Thomas Boland, Principal Officer.</p> <p>(2) Tony Dalton, Assistant Principal Officer.</p>	<p><i>For the Department:</i> David Goldberg S.C. Barry Halton B.L. Instructed by the Chief State Solicitor</p> <p><i>For the Commission:</i> Frank Clarke S.C. John Major B.L. Anne Reilly B.L.</p>	Department directed to furnish a report in writing by 7 <sup>th</sup> December, 2001 on the timeframe for producing fully comprehensive affidavits of discovery and dealing with other outstanding issues.

TABLE K—continued

Date of Hearing	Issue(s) dealt with	Witnesses * Signifies sworn testimony	Legal Representation	Outcome
24 <sup>th</sup> January, 2002	Failure of Department to properly fulfil commitments given to the Investigation Committee to deal with outstanding issues and, in particular, issues in relation to discovery.	John Dennehy, Secretary General	<p><i>For the Department:</i> David Goldberg S.C. Barry Halton B.L.</p> <p>Instructed by the Chief State Solicitor</p> <p><i>For the Commission:</i> Frank Clarke S.C. Deirdre Murphy S.C. John Major B.L. Anne Reilly B.L.</p>	<p>Undertaking given by the Secretary General to comply with the requirements of the Investigation Committee.</p> <p>A report dated 15<sup>th</sup> May, 2002 in relation to outstanding issues was submitted by the Department and, subsequently, a draft “Protocol for compliance with Discovery Directions” was submitted.</p>
11 <sup>th</sup> July, 2002	<p><b>Raised by Department</b> By reference to discovery directions made on 10<sup>th</sup> May, 2002 in relation to two specific Complainants whose evidential hearings were scheduled for 18<sup>th</sup> July and 19<sup>th</sup> July, 2002—</p> <p>(1) as to the necessity of providing discovery of matters raised by a Management Respondent, having regard to the material already provided voluntarily, and</p> <p>(2) in the context of the authority of <u>Haughey - v - Moriarity</u> the breadth and timescale of the discovery ordered and, in particular, whether a number of items sought on discovery more properly related to Phase 2 of the Inquiry and seeking discovery thereof therefore premature.</p> <p><b>Raised by the Sisters of Mercy</b> That a discovery direction issue against the Department for the benefit of the Sisters of Mercy directing discovery of all records necessary to enable the expert researchers of the Sisters of Mercy to conduct research into areas of relevance to the Commission’s proceedings, whether in relation to Phase 1 or Phase 2 of the work of the Investigation Committee</p>	None	<p><i>For the Department:</i> John McMenamin S.C. Anne Power B.L.</p> <p>Instructed by the Chief State Solicitor</p> <p><i>For Sisters of Mercy:</i> Kevin Feeney S.C. Una Ni Raifeartaigh B.L. Instructed by Arthur O’Hagan, solicitors.</p> <p><i>For the Commission:</i> Frank Clarke S.C. Deirdre Murphy S.C. John Major B.L. Anne Reilly B.L.</p>	<p><i>Re Issues raised by Department:</i> Meeting of a legal team of relevant parties, including of a representative Complainant, to be convened.</p> <p><i>Re Issues raised by Sisters of Mercy:</i> Application not acceded to but not finally determined.</p>

TABLE K—continued

Date of Hearing	Issue(s) dealt with	Witnesses * Signifies sworn testimony	Legal Representation	Outcome
31 <sup>st</sup> October, 2002	Issues raised by the Department in relation to compliance with a discovery direction made on 2 <sup>nd</sup> July, 2002 in relation to State culpability for abuse within the statutory remit of the Commission.	None	<p><i>For the Department:</i> John McMenamin S.C. Anne Power B.L.</p> <p>Instructed by Chief State Solicitor</p> <p><i>For the Commission:</i> Frank Clarke S.C. Deirdre Murphy S.C. Anne Reilly B.L.</p>	<p>Frank Clarke S.C. to peruse documents in dispute in conjunction with John McMenamin S.C. for the purposes of establishing whether the documents were relevant to the Commission's inquiry or, alternatively, would, in any event, be privileged.</p> <p>Frank Clarke S.C. reported to the Committee on 20<sup>th</sup> January, 2003 and his report was accepted.</p>
6 <sup>th</sup> December, 2002	<p>(1) Application to vary direction for discovery made on 8<sup>th</sup> October, 2002 in relation to Newtownforbes Industrial School module.</p> <p>(2) Issues as to outstanding Respondents' statements in respect of Newtownforbes module.</p> <p>(3) Other issues in relation to the obligations of the Department as Respondent.</p>	None	<p><i>For the Department:</i> John McMenamin S.C. Dóirbhíle Flanagan S.C. Anne Power B.L.</p> <p>Instructed by the Chief State Solicitor</p> <p><i>For the Commission:</i> Frank Clarke S.C. Deirdre Murphy S.C. Anne Reilly B.L.</p>	<p>Direction dated 8<sup>th</sup> October, 2002 varied.</p> <p>Other issues adjourned to 20<sup>th</sup> January, 2003.</p>
20 <sup>th</sup> January, 2003	<p>(1) General issues in relation to obligations of the Department as Respondent adjourned from 6<sup>th</sup> December, 2002.</p> <p>(2) Reporting of gross sexual misconduct to Department in February 1980.</p> <p>(3) Records in relation to early discharge of children committed under the Children Act 1908.</p> <p>(4) Department submissions on "Framework of Procedures".</p>	Paul Kennedy, Principal Officer*.	<p><i>For the Department:</i> John McMenamin S.C. Dóirbhíle Flanagan S.C. Anne Power B.L.</p> <p>Instructed by the Chief State Solicitor</p> <p><i>For the Commission:</i> Frank Clarke S.C. Deirdre Murphy S.C. Anne Reilly B.L.</p>	<p>(1) Chairperson not satisfied in relation to the completeness of the Department's archive. A proper explanation as to absence of documents to satisfy the Investigation Committee as to what happened to those documents required.</p> <p>(2) In relation to Department's capacity to implement discovery directions properly, discussions should take place between the respective legal teams in the immediate future.</p>

TABLE K—continued

Date of Hearing	Issue(s) dealt with	Witnesses * Signifies sworn testimony	Legal Representation	Outcome
14 <sup>th</sup> February, 2003	<p>Examination of serving officer of Department on—</p> <p>(1) issues in relation to the reporting to the Department of specific instances of abuse and the record of the reporting contained in the Department, and</p> <p>(2) the procedures and practices in relation to keeping and tracking records, both documentary and in e-format, in the Department.</p>	Liam Kilroy, Principal Officer*	<p><i>For the Department:</i> John McMenamin S.C. Doirbhile Flanagan S.C. Anne Power B.L.</p> <p>Instructed by the Chief State Solicitor</p> <p><i>For the Commission:</i> Frank Clarke S.C. Deirdre Murphy S.C. Anne Reilly B.L.</p>	Evidence taken as part of ongoing process.
4 <sup>th</sup> March, 2003	<p>Examination of—</p> <ul style="list-style-type: none"> <li>■ a serving officer of the Department, and</li> <li>■ a retired officer of the Department</li> </ul> <p>in relation to—</p> <p>(1) issues in relation to the reporting to the Department of specific instances of abuse and the record of the reporting contained in the Department, and</p> <p>(2) the procedures and practices in relation to keeping and tracking records, both documentary and in e-format, in the Department.</p>	<p>(1) John Dennehy, Secretary General*.</p> <p>(2) Retired Principal Officer*.</p>	<p><i>For the Department:</i> John McMenamin S.C. Doirbhile Flanagan S.C. Anne Power B.L.</p> <p>Instructed by the Chief State Solicitor</p> <p><i>For the Commission:</i> Frank Clarke S.C. Deirdre Murphy S.C. Anne Reilly B.L.</p>	Evidence taken as part of ongoing process.
5 <sup>th</sup> March, 2003	Application by Department as to the manner in which the Department should be required to make discovery of documents and the terms of a discovery direction, which should issue to the Department.	Paul Kennedy, Principal Officer*.	<p><i>For the Department:</i> Doirbhile Flanagan S.C. Anne Power B.L.</p> <p>Instructed by the Chief State Solicitor</p> <p><i>For the Commission:</i> Frank Clarke S.C. Deirdre Murphy S.C. Anne Reilly B.L.</p>	Consideration of issues adjourned to 10 <sup>th</sup> March, 2003.

TABLE K—continued

Date of Hearing	Issue(s) dealt with	Witnesses * Signifies sworn testimony	Legal Representation	Outcome
10 <sup>th</sup> March, 2003	Resumption of issues raised on 5 <sup>th</sup> March, 2003.	None	<p><i>For the Department:</i> Doirbhile Flanagan S.C. Anne Power B.L.</p> <p>Instructed by the Chief State Solicitor</p> <p><i>For the Commission:</i> Deirdre Murphy S.C. Anne Reilly B.L.</p>	Chairperson would make a discovery direction against the Department in the terms determined by the Investigation Committee.
18 <sup>th</sup> March, 2003	<p>Examination of—</p> <ul style="list-style-type: none"> <li>■ serving officer of the Department, and</li> <li>■ a retired officer of the Department</li> </ul> <p>in relation to—</p> <p>(1) issues in relation to the reporting to the Department of specific instances of abuse and the record of the reporting contained in the Department, and</p> <p>(2) the procedures and practices in relation to keeping and tracking records, both documentary and in e-format, in the Department.</p>	<p>(1) Edward Ward, Principal Officer*</p> <p>(2) Retired Assistant Secretary*.</p>	<p><i>For the Department:</i> Doirbhile Flanagan S.C. Anne Power B.L.</p> <p>Instructed by the Chief State Solicitor</p> <p><i>For the Commission:</i> Deirdre Murphy S.C. Anne Reilly B.L.</p>	Evidence taken as part of ongoing process.
31 <sup>st</sup> March, 2003 <b>Public Hearing</b>	Application by Department to vary direction for discovery issued on 10 <sup>th</sup> March, 2003.	None	<p><i>For the Department:</i> Doirbhile Flanagan S.C. Anne Power B.L.</p> <p>Instructed by the Chief State Solicitor</p> <p><i>For the Commission:</i> Frank Clarke S.C. Deirdre Murphy S.C. Anne Reilly B.L.</p>	Application withdrawn save in relation to extension of time to comply. Extension granted.
5 <sup>th</sup> December, 2003	Issues including compliance with direction for discovery issued on 10 <sup>th</sup> March, 2003	None	<p><i>For the Department:</i> John MacMeniman, S.C. Brian O'Moore, S.C. Doirbhile Flanagan, S.C. Anne Power, B.L.</p> <p>Instructed by the Chief State Solicitor</p> <p><i>For the Commission:</i> Frank Clarke, S.C. Deirdre Murphy, S.C. Laura Rattigan, B.L.</p>	Ruling dated 10 <sup>th</sup> December, 2003 (posted on the Commission's website).



# Congregations of Religious as Respondents to Allegations of Abuse

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## Congregations as Respondents

Apart from the Department, the main players in the Committee's process, as Respondents, are the Congregations which managed the Industrial and Reformatory Schools, the Orphanages, Special Schools for children with intellectual and other disability and other residential institutions which are the subject of complaints to the Committee. The Congregations also feature in the process as managers of non-residential institutions, such as National Schools. All of the Industrial and Reformatory Schools, with the exception of Baltimore Fisheries School, were managed by Congregations. As the complaint profile set out later<sup>162</sup> illustrates, 87 per cent of all of the complaints being investigated relate to institutions which were under the management of Congregations at the relevant time.

The manner in which the Congregations engage with the Committee is, and will continue to be, a significant determinant as to the capacity of the Committee to fulfil its mandate in a timely and proper fashion. If a Congregation has knowledge of facts, or is in a position to acquire knowledge of facts (for example, from records maintained in a "mother house" outside the jurisdiction), which tends to the conclusion that abuse occurred in one or more of its institutions, that evidence is likely to assist the Committee and to shorten its proceedings. On the other hand, if the Congregation decides not to divulge the information voluntarily and adopts the attitude that it is for the Committee to procure, by exercising its statutory powers, the proceedings will inevitably be more adversarial and difficult than would otherwise be the case.

## Procedural hearings to compel compliance

In the course of its preliminary inquiries, the Committee has had to schedule Procedural Hearings, most of which were held in private, to seek explanations from Congregations for delay in complying with requests for statements. In some cases, issues in relation to discovery also arose. In Table L, details of the hearings are set out.

It is only fair to record that most of the issues which arose at the scheduled hearings have been satisfactorily resolved over time. It is also fair to record that it is recognised that difficulties have been encountered by the Congregations in dealing with requests and directions from the Committee. Some are common to most Congregations: the antiquity of most of the allegations; the fact that so many of the personnel who worked in the

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<sup>162</sup> Chapter 12.

institutions or were in positions of authority in the Congregations at the time the abuse is alleged to have taken place are dead, ill or elderly; the diminishing number of members of the Congregations and the age profile and state of health of the surviving members; and the other commitments which the surviving members have, including pastoral commitments and the fact that some are serving abroad in Africa and North and South America. Some of the Congregations have had problems which are particular to them. For example, a problem which the Oblates of Mary Immaculate encountered, and which the Committee sought to have resolved, was difficulty in obtaining access to their records in relation to St. Conleth's Reformatory School, Daingean, Co. Offaly, which they relinquished to the Department when the school closed in 1974. This difficulty was eventually resolved.

It is recognised that the Christian Brothers, because of the volume of allegations which they have to answer, have had to bear a greater burden than any other Management Respondent in dealing with complaints before the Committee. At a Procedural hearing held in public on 20<sup>th</sup> March, 2003, Counsel for the Christian Brothers outlined the nature of the burden, both in terms of the volume of work involved in responding to allegations (by reference to a Complainant's statement in relation to Artane Industrial School in the 1950s in which abuse, both sexual and physical, was alleged against seven members of the Congregation and neglect and harsh regime was also alleged) and the pressure and emotional demands which making responding statements was imposing on the limited number of elderly members of the Congregation who were available for the task. Following the hearing, the Committee ruled on the Congregation's application for an extension of time to provide outstanding statements in a ruling dated 27<sup>th</sup> March, 2003, which was posted on the Commission's website. The Congregation complied with the ruling. The balance of the statements which were due after the Commission's announcement of 2<sup>nd</sup> September, 2003 have been accepted. At the hearing on 20<sup>th</sup> March, 2003, Counsel for the Congregation raised the issue of the Commission giving "some comfort" to the Congregation in relation to the additional expenditure on legal fees to which complying with the Congregation's obligations to the Committee was giving rise. In its ruling, the Committee indicated that it was not within its competence to predetermine any issue in relation to legal costs having regard to the amendment to the Act<sup>163</sup> effected in 2002.

## **Framework**

In the Framework of Procedures published on 18<sup>th</sup> November, 2002,<sup>164</sup> the Commission stated that in reviewing its procedures it had taken into account its experience up to that time in hearing allegations and it continued:

"The experience has been that, in the main and with a few exceptions, the Respondents have adopted an adversarial, defensive and legalistic approach in the process. The Committee has always recognised the right of a person or body which is brought into the process as a Respondent to be afforded a reasonable means of defending himself or herself. Accordingly, it has striven, through its procedures, to ensure that such right is safeguarded and that its proceedings are conducted fairly

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<sup>163</sup> Section 20A as inserted by section 32 of the Act of 2002.

<sup>164</sup> Appendix E.

and in accordance with the constitutional principles. While it is recognised that, in adopting the stance which has been adopted, Respondents are not acting improperly, the factual position is that the majority of allegations are being contested or, alternatively, strict proof of the allegations is being called for. The inevitable consequence of this approach will be an increase in the amount of detailed evidence which would otherwise have to be heard. Insofar as Respondents contend that they are cooperating with the Committee, in practice, they are doing no more than complying with their statutory obligations and doing so reluctantly in the case of some Respondents, and under protest, in the case of others”.

Exception was taken to that statement in some of the submissions on the Framework which the Committee received. Notwithstanding that, the Committee stands over the statement.

### **Interaction of Congregations with the Committee**

The Committee considers it necessary to report on the attitude being adopted by the Congregations because all of the evidential hearings and most of the procedural hearings which have been conducted to date have been held in private. While the Act<sup>165</sup> merely requires that so much of a hearing as relates to the giving of evidence of particular instances of alleged abuse is held in private, in practice, the evidential hearings which have been held have been conducted wholly in private. In consequence, neither the generality of persons involved in the process nor the public in general are aware of the manner in which the Committee’s mandate is being implemented in practice.

The Committee must preface the remarks which follow by stating that the right of the Congregations to defend allegations made in relation to institutions managed by them and against their members is unequivocally recognised and respected. Further, until allegations are fully investigated and all relevant evidence is heard, no assumption can be made as to whether the allegations may lead to findings of abuse.

It has been the experience of the Committee that, as a general proposition, in responding to allegations and in participating in evidential hearings, of which, admittedly, the experience of the Committee is limited, the approach of the Congregations has been to require strict proof of facts alleged by Complainants. One example will serve to illustrate the extent to which the Committee is being put on strict proof. A Complainant alleges that she was not adequately fed in an institution in the 1940s. It is a matter of historical record that during the period of the Complainant’s residence in the institution, the medical inspector of the Department found that the food was very bad, there had been a curtailment in diet and the children had not put on weight. In consequence, the Department sought the removal of the Resident Manager by the Congregation, which managed the institution. The Resident Manager was removed on foot of the demand, over a half a century ago. Yet, the formal response to the allegation that the Complainant was inadequately fed submitted by the Management Respondent is to identify prevailing nutritional standards as an area “on which appropriate expert testimony would be of benefit in ascertaining the truth of the matters complained of and/or whether certain conduct or events constituted abuse”. Implicit in the response is the proposition that

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<sup>165</sup> Section 11(3)(a).

expert evidence “concerning nutritional standards during the relevant period, both in the home and in institutions for children” is a prerequisite to the Committee making a proper decision.

It is the view of the Committee that, if the Congregations have a genuine desire to cooperate with the Committee, they could do so without prejudicing their position. By way of example, they could admit any matter of indisputable historic fact which has been the subject of a contemporaneous judgment made by an appropriate person in the context of the times. The example given in the immediately preceding paragraph is a case in point.

More importantly, if the Congregations are aware that abuse has occurred, rather than put the Committee on strict proof of the facts, they could admit the facts. Failure on the part of the Congregations to adopt such an approach, where it is open to them, will inevitably result in a process which is more protracted and costly than it should be. At this juncture, such evidence as is available, that is to say, the stance being adopted in Respondents’ statements, suggests that there are very few complaints which are being admitted by the Congregations and that the vast majority of complaints are being contested. If the statements are a true reflection of the intentions of the Congregations, this has implications for the Committee going forward in terms of the time it will take and the costs which will be associated with discharging its work load.

In general, it has not been suggested to the Committee that the Congregations are constrained in affording real cooperation to the Committee because of the existence of pending criminal proceedings or pending civil litigation. Moreover, the Committee has not been told in any case that the approach adopted by the Congregation was necessitated by the relationship of the Congregation to an indemnifier, such as an insurance company. It is suggested that factors which in the past might have been perceived as an impediment to pro-activity on the part of the Congregations towards the Committee should no longer be perceived as such. The State has put in place a “no fault” redress scheme and has indemnified the Congregations in respect of claims under the scheme and civil litigation in relation to matters within the remit of the Redress Board. Concerns in relation to civil liability and indemnification should no longer be a deterrent to real cooperation, at any rate in relation to matters within the remit of the Redress Board.

### **Cooperating Congregations**

The Committee considers it fair to identify the exceptions to the general statement contained in the Framework. The Committee acknowledges that it has received what it considers to be real cooperation from the Rosminian Institute. The Presentation Brothers have also proffered assistance in a constructive manner.

**TABLE L****Procedural Hearings involving Management Respondents**

<b>Date of Hearing</b>	<b>Management Respondent</b>	<b>Legal Representation</b>	<b>Issue</b>
31/10/2001	Christian Brothers	<i>For Management Respondent:</i> Mary Irvine, S.C. Maxwell, Weldon & Darley, Solicitors  <i>For Commission:</i> Frank Clarke, S.C. John Major, B.L.	Outstanding statements
7/12/2001	Rosminian Institute of Charity in Ireland	<i>For Management Respondent:</i> David Hardiman, S.C. O'Donovan, Solicitors  <i>For Commission:</i> Frank Clarke, S.C. Anne Reilly, B.L.	(1) Outstanding statements  (2) Practicalities of discovery
17/12/2001	Christian Brothers	<i>For Management Respondent:</i> Mary Irvine S.C. Maxwell, Weldon & Darley, Solicitors  <i>For Commission:</i> Frank Clarke, S.C. Deirdre Murphy, S.C. John Major, B.L. Anne Reilly, B.L.	Outstanding statements
22/01/2002	Christian Brothers	<i>For Management Respondent:</i> Maxwell, Weldon & Darley, Solicitors  <i>For Commission:</i> Frank Clarke, S.C.	Outstanding statements
8/03/2002	Oblates of Mary Immaculate	<i>For Management Respondent:</i> Conor Maguire, S.C. Colm O hOisin, B.L. Sheehan, Solicitors  <i>For Commission:</i> Frank Clarke, S.C. John Major, B.L.	Outstanding statements
26/03/2002	Good Shepherd Sisters	<i>For Management Respondent:</i> Aedan McGovern, S.C. Paul Gardiner, S.C. Esmond Keane, B.L. Millet & Matthews, Solicitors  <i>For Commission:</i> Frank Clarke, S.C. Anne Reilly, B.L.	(1) Outstanding statements.  (2) Discovery.

**TABLE L—continued**

<b>Date of Hearing</b>	<b>Management Respondent</b>	<b>Legal Representation</b>	<b>Issue</b>
<p><b>29/07/2002</b></p> <p><b>Public hearing</b></p>	<p>Oblates of Mary Immaculate</p>	<p><i>For Management Respondent:</i> Colm Maguire, S.C. C. O hOisin, B.L. Sheehan, Solicitors</p> <p><i>For Commission:</i> Frank Clarke, S.C. John Major, B.L.</p>	<p>Outstanding statements</p>
<p><b>20/03/2003</b></p> <p><b>Public hearing</b></p>	<p>Christian Brothers</p>	<p><i>For Management Respondent:</i> Mary Irvine, S.C. Sara Moorehead, B.L. J. O’Sullivan, B.L. Maxwell, Weldon &amp; Darley</p> <p><i>For Commission:</i> Frank Clarke, S.C. Deirdre Murphy, S.C. Anne Reilly, B.L.</p>	<p>Application by Management Respondent for extension of time in relation to submission of statements</p>

# CHAPTER 12 Investigation Committee: Complaint Profile

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## Introduction

In this chapter, the Committee proposes to furnish a detailed analysis of the allegations which it is investigating. The analysis will consist of:

- A profile of the persons making the complaints and allegations of abuse (the Complainants). In this connection, it will be noted that the Commission's remit relates to abuse suffered in childhood. The word "child" is defined in the Act<sup>166</sup> as meaning a person who has not attained the age of eighteen years.
- A profile of the institutions in which it is complained that the alleged abuse occurred. In the Act<sup>167</sup> the word "institution" is defined as including a school, an industrial school, a reformatory school, an orphanage, hospital, a children's home and any other place where children are cared for other than as members of their families. Placement of a child in foster care comes within that definition.
- A profile of the persons whom the Complainants name as having perpetrated or committed the alleged abuse (the Individual Respondents).
- A profile of the persons and bodies responsible for the management, administration and operation of the institutions at the time the abuse is alleged to have occurred (the Management Respondents).

In conducting its inquiry into the causes, nature, circumstances and extent of abuse in institutions, the Committee is also concerned with investigating the supervision, inspection and regulation of institutions and the persons and bodies responsible for the performance of those functions. As the data in relation to the types of institutions being investigated set out later will reveal, regulatory responsibility for the institutions was vested in a department of State or a public authority.

## The Case Load

The data contained in this chapter is based on allegations made by one thousand, seven hundred and twelve (1,712) Complainants and that figure includes the Complainants whose complaints are included in Table H and remain in the process. Those complaints

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<sup>166</sup> Section 1(1).

<sup>167</sup> Section 1(1).

have been partly heard or are regarded by the Committee as having been completely heard.

As has been recorded earlier,<sup>168</sup> when the second Interim Report was published in November 2001, the Committee had one thousand nine hundred and fifty-seven (1,957) complaints in hand. The current position is that, in addition to the complaints being investigated, the Committee has received requests to testify from three hundred and ninety-one (391) Complainants, but for a variety of reasons outlined later those Complainants' allegations will not proceed to a hearing. The total number of Complainants recorded as proceeding takes account of Complainants whose initial choice was the Confidential Committee but who have transferred to the Investigation Committee and vice versa. While the case load of the Committee may decrease, by reason of death, voluntary withdrawal from the process and such like, it cannot increase in the future.

The information contained in this chapter has been abstracted from request forms and statements submitted by the Complainants and statements submitted by Respondents. Factual matters asserted in the request forms and, to a lesser extent, in Complainants' statements are frequently vague and imprecise and sometimes inaccurate. Factual data, for example, date of birth, date of admission to or discharge from an institution, and the correct name of an individual against whom an allegation is made, is updated, verified and corrected as a result of inquiries and by reference to records furnished by the Department and school and pupil records submitted with Respondents' statements. Apart from this type of correction and verification, all of the data is untested except in relation to the matters which have been the subject of evidential hearings.

While the preliminary inquiries being conducted by the Inquiry Officers in accordance with the Act<sup>169</sup> have been substantially completed, they remain to be finalised. In particular, because of difficulties in setting up an interpretative service for Complainants with a hearing disability, the preliminary inquiries in relation to such Complainants, who number one hundred and nineteen (119), were ongoing when the Committee temporarily ceased gathering evidence pending the announcement of the result of the Government review. It is anticipated that there will be some variation in the data set out in this chapter when all of the preliminary inquiries have been completed. It is possible that significant events have occurred, for example, the death of a Complainant or the death of an Individual Respondent, of which the Committee is not aware, which have a bearing on the data contained in this chapter.

## **Timeframe of Allegations**

The Committee does not have available to it at this juncture precise information as to the number of complaints which relate to each decade or part of a decade since 1940. Such information would have to account for the fact that Complainants' residence in institutions may have straddled two or even three decades. Frequently, Complainants do not particularise when, during their residence in an institution, the alleged abuse occurred. However, a reliable timeframe picture can be extrapolated from the information available in relation to the age profile of the Complainants. Abuse which is within the Committee's

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<sup>168</sup> See chapter 2.

<sup>169</sup> Section 23.

investigative remit must have occurred before the Complainant attained the age of eighteen years. Accordingly, the following deductions can be made:

- 67% per cent of the complaints are at least 32 years old, that percentage of the Complainants being 50 years of age and upwards,
- 48% per cent of the complaints are at least 37 years old, that percentage of the Complainants being 55 years of age and upwards and
- 31% percent of the complaints are at least 42 years old, that percentage of the Complainants being 60 years of age and upwards.

Apart from the fact that the foregoing deductions are made on the basis of data which relates to five year time spans, there is a high degree of probability that most allegations are older than those deductions would suggest. With the exception of Reformatory Schools, the norm was that children were discharged from residential institutions at sixteen years of age or earlier.

### **Profile of Complainants**

The Complainants are profiled according to gender, age and current place of residence in Tables M(1), M(2) and M(3). The data discloses the following:

- That 73 per cent of the Complainants are men and 27 per cent are women.
- That 67 per cent of all Complainants are currently over the age of 50 and 31per cent are currently over the age of 60.
- That 65 per cent of the Complainants are currently resident within the State, whereas 35 per cent are currently resident outside the State, 31 per cent being currently resident in the United Kingdom.

In the statements submitted by them, the Complainants complain about their experiences in institutions during childhood. Most, but not all, make allegations of abuse against named individuals, although in the case of complaints concerning institutions for girls, the tendency to make allegations against named individuals is less prevalent than in the case of complaints concerning institutions for boys.

### **Profile of institutions**

The Committee is investigating complaints in relation to 267 institutions and institutional settings (foster care). A breakdown of the number of institutions by institution type and a breakdown of the complaints by institution type is set out in Table N.

The total number of complaints made by the Complainants in relation to institutions and institutional settings is two thousand, one hundred and one (2,101). The discrepancy between this figure and the number of Complainants is explained by the fact that some Complainants were resident in, and make allegations in relation to, more than one institution. Some were in more than one type of institution. For instance, a child may have been transferred from an Industrial School to a Reformatory School, or a child may have been committed to a Reformatory School having been discharged from an Industrial School.

Of the institution types listed in Table N, the following were residential: industrial school; orphanage; place of detention; reformatory school; residential home (for, among others, children with sight and hearing disability); secure unit; and special school (for children with intellectual disability). Of the total number of complaints being investigated in relation to institutions, 88 per cent relate to residential institutions.

The position in November 2001, as reported in the second Interim Report,<sup>170</sup> was that Industrial Schools and Reformatory Schools predominated in the requests to give evidence to the Committee. That remains the position. Of the total complaints pending, 76 per cent relate to Industrial and Reformatory Schools. As appears from Table Q, the twenty (20) Industrial and Reformatory Schools in relation to which the greatest number of complaints are pending between them account for one thousand, three hundred and twelve (1,312) complaints, or 62 per cent of all complaints.

In the hospital category, apart from one cluster, there are one (in relation to seventeen hospitals), two (in relation to five hospitals) and three (in relation to one hospital) complaints in relation to each hospital. There is a cluster of eleven complaints in relation to an Orthopaedic Hospital, covering the period spanning the 1940s, 1950s, 1960s and 1970s. The information available indicates that, as regards the Complainants who made complaints about it, the Orthopaedic Hospital was a long stay hospital, the duration of the stay of a Complainant ranging from one year to fourteen years.

The primary/secondary school category, which subsumes all non-residential schools, including National Schools, is profiled in depth later.

In relation to one thousand, nine hundred and twenty-one complaints (1,921), equivalent to 91 per cent of the complaints, the Department had regulatory responsibility for the institution. These complaints relate to the following institution types:

- industrial school (1,423);
- place of detention (15);
- reformatory school (165);
- secure unit (3);
- special school (29);
- day primary/secondary school (165); and
- residential home for children with sight and hearing disability (121).

## **Profile of Individual Respondents**

Some Complainants do not name any person as the alleged perpetrator, whereas others name several and some many.

Identifying and tracing individuals named by Complainants as perpetrators has given rise to considerable difficulty, because the Complainant may have given an incorrect, or an incomplete name, or may remember the individual only by a “nickname”. Whether an

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<sup>170</sup> Appendix C.

individual who, at the relevant time, was a member of a Congregation but is no longer a member, or a lay person who worked in an institution at the relevant time, is alive or dead may be difficult to establish.

On the basis of the information currently available to the Committee, the number and current status of persons named in Complainants' statements as alleged perpetrators is as follows:

Individuals named by Complainants as perpetrators of abuse		1,195
Named individuals who are—		
■ known to be dead	429	
■ untraced	185	
■ not identifiable by the Management Respondent	24	
■ incapable of testifying	15	
■ probably incapable of testifying	21	674
Named individuals who are known to be alive and are believed to be capable of giving evidence		521

In the case of each of the fifteen named individuals who are stated to be incapable of testifying, the Committee has determined, on the basis of medical evidence, that the individual is not capable of testifying. In three cases, the named individual has been examined by a consultant psychiatrist nominated by the Committee for the purpose of ascertaining and reporting on the mental capacity of the individual to give evidence in relation to the matters alleged against him.

The assessment that twenty-one named individuals are probably incapable of testifying is an assessment made by the Committee's legal team on the basis of the information supplied by legal representatives on their behalf.

The Committee is aware that ten named individuals reside outside the jurisdiction. They would not be amenable to a direction under the Act<sup>171</sup> to attend to give evidence. It is not known whether they would be willing to attend voluntarily. Only two are not legally represented before the Committee, one of whom, now residing in the United States of America, is the first individual listed in Table P, against whom seventy-six allegations are pending.

The Committee does not have complete information in relation to the age profile of named individuals who are alive. While, in the case of allegations which relate to residential institutions, some fellow pupils and some former pupils (commonly referred to as "older boys" or "older girls" or "monitors") are named, a significant majority of the persons named as alleged perpetrators were persons in authority or persons employed in the institution. Therefore, it is reasonable to assume that the age profile of the Individual Respondents is older than the age profile of the Complainants. This is borne out by the age profile of the Individual Respondents who have participated in hearings, as the year of birth information set out in the Table H indicates.

<sup>171</sup> Section 14(1)(a).

The volume of allegations against named individuals has added complexity and difficulty to the inquiry. Table O contains an analysis of the allegations showing, *inter alia*, the number of individuals who are facing multiple allegations. As that Table illustrates, thirty-six (36) individuals are facing more than twenty (20) allegations. Table P contains details of the volume of allegations against each of those individuals, without identifying the individual. All of the individuals are, or formerly were, members of Congregations.

The complexity of the investigation is compounded by the fact that, not only have named individuals multiple allegations made against them, but in the case of ninety named individuals, there are allegations against them in respect of more than one institution. Of the ninety named individuals, thirty-one are known to be dead and fifty-nine are alive.

The total number of allegations made by all Complainants against named individuals is four thousand, one hundred and twenty-eight (4,128).

### **Profile of Management Respondents**

The analysis of the institutions<sup>172</sup> is the key to the profile of the Management Respondents. A significant majority of institutions under investigation were managed by Congregations and this is reflected as follows in relation to institution types:

- The Hospital to which the cluster of complaints relates was managed by a Congregation.
- With the exception of Baltimore Fisheries School, all Industrial Schools were managed by Congregations.
- The Magdalene Laundries were managed by Congregations.
- Most of the Orphanages in relation to which complaints are pending were managed by Congregations.
- With the exception of Trinity House, Lusk, all of the Reformatory Schools were managed by Congregations.
- Most of the residential homes were managed by Congregations.
- Most of the Special Schools were managed by Congregations.

The total number of complaints being investigated in relation to the foregoing institutions managed by Congregations is one thousand, eight hundred and eighteen (1,818), which represents 87 per cent of all complaints in respect of institutions.

The predominance of Congregations as Management Respondents is clearly illustrated in Table Q, which contains a list of Industrial and Reformatory Schools in respect of which twenty or more complaints are pending before the Committee and which details the number of complaints against each of the institutions. The complaints aggregate one thousand, three hundred and twelve (1,312) and represent 62 per cent of all complaints in relation to institutions. One of the institutions listed, in respect of which there have been

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<sup>172</sup> See Table N.

twenty-one complaints, is Baltimore Fisheries School.<sup>173</sup> An analysis of the allegations against named individuals, who are not identified, in these institutions (excluding Baltimore Fisheries School) reveals that they aggregate three thousand, one hundred and ninety-two (3,192) allegations, which is equivalent to 77 per cent of all of the allegations against named individuals. Named individuals include lay people (for example, teachers and carers), as well as members and former members of the relevant Congregations.

In relation to Table Q, the Committee emphasises the following matters:

- No evidence has been heard and no finding has been made on foot of the complaints made in relation to the institutions named, nor has any evidence been heard or any finding been made on foot of the allegations against the unidentified named individuals. In the case of some of the named individuals, it is possible that it will be determined in due course that it would be unsafe to make a finding. The complaints and allegations remain complaints and allegations. They have not acquired any other status in the course of the preliminary investigations.
- The Complainants who have made allegations in relation to each institution represent a small percentage of the total population of pupils who resided in the institutions during the relevant period, as the data in the fourth column in Table Q clearly indicates. This data has been extrapolated from the Annual Reports of the Department of Education in the relevant years.

### **Artane Industrial School**

As is shown on Table Q, the largest volume of complaints in relation to an institution being investigated by the Committee relates to Artane Industrial School (Artane). Artane was the largest Industrial School in the State. It closed in 1969. As the data in the fourth column in Table E indicates, during the 1940s, the average yearly population of pupils residing in Artane was 815 pupils and the corresponding figure in the 1950s is 628 pupils.

Three hundred and fourteen (314) Complainants wish to give evidence of their experiences in Artane. Of those, one hundred and four (104) also wish to testify in relation to other institutions.

In the complaints in relation to Artane, one hundred and seventy one (171) individuals are named as having committed abuse and the allegations against those individuals aggregate one thousand and thirty-eight (1,038).

The information available to the Committee in relation to the individuals who are named is as follows:

- Fifty are known to be dead.
- Twenty-three have not been traced.
- On the basis of medical evidence, one is incapable of testifying.
- In the case of allegations against approximately thirty-four individuals it is asserted in

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<sup>173</sup> See chapter 8.

the statements of the Management Respondent that the person named was not in the institution when the abuse is alleged to have occurred.

- In the case of one individual named, it is asserted in the statement of the Management Respondent, that a person of that name was not a member of the Congregation.

There are in excess of twenty-five (25) allegations being investigated in relation to each of ten (10) of the named individuals and the totality of the allegations against those individuals aggregate four hundred and four (404). Of those ten (10) named individuals, five are alive and five are dead.

In the course of the Christian Brothers' Proceedings, the second named plaintiff, Brother David Gibson, gave evidence in the High Court on 14<sup>th</sup> May, 2003 in relation to the personnel in Artane, who were members of the Congregation during the period over which the Committee's inquiry ranges. The Committee considers it appropriate to record that evidence, so that the data given in relation to the matters pending before the Committee in relation to Artane<sup>174</sup> can be put in context. Brother Gibson testified that of the one hundred and ninety-two (192) members of the Congregation during the period in question:

- 85 members of the Congregation are dead.
- 32 members of the Congregation are still alive.
- 75 former members have left the Congregation, some of whom are dead and some of whom are not in contact with the Congregation.
- Of the 32 members of the Congregation who are still alive, probably three or four are unable to give instructions because of age or infirmity.

An analysis of the statements of the Complainants who make allegations in relation to Artane reveals the following information in relation to the nature of the abuse they allege:

- Approximately half of the Complainants allege sexual abuse.
- Practically all of the Complainants allege physical abuse.
- Less than half of the Complainants allege conduct which is classifiable as emotional abuse, for example, the manner in which bed wetting was dealt with, hair shaving as a punishment and such like.
- More than half allege neglect.

### **Estimation of parties requiring legal representation**

In his letter of 4<sup>th</sup> July, 2003 to the Commission<sup>175</sup>, the Minister requested information on "the number of persons (whether Complainants, institutions or individuals or religious

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<sup>174</sup> As recorded in the Final Ruling of 18<sup>th</sup> October, 2003 on lapse of time and allied issues, at paragraph 4.4, Counsel for the Christian Brothers estimated that in excess of 30 per cent of the complaints to which the Christian Brothers were responding included an allegation of sexual abuse. In paragraph 4.3 of the Final Ruling, the observations of Counsel for the other Management Respondent which participated in the Procedural Hearing in a representative capacity are recorded. Those observations reflect the general trend in relation to residential institutions for girls.

<sup>175</sup> In Appendix D.

orders) who are likely to seek and be granted representation in respect of the complaints outlined above''. In responding to that request, the Commission stated that, insofar as the information was sought with a view to estimating the possible burden on the Exchequer of costs of legal representation before the Committee, it could be of little value if it was not considered in the context of, and applied to, the investigative model which will be adopted in the inquiry. As the Committee's mandate is still under review, the following information is recorded for what it is worth.

In summary, the potential participants in the process are:

- Complainants: 1,712
- Individual Respondents: 1,195 against whom there are 4,128 allegations
- Institutions: 267 (including 11 foster homes) in respect of which there are 2,101 complaints, which may give rise to criticism of, or an adverse finding in relation to, the Management Respondent and/or the regulator of the institution.

The volume of statements received by the Committee from Complainants, Individual Respondents, Management Respondents and the relevant regulator (for example, the Department) is indicative of the level of participation in the process. To date, six thousand, seven hundred and forty-seven (6,747) statements have been received. Of that number, one thousand, six hundred and fifty-nine (1,659) have been submitted by Complainants, sixty-four of whom are not proceeding in the process. Complainants' statements have not been received in the case of one hundred and seventeen (117) Complainants with hearing disability because of the difficulty in establishing the interpretative service adverted to earlier. Approximately one thousand, nine hundred (1,900) responding statements have been received from the Department.

Only fifty-five (55) of the one thousand, seven hundred and twelve (1,712) Complainants do not have a legal representative on record with the Committee. Seventeen (17) of those Complainants reside outside the State. Only eight (8) of the Individual Respondents who are actively participating in the process do not have a legal representative on record. Two (2) of those Individual Respondents reside outside the State. All Management Respondents are legally represented.

## **Non Residential Schools**

As Table N indicates, there are one hundred and sixty-five (165) complaints, equivalent to 8 per cent of all complaints, involving one hundred and twenty-three (123) primary and secondary schools. Eighteen (18) of the Complainants also make allegations in respect of periods spent by them in residential institutions (Industrial Schools).

A significant majority of the complaints which have no residential institution element, one hundred and one (101), equivalent to 82 per cent of such complaints, concern non-residential institutions in respect of which there is a single complaint only. There are a small number of clusters of complaints involving a non-residential institution, for example:

- 14 complaints in relation to one day school
- 5 complaints in relation to one day school
- 4 complaints each in relation to two day schools

Of the foregoing, only one day school, in relation to which there are four complaints, was not managed by a Congregation.

There is considerable diversity in the profile of the Management Respondents of the non residential institutions complained about. In the case of National Schools, the nature of the management, and the identity of the Management Respondent, depends on the era to which the allegations relate. Before 1975, National Schools were managed by the nominee of the patron, usually the Parish Priest of the parish in which the school was situated, or a Congregation. After 1975, the trend was for the establishment of boards of management. Of the one hundred and twenty-three (123) non residential institutions to which the complaints relate, thirty-eight (38), equivalent to 31 per cent of all such institutions, were managed at the relevant time by a Congregation, the Christian Brothers.

In relation to the complaints which involve non-residential institutions only, that is to say, one hundred and forty-seven (147) complaints, the overwhelming trend is to name only one individual as a perpetrator of abuse. In aggregate, only one hundred and forty-nine (149) Individual Respondents (representing 12 per cent of the total number of Individual Respondents identified in the course of the preliminary inquiries) are named in the complaints in relation to non-residential institutions, of whom one hundred and twenty-three (123) are male and twenty-six (26) are female. An analysis of the volume of allegations against the named individuals discloses the following instances of multiple allegations:

- 5 allegations against one named individual, who is deceased but was convicted in his lifetime.
- 4 allegations against each of two individuals, both of whom are alive.
- 2 allegations against each of eleven (11) individuals.
- 1 allegation against each of one hundred and thirty-five (135) individuals.

Of the fourteen (14) individuals against whom two or more allegations have been made, none is female.

A significant majority of the allegations against named individuals, 93 per cent, involve an allegation or allegations by one Complainant against one named individual. The manner in which the Committee, following a full investigation of the allegations, may report on its determinations in such circumstances is constrained by the Act.<sup>176</sup> As has been explained,<sup>177</sup> this restriction has impacted on the Committee's capacity to report on the complaints in relation to National Schools which have been heard.

### **Requests to testify which will not proceed to a hearing**

As has been stated, the Committee has received three hundred and ninety-one (391) requests to testify which will not proceed to a hearing. The main reasons why there will not be a hearing are as follows:

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<sup>176</sup> Section 13(2)(c).

<sup>177</sup> Chapter 7.

## *Death*

- The right to recount abuse to the Committee is given by the Act<sup>178</sup> to “persons who have suffered abuse in childhood in institutions during the relevant period”. The Committee has received twenty (20) requests from spouses, partners or other family members of deceased persons whom it is alleged suffered abuse which comes within the remit of the Committee. Further, the Committee has been informed that nineteen (19) Complainants have died since submitting a request to testify, regrettably without having obtained a hearing. It may be that other Complainants have died and that the Committee has not been informed. While the death of the person who is alleged to have been abused and the loss of his or her direct evidence prevents his or her specific complaint being inquired into, the Committee is cognisant of the fact that family members of the deceased may have evidence to offer which is relevant to the Committee’s broader investigative remit: to inquire into abuse in institutions generally and to determine the causes, nature, circumstances and extent of the abuse. Family members may also have evidence to offer in relation to the effects of institutionalisation on the deceased and how his or her family was affected in turn. The information furnished by, or in relation to, the deceased remains part of the documentary records of the Committee as a potential source of evidence.

## *Complaints outside the Committee’s statutory remit*

- It has been decided in the case of twenty (20) requests to testify, that the matters alleged do not come within the ambit of the functions conferred by the Act on the Committee because, for example—
  - the incident or activity complained of does not come within the statutory definition of “abuse”,
  - the alleged abuse did not occur in an “institution” as defined in the Act,
  - the Complainant was not under the age of eighteen (18) years at the time of the alleged abuse,
  - the matters complained of occurred outside the “relevant period” as defined by the Act,<sup>179</sup> or
  - the matters complained about occurred outside the State.

Where the Committee has determined that a matter, the subject of a request to testify, does not come within its statutory remit, the Complainant has been notified.

## *Transfers to the Confidential Committee*

- The Act<sup>180</sup> permits a Complainant to transfer to the Confidential Committee prior to completion of his or her evidence to the Investigation Committee. To date, ninety-two (92) Complainants, who initially chose to testify to the Investigation Committee and have their allegations investigated, have opted to give their evidence to the

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<sup>178</sup> Section 12(1)(a).

<sup>179</sup> See Ruling of the Investigation Committee dated 27<sup>th</sup> November, 2002 on the meaning of “relevant period” which is posted on the Commission’s website.

<sup>180</sup> Section 19(1).

Confidential Committee instead. The volume of transfers to the Confidential Committee over the past three years is as follows:

- 39 transfers in 2001
- 47 transfers in 2002
- 6 transfers in 2003.

In its second Interim Report,<sup>181</sup> the Commission availed of the opportunity to remind Complainants of the nature of the inquiries being carried out by the Committee and the Confidential Committee respectively. The importance of a Complainant being fully aware of the differences between the two Committees and being in a position to make a fully informed choice of Committee to which to recount his or her experiences at an early stage of participation in the process was emphasised. It was recommended that a Complainant should be fully advised of these matters by his or her legal representatives and that, if there was a concern that the nature of the process of the Committee would be excessively stressful for a Complainant, consideration should be given to transferring to the Confidential Committee at an early stage.

#### *Default in compliance with rules/deadlines*

- The Committee has terminated its preliminary inquiries into complaints submitted by one hundred and forty-four (144) Complainants because of failure to furnish a statement in accordance with the Act<sup>182</sup> by the final date stipulated for submission of a Complainant's statement, 30<sup>th</sup> June, 2002. In a small number of cases, seven, the preliminary inquiries were terminated because of failure to submit a statement in conformity with the Committee's guidelines for making statements before the deadline.

As the Commission has explained in the past,<sup>183</sup> a whole range of factors is considered in reaching a determination which excludes somebody from the process. The fundamental imperative is that, in the interests of fairness and justice, the Commission's investigative remit must be fulfilled with reasonable expedition. Completion of the Commission's work and publication of its final report as soon as reasonably practicable is desirable in the interests of the generality of Complainants participating in the work of the Committee.

#### *Withdrawal*

- The Committee has been notified by ninety (90) Complainants that they have decided to withdraw from the process of the Committee, without giving any reason for the decision. Fifty-eight (58) of these Complainants were legally represented in the process and the notification of the decision to withdraw was given by their solicitors. The number of withdrawals notified by solicitors in the last three years is as follows:

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<sup>181</sup> Appendix C.

<sup>182</sup> Section 23(2)(a).

<sup>183</sup> For example, in the second Interim Report (Appendix C) in relation to the deadline on 31<sup>st</sup> July, 2001 for submitting requests to testify.

- 24 withdrawals in 2001
- 31 withdrawals in 2002
- 3 withdrawals in 2003.

The level of notifications in the current years raises the question of the impact of the work of the Residential Institutions Redress Board (the Redress Board) on the willingness of Complainants to continue in the Committee's process and have the investigation of their complaints brought to a conclusion at a hearing. *Prima facie*, it would appear that the work of the Redress Board has had no impact.

### **Going Forward**

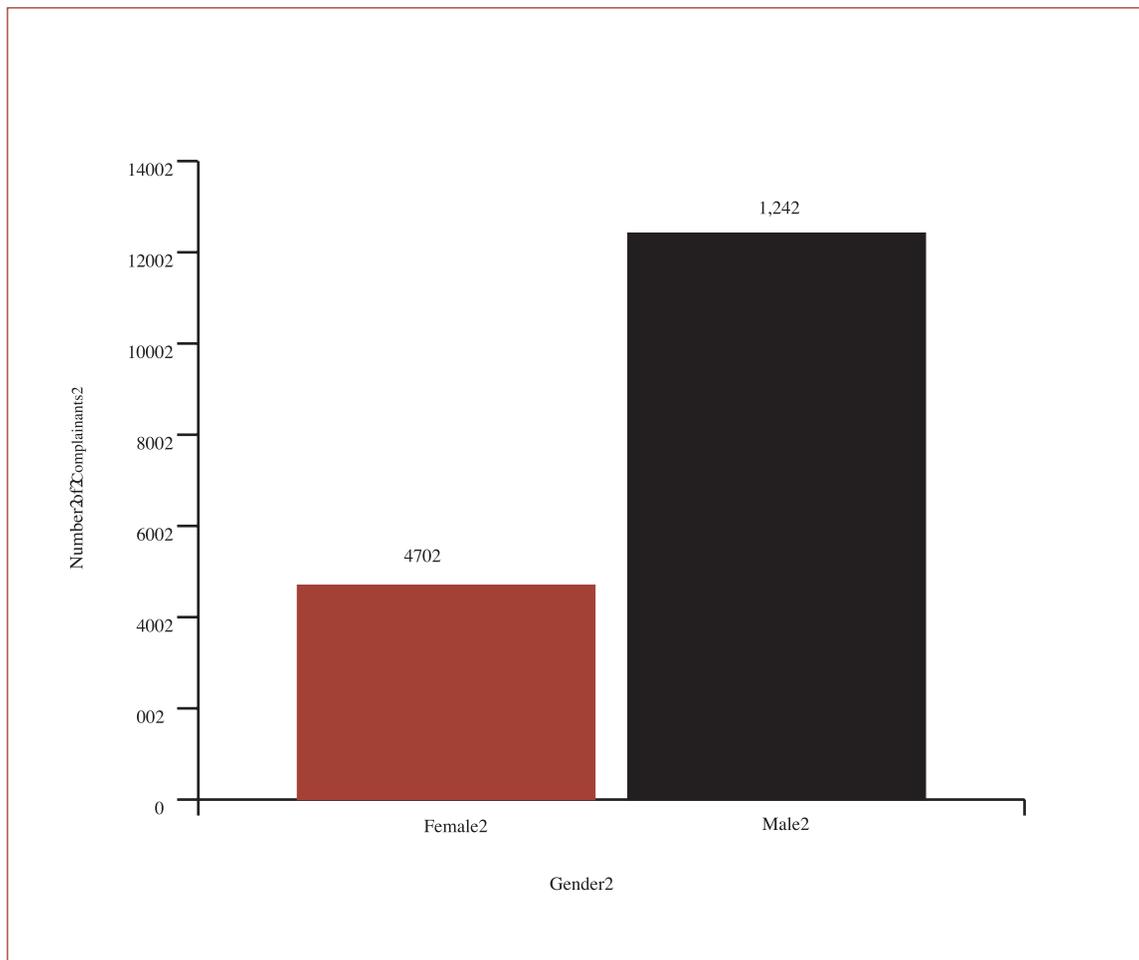
It is in the interests of the generality of persons involved in the process of the Committee, whether voluntarily, as Complainants, or compulsorily, as Respondents, that the Committee is informed of events and decisions which will affect the Committee's work going forward. In particular, legal representatives on record with the Committee should inform the Committee of any such events and decisions, for example, the death of the Complainant, or a decision by the Complainant to seek vindication from the Redress Board.

**TABLE M(1)**

**Gender of Complainants**

<b>Gender</b>	<b>Number of Complainants</b>	<b>Approximate Percentage %</b>
Female	470	27.45
Male	1,242	72.55
<b>TOTAL</b>	<b>1,712</b>	<b>100</b>

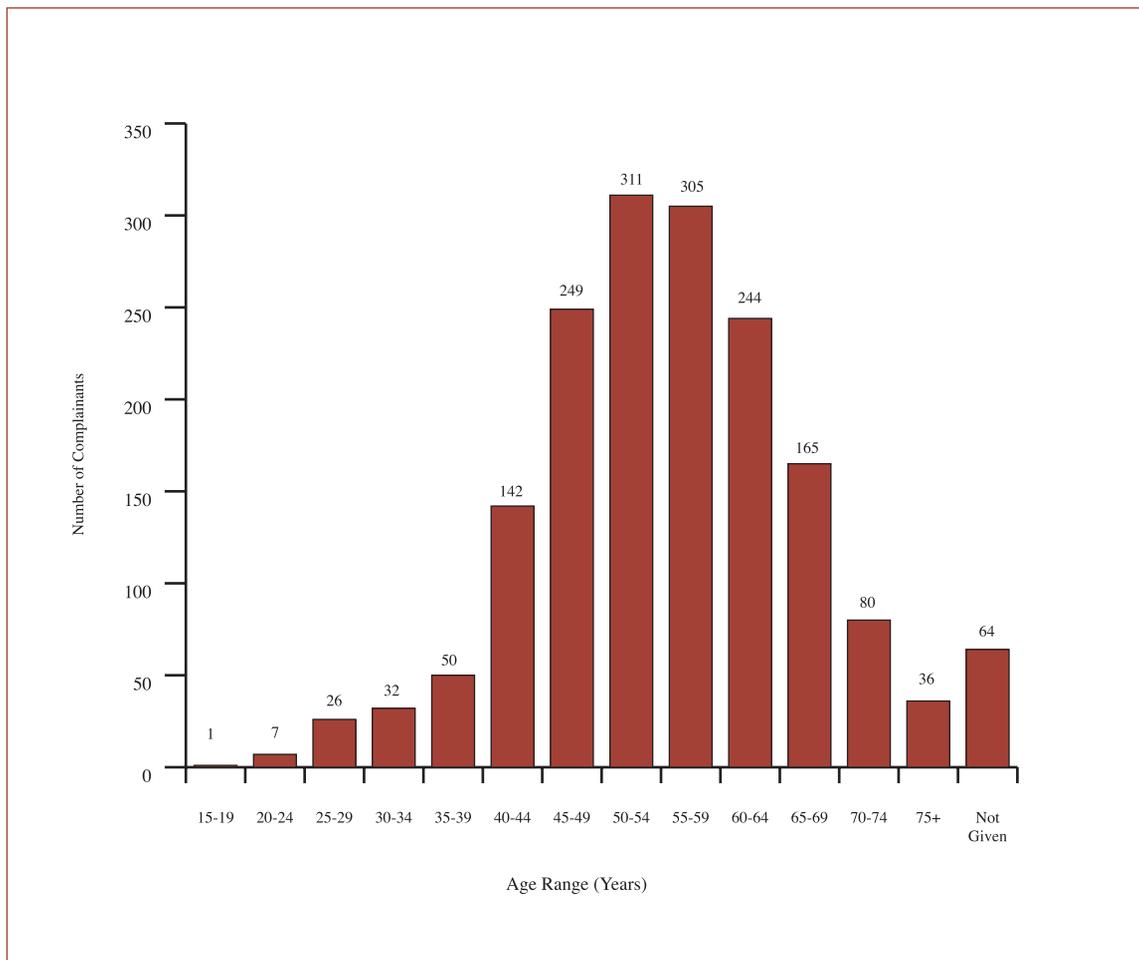
**Gender of Complainants**



**TABLE M(2)**  
**Age Range of Complainants**

Age Range (years)	Number of Complainants	Approximate Percentage %
15-19	1	0.06
20-24	7	0.41
25-29	26	1.52
30-34	32	1.87
35-39	50	2.92
40-44	142	8.29
45-49	249	14.54
50-54	311	18.17
55-59	305	17.82
60-64	244	14.25
65-69	165	9.64
70-74	80	4.67
75+	36	2.10
Age Range Not Given	64	3.74
<b>TOTAL</b>	<b>1,712</b>	<b>100</b>

**Age Range of Complainants**

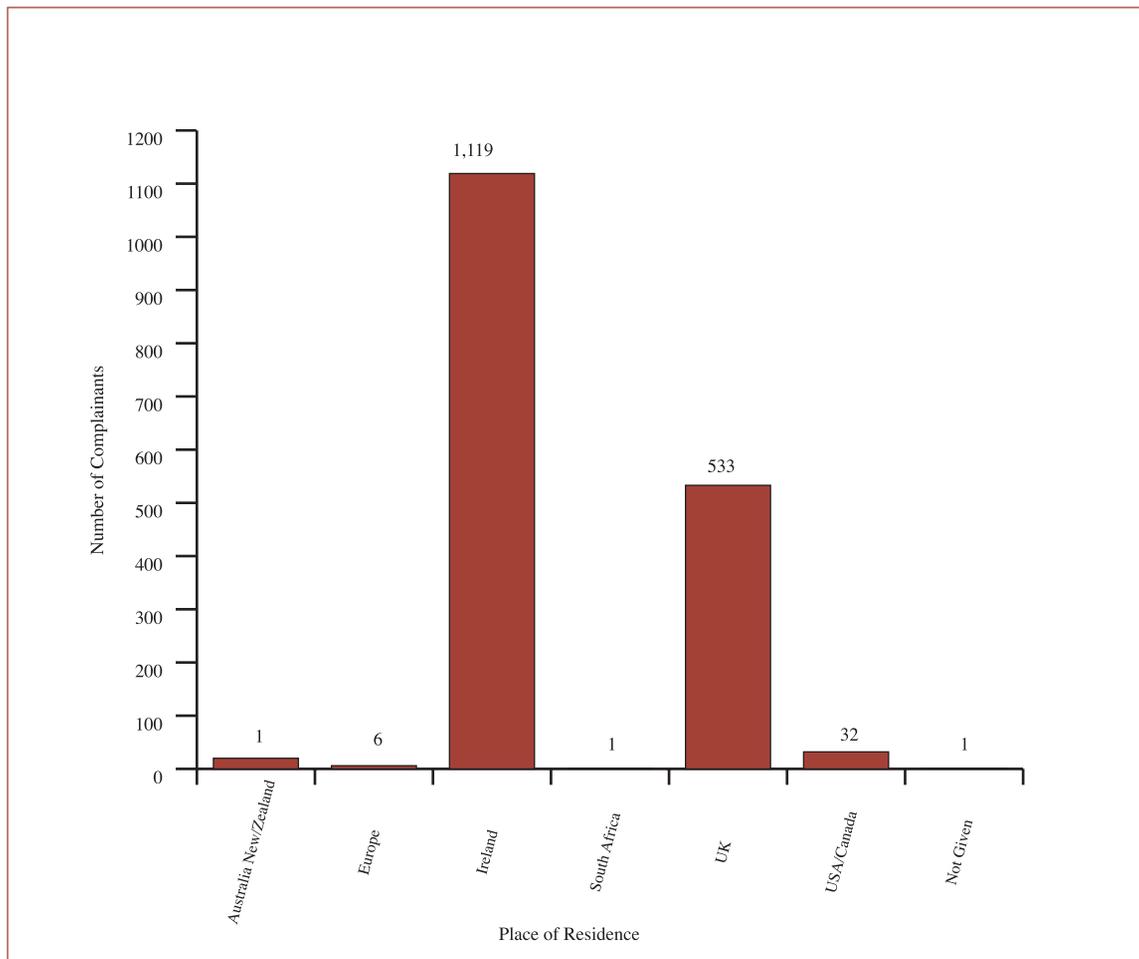


**TABLE M(3)**

**Place of Residence of Complainants**

<b>Place</b>	<b>Number of Complainants</b>	<b>Approximate Percentage %</b>
Australia/New Zealand	20	1.17
Europe	6	0.35
Ireland	1,119	65.36
South Africa	1	0.06
UK	533	31.13
USA/Canada	32	1.87
Place of Residence Not Given	1	0.06
<b>TOTAL</b>	<b>1,712</b>	<b>100</b>

**Place of Residence of Complainants**

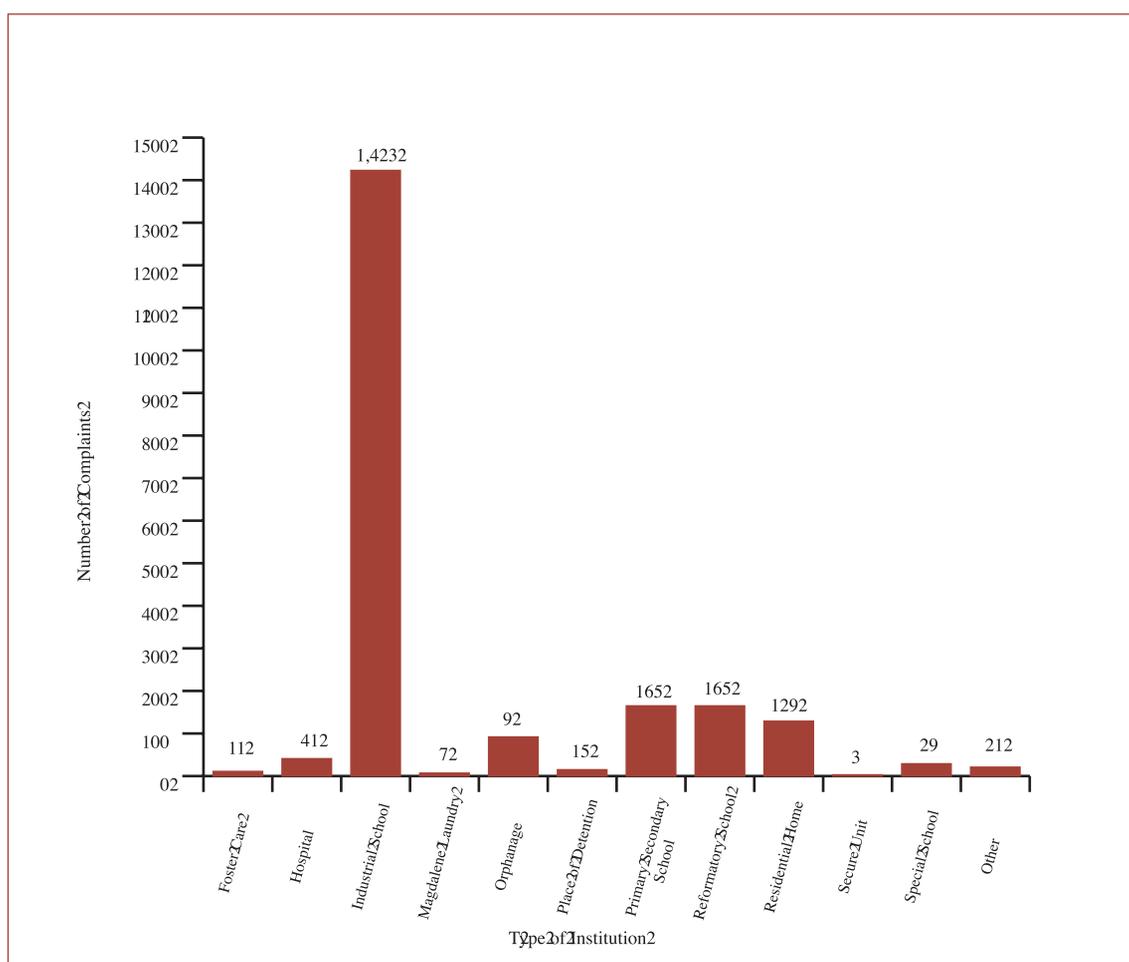


**TABLE N**

**Number of Complaints per Institution Type**

Type of Institution	No. of institutions in each class	Number of Complaints	Approximate Percentage %
Foster Care	11	11	0.5
Hospital	24	41	2
Industrial School	52	1,423	67.7
Magdalene Laundry	7	7	0.3
Orphanage	16	92	4.4
Place Of Detention	2	15	0.7
Primary/Secondary School	123	165	7.9
Reformatory School	4	165	7.9
Residential Home	6	129	6.1
Secure Unit	1	3	0.1
Special School	6	29	1.4
Other	15	21	1
<b>TOTAL</b>		<b>2,101</b>	<b>100</b>

**Number of Complaints per Institution Type**

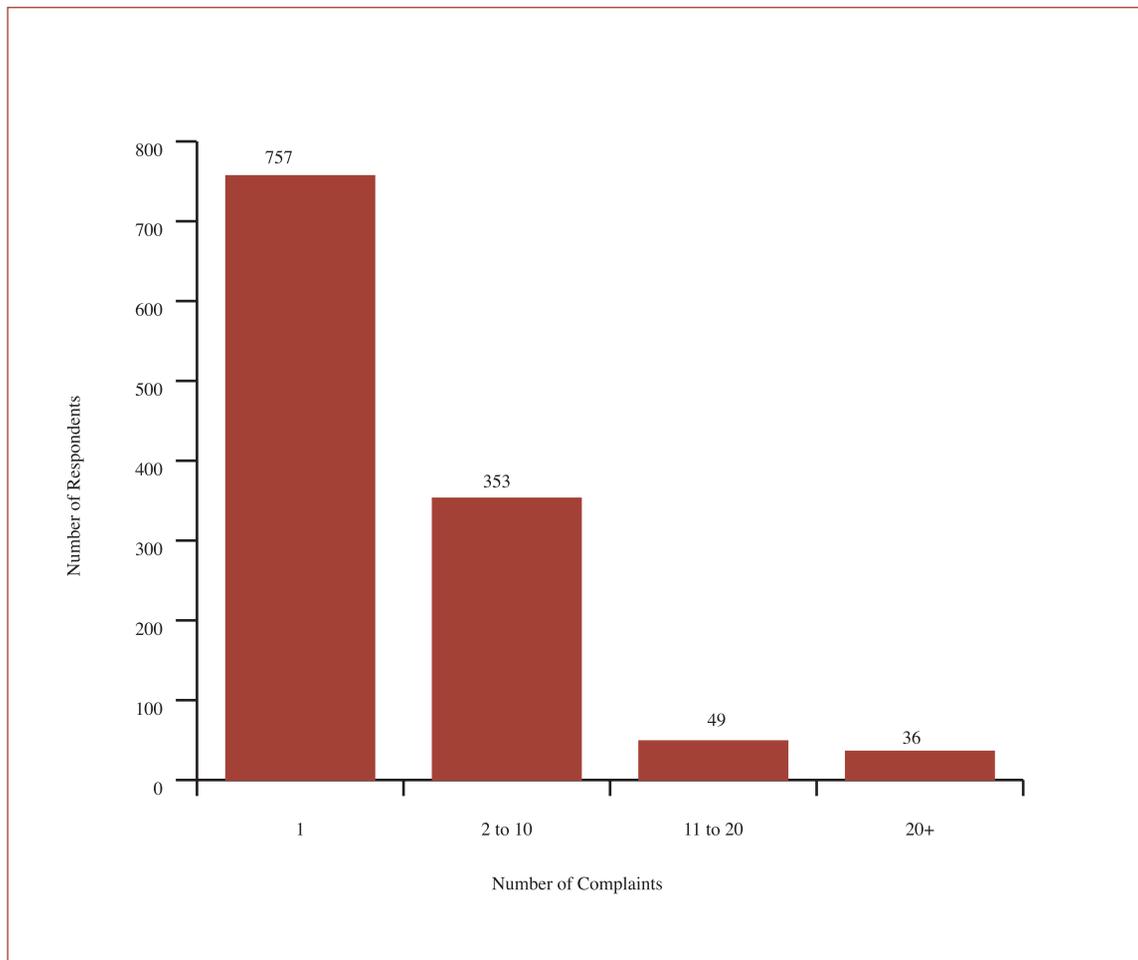


**TABLE O**

**Single/Multiple allegations per Individual Respondents**

<b>Number of Allegations</b>	<b>Number of Individual Respondents</b>	<b>Approximate Percentage %</b>
1	757	63.35
2-10	353	29.54
11-20	49	4.10
20+	36	3.01
<b>TOTAL</b>	<b>1,195</b>	<b>100</b>

**Number of Respondents with the Relevant Number of Complaints Against Them**



**TABLE P****Named individuals against whom twenty or more allegations have been made**

	<b>Type of Institutions in which abuse is alleged to have occurred</b>	<b>Number of allegations against named individual</b>	<b>Status of the named individual including, if alive, year of birth if known</b>
1	I.S. for boys (2) <b>Note 1</b>	76 Institution 1 – 37 Institution 2 – 39	Alive but residing out of the jurisdiction (YOB 1928)
2	I.S. for boys (2)	74 Institution 1 – 59 Institution 2 – 15	Deceased
3	I.S. for boys	65	Alive (YOB 1914)
4	I.S. for boys	61	Alive. Convicted. <b>Note 3</b>
5	I.S. for girls (2)	52 Institution 1 – 36 Institution 2 – 16	Alive (YOB 1918)
6	I.S. for boys	51	Deceased
7	I.S. for boys	47	Alive (YOB 1930)
8	R.S. for boys <b>Note 2</b>	44	Deceased
9	R.S. for boys	44	Deceased
10	I.S. for boys (2)	43 Institution 1 – 38 Institution 2 – 5	Deceased
11	I.S. for boys	38	Alive (YOB 1926)
12	I.S. for boys	37	Deceased
13	I.S. for boys (2)	34 Institution 1 – 9 Institution 2 – 25	Deceased
14	I.S. for boys	30	Deceased
15	R.S. for boys	30	Alive (YOB 1925)
16	I.S. for boys	30	Deceased
17	I.S. for boys	30	Deceased
18	R.S. for boys	29	Deceased
19	R.S. for boys	29	Alive but incapable of testifying
20	R.S. for boys	28	Deceased
21	I.S. for boys	27	Deceased
22	I.S. for boys(2)	25 Institution 1 – 18 Institution 2 – 7	Deceased

**TABLE P—continued**

	<b>Type of Institutions in which abuse is alleged to have occurred</b>	<b>Number of allegations against named individual</b>	<b>Status of the named individual including, if alive, year of birth if known</b>
23	I.S. for boys	25	Alive (YOB 1932)
24	I.S. for boys (2)	25 Institution 1 – 1 Institution 2 – 24	Alive
25	I.S. for boys	25	Alive (YOB 1927)
26	I.S. for boys/Day School (3)	25 Institution 1 – 2 Institution 2 – 21 Institution 3 – 2	Alive (YOB 1944)
27	I.S. for boys	24	Alive (YOB 1933)
28	I.S. for boys	22	Deceased
29	R.S. for boys	22	Alive (YOB 1933)
30	I.S. for boys	22	Alive (YOB 1936)
31	I.S. for boys	22	Deceased
32	I.S. for boys	21	Deceased
33	I.S. for boys	21	Deceased
34	I.S. for boys	21	Alive
35	I.S. for boys	20	Alive (YOB 1931)
36	I.S. for boys	20	Alive but out of the jurisdiction. Convicted (YOB 1945) <b>Note 3</b>

*Note 1:* I.S. means Industrial School

*Note 2:* R.S. means Reformatory School.

*Note 3:* The conviction does not necessarily relate to a complaint or complaints before the Committee.

**TABLE Q**

**Industrial and Reformatory Schools in relation to which twenty or more complaints are pending**

**THIS TABLE CONTAINS DETAILS OF UNPROVEN COMPLAINTS AND ALLEGATIONS**

	<b>Institution and Year of closure</b>	<b>Congregation/ Management Respondent</b>	<b>Average No. of pupils yearly during the: (1) the 1940s (2) the 1950s</b>	<b>No. of Complaints</b>	<b>(1) No. of individuals named in complaints and (2) No. of allegations against them</b>
1	Artane Industrial School 1969	Christian Brothers	(1) 815 (2) 628	314	(1) 171 (2) 1,038
2	St. Conleth's Reformatory School, Daingean, Co. Offaly 1974	Oblates of Mary Immaculate	(1) 216 (2) 159	152	(1) 59 (2) 361
3	St. Joseph's Industrial School, Ferryhouse, Co. Tipperary <b>Note 1</b>	Rosminian Institute	(1) 170 (2) 189	132	(1) 73 (2) 336
4	St. Joseph's Industrial School, Letterfrack, Co. Galway. 1974	Christian Brothers	(1) 158 (2) 124	126	(1) 68 (2) 393
5	St. Patrick's Industrial School (Danesfort), Upton, Co. Cork 1966	Rosminian Institute	(1) 177 (2) 135	93	(1) 64 (2) 228
6	St. Vincent's Industrial School, Goldenbridge, City of Dublin <b>Note 2</b>	Sisters of Mercy	(1) 148 (2) 153	77	(1) 13 (2) 78
7	St. Joseph's Industrial School, Tralee, Co. Kerry 1970	Christian Brothers	(1) 141 (2) 102	52	(1) 45 (2) 159
8	St. Kyran's Industrial School, Rathdrum, Co. Wicklow	Sisters of Mercy	(1) 76 (2) 99	44	(1) 13 (2) 42
9	St. Joseph's Industrial School, Glin, Co. Limerick 1977	Christian Brothers	(1) 200 (2) 165	37	(1) 36 (2) 122
10	St. Joseph's Industrial School, Greenmount, Cork City. 1959	Presentation Brothers	(1) 223 (2) 146	33	(1) 29 (2) 70
11	St. Joseph's Industrial School, Clifden, Co. Galway 1983	Sisters of Mercy	(1) 120 (2) 118	33	(1) 29 (2) 72

TABLE Q—continued

	Institution and Year of closure	Congregation/ Management Respondent	Average No. of pupils yearly during the: (1) the 1940s (2) the 1950s	No. of Complaints	(1) No. of individuals named in complaints and (2) No. of allegations against them
12	St. Joseph's Industrial School, Salthill, Galway	Christian Brothers	(1) 199 (2) 166	31	(1) 31 (2) 72
13	St. Joseph's Industrial School, Kilkenny 1966	Sisters of Charity	(1) 125 (2) 115	30	(1) 17 (2) 30
14	Mount Saint Joseph's Industrial School, Passage West, Co. Cork	Sisters of Mercy	(1) 76 (2) 72	26	(1) 20 (2) 39
15	St. Michael's Industrial School, Cappoquin, Co. Waterford	Sisters of Mercy	(1) 77 (2) 59	26	(1) 10 (2) 14
16	Carriglea Park Industrial School, Dun Laoghaire, Co. Dublin 1954	Christian Brothers	(1) 253 (2) 199	22	(1) 11 (2) 26
17	St. Patrick's Industrial School, Kilkenny 1966	Sisters of Charity	(1) 186 (2) 182	22	(1) 5 (2) 5
18	St. Joseph's Industrial School, Dundalk, Co. Louth 1983	Sisters of Mercy	(1) 59 (2) 40	21	(1) 19 (2) 73
19	Baltimore Fisheries School 1950 <b>Note 3</b>			21	
20	Pembroke Alms (Nazareth House) Industrial School, Tralee, Co. Kerry	Sisters of Mercy	(1) 74 (2) 50	20	(1) 17 (2) 34

Notes

- (1) St. Joseph's, Ferryhouse is still in existence as a Special School under the aegis of the Minister.
- (2) From 1955 onwards, St. Vincent's Industrial School, Goldenbridge was certified for the reception of a limited number of boys of tender years. Boys placed in Goldenbridge in the 1950s are not included in arriving at the average figure.
- (3) The final definitive report on the Committee's inquiry into Baltimore Fishery School is contained in chapter eight.

# CHAPTER 13 Investigation Committee: Costs of Legal Representation

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## Original Statutory Provision

The Act of 2000<sup>184</sup> empowered the Minister, with the consent of the Minister for Finance and after consultation with the Commission, to make a scheme providing for the payment by the Commission to a person who—

- (a) attends before a Committee, or
- (b) makes an oral submission to the Commission or a Committee in person or through a legal representative,

of a reasonable amount in respect of expenses incurred by the person in relation to such attendance or submission. It was recognised that the expenses which required to be covered by such a scheme were witnesses' expenses and the costs of legal representation of parties involved in the process, where such was allowed.

The Minister made a scheme for payment of witnesses' expenses prior to the first public sitting and the text of the scheme was appended to the Opening Statement.<sup>185</sup> That scheme was revised with effect from 1<sup>st</sup> January, 2002.<sup>186</sup> It provides for the payment of travel, accommodation and subsistence expenses for witnesses and for a travelling companion and for payment, in certain circumstances, of a fee, and travel and subsistence expenses, to a professional counsellor accompanying a witness.

The circumstances in which the Minister made a scheme for payment of the expenses of legal representation has been recorded earlier.<sup>187</sup> The scheme was made on 9<sup>th</sup> May, 2001 and it provided for the costs of legal representation for Phase 1 of the work of the Committee. The text of the scheme is set out in Table R. It had already been ruled<sup>188</sup> that a person appearing before the Committee during Phase 1 of its work, whether as a Complainant or a Respondent, would be allowed legal representation by a solicitor and a

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<sup>184</sup> Section 20(1).

<sup>185</sup> See Appendix A.

<sup>186</sup> The revised scheme is posted on the Commission's website.

<sup>187</sup> See chapter 2.

<sup>188</sup> At the second Public Sitting on 20<sup>th</sup> July, 2000. See chapter 2.

barrister of his or her choice. That ruling stands, although it has not been applied in relation to certain procedural hearings.<sup>189</sup>

The Act<sup>190</sup> empowered the Commission to pay to a person making discovery of documents pursuant to a direction such reasonable amount in respect of expenses incurred by the person in relation to discovery as, in default of agreement between the Commission and the person, might be determined by a Taxing Master of the High Court.

## Operation of the Scheme

The scheme was in operation from 9<sup>th</sup> May, 2001 to 10<sup>th</sup> April, 2002 when an amendment to the Act referred to later became law. The history of the circumstances in which that amendment was made are also recorded earlier.<sup>191</sup> Prior to publication of the second Interim Report in November 2001, the Commission had been informed, through its legal team, that the Minister was agreeable in principle to the taxation of costs of legal representation at both phases of the work of the Committee and proposed to amend the Act to so provide, as was disclosed in the second Interim Report.<sup>192</sup>

While the scheme was in operation, the Committee received applications for payment of the costs of legal representation in accordance with the scheme. The total amount of legal costs paid by the Commission under the scheme was €5,307.80.

Only one Complainant's complaint went to a hearing before the Committee while the scheme was in operation and before it became public knowledge that it was proposed to amend the Act to provide for taxed costs for legal representation. The Complainant's allegations related to a National School. The Complainant was legally represented, as was the teacher against whom she made the allegations. The Committee was satisfied that the teacher was not capable of attending or testifying. The Board of Management of the School was also legally represented. There was only one witness, the Complainant. At the end of the hearing, the costs of legal representation were measured at the lower end of the range of costs provided for in the scheme, on the basis that the matter did not involve difficulty or complexity and the following amounts (converted into euro) were allowed for legal costs:

- €317.43 for the solicitor for submission of a statement
- €190.46 for Counsel for settling the statement
- €126.97 for the solicitor for a consultation
- €126.97 for Counsel for a consultation
- €952.30 for Counsel's brief fee (if Counsel briefed)
- €952.30 for solicitor's attendance at hearing

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<sup>189</sup> See, for example, the direction for payment of the costs of legal representation at the Procedural Hearing on lapse of time and allied issues, which is posted on the Commission's website.

<sup>190</sup> Section 20(4).

<sup>191</sup> See chapter 2.

<sup>192</sup> See Appendix C.

The total amount allowed for each party, where the party was represented by a solicitor and a barrister was €2,666.43. The fees measured were exclusive of value added tax.

## **Amendment of the Statutory Provisions**

The Act<sup>193</sup> was amended by the Act of 2002.<sup>194</sup> The effect of the amendment was to—

- preserve the position for payment of witnesses' expenses in accordance with a scheme made by the Minister, and
- provide for payment of costs of legal representation on the basis of taxation by a Taxing Master of the High Court, in default of agreement.

The power conferred on the Commission by the amending provision is to ‘pay such reasonable costs arising out of [representation by counsel or solicitor or otherwise] as are agreed . . . or, in default of agreement, such costs as may be taxed by a Taxing Master of the High Court’. The power is qualified as follows:

1. It is provided<sup>195</sup> that where the Chairperson is of the opinion that a person has failed to cooperate with or provide assistance, or has knowingly given false or misleading information to the Committee and there are sufficient reasons rendering it equitable to do so, the Chairperson may refuse to allow the whole or part of the costs of such person and may order such person to pay the taxed costs of another person involved in the process or the taxed costs of the Committee.
2. It is provided<sup>196</sup> that, in agreeing or taxing costs payable to a person, regard shall be had to—
  - (a) any expenses and costs paid to the person by the Residential Institutions Redress Board, and
  - (b) any expenses and costs paid to the person by the State in respect of any litigation concerning the same, or substantially the same, acts complained of to the Committee,

for the purpose of ensuring that payment is not made more than once for any matter arising out of such expenses and costs.

The amendment also included a provision<sup>197</sup> which the Commission understands is intended to provide for the costs of complying with directions for discovery by persons who have not been granted representation in the process.

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<sup>193</sup> Section 20.

<sup>194</sup> Section 32.

<sup>195</sup> Section 20A(3) of the Act, as inserted by Section 32 of the Act of 2002.

<sup>196</sup> Section 20A(5) of the Act, as inserted by Section 32 of the Act of 2002.

<sup>197</sup> Section 20A(4) of the Act, as substituted by Section 32 of the Act of 2002.

## Framework of Procedures

When the Committee decided to conduct its inquiry on a modular basis and was formulating the new procedures to give effect to that decision, which were embodied in the Framework of Procedures,<sup>198</sup> it took cognisance of the fact that it could be unfair to persons involved in the process to postpone paying legal costs until a module was completed. In the Framework, legal representation and legal costs were dealt with as follows:

- The Committee confirmed and ratified the position it had adopted at the second Public Sitting in relation to the level of representation at Phase 1 hearings.
- Each person participating in a module, whether as Complainant or as Respondent, would be allowed legal representation by a solicitor and one barrister to the extent that such participation was permitted, subject to the proviso that the Committee would hear the submissions of any person contending that the interests of fairness and justice required that such person should be entitled to a higher level of legal representation.
- Participation by a person who had been granted representation in a module was to be subject to certification in advance. A direction for payment of costs would only be made in relation to participation which had been so certified. A certificate to participate would be granted where such participation was necessary in the interests of fairness and justice or was otherwise reasonable having regard to the contribution which the person might reasonably be expected to make to the resolution of the issues. The right was reserved, where appropriate, to appoint a person or body to represent a particular category of persons, bodies or interests.
- Subject to the provisions of the Act<sup>199</sup> and the Commission obtaining the necessary sanction, it was the intention of the Committee to make directions for payment of, and to discharge, the costs of legal representation as follows:
  1. To direct payment on account of the costs of preparation of, and filing, a statement in an amount advised by a legal cost accountant nominated by the Committee as representing a fair and reasonable payment on account.
  2. To direct payment for participation in the module on completion of the module, notwithstanding that evidence of context might remain to be heard.
  3. To direct payment of any costs of participation in a module not already provided for after completion of all hearings.
  4. To direct payment of costs of representation at a public hearing dealing with issues of general application, as a general rule, at completion of the hearing.

Because the Government review of the Commission's mandate intervened, the Framework has not been finalised and the intended provisions have not been implemented.

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<sup>198</sup> Appendix F.

<sup>199</sup> Section 20A as substituted by Section 32 of the Act of 2002, the text of which is appended to the Framework.

## Directions for Payment of Costs

Prior to the temporary cessation of the work of the Committee announced in the Commission's statement of 2<sup>nd</sup> September, 2003 only one formal direction for payment of costs of legal representation had been made. The direction,<sup>200</sup> which was made on 4<sup>th</sup> December, 2002 following a public hearing on 27<sup>th</sup> November, 2002 in relation to costs issues, related to the legal representation of the representative parties who participated in the Procedural Hearing on lapse of time and allied issues, which was held in public in July 2002.<sup>201</sup> Details of the legal representations at the Procedural Hearing, the dates of the hearing, the direction for payment of costs and the costs which have been claimed by the representative parties, but which have not yet been agreed or taxed, are set out in Table S.

Since the temporary cessation, formal directions for payment of costs have been made in relation to the evidential hearings and case-specific procedural hearings which are regarded by the Committee as having been completed. Where a formal direction has been made that fact is recorded in Table H.

## Claims for Costs of Legal Representation

Notwithstanding that no formal directions, other than directions outlined in the preceding paragraphs, have been made, over the past two years claims for costs of legal representation have been submitted to the Committee by the legal representatives of parties involved in the process. With a view to demonstrating the level of costs which the legal representatives of parties involved in the process of the Committee consider it is appropriate to claim from the Commission, examples of claims received in relation to various degrees of participation in the process are set out below. The information set out in relation to claims is published on the following basis:

- Save where it is indicated in this Report that a formal direction for payment of costs has been made, the Committee does not recognise the existence of an entitlement to, or a liability on the part of the Commission for, costs at this time.
- Even where a direction for payment of costs has been made, as no assessment has been made by, or on behalf of, the Committee as to the reasonableness or otherwise of the costs claimed, no liability exists on the part of the Commission to discharge the costs claimed pending agreement on the appropriate quantum or taxation.
- If and when the costs claimed are being agreed or taxed, regard will have to be had to—
  - any expenses and costs paid to the claimant by the Residential Institutions Redress Board, and
  - any expenses and costs paid to the claimant in respect of litigation concerning the same, or substantially the same, acts complained of to the Committee.

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<sup>200</sup> The direction is posted on the Commission's website.

<sup>201</sup> See chapter 6.

The following are examples of claims which have been submitted to the Committee:

#### *Preparation and submission of Complainant's Statement*

- At the end of November 2003 the Committee received four hundred and eighty-seven (487) unsolicited claims from a firm of solicitors which is on record with the Committee as legal representative for the four hundred and eighty-seven (487) Complainants to whom the claims relate. None of the matters to which the claims relate has proceeded beyond preliminary stage and, in general, the involvement of the Complainant's legal representative has been to prepare and submit a statement on behalf of the Complainant in accordance with the Act.<sup>202</sup> The claims vary in amount, ranging from €4,053.50, at the lowest, to €11,228.80, at the highest. The claims aggregate €3,241,672.52, the average being €6,656.

#### *Preparation and submission of Respondents' Statements*

- A firm of solicitors, which is on record with the Committee as legal representative of a Congregation which is involved in the process as a Management Respondent, has submitted nineteen (19) unsolicited claims in cases which have not gone beyond preliminary stage, so that the involvement of the Management Respondent has been the preparation and submission of a statement in accordance with the Act.<sup>203</sup> The amounts claimed vary and they range from €732.76 to €9,025.58. The claims aggregate €54,611.47.

#### *Completed matter involving a complaint in relation to a National School*

- Claims for costs has been received in a matter which has been completed in which the Complainant's complaint related to a National School. The Complainant was legally represented, as was an individual Respondent named by the Complainant. Two witnesses gave evidence at the hearing which was completed in a day. The following claims have been received:
  - For €14,241.70 from the legal representatives of the Complainant
  - For €35,065.01 from the legal representatives of the individual Respondent.

The claims aggregate €49,306.71. The Department was also legally represented at the hearing. Formal directions for the payment of the costs have been made.

#### *Baltimore Fisheries School*

- In connection with the preparation of this Report, formal directions for payment of costs have been made in relation to participation of Complainants and Respondents in the inquiry on the complaints in relation to Baltimore School. Prior to the making of the formal direction, claims were submitted by the legal representatives on record for twenty of the twenty-one Complainants. Claims, in the form of Bills of Costs drawn by a legal cost accountant received, vary in amount from €11,001.96 to €13,734.02. At each hearing, only one witness was heard — the Complainant.

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<sup>202</sup> Section 23(2)(a).

<sup>203</sup> Section 23(2)(b).

As has been outlined earlier,<sup>204</sup> some of the Complainants in relation to Baltimore School spent part of their childhood in other institutions. Where a statement submitted on behalf of a Complainant included allegations against another institution, the statements were furnished to, and responded to by, the relevant Management Respondent. In determining, by agreement, to confine the hearings to the allegations in relation to Baltimore School with a view to expediting the hearings, the Committee acknowledged that the relevant Management Respondent was entitled to the costs of preparation and submission of a statement under the Act.<sup>205</sup> In relation to eight Complainants, claims have been submitted by the legal representative of a Management Respondent for varying amounts ranging from €838.19 to €2,033.25. The claims aggregate €10,509.79 in amount.

### *Procedural Hearing*

- A formal direction has been made for the payment of the costs of legal representation at a Procedural Hearing which, although case specific, dealt with a legal issue of general application. Following the furnishing of the Complainant's statements to the Management Respondents in accordance with the Act,<sup>206</sup> the issue, which involved a question of the construction of the Act, was raised by the Management Respondents. At the hearing, no evidence was taken. The Committee heard legal submissions made by the legal representatives on behalf of the Complainant, three Respondents and Counsel for the Committee. The hearing was completed within the scheduled day. Prior to the making of the formal direction, the following claims for costs were submitted:
  - For €50,072.78 by the legal representative on record for the Complainant.
  - For €21,477.50 by the legal representatives on record for one of the Management Respondents.

### *Hearing at which Complainant withdrew*

- The Act<sup>207</sup> provides that a person who is giving, or is to give, evidence to a Committee of alleged abuse suffered by him or her in childhood may at any time cease giving or decline to give evidence. The legal representatives on record with the Committee for a Complainant, who decided at a scheduled evidential hearing not to proceed, have submitted a claim for costs in the sum of €16,315.86.

### *Costs of discovery*

- It is obvious to the Committee that, because of the passage of time since most of the matters which the Committee is investigating occurred, complying with directions for discovery made by the Committee is labour-intensive and time consuming. This fact is illustrated by—

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<sup>204</sup> See Chapter 8.

<sup>205</sup> Section 23(2)(b).

<sup>206</sup> Section 23(2)(b).

<sup>207</sup> Section 19(1).

- the volume of documentation discovered pursuant to the directions made in the Newtownforbes Industrial School module,<sup>208</sup>
- the cost of making discovery, and volume of documentation discovered, pursuant to the abuse-specific discovery direction which issued to the Department on 10<sup>th</sup> March, 2003.<sup>209</sup>

In the affidavit of discovery submitted by the Department on 27<sup>th</sup> June, 2003, approximately twenty thousand (20,000) documents were scheduled.

To date few claims have been received by the Committee for the legal costs of compliance with directions for discovery. The example chosen by the Committee relates to discovery made on foot of a direction which was issued by the Vaccine Trials Division of the Committee. The discovery direction in question was directed to a Congregation which managed a Children's Home, which was one of the Children's Homes in which Trial 1 was conducted in 1960 and 1961.<sup>210</sup> The discovery direction related to a time span of approximately five years in the late 1950s and early 1960s and sought discovery of documents in relation to the participation of children from the Home, in Trial 1. The schedule to the affidavit discovery, which was submitted in compliance with the direction, comprised seventy-two pages. A claim for costs has been submitted by the legal representatives for the Congregation, although no direction for payment has been made. The sum claimed is €34,861.18.

## Costs incurred in Legal Proceedings

The nature of the litigation in the High Court which the Commission initiated utilising the summary procedure provided for in the Act,<sup>211</sup> which arose out of the process of the Committee, has been outlined earlier.<sup>212</sup> The Commission was ordered by the High Court to pay the costs of four of the notice parties who had been joined in the proceedings. Details in relation to the costs of the notice parties are set out in Table T.

## Opinion of Chairperson

As has been stated, the Act<sup>213</sup> provides that where the Chairperson is of the opinion that a person has failed to cooperate with or provide assistance, or has knowingly given false or misleading information, to the Committee and there are sufficient reasons rendering it equitable to do so, the Chairperson may, on his or her own motion or pursuant to an application by a person appearing before the Committee, refuse to allow the whole or part of the costs of appearance to such person and may make consequential orders in relation to payment of such costs. As the resignation of the Chairperson will become effective when this Report is passed by the Commission for publication,<sup>214</sup> the Chairperson

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<sup>208</sup> See chapter 9.

<sup>209</sup> See chapter 10.

<sup>210</sup> See chapter 14.

<sup>211</sup> Section 25.

<sup>212</sup> See chapter 6.

<sup>213</sup> Section 20A(3), as inserted by section 32 of the Act of 200.

<sup>214</sup> The Chairperson's resignation became effective on 12<sup>th</sup> December, 2003.

hereby formally records her opinion in relation to the matters which have been the subject of a hearing before the Committee while she was Chairperson of the Committee.

In relation to each matter which has been the subject of a hearing before the Committee while she was Chairperson of the Committee, the Chairperson is of the opinion that none of the circumstances outlined in the Act, which would give the Chairperson a discretion to refuse to allow the whole or part of the costs of appearing before the Committee, exist in relation to any party who would be entitled to claim the costs of representation before the Committee at such hearing. For the avoidance of doubt, the Chairperson states as follows:

- The opinion expressed by her applies whether the matter is regarded by the Committee as having been completed or not, but, in relation to matters which have not been completed, it applies only to participation in the process prior to the conclusion of the hearing which has taken place.
- No opinion is expressed in relation to the costs of any matter which was formerly, but is not now pending before the Committee, which has not been the subject of a hearing.

## TABLE R

### Scheme pursuant to section 20 of the Commission to Inquire into Child Abuse Act, 2000

1. This Scheme shall apply to Part 1 of the proceedings of the Investigation Committee (hereinafter in this Scheme referred to as “the Committee”) established under section 10(1)(b) of the Commission to Inquire into Child Abuse Act, 2000 (hereinafter in this Scheme referred to as “the Act”).
2. Such procedures as to Part 1 of the proceedings of the Investigation Committee are as set down and described in the document described as the “Rules of Procedure” of the Investigation Committee of the Commission to Inquire into Child Abuse (hereinafter in the Scheme referred to as “the Commission”).
3. The following persons may, in such proceedings before the Committee, apply to the Commission for the costs and legal expenses listed below incurred by them in respect of legal representation before the Committee, that is to say:
  - (a) persons who, in such proceedings, make allegations of having suffered abuse,
  - (b) persons against whom such allegations are made, and
  - (c) in the case of such allegations made against a body corporate or an unincorporated body of persons, the body concerned and such officers and other members of staff of the body whom the Commission considers appropriate, or
  - (d) other persons who attend before, or make an oral submission to, the Committee.
4. The following legal costs and expenses shall be payable by the Commission if it is satisfied that such costs and expenses have been incurred by the applicant:—

#### Part 1

##### Procedures in relation to Evidence of Allegations of Abuse at Private Hearings

- (c) Instructions for and preparation of Statement pursuant to section 23(2)(a) or section 23(2)(b) of the Act — £250/£350.
  - (d) Counsel’s fee for settling Statement — £105.
  - (e) Perusing and considering the book of documents — £150/£250.
  - (f) Instructions for and preparation of Supplemental Statement — £150/£250
  - (g) Counsel’s Brief fee. £750/£1,000/£1,250.
  - (h) Attending the hearing of allegations (solicitor):
    - (a) Half day £500.
    - (b) Full day £750.
  - (i) Refresher for Counsel:
    - (c) Half day £500.
    - (d) Full day £750.
  - (j) Attending consultation.
    - (e) Solicitor £100.
    - (f) Counsel £100.
5. In applying this Scheme the Commission shall do so on the basis that there should be parity of representation for all parties.
  6. Where alternative amounts appear for each item of legal costs and expenses, the Commission shall have discretion to pay such amounts according to the difficulty and complexity of the case.

## TABLE S

### Costs claimed by representative parties in relation to Procedural Hearing on lapse of time and allied issues

#### Legal representation at hearing

1. For first Management Respondent:	Kevin Feeney, S.C. Paul Gardiner, S.C. Jonathan Newman, B.L. Instructed by Arthur O'Hagan, Solicitors
2. For second Management Respondent:	Mary Irvine, S.C. Sara Moorehead, B.L. Instructed by Maxwell, Weldon & Darley, Solicitors
3. For first Complainant:	Dave McGrath, S.C. Gerard Hogan, S.C. Instructed by Lavelle Coleman
4. For second Complainant:	Ben O Floinn, B.L. Instructed by George Daly & Co.
5. For Minister for Education & Science:	John MacMenamin, S.C. Anne Power, B.L. Barry Halton, B.L. Instructed by the Chief State Solicitor
6. For the Attorney General:	James Connolly, S.C. James O'Callaghan, B.L. Instructed by the Chief State Solicitor
7. For Commission:	Frank Clarke, S.C. Deirdre Murphy, S.C. John Major, B.L. Anne Reilly, B.L.

#### Dates of hearing

3 <sup>rd</sup> July, 2002:	Procedural Hearing in private to settle issues.
26 <sup>th</sup> , 29 <sup>th</sup> , 30 <sup>th</sup> and 31 <sup>st</sup> July, 2002:	Public Hearing
27 <sup>th</sup> November, 2002:	Public Hearing in relation to costs issues.

#### Direction for payment of costs dated 4<sup>th</sup> December, 2002

It was directed that each of the parties listed at 1 to 4 above should be entitled to be paid such reasonable costs arising out of representation as, in default of agreement, might be taxed by a taxing master of the High Court on the basis that such costs should be taxed on the same basis as costs of a similar issue in the High Court would be taxed as between solicitor and client.

#### Costs claimed, but not yet agreed or taxed

	€
1. By 1 <sup>st</sup> Management Respondent	203,179.04
2. By 2 <sup>nd</sup> Management Respondent	162,619.85
3. By 1 <sup>st</sup> Complainant	88,476.98
4. By 2 <sup>nd</sup> Complainant	<u>94,966.25</u>
Total	549,242.12

The foregoing claims have been referred to the Legal Cost Accountant appointed by the Commission, Peter Fitzpatrick & Company, for advice. No liability exists on the part of the Commission to discharge the costs in the amounts claimed pending agreement on the appropriate quantum of taxation.

**TABLE T**

**High Court Proceedings: Section 25 application**

**(Re Commission to Inquire into Child Abuse Act [2002] 3 I.R. 459)**

**Costs of Notice Parties**

By order of the High Court made in the above proceedings, the Commission was directed to pay the costs of the four notice parties, who were referred to in the judgment of the Court as Notice Party A, Notice Party B, Notice Party C and Notice Party D.

Costs of the following Notice Parties have been agreed in the following amounts and are due for payment:

	€
Notice Party B	89,679.96
Notice Party C	85,954.04
Notice Party D	<u>93,972.04</u>
Total	269,606.04

A Bill of Costs submitted on behalf of Notice Party A is under consideration by the Commission's Legal Cost Accountant, having being received later than the bills from the other notice parties.

The Court did not make any order for costs in favour of the Minister who was also a notice party in the proceedings.

The Commission's legal costs are dealt with in Chapter 3.

CHAPTER **The Vaccine Trials**  
**14** **Division**

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### **Introduction**

This chapter of the Report of the Commission is based on the first Interim Report of the Vaccine Trials Division (the Division), which performs the functions conferred on the Commission by virtue of the Commission to Inquire into Child Abuse Act 2000 (Additional Functions) Order 2001 (S.I. No. 280 of 2001) ( the Order). Its purpose is to outline the work of the Division in performance of the functions conferred on it by the Order from its inception to date. The work of the Division has been ongoing for almost two years. While public hearings in relation to the first of the vaccine trials into which it was mandated to inquire by the Order had been scheduled for June 2002, in consequence of the Judicial Review Proceedings,<sup>215</sup> those hearings and all future hearings have been effectively suspended.

In broad terms, the approach which will be adopted in this chapter is to outline the following matters:

- The background to the conferring of the additional powers.
- The nature of the additional powers.
- The commencement of the work of the Division.
- The measures taken to elicit information from the public.
- The preliminary inquiries in relation to Trial 1.
- The preparation for, and scheduling of, the public hearings in relation to Trial 1.
- The Judicial Review Proceedings.
- The preliminary inquiries in relation to Trial 2.
- The preliminary inquiries in relation to Trial 3.

### **Background to conferring of additional powers on the Commission**

At the commencement of the 1990s, concerns were publicly raised by a number of former residents of children's homes as to their suspected involvement in clinical trials of vaccines, while resident in the homes. Questions were raised in the Dáil in 1991. Subsequently, in 1997 the Minister for Health gave an assurance to the Dáil that appropriate inquiries

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<sup>215</sup> See Table C.

would be conducted into the matter. The Chief Medical Officer of the Department of Health, Dr. James Kiely, was appointed to investigate the matters raised. Having conducted his inquiries, the results were the subject of a report entitled “Report on 3 Clinical Trials involving Babies and Children in institutional settings 1960/61, 1970 and 1973” (the CMO’s report). The CMO’s report was laid before the Houses of the Oireachtas on 7<sup>th</sup> November, 2000.

## **The CMO’s report**

The main features of the CMO’s report were as follows:

### *Location, date and nature of the vaccine trials*

- Three trials were identified, namely:
  - **Trial 1:** This trial took place between December 1960 and November 1961 in five children’s homes, only one of which was named (the Sacred Heart Home and Hospital, Bessborough, Cork). Fifty-eight children were involved. The purpose of the trial, in general terms, was to compare the poliomyelitis antibody response after vaccination with a quadruple vaccine — diphtheria, pertussis, tetanus (DTP) and polio combined (4:1) — with the standard vaccines in use at the time, which consisted of DTP and polio administered separately at different sites. The trial was the subject of an article published in the British Medical Journal in 1962 entitled “Antibody response in Infants to the Poliomyelitis component of a quadruple vaccine”. The authors were listed as: Hillary, IB; Meenan, PN; Goffe, AP; Knight GT; Kanarek, AD; and Pollock, TN.
  - **Trial 2:** This trial involved sixty-nine (69) children and was conducted in a children’s home in Dublin, the identity of which the Chief Medical Officer was unable to discover. A further fifty-three children living in their own homes in a semi-rural area in the Midlands were also involved. The purpose of the trial was to assess whether there was a propensity for intranasally administered vaccines to spread to susceptible contacts and to estimate antibody levels and acceptability of the intranasal technique of vaccination. This trial was the subject of an article published in the Cambridge Journal of Hygiene in 1971 entitled “Trials of Intranasally administered Rubella Vaccine”. The author was listed as Hillary, IB. While the CMO’s report did not indicate when the trial took place, the article indicated that the part of the study which took place in the Midlands was conducted during the summer holidays of 1970.
  - **Trial 3:** This trial took place in 1973 and involved fifty-three children living in five institutional settings: St. Patrick’s Home, Madonna House, Cottage Home, Bird’s Nest and Boheennaburna,<sup>216</sup> all in the city or county of Dublin. Sixty-five (65) children living at home in Dublin also participated. The stated purpose of this trial was to compare the reactogenicity of the commercially available batches of Trivax vaccine and Trivax AD vaccine, with that of equivalent vaccines prepared for the trial, where the pertussis (whooping cough) component was replaced with a component obtained by a modified method of culturing the whooping cough organism. In relation to an understanding of the

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<sup>216</sup> It is believed that this should refer to Bohernabreena.

rationale of this trial, the Chief Medical Officer referred to what he termed “. . . the apparent discrepancy in the recorded chronology of events”. This was a reference to the fact that in its public statement of July 1997, GlaxoWellcome, the successor of the pharmaceutical company whose vaccine was being tested, Wellcome Laboratories (Wellcome), indicated that the catalyst for the conduct of the trial was a request in mid 1973 from the Eastern Health Board, through the Deputy Chief Medical Officer, Dr. Margaret Dunleavy,<sup>217</sup> to investigate an apparent increase in the incidents of adverse reactions to the DTP vaccine then in use in the Eastern Health Board immunisation programme. The Chief Medical Officer, however, noted that the trial appeared to have been underway earlier in 1973, as the National Drugs Advisory Board had sent to Wellcome a letter of no objection to the trial and to the utilisation of the vaccines prepared for the trial in April 1973, on foot of a protocol for the trial submitted by Wellcome in February 1973. There was no published paper or report of this trial.

### *Conclusions of the Chief Medical Officer*

- The Chief Medical Officer found that the trials were conducted by Professor Patrick Meenan and Professor Irene Hillary, both of whom were at the time attached to the Department of Medical Microbiology at University College, Dublin. Dr. Dunleavy was involved in the conduct of Trial 3. The trials were conducted on behalf of Wellcome, which was established in the United Kingdom.

The Chief Medical Officer recorded that there were no statutory controls in force in this jurisdiction regarding the conduct of clinical trials at the time. The ethical standards applicable at the time were:

- The General Medical Council (London) Guidelines.
- The Nuremberg Code (1947).
- The Declaration of Helsinki (1964).
- The Statement of the Medical Research Council printed in the Report of the Medical Research Council for 1962 — 1963.

In relation to the subject matter of the three trials, the Chief Medical Officer found that, given the diseases which the vaccines sought to counter, the decision to conduct such clinical trials was acceptable and reasonable. He further commented on the fact that the publication of two of the trials in peer review journals indicated that the editors of the journals considered that the researchers’ ethical obligations were discharged to the point that they felt that it was appropriate to publish the papers.

The Chief Medical Officer could not reach any conclusion as to whether or not the terms of the Therapeutic Substances Act 1932 were complied with in relation to the licensing aspects of all three trial vaccines, because of paucity of documentation.

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<sup>217</sup> The Division did not get an opportunity to interview Dr. Dunleavy, who died in June 2002.

It was noted by the Chief Medical Officer that there was no documentation or information available to clarify what arrangements were arrived at with the managers of the children's homes or the parents of the children who were involved in Trial 1, or whether consent was obtained for the participation of children in the children's home, who were involved in Trial 2. He referred to conflicting statements on the issue of consent in relation to Trial 3. However, he noted the clear understanding of the researchers of the requirement for consent to be obtained.

The Chief Medical Officer did not resolve the difficulty in relation to the chronology of Trial 3.

## **Referral of the Report of the Chief Medical Officer to the Commission**

On 9<sup>th</sup> November, 2000, the Minister for Health advised the Dáil that, while the CMO's report was a good report, it was nonetheless incomplete, because, in some areas "the most rigorous interrogation of the system failed to produce documentary records of the trials". The Minister stated that there were informational gaps in the report such that he was satisfied that the work of the Chief Medical Officer "... must be regarded as the beginning, not the end of the matter". The Minister identified questions that the report could not answer, for example,—

- Why children in care received the experimental vaccines?
- Why were some of the recipients outside the normal age for the administration of the vaccines?
- Was the end result for commercial gain or public good?
- Why were the records of the trials so inadequate?

To answer the questions, the Minister for Health decided to refer the CMO's report to the Commission, referring to the "clear synergy between investigating this matter and the other matters being addressed . . ." by the Commission. The CMO's report was sent by the Minister for Health to the Commission on 13<sup>th</sup> November, 2000. The Commission indicated its willingness to investigate the matter and its belief in its competence to conduct the necessary inquiries into the vaccine trials.

## **The Additional Functions**

To define the parameters of the Commission's inquiry into vaccine trials and to expressly confer the functions and powers to do so, the Government made the Order. The Act<sup>218</sup> empowers the Government, if it so thinks fit, after consultation with the Commission to confer, by order, on the Commission and its Committees certain additional functions or powers connected with its functions and powers for the time being as they consider appropriate. The Order was made by the Government pursuant to that provision.

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<sup>218</sup> Section 4(4).

By the Order, the following additional functions were conferred on the Commission:

- (a) to inquire, through the Investigation Committee, into the circumstances, legality, conduct, ethical propriety and effects on the subjects thereof of—
  - (i) the three vaccine trials referred to in the CMO's report, and
  - (ii) any systematic trials of a vaccine or the mode of delivery thereof to test its efficacy or to ascertain its side effects on a person, found by the Investigation Committee to have taken place during the period commencing on 1 January, 1940 and ending on 31 December, 1987 and to have been conducted in an institution, following an allegation by a person that he or she as a child in the institution was the subject thereof, and
- (b) to prepare and publish to the general public, in such manner and at such time as the Commission might determine, a report in writing specifying the determinations made by the Investigation Committee.

The Order followed the structure of the Act and envisaged the Investigation Committee reporting to the Commission. As has been stated at the outset, the Division, being a division of the Investigation Committee, has reported to the Commission and this chapter of the Commission's Report is based on that report.

It is the Division's understanding that the remit conferred by the Order terminated at the end of 1987 because, from 1987 onwards, regulatory control of the conduct of clinical trials in Ireland was derived from the Control of Clinical Trials Act 1987.

By virtue of the Order, the powers conferred on the Commission and the Investigation Committee in relation to inquiries were declared to apply to the Vaccine Trials inquiry.

The Order was made on 19<sup>th</sup> June, 2001.

## **Commencement of the work of the Division**

The Division convened a public sitting on 23<sup>rd</sup> January, 2002 for the purposes of outlining to the general public its understanding of its terms of reference and its statutory functions. An Opening Statement<sup>219</sup> was delivered at the sitting.

In the Opening Statement, the inquisitorial nature of the process was emphasised and particular reference was made to the fact that the process was a fact finding one that was not capable of giving rise to a determination of criminal responsibility or civil liability. The process would be conducted in a manner consistent with constitutional and natural justice. Every person or body who might be materially adversely affected by a determination of the Division would be entitled to legal representation. The possibility that it might be considered appropriate to grant legal representation to a section of the public, the focus of the inquiry, was adverted to. The work of the Division was to be a distinct module of the work of the Commission.

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<sup>219</sup> The text of the Opening Statement is set out in Appendix G.

At the public sitting, the Division's leading Counsel, Frank Clarke, S.C., set out the parameters of the intended work of the Division and emphasised its discrete nature. He suggested that consideration be given to the appointment of an independent legal team by a neutral body to represent the interests of all those who were, or who might have been, the subject of a vaccine trial during the relevant period. That suggestion was predicated on the belief that there was no apparent difference between the various trial subjects. It was acknowledged by Counsel that any affected person who might be required to give evidence to the Division would be entitled to representation by a solicitor and Counsel of his or her own choosing.

## **Measures adopted to elicit information from the public**

The Division adopted the following measures to elicit information from the public:

### *Advertising*

- As part of its preliminary work, the Division advertised in the print media in the State and in the United Kingdom inviting anyone who believed that he or she was involved in a vaccine trial, which came within the ambit of the Commission's remit, to contact the Division. The ultimate deadline for such contacts was 28<sup>th</sup> March, 2002.

### *Questionnaires*

- A questionnaire designed to elicit relevant information from persons who, either directly or through a solicitor, made contact with the Division was made available to all who requested it. The questionnaire sought information on such matters as current and former name, date of birth, place of birth, details of residence in an institution and the personnel involved in the institution. The questionnaire provided the public with an opportunity to indicate that they either were, or suspected that they might have been, involved in a vaccine trial and to provide details to the Division in relation to the conduct of such trial, including any information as to selection for the trial and consent. The Division was conscious of the fact that because of the age of the subjects at the time of vaccination, the completion of the questionnaire would not necessarily be an easy task. As it transpired, many members of the public commented, in responding to the questionnaire, that they were not in a position to provide the details sought. The deadline for receipt of completed questionnaires was 17<sup>th</sup> May, 2002.

A total of eight hundred and seventy-seven (877) members of the public (correspondents) submitted completed questionnaires. On the core issue, whether the correspondent had participated in a clinical trial of a vaccine while in an institution, the responses were as follows:

- One hundred and fifty-eight (158) correspondents positively alleged that they had been involved in a vaccine trial,
- Two hundred and nineteen (219) correspondents suspected that they may have been involved in a trial,
- One hundred and forty-three (143) correspondents both alleged and suspected that they were participants in a vaccine trial,

- One hundred and thirty-six (136) correspondents indicated that they were not part of a vaccine trial,
- One hundred and eighty-four (184) correspondents indicated that they did not know whether they were involved in a vaccine trial or not, and
- Thirty-seven (37) correspondents failed to complete the relevant portion of the questionnaire.

Some correspondents provided details in relation to siblings who were resident in institutions in the past. Some correspondents submitted medical records with the questionnaires.

The value of the questionnaire process became apparent in the course of the Division's subsequent investigations. As the Division's legal team came into possession of further documentation through the discovery process, including the names and dates of birth of those involved in the three known trials and the identity of the institutions in which the trials were conducted, it was possible to correlate this information with the information submitted by the correspondents. As a result, the Division was in a position to positively confirm to the correspondents whether or not they had an involvement in any of the known trials.

On the basis of its investigations to date, the Division is aware that four correspondents were involved in two of the three known trials. Two correspondents, who were former residents of the Sacred Heart Mother and Baby Home in Bessborough, Cork were involved in Trial 1. Two correspondents, who were resident in St. Anne's Industrial School, Booterstown, Co. Dublin, which was identified as the institution in which Trial 2 was conducted, were involved in Trial 2.

All of the questionnaires have been retained by the Division. The correspondents, who have been eliminated from involvement in the trials known to the Division, have been informed that they will be contacted should the Division come into possession of any further documentation tending to show their involvement, while resident in an institution, in a clinical trial of a vaccine which is within the Commission's remit.

## **Preliminary investigations**

In the course of its preliminary investigations, the Division took the following steps:

### *Acquisition of documentation from the Department of Health and Children*

- The Division sought and was furnished with all original documentation pertaining to the known trials, which the Chief Medical Officer had located. Issues in relation to the documents were dealt with at a procedural hearing held in private in May 2002. The Division is satisfied that it has received full disclosure from the Department of Health and Children of all relevant documentation which it has sought.

### *Attempts to identify children's homes involved in trials*

- Extensive investigations were carried out to identify the children's homes in which the trials were conducted.

In relation to Trial 1, the investigations produced conflicting information as to the children's home in which it was conducted. Eventually, having received discovery of documents from GlaxoSmithKline (the successor of Wellcome),<sup>220</sup> the Division was able to definitively identify the homes in which Trial 1 was conducted, which were:

- St. Patrick's Mother and Baby Home, Navan Road, Dublin (14 children)
- Sacred Heart Mother and Baby Home, Bessborough, Co. Cork (25 children)
- St. Peter's Mother and Baby Home, Castlepollard, Co. Westmeath (6 children)
- St. Clare's Baby Home, Stamullen, Co. Meath. (4 children) and
- Good Shepherd Mother and Baby Home, Dunboyne, Co. Meath (9 children)

The discovered material also revealed that Mount Carmel Industrial School, Moate, Co. Westmeath was involved in Trial 1, in that ten children from that school constituted a polio control group.

#### *State vaccination programmes (1940–1987)*

- In May 2002 the Department of Health and Children furnished a comprehensive dossier to the Division containing details of all vaccination programmes introduced in the State in the period with which the Division is concerned, accompanied by circulars issued by the Department, which has greatly facilitated the Division in its work.

### **Preliminary inquiries specific to Trial 1**

In order to advance its preliminary inquiries into Trial 1, the Division took the following action:

#### *Issue of discovery directions*

- In June 2002, the Division commenced the process of issuing directions for discovery and production of documents. Table U contains details of the discovery directions issued showing—
  - the person or body from whom discovery was sought,
  - the name of the deponent,
  - the date on which third parties who were likely to be affected by the discovery direction were notified of the intention to make the direction (Haughey - v - Moriarty letters)<sup>221</sup>,
  - the date on which the direction issued,

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<sup>220</sup> Wellcome Foundation Limited, which operated the Wellcome Laboratories, was acquired by Glaxo Plc in 1995 and the company was renamed GlaxoWellcome. In 2000, GlaxoWellcome merged with SmithKline Beecham to become GlaxoSmithKline.

<sup>221</sup> These letters were designed to fulfil the requirements identified by the Supreme Court in *Haughey - v - Moriarty* [1999] 3 I.R. 1.

- the date of swearing of each affidavit of discovery submitted in compliance with the direction, and
- the date of receipt of each affidavit submitted in compliance with the direction.

#### *Grants of legal representation for the purposes of discovery*

- Legal representation limited to the making of discovery in relation to Trial 1 was granted to the parties to whom discovery directions issued. Table V contains a list of the parties to whom legal representation was granted for the purposes of discovery and the solicitors representing them.

#### *Procedural hearings in relation to discovery issues*

- The Division held the following procedural hearings to deal with issues arising out of the discovery directions issued in respect of Trial 1:
  - a hearing held in private on 23<sup>rd</sup> September, 2002 to deal with issues in relation to the direction issued to the Sisters of the Sacred Heart of Jesus and Mary,
  - a hearing held in private on 30<sup>th</sup> September, 2002 to deal with issues in relation to the direction issued to the Northern Area Health Board, and
  - a hearing held in private on 30<sup>th</sup> September, 2002 to deal with issues raised in relation to the direction to the East Coast Area Health Board.

#### *Analysis of discovered documentation*

- All of the documentation discovered pursuant to the discovery directions which issued in relation to Trial 1 was analysed in depth by the Division's legal team. The documentation discovered by GlaxoSmithKline contained information vital to the Division's investigations and included material which had not been available to the Chief Medical Officer when he was conducting his inquiry. Analysis of this material enabled the Division to ascertain positively, not only the identities of the five children's homes involved in the trial, but also the identities of all the trial participants except six children, in relation to whom only gender and date of birth data was provided. The documentation discovered revealed the following information—
  - The identities of the children who had received the 4:1 vaccine (group A) and the children who had been vaccinated in the normal manner (group B).
  - The existence of a control group for the polio element, identifying the children and the institution in which they were resident (Mount Carmel Industrial School, Moate, Co. Westmeath).
  - The dates of the taking of pre-vaccination blood specimens on the basis of which the selection for Group A or Group B was determined.
  - The dates of the taking of blood samples in the course of the trial.

The documentation discovered by GlaxoSmithKline also enabled the Division to identify personnel who were employed in the research department of Wellcome in the late 1950s and the early 1960s, who had an involvement in Trial 1, including Dr. Alex Kanarek, who manufactured the 4:1 vaccine used in the trial. Dr. Kanarek, who now

lives in Canada, was contacted and it was proposed to call him as a witness during the hearings in connection with Trial 1. Other personnel employed in the research department of Wellcome were identified and, if alive, were contacted.

The material discovered by GlaxoSmithKline also disclosed that a previous trial of the 4:1 vaccine had been conducted on children living in Swindon in the United Kingdom in the late 1950s. The results of that trial had not been published.

It is apposite to record that the Division's engagement in the discovery process illustrates the benefit which accrues from an inquisitorial body having a statutory basis and being endowed with statutory powers of compellability. The Division, through the exercise of the statutory power to direct discovery and production of documents, succeeded in gathering a significant body of documentary evidence from which it is possible to establish a detailed picture of the conduct of a vaccine trial which took place over forty years ago. The observations in chapter 13 in relation to the labour intensive and time consuming work involved in making discovery and producing documents which are relevant to events which occurred a long time ago, are applicable to compliance with discovery directions made by the Division. Indeed, the example cited in chapter 13 is an example of compliance with a discovery direction made by the Division.

#### *Retainer of experts*

- The Division retained the following experts to advise on aspects of Trial 1 and to give expert evidence on those aspects of the trial:
  - Dr. Karina Butler, M.B., F.R.C.P.I, Consultant in Paediatric Infectious Diseases, at Our Lady's Hospital for Sick Children, Crumlin, who advised and provided a report on the medical and immunological aspects of Trial 1.
  - Dr. Richard Ashcroft, M.A., PhD, Leverhulme Senior Lecturer in Medical Ethics at Imperial College, London, who advised and reported on the ethical aspects of Trial 1.

#### *Advertisements*

- In February 2003, the Division advertised in national newspapers in the State requesting that mothers and children resident during 1960/61 in the children's homes and the industrial school in which Trial 1 was conducted, which were identified in the advertisement, to contact the Division. While the Division had established the identity of both the mothers and the children involved in Trial 1, it was considered that it would be inappropriate, given the confidentiality and privacy which it must be assumed they wished to protect, to endeavour to trace and make contact with the mothers or the children. The objective of advertising was to enable trial subjects and their mothers to contact the Division, if they so wished. The advertisements led to considerable interest from the public. The Division personnel were able to confirm or eliminate a caller's involvement in Trial 1 by ascertaining from the caller the gender of the child and the date of birth. As a result of this process, the Division was able to confirm that six persons who made contact had been trial subjects for Trial 1. One of the persons

who made contact was not interested in being involved in the inquiry. The advertisement also led to contacts from the birth mothers of two of the trial subjects.

#### *Access to Department of Health and Children records*

- Division personnel were given access to files in the Department of Health and Children in relation to licensing and importation of vaccines and the administration of polio and rubella vaccinations.

#### *Interviews with perspective witnesses*

- The Division's legal team identified and interviewed persons connected with the conduct of the trial, directly and indirectly, whom it was considered might be in a position to assist the Division, including:
  - The only surviving Medical Officer attached to one children's home in which the trial was conducted.
  - An assistant to the Medical Officer of another of the children's homes.
  - A County Medical Officer for a county in which one of the homes was located.
  - Members of the Congregations which managed the homes.
  - Representatives of University College, Dublin.
  - The Medical Officer of the Southern Health Board, who had provided a report in relation to the trial subjects in the children's home in Bessborough.
  - Dr. Alex Kanarek, who was interviewed via teleconference and indicated a willingness to testify at the public hearings.

#### *Witness statements*

- Having identified potential witnesses who could assist the inquiry into Trial 1 at the public hearings, the Division invited witness statements from the proposed witnesses, suggesting areas of the inquiry to be covered in the statements. In response, twelve witness statements were submitted.

### **Preparation for and Scheduling of public hearings in relation to Trial 1**

At a procedural hearing held in public on 20<sup>th</sup> March, 2003, the Division announced that it proposed commencing public hearings on Trial 1 on 17<sup>th</sup> June, 2003. The following steps were subsequently taken on foot of that decision:

#### *The Books of Documents*

- The Division invited parties involved in the inquiry in relation to Trial 1 to submit any documents which they wished to rely on not later than 11<sup>th</sup> April, 2003. Following that deadline, all relevant material was assembled in thirteen Books of Documents which contained—
  - discovered material (where necessary, suitably redacted to protect the identity of any child or mother named in a document),

- witness statements, and
- expert reports (including expert reports submitted by Professor Irene Hillary and an expert report commissioned by the independent legal team appointed to represent the interests of the children involved in the trial).

The relevant Books of Documents were circulated to the parties involved in the process during the first three weeks of May 2003. Supplemental documents were circulated later, as they became available.

#### *Public hearings to deal with procedural matters*

- Public hearings to deal with procedural matters and issues arising out of the preparations for the hearings on the inquiry into Trial 1 were held on six occasions—
  - on 20<sup>th</sup> March, 2003,
  - on 8<sup>th</sup> April, 2003,
  - on 6<sup>th</sup> May, 2003,
  - on 19<sup>th</sup> May, 2003,
  - on 30<sup>th</sup> May, 2003, and
  - on 1<sup>st</sup> July, 2003

#### *Legal representation*

- At the public hearing on 20<sup>th</sup> March, 2003, applications were received on behalf of a number of parties for legal representation at public hearings in relation to Trial 1, which at that stage were scheduled to commence on 17<sup>th</sup> June, 2003. Further applications were received at subsequent procedural hearings. Legal representation was allowed, in accordance with the Act,<sup>222</sup> to parties who applied for it, where the circumstances were such that the Division considered it appropriate to allow legal representation. Particulars of the parties who were allowed legal representation for the public hearings in Trial 1 are summarised in Table W, which indicates:
  - the identity of the party,
  - the involvement or connection of the party with the conduct of Trial 1,
  - the extent of legal representation, and
  - the solicitor on record for the party.

#### *Appointment of independent legal team*

- At a public hearing on 8<sup>th</sup> April, 2003, the Division appointed an independent legal team to represent the interests of the children involved in Trial 1 and their mothers. The membership of the independent legal team is:
  - Michael Boylan, Solicitor, of the firm Augustus Cullen & Company, Solicitors and

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<sup>222</sup> Section 20A(1), substituted by section 32 of the Act of 2002.

- Oonagh McCrann, S.C., and Michael Cooney, B.L., who were appointed on the nomination of the Chairman of the Bar Counsel.

The authority for making the appointment and the role of the independent legal team were outlined in a Ruling of the Division dated 5<sup>th</sup> June, 2003<sup>223</sup> in which it was stated as follows:

“... the Commission and the Investigation Committee are endowed with such powers as are necessary or are expedient for the performance of their functions. The relevant provisions are similar, although not identical, to section 4 of the Tribunals of Inquiry (Evidence) (Amendments) Act 1979. It is the view of the Division that it has power under section 4(3) and section 12(2) of the Act of 2000 to appoint a legal team, separate and distinct from the legal team which has been and will continue to be involved in performing the traditional role performed by a legal team to a public inquiry — gathering evidence, considering the evidence for relevance, disseminating notice of the evidence to affected persons and presenting the evidence at public hearings — where to do so is necessary or expedient for the proper fulfilment of its remit. Exceptional circumstances prevail in relation to the inquiry into Trial 1. As has been stated, the participants who have sought legal representation do not reflect the disparate factual circumstances of the entire body of participants. It is reasonable to infer that considerations of privacy and confidentiality may have deterred other participants from coming forward or seeking an involvement. Because of the risk of breaching such privacy and confidentiality, the Division has not sought to contact participants. In such exceptional circumstances, it is the view of the Division that an independent legal team is necessary to properly reflect the perspective of the disparate elements who participated in Trial 1, there being no alternative method of achieving this objective.

A question has been raised as to why the Division’s existing legal team could not put forward matters arising from the perspective of the participants in Trial 1. In response, it has been submitted by the Division’s legal team that there may be areas where the necessary neutrality and objectivity which attaches to the Division’s legal team would be interfered with or even compromised, should it be seen to adopt what might be regarded as a partisan position. The Division accepts that advice”.

### *Areas of concern*

- Following the dissemination of the Books of Documents, the Division’s legal team identified in the evidence which had been gathered matters of fact and law which might give rise to a concern that a person or body could be subject to adverse comment or criticism in the findings and determinations made on the inquiry. On 12<sup>th</sup> May, 2003, the Division corresponded with each party involved in the inquiry on Trial 1, indicating the areas of concern which had been identified as relevant to the party. It was emphasised that highlighting those areas was not to be taken as an allegation nor as

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<sup>223</sup> The full text of the Ruling is posted on the Commission’s website.

an indication that the Division had formed any view as to whether there was a *prima facie* case on the evidence collected and contained in the Books of Documents which might reasonably lead to an adverse finding. The purpose of the letters was simply to indicate areas in respect of which there might be a contention made in respect of such party which, if established, could lead to an adverse finding. By way of example, two of the major concerns identified by the Division were:

- the absence of documentation or information concerning the facilitation, organisation and administration of the Trial in the children's homes, and
- the absence of any documentation concerning consents allegedly given to the participation of the children in the trial.

### *Directions to attend*

- In anticipation of the commencement of the public hearings on the inquiry in relation to Trial 1 on 17<sup>th</sup> June, 2003, a direction to attend was issued pursuant to the Act<sup>224</sup> to each person, apart from the Division's own experts, whose oral testimony the Division considered necessary to enable it to properly fulfil its mandate in relation to the inquiry into Trial 1. One such direction, which issued on 31<sup>st</sup> March, 2003 to Professor Patrick Meenan, one of the researchers involved in Trial 1, was the subject of an application by the Commission to the High Court under the Act of 2000<sup>225</sup> to compel compliance with the direction. There was a cross application by Professor Meenan seeking, by way of judicial review, to quash the direction to attend. The proceedings were heard in the High Court on 27<sup>th</sup> and 28<sup>th</sup> May, 2003. Judgment was delivered by the High Court by Mr. Justice T.C. Smyth on 3<sup>rd</sup> June, 2003, in which it was held that there was jurisdiction to issue the direction to attend, that it was issued within jurisdiction and was valid. The application to quash the direction was refused. There was an appeal to the Supreme Court from the Judgment and Order of the High Court. The appeal was heard in the Supreme Court on 29<sup>th</sup> July, 2003. Judgment was delivered by the Supreme Court on 31<sup>st</sup> July, 2003 reversing the decision of the High Court. The Supreme Court held that the rules of fair procedures had not been observed by the Division in its dealings with Professor Meenan, having regard to his age and state of health. The decision to issue the direction to attend was quashed.

### *Postponement of public hearings*

- The public hearings on the inquiry into Trial 1 which were originally scheduled to commence on 17<sup>th</sup> June, 2003 were postponed from time to time pending the resolution of the litigation involving Professor Meenan. On 1<sup>st</sup> July, 2003, the hearings were adjourned *sine die*.

## **The Judicial Review Proceedings**

On 1<sup>st</sup> August, 2003, the Division was put on notice by the legal representatives of Professor Irene Hillary that, on her behalf, they had written to the Minister for Health and Children on that day requesting that the Government should revoke the Order and threatening legal action in the absence of a positive and satisfactory response. The

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<sup>224</sup> Section 14(1)(a).

<sup>225</sup> Section 14(3).

Commission was requested to enter into immediate consultation with the Minister for Health and Children and the Government for the purposes of initiating the process of revocation. It was submitted, having regard to certain observations in the judgments delivered in the Supreme Court by the Chief Justice and Mr. Justice Hardiman in the case of Meenan -v- the Commission, that it was imperative that the inquiry should be halted pending the revocation sought from the Government. The Division responded setting out its view that it was for the Government, not the Commission, to initiate the process of revocation should it consider it appropriate to do so. It was indicated that it was anticipated that the inquiry would not be progressed during the month of August and that, if by 1<sup>st</sup> September the issues raised with the Government had not been resolved and legal proceedings had been initiated, consideration would be given to the means whereby the inquiry might be stayed pending the conclusion of legal proceedings, always provided that the legal proceedings were prosecuted expeditiously.

The Judicial Review proceedings, in which Professor Hillary is seeking, *inter alia*, a declaration that the Order is *ultra vires* the Act, were initiated on 3<sup>rd</sup> November, 2003. On 25<sup>th</sup> November, 2003, an undertaking was given to the High Court by the Commission that it would not conduct any hearings in relation to the matters within the ambit of the Order until the matter is next in the High Court list, that is to say, until 20<sup>th</sup> January, 2004.

## **Preliminary inquiries in relation to Trial 2**

In the latter half of 2002, contemporaneously with preparations for the public hearings in relation to Trial 1, the Division's legal team was conducting preliminary inquiries into the conduct of Trial 2. On the basis of the experience gained in its preliminary investigations into the conduct of Trial 1, the Division decided to issue discovery directions to GlaxoSmithKline, the successor of Wellcome, the manufacturer of the vaccine used in Trial 2, and Professor Irene Hillary, the principal researcher on Trial 2, in the first instance, and to postpone issuing any further discovery directions until the documentation discovered on foot of those directions was analysed. It was believed that information gleaned from the fruits of those discovery directions would enable the Division to advance its inquiries in a focused way. Details of the directions for discovery issued in the preliminary inquiries in relation to Trial 2 are set out in Table X. As has been stated previously, the documentation discovered by GlaxoSmithKline identified the children's home involved in Trial 2 as St. Anne's Industrial School, Booterstown, Co. Dublin. It also disclosed the names and ages (although not the dates of birth) of all of the sixty-nine (69) participants of the aspect of the study conducted in St. Anne's. The discovered documentation also revealed the names of all the children living in their family homes in the Midlands who took part in the study. The children lived in the Killucan area of Co. Westmeath.

The documentation discovered by GlaxoSmithKline also disclosed a considerable amount of information in relation to other vaccine trials conducted in the State. No determination has been made as to whether those trials are within the ambit of the functions conferred on the Commission by the Order.

## **Preliminary inquiries into Trial 3**

The Division's legal team commenced its preliminary inquiries into the conduct of Trial 3 towards the end of 2002. As the results of Trial 3 were not the subject of a published

report or article, it was decided, in the first instance, to focus on what documentation might be obtained from the archives of GlaxoSmithKline. A discovery direction issued to GlaxoSmithKline on 27<sup>th</sup> February, 2003. Details of the discovery direction are listed in Table Y. The analysis of the documentation discovered on foot of this direction has commenced.

## Suspension of the work of the Division

The practical effect of the undertaking given by the Commission to the High Court on 25<sup>th</sup> November, 2003, is that the work of the Division is suspended. The public will be kept apprised of any alteration of the current status of the Division by notices posted on the Commission's website.

**TABLE U**  
**TRIAL 1 Discovery**  
**Discovery directions pursuant to section 14 (1),**  
**Commission to Inquire into Child Abuse Act 2000**

Institution / Order	Deponent	Haughey V Moriarty Letters	Direction Issued	Affidavit Sworn	Affidavit Received
University College Dublin	Professor William Hall	20 <sup>th</sup> June 2002	5 <sup>th</sup> July 2002	30 <sup>th</sup> September 2002	30 <sup>th</sup> September 2002
GlaxoSmithKline	Alice Mary Pascoe	27 <sup>th</sup> June 2002	2 <sup>nd</sup> August 2002	(1) 3 <sup>rd</sup> October 2002; (2) 7 <sup>th</sup> February 2003	(1) 4 <sup>th</sup> October 2002; (2) 11 <sup>th</sup> February 2003
Sisters of the Sacred Heart of Jesus and Mary	Sr. Ellen Harney	28 <sup>th</sup> June 2002	22 <sup>nd</sup> July 2002 (amended 25 <sup>th</sup> September 2002)	(1) Unsworn; (2) 3 <sup>rd</sup> October 2002; (3) 31 <sup>st</sup> October 2002; (4) 7 <sup>th</sup> November 2002; (5) 24 <sup>th</sup> January 2003; (6) 11 <sup>th</sup> April 2003; (7) 12 <sup>th</sup> June 2003	(1) 3 <sup>rd</sup> October 2002; (2) 4 <sup>th</sup> October 2002; (3) 1 <sup>st</sup> November 2002; (4) 8 <sup>th</sup> November 2002; (5) 27 <sup>th</sup> January 2003; (6) 15 <sup>th</sup> April 2003; (7) 13 <sup>th</sup> June 2003
Daughters of Charity	Sr. Catherine Mulligan	28 <sup>th</sup> June 2002	24 <sup>th</sup> July 2002	(1) 30 <sup>th</sup> September 2002; (2) 14 <sup>th</sup> October 2002	(1) 30 <sup>th</sup> September 2002; (2) 14 <sup>th</sup> October 2002
Good Shepherd Sisters	Sr. Noreen O'Shea	28 <sup>th</sup> June 2002	29 <sup>th</sup> July 2002	22 <sup>nd</sup> October 2002	25 <sup>th</sup> October 2002
Department of Health	Eamon Corcoran	None	21 <sup>st</sup> March 2003	16 <sup>th</sup> April 2003	17 <sup>th</sup> April 2003
Professor Irene Hillary	Irene Hillary	11 <sup>th</sup> July 2002	29 <sup>th</sup> July 2002	(1) 9 <sup>th</sup> September 2002; (2) 7 <sup>th</sup> January 2003	(1) 10 <sup>th</sup> September 2002; (2) 7 <sup>th</sup> January 2003
Professor Patrick Meenan	Professor Patrick N. Meenan	11 <sup>th</sup> July 2002	29 <sup>th</sup> July 2002	25 <sup>th</sup> September 2002	30 <sup>th</sup> September 2002

**TABLE U—continued**

<b>Institution / Order</b>	<b>Deponent</b>	<b>Haughey V Moriarty Letters</b>	<b>Direction Issued</b>	<b>Affidavit Sworn</b>	<b>Affidavit Received</b>
<b>The Bird's Nest (Mrs. Smyly's Homes)</b>	<b>George Knaggs</b>	10 <sup>th</sup> July 2002	2 <sup>nd</sup> August 2002	18 <sup>th</sup> October 2002	24 <sup>th</sup> October 2002
The Cottage Home for Little Children	Robin Goodbody	10 <sup>th</sup> July 2002	2 <sup>nd</sup> August 2002	23 <sup>rd</sup> October 2002	24 <sup>th</sup> October 2002
Southern Health Board	Gerard O'Dwyer	11 <sup>th</sup> July 2002	1 <sup>st</sup> August 2002	26 <sup>th</sup> September 2002	27 <sup>th</sup> September 2002
North Eastern Health Board	Aidan Browne	5 <sup>th</sup> July 2002	9 <sup>th</sup> August 2002	(1) 24 <sup>th</sup> September 2002; (2) 5 <sup>th</sup> December 2002; (3) 29 <sup>th</sup> April 2002	(1) 27 <sup>th</sup> September 2002; (2) 9 <sup>th</sup> December 2002; (3) 7 <sup>th</sup> May 2003
North Eastern Health Board	Sally Campbell			6 <sup>th</sup> February 2003	7 <sup>th</sup> February 2003
Midland Health Board — Castlepollard	Pat O'Dowd	5 <sup>th</sup> July 2002	26 <sup>th</sup> August 2002	(1) 23 <sup>rd</sup> October 2002; (2) 21 <sup>st</sup> May 2003	(1) 24 <sup>th</sup> October 2002 <sup>226</sup> ; (2) 23 <sup>rd</sup> May 2003
Midland Health Board — Moate	Pat O'Dowd	20 <sup>th</sup> November 2002	11 <sup>th</sup> December 2002	(1) 17 <sup>th</sup> February 2002; (2) 22 <sup>nd</sup> April 2003	(1) 18 <sup>th</sup> February 2003; (2) 22 <sup>nd</sup> April 2003
Mid Western Health Board	Gus Sheehan	16 <sup>th</sup> July 2002	1 <sup>st</sup> August 2002	19 <sup>th</sup> September 2002	23 <sup>rd</sup> September 2002
Eastern Regional Health Authority	Martin Devine	16 <sup>th</sup> July 2002	1 <sup>st</sup> August 2002	24 <sup>th</sup> October 2002	25 <sup>th</sup> October 2002
Northern Area Health Board	Maureen Windle	5 <sup>th</sup> July 2002	2 <sup>nd</sup> August 2002	18 <sup>th</sup> October 2002	18 <sup>th</sup> October 2002
East Coast Area Health Board	Michael Lyons	16 <sup>th</sup> July 2002	2 <sup>nd</sup> August 2002	18 <sup>th</sup> October 2002	18 <sup>th</sup> October 2002
Department of Education and Science	John Dennehy	28 <sup>th</sup> May 2003	13 <sup>th</sup> June 2003	13 <sup>th</sup> June 2003	13 <sup>th</sup> June 2003
Cúnamh	Elizabeth O'Flinn		28 <sup>th</sup> April 2003	12 <sup>th</sup> May 2003	16 <sup>th</sup> May 2003
The Sisters of Mercy	Sr. Martina Barrett	15 <sup>th</sup> November 2002	11 <sup>th</sup> December 2002	(1) 17 <sup>th</sup> January 2003; (2) 11 <sup>th</sup> March 2003	(1) 22 <sup>nd</sup> January 2003; (2) under cover of letter dated 13 <sup>th</sup> March 2003
The Sisters of St. Clare	Sr. Patricia Rogers	28 <sup>th</sup> October 2002	11 <sup>th</sup> December 2002	22 <sup>nd</sup> January 2003	22 <sup>nd</sup> January 2003

<sup>226</sup> An undated Affidavit of Discovery was received on 4<sup>th</sup> October 2002.

## TABLE V

### Grants Of Legal Representation for the Purposes of Discovery-Trial 1

On the 19<sup>th</sup> July 2002, legal representation was granted to the following firms of solicitors:

- McCann FitzGerald representing the Daughters of Charity
- Millett & Matthews representing the Sisters of the Good Shepherd
- Philip Wm Bass & Co representing the Sisters of the Sacred Heart of Jesus and Mary
- The Chief State Solicitor's Office representing The Department of Health and Children
- Roger Greene & Sons representing the East Coast Area Health Board
- Arthur Cox representing the Eastern Regional Health Authority
- Farrell & Partners representing the Midland Health Board — This legal representation was extended on 15<sup>th</sup> November 2002 to cover further Discovery.
- Dermot O'Donovan & Partners representing the Mid-Western Health Board
- Roger Greene & Co representing the Northern Area Health Board
- BCM Hanby Wallace representing the North-Eastern Health Board
- Arthur Cox representing Professor Patrick Meenan
- Conway Kelleher Tobin representing the Southern Health Board
- John J McDonald & Co representing University College Dublin
- Hayes & sons representing Professor Irene Hillary
- McCann FitzGerald representing GlaxoSmithKline

On 6<sup>th</sup> December 2002, legal representation was granted to the following:  
Arthur O'Hagan, representing the Sisters of Mercy.

On 5<sup>th</sup> February 2003, legal representation was granted to the following:  
Arthur O'Hagan, representing the Sisters of St. Claire.

*Note:*

Legal representation was not granted to Eugene F. Collins Solicitor, representing the Irish Medicines Board, as its predecessor, the National Drugs Advisory Board was not established until 1966 some five years after the conclusion of Trial 1.

**TABLE W**

**Legal Representation granted for the purposes of the Public Hearings in relation to Trial 1**

<b>Party</b>	<b>Extent of Representation</b>	<b>Solicitor</b>
<b>GlaxoSmithKline:</b> Manufacturer of trial vaccines	Full	McCann Fitzgerald
<b>Professor Hillary:</b> Principal Researcher	Full	Hayes & Company
<b>Department of Health &amp; Children</b>	Full	The Office of the Chief State Solicitor
<b>UCD:</b> Location of Department of Medical Microbiology where principal researcher was employed	Limited *	John J. McDonald & Co.
<b>The Sisters of Mercy:</b> Order responsible for the management of Moate Industrial School	Limited *	Arthur O'Hagan
<b>The Sisters of St. Clare:</b> Order responsible for the management of Stamullen Baby Home.	Limited *	Arthur O'Hagan
<b>The Good Shepherd Sisters:</b> Order responsible for the management of Dunboyne Mother and Baby Home	Limited *	Millett and Matthews
<b>The Sisters of the Sacred Heart of Jesus and Mary:</b> Order responsible for the management of Bessborough and Castlepollard Mother and Baby Homes	Limited *	Philip William Bass & Co.
<b>The Daughters of Charity:</b> Order responsible for the management of St. Patrick's Mother and Baby Home	Limited *	McCann Fitzgerald
<b>The Southern Health Board:</b> Successor to Cork County Council in whose functional area the home at Bessborough was located	Limited*	Conway, Kelleher, Tobin
<b>The North Eastern Health Board:</b> Successor to Meath County Council in whose functional area the homes at Dunboyne and Stamullen were located	Limited*	BCM Hanby Wallace
<b>The Midland Health Board:</b> Successor to Westmeath County Council in whose functional area the home at Castlepollard and the Industrial School in Moate were located	Limited*	Farrell & Partners
<b>The Northern Area Health Board:</b> Successor to Dublin Health Authority in whose functional area St. Patrick's home on the Navan Road was located	Limited *	Roger Greene & Sons

**TABLE W—continued.**

<b>Party</b>	<b>Extent of Representation</b>	<b>Solicitor</b>
<b>Interests of children and mothers involved in Trial 1</b>	Full	Michael Boylan of Augustus Cullen & Son (appointed as solicitor to the independent legal team)
<b>Bessborough child</b>	Limited	Anne Marie McCrystal
<b>Moate child **</b>	Limited	

*Notes:*

\* On 20<sup>th</sup> March, 2003, these parties applied to the Division for legal representation at the Trial 1 hearings. Their respective positions were reserved pending receipt by them of the Books of Documents. It was accepted that each of these parties would be entitled to limited legal representation (i.e. representation by a Senior Counsel, a Junior Counsel and a Solicitor during certain parts only of the hearing) to the extent necessary to protect their respective interests. The precise parameters of this limited representation were never identified.

\*\* Three children who were resident in the Mount Carmel Industrial School in Moate applied for legal representation on 30<sup>th</sup> May, 2003. Two of the said children were represented by Murphy English & Co., the other by Kieran McCarthy & Co. On 5<sup>th</sup> June, 2003, the Division ruled that one of these children should be granted limited representation. In default of the applicants agreeing among themselves which of them would avail of that representation, the Division ruled that the elder of the applicants represented by Murphy English & Co. could do so. The Division has not been informed of any such agreement between the Moate applicants.

**TABLE X**

**Trial 2 Discovery**

**Discovery Directions Pursuant to Section 14 (1), Commission To Inquire Into Child Abuse Act, 2000**

<b>Institution/Order</b>	<b>Deponent</b>	<b>Haughey V Moriarty Letters</b>	<b>Direction Issued</b>	<b>Affidavit Sworn</b>	<b>Affidavit Received</b>
GlaxoSmith Kline	Alice Mary Pascoe	22 <sup>nd</sup> October 2002	19 <sup>th</sup> November 2002	24 <sup>th</sup> January 2003	29 <sup>th</sup> January 2003
Professor Irene Hillary	Irene Hillary	October 2002	19 <sup>th</sup> November 2002	7 <sup>th</sup> January 2003	7 <sup>th</sup> January 2003

**TABLE Y**

**Trial 3 Discovery**

**Discovery Direction Pursuant To Section 14 (1), Commission to Inquire into Child Abuse Act, 2000**

<b>Institution / Order</b>	<b>Deponent</b>	<b>Haughey V Moriarty Letters</b>	<b>Direction Issued</b>	<b>Affidavit Sworn</b>	<b>Affidavit Received</b>
GlaxoSmith Kline	Alice Mary Pascoe	12 <sup>th</sup> December 2002	27 <sup>th</sup> February 2003	16 <sup>th</sup> June 2003	18 <sup>th</sup> June 2003

# APPENDICES

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# APPENDIX A



**Commission to Inquire into Child Abuse Act,  
2000**

**Statement**

**Delivered at**

**First Public Sitting of**

**Commission to Inquire into Child Abuse**

**held on**

**29th June 2000**

Commission to Inquire into Child Abuse,  
Second Floor,  
St. Stephen's Green House,  
Earlsfort Terrace,  
Dublin 2.



## **1. Purpose**

The purpose of this public sitting of the Commission to Inquire into Child Abuse is to explain to the public, and, in particular, to the survivors of institutional child abuse and other persons affected by its work, the Commission's understanding of the tasks it has been given in the Commission to Inquire into Child Abuse Act, 2000 (the Act) and how it proposes to carry out those tasks.

## **2. Background**

On 11th May 1999, the date on which the last of the three television programmes in the *States of Fear* series of programmes was broadcast by RTE, while announcing a package of measures to be introduced relating to childhood abuse, the Taoiseach acknowledged that abuse had ruined the childhoods of many children in the past and on behalf of the State and of all of the citizens of the State he apologised to the victims of child abuse "for our collective failure to intervene, to detect their pain, to come to their rescue". One of the measures announced was the establishment of a Commission to Inquire into Childhood Abuse. That Commission, in the first instance, was to be established on a non-statutory basis with broad terms of reference and with the initial task of making recommendations to the Government on the terms of reference, on how it would operate and on what powers and protections it required to carry out its work.

The non-statutory Commission, which comprised three of the members of this Commission, made recommendations to the Government in two reports dated the 7th of September 1999 and the 14th of October 1999 respectively, in which it recommended, among other things, that the Commission should be put on a statutory basis. The reports were published at the same time as the publication of the Commission to Inquire into Child Abuse Bill, 2000 on the 2nd February, 2000.

This Commission was established on the 23rd May, 2000 pursuant to the Act, which had become law on the 26th of April 2000. The Act, which in broad terms gave effect to the recommendations in the two reports, governs the functions, powers and procedures of the Commission.

## **3. The Commission**

The Commission, as established under the Act, consists of a chairperson and five ordinary members. Details of the members of the Commission are set out in Appendix A. The membership of the Commission reflects a wide range of qualifications and professional experience in areas which will be under consideration by the Commission.

As a statutory body mandated to inquire into a matter of grave public concern, the Commission is unique. While under the Act it has powers and privileges similar to those conferred on Tribunals of Inquiry and Committees of the Houses of the Oireachtas to enable it to fulfil its investigative remit, it is also intended that its hearing process will be a source of healing for survivors of institutional childhood abuse and to that end it has unique features which will be outlined later in this statement.

The Commission and its members are independent in the performance of their functions.<sup>1</sup>

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<sup>1</sup> Section 3(3).

#### **4. The Staff of the Commission**

Under the Act<sup>2</sup> the Commission has a range of options in relation to recruitment of staff. Details of the current administrative and other staff of the Commission are set out in Appendix B. The five members of the administrative staff who are on secondment from the Department of Education and Science provided administrative services for the non-statutory Commission. None of these seconded staff has been involved in the Department of Education and Science or elsewhere in the consideration of or processing any complaint of or other matter relating to child abuse. Moreover none has had any administrative or management responsibility in the Department of Education and Science or elsewhere for industrial schools or reformatory schools.

The inquiry officers, who under the Act<sup>3</sup> will carry out a preliminary inquiry for the Investigation Committee in relation to each allegation of abuse coming before that Committee, will not be recruited from any Department of State which has or has had responsibility for children in institutions. This includes, for example, the Department of Education and Science, the Department of Health and Children or the Department of Justice, Equality and Law Reform.

#### **5. Conflicts of Interest**

There will be in force within the Commission a protocol, which will bind the members of the Commission, its staff and advisers, for identifying potential conflicts of interest and ensuring that a member of the Commission or of its staff or any adviser does not become involved in any matter which comes before the Commission or a Committee of the Commission where such involvement would give rise to a conflict of interest. The protocol will be strictly enforced by the chairpersons of the Commission and the Confidential Committee.

Under the Act<sup>4</sup> the Committees of the Commission are permitted to act in divisions. This will enable the Committees to deal with any conflict situations which may arise. It will also enable the Committees to complete their work more efficiently.

#### **6. The functions of the Commission**

Under the Act<sup>5</sup> the Commission has been given three principal tasks to perform. These are:

1. To listen to persons who have suffered abuse in childhood in institutions telling of this abuse and making submissions;
2. To conduct an inquiry into abuse of children in institutions since 1940 or earlier and where abuse occurred to find out why it occurred and who was responsible for it; and

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<sup>2</sup> Section 9.

<sup>3</sup> Section 23.

<sup>4</sup>Section 11(6).

<sup>5</sup> Sections 4&5.

3. To report directly to the public on the results of the inquiry and on the steps which should be taken now to deal with the continuing effects of abuse and to protect children in institutions from abuse now and in the future.

In performing these tasks, the Commission and its Committees must take into account the meanings given to certain words and expressions, for example “abuse”, “child” and “institution”, in the Act<sup>6</sup>.

In relation to the work of the Commission, “abuse” means physical abuse, sexual abuse, and other acts and omissions, for example, neglect and emotional abuse, which have serious consequences for a child.

In relation to the work of the Commission, “child” means a person who has not attained the age of eighteen years, so that the Commission and its Committees are concerned with the experiences of a person before his or her eighteenth birthday. In relation to the work of the Commission, an “institution” means a school, an industrial school, a reformatory school, an orphanage, a hospital, a children’s home and any, other similar place and a foster home. However, the Commission and its Committees are not only concerned with what happened within an institution, but they are also concerned with a situation in which abuse of a child, which took place outside an institution, was caused or contributed to by a person with responsibility for the child in the institution. For example, if a child from a residential institution was abused while in outside employment arranged by the institution, that is a situation which the Act<sup>7</sup> requires the Commission to look into.

The work of the Commission does not extend to abuse suffered by a child while in the care of his or her own family, whether the abuse was perpetrated by a member of the family or by a third party. For example, the work of the Commission does not extend to abuse of a child living and being cared for at home—

- (i) where the abuse was perpetrated by a neighbour;
- (ii) where a child in part-time or full-time employment was abused by his or her employer;
- (iii) where abuse was perpetrated in a sports club by a coach or another person in authority, or
- (iv) where abuse was perpetrated by a group leader or other person in authority in a group or club situation.

## **7. The Structure of the Inquiry**

Under the Act the Commission is to carry out its tasks of listening to survivors of abuse and conducting an inquiry into abuse in institutions since 1940 or earlier through its Committees. Two Committees have been established under the Acts<sup>8</sup>, the Confidential Committee and the Investigation Committee. Details of the membership of each

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<sup>6</sup> Section 1(1).

<sup>7</sup> Section 1(2).

<sup>8</sup> Section 10.

Committee are set out in Appendix C. As required by the Act<sup>9</sup> there is no overlap between the membership of the two Committees.

While both Committees will contribute to fulfilling all of the functions of the Commission, its healing or therapeutic role, in the main, will be fulfilled through the work of the Confidential Committee, whereas its investigative role, in the main, will be fulfilled through the work of the Investigation Committee.

## **8. Evidence**

Under the Act<sup>10</sup> the Commission and the Committees of the Commission may require a witness to give his or her evidence on oath. All witnesses who give evidence to the Investigation Committee shall be required to give their evidence on oath.

In making its findings of fact, the Investigation Committee will—

- (i) apply the standard of proof applicable in civil proceedings in a court, that is to say, proof on the balance of probabilities, and
- (ii) the findings will be based only on evidence which would be admissible in a Court, so, that in making its findings, the Investigation Committee shall not rely on hearsay.

To avoid adversely affecting the therapeutic effect of giving evidence to the Confidential Committee, persons coming forward to that Committee will not be required to give evidence on oath.

The Confidential Committee, in its report to the Commission, shall identify findings which are based on evidence which could not be tested or challenged and was not corroborated, so as to enable the Commission to disclose these matters in its reports, as required by the Act<sup>11</sup>.

The Act<sup>12</sup> requires the Commission and its Committees to bear in mind the need of persons who have suffered abuse in childhood to recount to others such abuse, their difficulties in doing so and the potential beneficial effect on them of so doing. It enjoins the Commission and its Committees to conduct hearings at which evidence is given in such a manner as to afford persons who have suffered abuse to give their evidence in an atmosphere that is as sympathetic to, and as understanding of, them as is compatible with the rights of others and the requirements of justice and as informally as possible in the circumstances. The Commission, through its Committees, will hear all persons who come forward to tell of abuse they have suffered in institutions in childhood. No such person will be refused a hearing. The Commission expects, and it will take steps to ensure, that persons coming forward to testify as to abuse are treated in the healing manner envisaged by the Oireachtas. In the case of the Investigation Committee, in hearing the testimony of such persons, the rules of evidence may be relaxed where necessary to prevent the

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<sup>9</sup> Section 10(6).

<sup>10</sup> Section 22.

<sup>11</sup> Section 5(4).

<sup>12</sup> Section 4(6).

healing effect of testifying being jeopardised, but the Committee will hear submissions as to what evidence it may use in making its findings.

## 9. The Confidential Committee

Under the Act<sup>13</sup> the main task of the Confidential Committee is to listen to persons who have suffered abuse in childhood in institutions telling of this abuse and making submissions. The significant feature of the manner in which the Confidential Committee will conduct its business, and what distinguishes it from the Investigation Committee, is that, subject to certain limited and specific exceptions provided for in the Act<sup>14</sup>, persons giving evidence to the Confidential Committee are guaranteed total confidentiality in relation to their evidence and any documentation that they may produce. To that end every hearing of the Confidential Committee is required to be held in private<sup>15</sup>. The only persons present will be the members of the Confidential Committee, the person giving evidence and, if that person so wishes, a companion who will be required to agree to the confidential nature of the proceedings.

A person against whom, or an institution in respect of which, an allegation of abuse is made before the Confidential Committee will not be notified of the making of the allegation and will not have any opportunity to answer the allegation or to defend himself, herself or itself. However, the Confidential Committee may not name, or disclose information which would lead to the identification of, the witnesses before the Confidential Committee or the persons they allege committed abuse or any institution or any other person<sup>16</sup>.

Moreover, while the Act requires the Confidential Committee to reach conclusions, on the basis of the evidence it receives, in relation to the occurrence of abuse of children in institutions since 1940 or earlier, as the evidence will not have been tested and as persons and institutions against whom allegations have been made will not have had an opportunity to defend themselves, the Confidential Committee will only be able to reach conclusions, recorded in its reports, interim and final, as findings, of a general nature. No person or institution will be named or identified in any report of the Confidential Committee.

As the Act<sup>17</sup> requires the Commission to make as complete a record as is practicable of the proceedings of the Commission and its Committees, it is intended that an audio recording will be made, as unobtrusively as possible, of each hearing of the Confidential Committee. No copy or transcript of the audio recording of a hearing shall be released by the Confidential Committee to any person unless it is so ordered by the High Court in the exceptional circumstances provided for under the Act and on the terms of such order<sup>18</sup>. However, if a witness objects to the making of an audio-recording, a record of the hearing in the form of notes will be taken by the members of the Confidential Committee present. No copy of the notes shall be released unless it is so ordered by the High Court as

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<sup>13</sup> Section 15(1).

<sup>14</sup> Section 27(2).

<sup>15</sup> Section 11(2).

<sup>16</sup> Section 16(2).

<sup>17</sup> Section 7(6).

<sup>18</sup> Section 27(2) & (3).

aforesaid and on the terms of such order. A witness, who may be accompanied by the companion who attended the hearing before the Confidential Committee with him or her, will be afforded an opportunity, if he or she wishes, to listen to the audio recording of his or her meeting with the Confidential Committee in the office of the Commission as soon as reasonably practicable after a request from such person is received. It will not be permissible to make any other record of the hearing.

Insofar as it is possible to do so against documents in the possession of public bodies in the State to which the Confidential Committee has access, the Confidential Committee will verify that a witness before the Confidential Committee was in the institution in which the abuse was alleged to have occurred at the relevant time and any other relevant facts capable of verification without breaching its duty of non-disclosure.

The Act guarantees the confidentiality of information given to the Confidential Committee by making it an offence for any person, whether a member of the Confidential Committee, a member of staff assigned to the Confidential Committee or an adviser or expert retained by the Confidential Committee, to disclose any information provided to the Confidential Committee<sup>19</sup>. Moreover, the Act ensures that documents furnished to and generated by the Confidential Committee will never be made public<sup>20</sup>. In relation to what will happen when the Commission has finished its work, in general under the Act the Commission has a discretion as to the custody and disposal of its records, subject to compliance with the National Archives Act, 1986<sup>21</sup>. The records of the Confidential Committee will not be subject to the provisions of the Act of 1986<sup>22</sup> and, accordingly, the Commission will have an absolute discretion as to their custody and disposal. No final decision can be made at this juncture in relation to these matters. The Commission gives an assurance to persons concerned that the guarantee of confidentiality in relation to information given to the Confidential Committee will be honoured. Persons who will give information in confidence and persons, individuals and bodies, whom the information may suggest were implicated in wrongdoing or in conduct of which society disapproves who have not had an opportunity to refute the information, can be assured that steps will be taken to retain the records in a secure facility but only for such period as is reasonably necessary. Thereafter the records will be destroyed.

On a practical level, the Commission is putting procedures in place to ensure that the guarantee of confidentiality is honoured during the currency of the Commission, The Commission will have in place a protocol, which will bind every person who has access to information provided to the Confidential Committee, including staff members assigned to and to experts and advisers retained by the Confidential Committee. The protocol will be strictly enforced by the chairpersons of the Commission and the Confidential Committee. All documentary data furnished to or generated by the Confidential Committee will be stored in a secure place, to which only members of the Confidential Committee and staff members assigned to the Confidential Committee have access. Arrangements are being put in place to prevent any person other than members of the Confidential Committee and the staff members assigned to the Confidential Committee having access to the computer

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<sup>19</sup> section 27(1) & (6).

<sup>20</sup> Section 27(5).

<sup>21</sup> Section 7(6).

<sup>22</sup> Section 27(5).

generated data of the Confidential Committee. Insofar as is reasonably practicable, the Commission will endeavour to assign staff to the Confidential Committee on an exclusive basis.

Apart from the importance of ensuring that the guarantee of confidentiality in relation to information furnished to the Confidential Committee is honoured in the interests of the persons giving such information and of persons who might be adversely affected if it was divulged, the Commission and its members are conscious of the necessity of ensuring, in the interest of fairness and justice, that the deliberations and findings of the Investigation Committee are not in any way informed by evidence given to the Confidential Committee.

The Commission will conduct or commission research in relation to matters which bear on its inquiry and the policy matters on which it may make recommendations, as it is empowered to do by the Act<sup>23</sup>. Persons coming to the Confidential Committee will be asked if they wish to participate in this process. If they are willing to participate, any questionnaires will be administered by a member of the Confidential Committee or a staff member assigned or adviser to the Confidential Committee. Information gathered will be released by the Confidential Committee for analysis only in such form as the identity of the witness participating in the research is not revealed and the witness is assured of absolute anonymity. It is hoped that the witnesses coming to the Confidential Committee will participate in any research programmes which they are invited to participate in, because the Commission believes that all information channelled to the Commission through the Confidential Committee, whether the subject of general findings made by the Confidential Committee or the results of other research, will help society to better understand the past circumstances of the survivors and their current circumstances.

## **10. Investigation Committee**

Like the Confidential Committee, it is the task of the Investigation Committee to listen to persons who have suffered abuse in childhood in institutions telling of this abuse and making submissions<sup>24</sup>. The essential difference between the two committees is that the Investigation Committee will hear the evidence in accordance with due process as part of the inquiry into the abuse of children in institutions since 1940 or earlier, which is one of the main tasks of the Commission. The results of the Investigation Committee's inquiries will be reports, interim and final. It will be open to the Investigation Committee to reach conclusions, which will be recorded in its reports as findings, where it is appropriate to do so on the evidence, that abuse occurred in a particular institution during a particular period and to name the institution and the person who committed the abuse<sup>25</sup>. Because of this, the Investigation Committee must give every person who, and every institution or other body which, may be the subject of a conclusion which would adversely reflect on him, her or it the opportunity to defend himself, herself or itself.

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<sup>23</sup> Section 24(2).

<sup>24</sup> Section 12.

<sup>25</sup> Section 13.

The inquiry which the Investigation Committee must conduct is required to establish—

- (i) whether abuse occurred, and
- (ii) if it did<sup>26</sup>, what were the causes, nature, circumstances and extent of such abuse and what factors contributed to its occurrence and the extent to which the various factors contributed, looking, in particular, at the institutions themselves and the systems of management in, and the regulation of, the institutions in operation at the time of the abuse, and how the persons and bodies responsible for the management and regulation of the institutions performed their duties.

Another difference between the Confidential Committee and the Investigation Committee is that, while the Investigation Committee must hold hearings at which evidence relating to instances of alleged abuse of children is being given in private, it is given a discretion to hold other hearings in public and it is reminded in the Act by the Oireachtas of the desirability of holding hearings of the Investigation Committee in public<sup>27</sup>.

The Investigation Committee will conduct its inquiry in two phases. In the first phase, the Investigation Committee will investigate particular allegations of abuse. This phase will involve, in relation to each survivor's allegation or allegations, a preliminary inquiry by an inquiry officer in accordance with the Act<sup>28</sup>, followed by a hearing which will be held in private. If it is established to the satisfaction of the Investigation Committee that abuse occurred, findings to that effect will be made and recorded in an interim report from the Investigation Committee to the Commission. Such findings will be final and not open to challenge in the second phase. The Investigation Committee will then move on to the second phase. There will be two components in this phase. One will involve investigating, in relation to each institution (or group of institutions under the same or connected ownership or management) the context in which the abuse occurred and why it occurred and the attribution of responsibility for it, whether institutional or regulatory. This investigation will be conducted through public hearings. Each public hearing will involve discrete issues in relation to an institution (or group of institutions). In the other component, the Investigation Committee will look at the broader picture — the legislative framework and the historical and social context in which the abuse existed — and will conduct such comparative analyses as it considers appropriate. It is envisaged that this component may be partly conducted through research projects.

The approach which the Investigation Committee proposes adopting is intended to put structure on the inquiry, which is wide ranging both as regards subject matter and in time. It is not intended that the various aspects of the work of the Investigation Committee will be rigidly compartmentalised. The final report of the Investigation Committee will be based on the totality of the evidence available to it.

An outline of the procedures which the Investigation Committee proposes to adopt in relation to the first phase and the public hearing component of the second phase of the

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<sup>26</sup> The Commission interprets section 12(1)(c) of the Act on the basis that the duty thereby imposed applies where the prerequisite stipulated in section 4(1)(b) is complied with— “where it is satisfied that such abuse occurred”.

<sup>27</sup> Section 11(3)(b).

<sup>28</sup> Section 23.

inquiry is contained in Appendix D. The Investigation Committee will adopt a flexible and fair approach in relation to all procedural matters and will endeavour to accommodate the interests of all persons affected insofar as that is reasonably practicable. However, the Oireachtas has given the Commission two years in which to fulfil its remit<sup>29</sup> and the Investigation Committee will have to have regard to this time stricture in relation to imposing time limits and scheduling hearings.

It is not possible at this juncture to devise procedures for regulating the other component of the second phase of the Investigation Committee's inquiry. It is envisaged that a further public statement will be made on this aspect of its work at the end of the first phase. It is intended that issues of general application to all institutions or all institutions of a particular type will be dealt with in such a way as to avoid repetition, while giving every person or body affected by an issue the opportunity to be heard on it. It is also intended that matters of incontrovertible or uncontested fact should be identified so as to avoid the necessity for formal proof.

The Commission gives the same assurance as to confidentiality and absolute anonymity to persons coming to the Investigation Committee who are willing to participate in research programmes as it gives to persons coming to the Confidential Committee. For the reason stated earlier in relation to the Confidential Committee, it is hoped that persons coming forward to the Investigation Committee will participate in such programmes.

The Commission anticipates that some persons against whom allegations of abuse are made before the Investigation Committee may be untraceable or deceased. The members of the Commission are conscious of their obligation to fulfil their statutory mandate in accordance with fair procedures. The manner in which, in a particular instance, an allegation in relation to a person who is untraceable or deceased will be dealt with by the Investigation Committee in its reports will only be decided on after the Investigation Committee has heard all the evidence and the submissions of all interested parties in relation to that instance.

## **11. Witnesses**

Under the Act<sup>30</sup> the Investigation Committee has power to direct the attendance of witnesses and, if necessary, to seek the assistance of the High Court in ensuring compliance with such a direction<sup>31</sup>. Moreover, failure to comply with such a direction is an offence<sup>32</sup>.

The Act makes special provision for a witness testifying about abuse suffered by himself or herself. He or she is entitled to stop testifying or to decline to testify at any time<sup>33</sup>. Accordingly, a witness as to abuse suffered by himself or herself is not compellable. If a person does stop testifying before the Committee of his choice, he or she may give

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<sup>29</sup> Section 5(5)(b).

<sup>30</sup> Section 14(1).

<sup>31</sup> Section 14(3).

<sup>32</sup> Section 14(4).

<sup>33</sup> Section 19.

evidence to the other Committee, but the first Committee must totally disregard all evidence and documentation furnished to it by that person.

In order to encourage witnesses to come forward and co-operate with the Commission, under the Act<sup>34</sup> a person giving evidence to either Committee will have the same protection as he or she would ordinarily have if giving evidence in the High Court, for example, immunity from civil liability in respect of his or her testimony. However, a witness, other than a person giving evidence as to alleged abuse suffered by himself or herself, will not be entitled to refuse to answer a question on the ground that the answer might incriminate him or her<sup>35</sup>. As is usual in situations where a witness is deprived of privilege against self-incrimination, the Act provides that a statement or an admission made by a person to the Commission or its Committees which is against the interest of that person, whether made orally or in a document prepared for and sent to the Commission, cannot be later used in a court against that person or any person who may be vicariously liable for him or hers<sup>36</sup>. It is clear from newspaper reports that there is widespread misunderstanding of the effect of this latter provision. It does not mean that a person who tells the Commission or its Committees something against his or her interest, whether orally or in writing, cannot be prosecuted in a criminal court or be a defendant in a civil action for damages later. If such a person is prosecuted or is sued later, the case against him or her will have to be made otherwise than by reliance on the statement or admission made to the Commission or the Committee. The Commission wishes to emphasise two points. First, coming forward to give evidence to the Commission will not affect the right of a survivor of abuse to give evidence of the abuse in criminal or civil proceedings in a court or before a tribunal later. Secondly, there is no question of any person who admits wrongdoing to the Commission getting an amnesty or any immunity from criminal or civil liability in respect of that wrongdoing.

## **12. Production and Discovery of Documents**

Under the Act<sup>37</sup>, the chairperson of the Investigation Committee has power to direct a person to produce a document or make discovery on oath of documents in his possession or control relevant to the work of the Committee. These powers may only be exercised for the purposes of the functions of the Investigation Committee and any documents produced or discovered pursuant to those powers may only be used by the Investigation Committee for the purposes of its work and not for any other purpose. It is hoped that persons, including public bodies who have documents which are relevant to the work of the Investigation Committee will, where requested, produce those documents voluntarily. However, in the absence of voluntary production, the chairperson of the Investigation Committee will make directions under the Act.

Provision is made in the Act<sup>38</sup> for payment in respect of the expense of making a discovery pursuant to a direction.

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<sup>34</sup> Section 18.

<sup>35</sup> Section 21 (1).

<sup>36</sup> Section 21 (2).

<sup>37</sup> Section 14 (1).

<sup>38</sup> Section 20(4).

The Investigation Committee will have a protocol in place for dealing with documentation submitted to it in the course of its work. A copy of the protocol, which will deal with such matters as security, confidentiality, use of sensitive material, return of documents not considered relevant and copying documents, will be available on request to a person from whom production is sought.

The Commission wishes to draw attention to the provision of the Act<sup>39</sup> which exempts the Commission and its Committees from non-party discovery in legal proceedings. In particular, it should be noted that there is an obligation on the Commission to make available to a person against whom a discovery order has been made in legal proceedings any document which is the subject of that order which is in the possession or control of the Commission. Apart from that obligation, the Commission will use its best endeavours, consistent with the fulfilment of its functions, to facilitate all persons involved in civil litigation so that the prosecution of such litigation is not impeded.

The Commission, through its historical researcher, has access to all documentation in relation to industrial and reformatory schools held in the Special Education Branch of the Department of Education and Science in Athlone. The Commission understands that the documentation is in the course of being scanned and anticipates that by August, 2000 it will be available to the Commission in electronic form. The Commission is considering how to make available to a person who is involved in a hearing before the Investigation Committee such of the data as is relevant to the hearing. This matter will be the subject of a further statement at a later public sitting. However, the Commission reiterates that the power of directing production of documents provided for in the Act may only be used for the purpose of the functions of the Investigation Committee.

### 13. Disclosure

As has been stated, subject to certain limited and specific exceptions provided for in the Act, persons giving evidence to the Confidential Committee are guaranteed confidentiality in relation to their evidence and any documentation which they may produce. There are two situations in which a duty of disclosure arises in relation to information provided to the Confidential Committee<sup>40</sup>. In those situations there is also a duty of disclosure in relation to information provided to the Commission or the Investigation Committee<sup>41</sup>, which are otherwise exempt from any statute or any other rule of law requiring disclosure<sup>42</sup>.

The two situations which give rise to an obligation of disclosure are—

- (i) where there is a *bona fide* and reasonable belief that disclosure is necessary in order to prevent the continuance of an act or omission constituting a serious offence (meaning an offence for which a person of full age or capacity not previously convicted may be punished by imprisonment for a term of five years or a more severe penalty), in which case disclosure is to a member of An Garda Síochána, and

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<sup>39</sup> Section 31(1).

<sup>40</sup> Section 27(2).

<sup>41</sup> Section 28(2).

<sup>42</sup> Section 28(1).

- (ii) where there is a *bona fide* and reasonable belief that disclosure is necessary to prevent, reduce or remove a substantial risk to life or to prevent the continuance of abuse of a child, in which case disclosure is to an appropriate person within the meaning of the Protections for Persons Reporting Child Abuse Act, 1998, (meaning a member of An Garda Síochána or a designated officer of a health board appointed under section 2 of the Act of 1998).

The Commission is putting in place a protocol, which will bind the members of the Commission, the staff of the Commission and all other persons who obtain information in the course of performance of functions under the Act, outlining the procedures to be adopted in relation to the statutory duty of disclosure. Insofar as abuse of a child is concerned the protocol will incorporate the standard reporting procedures contained in “Children First: National Guidelines for the Protection and Welfare of Children”<sup>43</sup>.

#### **14. Recommendations of Commission on policy matters**

It is provided in the Act<sup>44</sup> that the Commission may include in its report any recommendations it considers appropriate, including recommendations as to the action it considers should be taken—

- (a) to alleviate or otherwise address the effects of abuse on those who suffered it, and
- (b) to prevent where possible and reduce the instances of abuse of children in institutions and to protect children from such abuse.

Gathering information on which to base recommendations on such matters will be an integral part of the work of the Commission from the outset. While it would be premature at this juncture to decide on the methods which the Commission will adopt with a view to informing itself in relation to those matters, it is envisaged that, apart from utilising such evidence relevant to those matters as comes to the Commission through the Confidential Committee and the Investigation Committee and the results of its research programmes, the Commission may take the following steps:

- (i) invite written submissions from the public and from persons and bodies with expertise on a particular topic to furnish written submissions to the Commission;
- (ii) consult with persons or representatives of bodies which have furnished written submissions and others;
- (iii) produce a discussion document on some or all the relevant topics;
- (iv) hold a public forum on some or all of the relevant topics.

The Commission would welcome written submissions from the public and interested bodies containing suggestions on topics which it should consider with a view to making recommendations in its report in due course and as to how public participation in the process of making policy recommendations might be achieved. The Commission is grateful

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<sup>43</sup> Published by the Department of Health and Children in September 1999.

<sup>44</sup> Section 5(2).

to persons and bodies who have written to this Commission and its predecessor on these matters and will have regard to their suggestions. The following list, which is not exhaustive, sets out topics which the Commission will be considering:

- (a) in relation to addressing the continuing effects of abuse suffered by survivors:—
  - (i) compensation,
  - (ii) adequacy of support for survivors,
  - (iii) adequacy of counselling services for survivors,
  - (iv) tracing family, and
  - (v) other strategies for healing.
- (b) in relation to the protection of children in institutions now and in the future:—
  - (i) recruitment, training, support and supervision of personnel,
  - (ii) regulation and supervision of institutions,
  - (iii) complaints procedures,
  - (iv) mechanisms for ensuring the voice of the child is heard, and
  - (v) rehabilitation of offenders against children.

The Commission does not intend to duplicate the work of any other public body which is advising on policy issues which are within the Commission's remit. For instance, in considering the protection of children from abuse now and in the future, the Commission will use as its starting point the current "National Guidelines for the Protection and Welfare of Children".

## **15. Research**

Any research which the Commission conducts itself or commissions will be carried out in accordance with best practice and in such a way as to ensure that the anonymity of persons participating in research is absolutely preserved.

When including the results of research in its reports, the Commission and its Committees will clearly identify the material as being the result of research and not proven fact.

## **16. Findings/Reports**

The Commission is conscious that different considerations arise in relation to inquiring into and reporting on abuse of children in different types of institutions within the Commission's remit. For instance, different considerations arise in relation to abuse of children in residential institutions, such as orphanages, on the one hand, and in non-residential institutions, such as primary schools, on the other hand. The Commission intends to investigate and report on what has happened in the past in relation to each distinct type of institution separately.

## **17. Expenses**

The Minister for Education and Science, pursuant to his power under the Act<sup>45</sup>, has made a scheme for the payment of travel, accommodation and subsistence expenses for persons coming to the Commission or its Committees. The scheme is set out in Appendix E.

The Commission understands that a scheme for payment of legal expenses is under consideration. Responsibility for making the scheme lies with the Minister for Education and Science under the Act<sup>46</sup>, but the Commission is entitled to be consulted.

The Commission has expressed the view to the Minister that, having regard to the procedures which the Investigation Committee proposes to adopt in relation to the conduct of its inquiry, the interest of all survivors of abuse might best be met by having a single team of barristers instructed by a co-ordinating solicitor. These (in the absence of agreement, which it may not be possible to achieve) would be chosen by an independent person, such as the Chairman of the Bar Council or the President of the Law Society, to represent the survivors' interest.

Given that every hearing of an individual allegation of abuse by the Investigation Committee must be heard in private, the advantages of an arrangement under which each individual making an allegation would be represented by a barrister from a legal team representing the interests of all survivors are obvious. Each individual would have the benefit of representation at the hearing of his own allegation by a member of a legal team which would be representing all survivors availing of legal representation at all private hearings of allegations in the first phase of the inquiry. Accordingly, he or she would be represented by a lawyer with a broad knowledge of all of the facts and issues arising at the private hearings before the Investigation Committee.

Moreover, at the public hearing in the second phase his or her interest and that of all other survivors would be represented by a legal team which would have represented all survivors at the private hearings. With a single representation of the survivors' interest the public hearings would inevitably be more effectively and expeditiously conducted than if the survivors' interest were represented by a multiplicity of legal teams, none of whom would be aware of the full picture which had emerged at the hearings of the allegations of abuse.

The Commission asks survivors to consider its suggestion in the spirit in which it is made: as being, in the Commission's belief, the best choice for the survivors. The text of the Commission's letter dated the 14th of June, 2000 to the Department of Education and Science, which contains a fuller exposition of the Commission's views on the representation of survivors, is set out in Appendix F.

## **18. Counselling**

The Commission is conscious of the traumatic effects which coming forward and giving evidence to the Commission may have on survivors of abuse and the necessity for access

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<sup>45</sup> Section 20.

<sup>46</sup> Section 20(1).

for survivors to counselling services when required. When announcing the establishment of the non-statutory Commission on 11th May, 1999, the Taoiseach also announced the establishment of a dedicated professional counselling service in all regions of the State to help survivors to overcome the effects of abuse. The Commission is liaising with the project directors of this service. It is understood that the service will be operating by September, 2000. It is hoped that it will be in a position to provide an emergency outreach service for those survivors, who require it, who come to the Commission.

Counselling will not be provided by the Commission, nor will the Commission act as a referral agency to counselling services. However, it will make available to persons coming forward to testify information on the counselling services available in their local areas.

## **19. Witness Support**

One, and if necessary more than one, member of the Commission's staff will be assigned the role of providing support for persons coming forward to give evidence of abuse. This role will involve assisting persons, who come to the Commission to tell of their experiences, in a sympathetic and an understanding way. Help will be given, if sought, in relation to all aspects of their contact with the Commission-provision of information, completion of forms, dealing with special needs, providing support before and after a hearing and such like. The role will also include liaison with counselling services and, naturally, with survivors' support groups.

The Commission is also conscious that the need may arise to provide support for persons required to attend before the Investigation Committee to answer allegations of abuse. If the need for such support becomes manifest, the Commission will make arrangements to have it provided.

The Commission will ensure that the implementation of the witness support functions does not adversely impact on the evidence gathering processes of its Committees.

## **20. Second Public Sitting**

The matters dealt with in this statement and the appendices may give rise to issues in respect of which survivors of child abuse and other persons affected by the work of the Commission may wish to make representations. The Commission proposes to sit in public again on Thursday 20 of July, 2000 at 10.30am to deal with any submissions of which notice in writing has been given to the Commission by close of business (5.30pm) on Thursday 14 July, 2000. The notice should summarise the matter on which the person making the submission requires clarity or a determination.

## **Appendix A**

### **Membership of Commission**

#### **Chairperson**

The Honourable Ms Justice Mary Laffoy, Judge of the High Court.

#### **Ordinary Members**

Dr. Patrick Deasy, Consultant Paediatrician.

Ms Norah Gibbons, Childcare Director.

Mr Bob Lewis, CBE, retired Director of Social Services (Stockport, United Kingdom).

Mr Fred Lowe, Principal Clinical Psychologist.

Dr. Imelda Ryan, Consultant Child and Adolescent Psychiatrist.

## **Appendix B**

### **Current Staff of Commission**

#### **Staff on secondment from Department of Education & Science**

Paul Doyle, Principal Officer.

Michael D. Ryan, Assistant Principal Officer.

Mary Durack, Higher Executive Officer.

John Keenan, Higher Executive Officer.

Helen Lynch, Clerical Officer.

#### **Other Staff**

Gerry Cronin, BA, PhD, (University of Dublin), Historical Researcher,

Carthage Minnock, Court Usher.

## **Appendix C**

### **Membership of Committees**

#### **Confidential Committee**

Mr Bob Lewis, CBE (Chairperson).

Dr. Paddy Deasy.

Ms Norah Gibbons.

#### **Investigation Committee**

The Honourable Ms Justice Laffoy (Chairperson).

Mr Fred Lowe.

Dr Imelda Ryan.

## Appendix D

### THE INVESTIGATION COMMITTEE

#### Preamble

1. In this Appendix—
  - (a) “Complainant” means a person who alleges that he or she has. Suffered abuse in childhood in an institution and who is prepared to give evidence to the Investigation Committee;
  - (b) “Manager” means a person or body concerned with the ownership, running or management of an institution;
  - (c) “Regulator” means a person or body concerned with the administration, operation, supervision, inspection or regulation of an institution;
  - (d) “Respondent” means a person against whom a Complainant makes an allegation of abuse and any other person or body, whether concerned with the management or regulation of an institution, whom the Complainant implicates in the alleged abuse;
  - (e) “Survivor’s interest” means the interest of survivors of abuse in an institution in which it has been established that abuse has occurred, including Complainants; and
  - (f) Words and expressions used have the meanings ascribed to them in the Act.
2. A request or direction given by the Investigation Committee (through an inquiry officer or otherwise) or by the Chairperson of the Investigation Committee shall stipulate a reasonable time for compliance with the request or direction, having regard to the nature of the request or direction, For instance, a request by an inquiry officer under paragraph (a) or paragraph (b) of section 23(2) of the Act shall stipulate a period of four weeks for compliance with the request. Time for compliance with a request or direction may be extended at the discretion of the Investigation Committee.
3. Every person or body concerned will be given at least two weeks’ notice of the date of a hearing.
4. Subject to paragraph 5, any request, direction or notice may be served by registered post, facsimile transmission or personally.
5. Where a person or body is being represented before the Investigation Committee by a solicitor, any request, direction or notice may be served on such person or body by ordinary post or facsimile transmission on his solicitor.
6. Not less than one weeks’ notice of intention to make a direction under paragraph (c) or paragraph (d) of section 14(1) of the Act shall be given to any person affected by the direction other than the person to whom it is directed.

7. Notwithstanding anything contained in this Appendix, the Investigation Committee shall be at liberty to adopt such procedures as it considers appropriate in relation to the conduct of its inquiry or any part of it and, subject to giving reasonable notice to any person or body thereby affected, may depart from the procedure outlined in this appendix.

### **Part 1**

#### **Outline of Procedures in relation to Evidence of Allegations of Abuse at Private Hearings.**

1. The Investigation Committee, by reference to response to the Commission's advertising campaign or otherwise, shall identify Complainants.
2. Every allegation of a Complainant will be the subject of a preliminary inquiry by an inquiry officer appointed under section 23 of the Act carried out in the manner following:
  - (a) The inquiry officer shall request and obtain a statement in writing provided by the Complainant or made by an inquiry officer in accordance with section 23(2)(a) of the Act and any relevant supporting documents. If the Complainant wishes that a witness be called by the Investigation Committee in support of the allegation, he shall identify the witness and there shall be included in the statement the substance of the evidence to be given by the witness.
  - (b) The inquiry officer shall, insofar as it is possible to do so against documents in the possession of public bodies in the State to which the Investigation Committee has access, verify that the Complainant was in the institution in which the abuse was alleged to have occurred at the relevant time and any other relevant facts capable of verification. The inquiry officer shall also request from the staff member assigned to the Confidential Committee verification that the Complainant has not applied to give evidence to the Confidential Committee.
  - (c) The inquiry officer shall furnish to each Respondent—
    - (i) the statement and any relevant documents referred to at (a) above, and
    - (ii) the verification data referred to at (b) above.
  - (d) The inquiry officer shall request and obtain from each Respondent a statement provided by the Respondent or made by an inquiry officer in accordance with section 23(2)(b) of the Act. If a Respondent wishes that a witness be called by the Investigation Committee in support of his response, he shall identify the witness and there shall be included in the statement the substance of the evidence to be given by the witness.
  - (e) The inquiry officer shall prepare a report in writing (the Report) summarising the Complainant's statement of allegations and the statement of each Respondent in response and identifying the areas of factual dispute and any

other issues arising on these statements and other relevant documentation in his possession. The Report accompanied by the following documents—

- (i) the statement of the Complainant,
- (ii) the statement of each Respondent,
- (iii) the relevant documents submitted by the Complainant and each Respondent,
- (iv) the verification data referred to in (b) above,  
and,
- (v) any other relevant documentation in his possession,

shall be furnished by the inquiry officer to the Investigation Committee, together with a request for such direction or directions under section 14 of the Act as shall be advised by counsel for the Investigation Committee.

- (f) In the event of default by a Respondent in complying with a request pursuant to paragraph (b) of section 23(2) of the Act within the time allowed, the inquiry officer shall outline in the report that circumstance and the Report shall be accompanied by such of the documents referred to at (e) as are available.
- (g) The Chairperson of the Investigation Committee shall give such directions under section 14 of the Act as shall be considered appropriate.
- (h) The inquiry officer, when he is satisfied that all directions under section 14(1) have been or will be complied with, shall certify that the allegation is ready for hearing, and, subject to the directions of the Investigation Committee, he shall schedule the allegation for hearing. Not later than four weeks before the date of the hearing he shall furnish to the Complainant and each Respondent a book of documents containing the Report and copies of the documents referred to at (e) above and any other documents which will be before the Investigation Committee at the hearing including any supplemental statement furnished by the Complainant or any Respondent.

**The book of documents may contain information of which the Complainant is unaware and which may cause distress to him or her. If the Complainant does not have a legal representative, the Commission's witness support officer will contact the Complainant before the book is despatched to apprise him or her in a general way of its contents and to suggest measures with a view to alleviating distress.**

3. In accordance with section 4(6) of the Act, the Investigation Committee shall endeavour to ensure that the hearing of the allegation is conducted in an atmosphere that is as sympathetic to, and as understanding of, the Complainant as is compatible with the rights of the other parties to the hearing and the requirements of justice. The procedure to be adopted at the hearing shall be at the absolute discretion of the

Investigation Committee. However, the Investigation Committee, as a general rule, will adhere to the following order in calling evidence:

- (a) The evidence of the Complainant will be taken in the manner following:
  - (i) The Complainant may recount the substance of his statement viva voce or, alternatively, his or her statement will be deemed to be read into the record and he or she may elaborate on it, if he or she wishes.
  - (ii) The members of the Committee may address questions to the Complainant;
  - (iii) Each Respondent or his legal representative may address questions to the Complainant, and
  - (iv) The Complainant's legal representative may address questions to him or her,
- (b) The evidence of each of the Respondents will be taken sequentially in the manner following:
  - (i) The statement, if any, of the respondent will be deemed to be read into the record and the Respondent may elaborate on his or her statement, if he or she so wishes;
  - (ii) The members of the Investigation Committee may address questions to the Respondent;
  - (iii) The Complainant or his legal representatives may address questions to the Respondent, and
  - (iv) The Respondent's legal representative may address questions to him or her.

In case a Respondent has not complied with the request of an inquiry officer to furnish a statement he may nonetheless be allowed to give evidence but on such terms, whether as to adjournment or otherwise, as the Investigation Committee considers necessary to enable any person affected by the evidence to adequately address it.

- (c) The evidence of any witness called at the request of the Complainant in support of his allegation shall then be taken in the same manner as the evidence of the Complainant *mutatis mutandis*.
- (d) The evidence of any witness called at the request of a Respondent in support of the response shall be taken in the same manner as the evidence of the Respondent *mutatis mutandis*.
- (e) The Investigation Committee may call any further or other evidence relevant to the allegation as it in its absolute discretion determines, on such terms, whether as to adjournment or otherwise, as it considers necessary to enable any person affected by the evidence to adequately address it.

A witness may be allowed to give evidence on matters not outlined in a statement or supplemental statement on such terms, as to adjournment or otherwise, as the Investigation Committee considers necessary to enable any person affected by such evidence to adequately address it.

4. At the completion of the evidence the Investigation Committee will hear any submissions which the Complainant or his or her legal representative and each Respondent or his, her or its legal representative may wish to make.
5. No person shall be in attendance at the hearing of an allegation other than the members of the Investigation Committee, the Registrar, the stenographer, Counsel to the Investigation Committee, the Complainant and his or her legal representative and each Respondent and his, her or its legal representative and, while he or she is testifying but not otherwise, any other person called to testify.
6. At any stage in the course of the hearing the Investigation Committee may seek the assistance of or require submissions from Counsel to the Investigation Committee.
7. The transcript of each hearing of the Investigation Committee shall be available for inspection at the offices of the Commission by the Complainant or his or her or its legal representative and by each Respondent or his or her legal representative within fourteen days of completion of the hearing. A request for inspection facilities should be made in writing to the Investigation Committee and it will be acceded to as soon as reasonably practicable.

## **Part 2**

### **Outline of Procedures in relation to the conduct of Public Hearings in relation to Institutions in which abuse has been established.**

1. Following completion of the private hearings of allegations of abuse, if the Commission is satisfied that abuse occurred in a particular institution, it will furnish to each Manager and each Regulator copies of its findings based on those hearings, with a request for a statement in accordance with paragraph 2. Each Manager and each Regulator, insofar as they are not covered by paragraph 7 of Part 1 of this Appendix, shall be entitled to inspect the relevant transcripts on the basis set out in that paragraph, but the names of the Complainants and any details which would identify them shall be masked.
2. Within a reasonable period of the furnishing of the findings to them, each Manager and each Regulator shall furnish to the Investigation Committee a statement in writing setting out the following information:
  - (a) If, and to what extent, he, she or it acknowledges or denies that he, she or it contributed to the occurrence of the abuse found by the Investigation Committee to have occurred in the institution;
  - (b) The names of any witnesses whom he, she or it wishes the Investigation Committee to call in support of the position being adopted;
  - (c) The substance of the evidence which each such witness will give to the Investigation Committee, and
  - (d) Details of any direction under section 14 of the Act, which he, she or it requests the Chairperson of Investigation Committee to make.

3. The statement referred to in paragraph 2 shall be accompanied by copies of any documentation, which the person furnishing the statement intends to rely on in support of the position being adopted.
4. A copy of every statement and supporting documentation furnished by each Manager shall be given to each Regulator and vice versa. Copies of all statements and documentation shall be given to the legal representative for the Survivors' interest.
5. Within a reasonable period of the furnishing of the said documentation to him the legal representative of the Survivors' interest shall furnish to the Investigation Committee a statement in writing setting out the following information:
  - (a) The names of any witnesses whom he wishes the Investigation Committee to call, setting out the substance of the evidence which each such witness will give to the Investigation Committee, and
  - (b) Details of any direction under section 14 of the Act which he requests the Chairperson of the Investigation Committee to make.
6. If a person has requested that a direction under section 14 of the Act be given, the Chairperson of the Investigation Committee shall consider that request and make such directions as she considers appropriate.
7. Any additional relevant document not already furnished, whether arising from compliance with a direction or otherwise, shall be furnished to each Manager and each Regulator and the legal representative for the Survivors' interest.
8. Not less than four weeks' notice of the holding of a public hearing to deal with the issues provided for under paragraph (c) and (d) of Section 12(l) of the Act arising out of the findings shall be given to each Manager, each Regulator and the legal representative for the Survivors' interest. Notice of the public hearing will be given to the public by public advertisement or such other means as the Investigation Committee shall direct. The notice in writing to each Manager, each Regulator and the legal representative for the Survivors' interest shall set out the names of the witnesses whose attendance will be requested or directed by the' Investigation Committee, who will be given at least two weeks' notice of the date of the hearing, and the order in which it is intended that the witnesses will be called.
9. The procedure to be adopted at the public hearing shall be at the absolute discretion of the Investigation Committee. However, the Investigation Committee shall endeavour to adhere to the following order—
  - (a) Counsel for the Investigation Committee will make an opening statement.
  - (b) Counsel for the Investigation Committee will examine the witnesses whose attendance has been requested or directed by the Investigation Committee, who may be cross examined on behalf of each Manager, each Regulator and legal representative of the Survivors' interest and re-examined on behalf of the Investigation Committee. Insofar as it possible to do so, the witnesses will be called in the order notified.

- (c) The Investigation Committee may call such further evidence as it deems appropriate in its absolute discretion, subject however to such terms as to adjournment or otherwise, as may be necessary to ensure that any person affected by the evidence has an adequate opportunity to deal with it.
10. Submissions may be made on behalf of each Manager, each Regulator, the legal representative of the Survivors' interest and by counsel for the Investigation Committee in that order.
  11. During the course of the public hearing it shall not be permissible to name or disclose details which would identify any child who was in an institution. If a child is named in any document put in evidence at a public hearing his or her name shall be masked and he or she shall be referred to as child A or in some similar manner.
  12. The Investigation Committee in its discretion may hold a public hearing in relation to two or more institutions of a similar type the management of which comprises of the same persons or bodies or connected persons or bodies.
  13. A stenographer will record all proceedings at public hearings.

## Appendix E

### Scheme for the payment of expenses for persons attending the Commission to Inquire into Child Abuse or a Committee

1. Section 20 of the Commission to Inquire into Child Abuse Act, 2000 provides that the Minister for Education and Science may, with the consent of the Minister for Finance, and after consulting the Commission, make a scheme for the payment of expenses to a person who, as a result of a request or a direction of a Committee, attends before the Committee or who makes an oral submission to the Commission or a Committee either in person or through a legal representative. The Scheme set out in this document relates to the payment of travel, accommodation and subsistence costs of a person who attends before the Commission or a Committee of the Commission.
2. The Scheme provides for expenses to be paid to witnesses to the Commission on the basis of
  - (a) travel expenses
  - (b) accommodation and subsistence expenses,

#### 3. **Travel Expenses**

3.1 This part of the Scheme is designed to meet the travel expenses of witnesses who are giving evidence to the Commission. It provides for witnesses travelling either by public transport or by private car and for witnesses who travel from abroad.

#### 3.2 **Public Transport**

Witnesses travelling to the Commission by public transport should retain receipts for the expenditure incurred in so doing. The Commission will, on presentation of these receipts, provide for an immediate refund of the expenses, or where circumstances do not permit an immediate refund, the Commission will make such refund as speedily as possible.

#### 3.3 **Private Cars**

The Commission will reimburse a witness for the expenses of the use of private cars in the following circumstances—

- (a) there is no suitable public transport available, or
- (b) where public transport is available only at equal or greater expense.

Where a private car is used to attend the Commission, the State will not accept liability for any loss or damage resulting from its use.

Witnesses attending the Commission should furnish the Commission with a statement of the miles travelled from their homes to attend the Commission, together with their home address. Payment in respect of this travel will be made at a rate of 50 pence per mile, and the Commission will make such payment as speedily as possible.

### **3.4 Witnesses travelling from abroad**

Where witnesses who wish to give evidence before the Commission are currently living abroad the Commission will refund the reasonable travel costs incurred, calculated by reference to the cost of an economy/budget airline ticket fare, or a contribution of equal amount to a higher fare ticket.

As in the case with public transport, witnesses should provide receipts of expenditure incurred in travelling to the Commission, and the Commission will make such payment as speedily as possible.

## **4. Accommodation and Subsistence expenses**

The Commission may 'arrange for the provision of accommodation for witnesses attending the Commission where they are satisfied that the person concerned is obliged to make an overnight stay for the purpose of giving evidence to the Commission.

In the event that the Commission does not provide such accommodation, the Commission will refund vouched expenses incurred by the witnesses.

The Commission will also refund the reasonable vouched cost of subsistence incurred by a witness attending the Commission for the purpose of giving evidence to the Commission.

The refunds by the Commission to witnesses in respect of aggregate vouched accommodation and subsistence expenses shall not exceed £75.00 for any twenty-hour period.

## **5. Provision for Travelling Companion**

If the Commission is satisfied that the particular circumstances surrounding the attendance of a witness warrant him or her to be accompanied by a companion (such witness not being accompanied by a counsellor), the Commission may refund at its discretion the vouched expenses of the companion at the same rates as apply to the witness.

This provision will include such travel, accommodation, and subsistence expenses incurred by such companion and will be paid at the same rate as that for witnesses.

## **6. Provision for payment of expenses in advance of attendance for certain witnesses**

In some instances, a witness of limited means who wishes to attend the Commission, may not be able to attend due to the costs which he/she would have to incur. In such circumstances, the Commission may, where it is satisfied that it is necessary, make appropriate arrangements in regard to travel and subsistence for witnesses. These arrangements may include, in certain circumstances, advance payment in respect of such expenses as are necessary so as to allow the witness to attend. The total cost of the travel and subsistence arrangements under this provision shall not exceed the amounts indicated in paragraphs 3 and 4 above.

## 7. Counsellors

A witness may be accompanied by a professional Counsellor when giving evidence to the Commission. Where such Counsellor is not being paid from public funds (e.g. the relevant Health Board), the Commission will pay an amount not exceeding £155 in respect of the Counsellor's attendance. Travel and subsistence will also be payable to Counsellors attending at the rates stated above. Tax clearance arrangements in respect of payments to professionals will apply.

## Appendix 1

### Schedule of Rates

Expenses	Witnesses	Travelling Companion (where appropriate)
Public Transport	Receipts of Expenditure	Receipts of Expenditure
Air/Sea Travel	Receipts of Expenditure	Receipts of Expenditure
Private Car	50 pence per mile	
Subsistence and Accommodation	Receipts of Expenditure up to £75.00 per day	Receipts of Expenditure up to £75.00 per day
Counsellor		up to £155.00

## Appendix F

Mr. Tom Boland,  
Department of Education and Science,  
Marlborough Street,  
Dublin 1.  
14th June, 2000.

### **Re: Commission to Inquire into Child Abuse Act, 2000 Section 20: Expenses Scheme**

Dear Mr. Boland,

As I think you are aware, the Commission proposes holding a public sitting on Thursday 29th June 2000, at which it will outline to the public its understanding of its functions and the procedures it proposes to adopt. The Commission is anxious that the Expenses Scheme provided for in section 20 of the Act should be in place by that date, if at all possible.

The purpose of this letter is to elaborate on a suggestion I made some time ago as to how legal representation of the interest of survivors might best be addressed in such a scheme, both from the perspective of survivors and the perspective of the Commission. The suggestion is informed by the unique nature of the Commission as a statutory inquisitorial body.

The question of legal representation arises only in connection with hearings before the Investigation Committee, not hearings before the Confidential Committee. Broadly speaking, it is envisaged that the hearings before and the work of the Investigation Committee will involve two phases. First, through the preliminary inquiry carried out by the Inquiry Officers provided for in section 24 and hearings before the Investigation Committee, the Investigation Committee will investigate particular instances of alleged abuse and, on the basis of the evidence, make findings which it is permitted to make, for instance, whether the alleged abuse occurred in a particular institution and its nature. Secondly, the Investigation Committee will be concerned to attribute responsibility to, and, where appropriate, apportion responsibility between, the systems in operation and the persons and bodies, private and public, who were involved in the management and regulation of the institutions in which the abuse, which the Investigation Committee has found existed, occurred and with the broader issues within its remit, such as the causes of abuse.

Section 11(3) of the Act requires that the first phase of the work of the Investigation Committee be carried out through hearings held otherwise than in public. However, given that in section 11(3) the Investigation Committee is enjoined by the Oireachtas to have regard to the desirability of holding its sittings in public, it is the Commission's view that the second phase of the work of the Investigation Committee should be carried out in public to the extent that that is possible in accordance with the provisions of the Act.

I will illustrate the manner in which it is envisaged the Investigation Committee will operate by reference to survivors A, B and C who allege that they were abused in institution X between 1970 and 1975. The individual allegations will be heard by the

Investigation Committee at three private sittings at which the individual survivor will be in attendance and legally represented, if he wishes, and the person or persons who are alleged to have perpetrated the abuse and the management of institution X and, if there is a specific allegation against a regulatory body, that body is in attendance and legally represented if he or it wishes. In passing, I should say that I think it is unlikely that a regulatory body will be a party before the Investigation Committee at the first stage, unless, for instance, there is a specific allegation that a complaint was made to the regulatory body and it was not investigated or properly dealt with. Following the hearing of the allegations of A, B and C, the Investigation Committee will reach conclusions as to whether the abuse alleged occurred in institution X. If it concludes that it did occur, the Investigation Committee will then have to decide what factors and circumstances contributed to the occurrence of the abuse and, in essence, this involves an issue between the persons involved in the running and management of institution X, on the one hand, and the regulatory body, whether a Government Department, a Health Board or some other public body, responsible for regulating institutions such as institution X, on the other hand. It is the Commission's view that the evidence and submissions on this issue should be held in public, although steps would have to be taken to preserve the anonymity and confidentiality of children who were in institution X at the relevant time. It would, of course, be important that the interests of survivors of abuse would be represented at the public hearings, which will also address the broader issues within the Investigation Committee's remit.

It is felt that the requirements of the survivors would be best met if all survivors were represented before the Commission by one legal team. Let us say, again for the purposes of illustration, that the legal team would comprise two senior counsel and three junior counsel and a solicitor, whether from the public sector or from the private sector. At the respective hearings of their allegations, A, B and C would be represented by one of the barristers on the team. In the second phase, A, B and C and all other survivors would be represented by the team.

The advantages of this approach from the survivors' perspective are manifold. It is to be expected that a team which habitually represents survivors before the Investigation Committee will build up more expertise in relation to the issues which concern survivors than a legal representative who appears before the Investigation Committee only once or only occasionally. Each individual survivor who is represented by a member of the team at the first phase will have the knowledge and the expertise of the entire team working for him. More importantly, the team which represents the survivors' interests at the second phase will, through its individual members, have been involved in every hearing at the first phase. I believe that the co-ordinated and coherent approach which the team, with its background knowledge of the facts and the issues, could bring to the second phase would be of more benefit to the survivors and, indeed, to the Investigation Committee than three separate legal representations, none of which, because the first phase hearings were held in private, would know the whole picture. Indeed given the requirements of section 11(3)(a) and 13(2)(c) of the Act, it could be argued that it would go against the scheme of the Act to hold the second phase in public if every survivor coming before the Investigation Committee was allowed separate legal representation at the second phase.

From the perspective of the Investigation Committee, allowing fragmented representation of persons who were in institution X at the relevant time (who in the example I have

given to illustrate the points made in this letter number three, but, in reality, could number thirty) would be wholly unwieldy and inefficient and, in my view, would not promote the interests of the survivors. The interests of both the Investigation Committee and the survivors would be best served by a legal team which has a comprehensive and thorough knowledge of and insight into the overall work of the Investigation Committee. Moreover, it is in the interest of all of the survivors that the work of the Commission and its Committees be carried out in an efficient manner and in as short a time span as is consistent with the fulfilling the Commission's functions properly and fairly, so as to bring closure to one aspect of the historical legacy of abuse.

Thus far I have concentrated on the work of the Investigation Committee. The remit of the Commission extends to making recommendations it considers appropriate, including recommendations in relation to action which should be taken to alleviate or otherwise address the continuing effects of abuse on survivors and to prevent the recurrence of, and to protect children from, abuse in institutions in the future. It is considered that a legal team the members of which had represented every survivor who testified before the Investigation Committee could make a very valuable contribution in making submissions to the Commission, particularly on the issue of dealing with the continuing effects of abuse.

Finally, it seems to me that a legal team, which would represent such an important interest before the Commission, should be chosen by an independent person, such as the Chairman of the Bar Council or the President of the Law Society. Moreover, if an individual survivor has already retained a solicitor, there should be a role for such solicitor in instructing the barrister member of the legal team, who will represent the individual on the day.

I hope the foregoing is of some assistance in the formulation of the elements of the Expenses Scheme dealing with legal representation of survivors. I believe that what is proposed would work well for survivors.

Yours sincerely,

---

Justice Mary Laffoy,  
Commission Chairperson.



# APPENDIX B



# **Commission to Inquire into Child Abuse**

## **Interim Report**

**May 2001**

Published by:  
Commission to Inquire into Child Abuse,  
Second Floor,  
St. Stephen's Green House,  
Earlsfort Terrace,  
Dublin 2.  
Tel.: (01) 662 4444  
Callsave: 1850 20 11 20 (Rep. Of Ireland)  
Lo-Call: 0845 3098 139 (N.I. and U.K.)  
Website: [www.childabusecommission.ie](http://www.childabusecommission.ie)



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## 1. Introduction

This is the first interim report of the Commission to Inquire into Child Abuse, which was established by the Government pursuant to the Commission to Inquire into Child Abuse Act, 2000 (the Act), which became law on 26 April, 2000.

It is published by the Commission to the general public in compliance with its statutory obligation.

## 2. The Commission

The Commission, the membership of which is set out in Appendix A, was established on 23 May, 2000 pursuant to the Act.<sup>1</sup>

The principal functions of the Commission as set out in the Act<sup>2</sup> are to:

- listen to persons who have suffered abuse in childhood in institutions telling of the abuse and making submissions;
- conduct an inquiry into abuse of children in institutions since 1940 or earlier and, where satisfied that abuse occurred, find out why it occurred and who was responsible for it; and
- report directly to the public on the results of the inquiry and make recommendations, including recommendations on the steps which should be taken now to deal with the continuing effects of abuse and to protect children in institutions, as defined in the Act<sup>3</sup>, from abuse now and in the future.

The Act provides that the hearing and investigative remits of the Commission are to be carried out through its two Committees, the Confidential Committee<sup>4</sup> and the Investigation Committee<sup>5</sup> and that its reporting remit should have regard to reports to it from the two Committees.<sup>6</sup>

The Commission is required under the Act<sup>7</sup> to prepare an interim report on such matters relating to the inquiry or otherwise relating to its functions as it may determine not more than one year after its establishment and to publish the interim report to the general public during the year after its establishment. This interim report has been prepared and is published in compliance with that requirement. In preparing it, the Commission has had regard to the interim reports furnished to it by the Confidential Committee and the Investigation Committee, as required by the Act.<sup>8</sup>

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<sup>1</sup> Section 3.

<sup>2</sup> Section 4.

<sup>3</sup> Section 1(1) and (2).

<sup>4</sup> Section 15.

<sup>5</sup> Section 12.

<sup>6</sup> Section 5(1).

<sup>7</sup> Section 5(6) and (7).

<sup>8</sup> Section 16(4) and 13(4).

The preparation of this report was completed by the Commission on 15 May, 2001 and it records matters in relation to the performance of the Commission's functions up to and including that day.

### **3. General Approach to Interim Report**

It is the Commission's view that it would not be appropriate to publish any determinations or findings made during the course of the inquiry into abuse of children in institutions on a piecemeal basis because to do so might give an inaccurate, incomplete or distorted picture of the prevalence of abuse, why it occurred and who was responsible for it. Therefore, to avoid such a possibility, and any unfairness and injustice which might ensue, the Commission does not intend to make public any determinations or findings until after the inquiry or, in the case of the inquiry being conducted by the Investigation Committee, the first phase of the inquiry, has been completed. The Commission appreciates that persons who have already participated, or will participate in the near future, in the work of the Commission may find this approach disappointing and having to wait for a future report frustrating. However, as it is necessary in order to protect the integrity of the Commission's work, the Commission must ask them to be patient.

In reporting on an interim basis, the Commission will inform the public of the work it has carried out and of any difficulties it has encountered during the period to which the report relates. It will also endeavour to predict the future course of its work.

In relation to the policy matters on which the Commission is empowered to make recommendations, if it considers that a matter needs to be urgently addressed and that it is in a position to formulate a policy recommendation, it may make such recommendation in a periodic interim report or in an interim report prepared and published specifically to deal with that issue.

The Commission welcomes the opportunity of reporting to the general public at regular intervals and as the need arises. Because of the difficulties it has encountered, which will be outlined later, it regrets, however, that it is not in a position to report more progress in this its first interim report in relation to a major element of its work, the inquiry being carried out by the Investigation Committee.

### **4. Opening Statement at First Public Sitting on 29 June, 2000**

The first tasks the Commission set itself, following its establishment on 23 May, 2000, were to prepare a statement to explain to the public and, in particular, to survivors of institutional child abuse and other persons affected by its work, its understanding of its functions and powers under the Act and how it proposed to fulfil those functions and to convene a public sitting of the Commission at which the statement would be delivered to open up the work of the Commission to the public. The first public sitting was held on 29 June, 2000. It was attended by at least 300 members of the public. The Commission's statement (the Opening Statement), which is available on the Commission's website,<sup>9</sup> was delivered at that sitting. The Commission announced that a second public sitting would be held three weeks later, on 20 July, 2000, and persons affected by the work of the

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<sup>9</sup> [www.childabusecommission.ie](http://www.childabusecommission.ie).

Commission were invited to make submissions in relation to issues arising from the Opening Statement in the interim.

Subsequently approximately 1,000 copies of the Opening Statement were distributed on request by the Commission to persons affected by the Commission's work and members of the public. In addition, approximately 8,000 information leaflets were distributed.

## **5. Second Public Sitting on 20 July, 2000**

The second public sitting to deal with legal and procedural issues arising out of the Opening Statement was held on 20 July, 2000. In the intervening period the Commission had received submissions from individuals, representative groups and organisations, and firms of solicitors interested in the work of the Commission. Broadly speaking, the submissions which addressed legal and procedural issues arising out of the Opening Statement came from:

- groups and organisations representing survivors of institutional child abuse,
- a firm of solicitors representing a number of firms of solicitors acting for survivors of institutional child abuse, and
- firms of solicitors acting on behalf of the proprietors or managers of institutions who anticipated that their clients might be involved in the Commission's inquiry.

At the public sitting, in so far as it was possible to do so, the submissions were responded to and, where appropriate, determinations made.

Two issues which were not resolved and which have subsequently significantly impacted on the ability of the Investigation Committee to fulfill its statutory remit need to be highlighted, namely:

- (A) legal representation at the proceedings of the Investigation Committee and the making of a scheme providing for payment out of monies provided by the Oireachtas of the cost of such representation, and
- (B) an issue raised by a firm of solicitors on behalf of a number of solicitors acting for certain survivors of institutional child abuse in relation to the establishment by the State of a compensation scheme for such survivors.

At the public sitting the Commission dealt with the two issues as follows:

### **(A) Legal Representation/Expenses scheme**

On the issue of legal representation of persons involved in the proceedings of the Investigation Committee and provision for the costs of such representation, the Commission stated its position having had regard to submissions it had received. In doing so, it took account of the proposed phased structure of the proceedings of the Investigation Committee, which had been outlined in the Opening Statement.<sup>10</sup> It stated as follows:

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<sup>10</sup> Page 14 *et seq.*

- (a) that it proposed to grant to each person who comes before the Investigation Committee to make an allegation or allegations of abuse legal representation by a solicitor and one counsel of his or her choice at the hearing of the Investigation Committee dealing with such allegation or allegations, that is to say, during the first phase of the work of the Investigation Committee;
- (b) that it proposed to grant to each person and/or body against whom an allegation of abuse is made legal representation by a solicitor and one counsel of his/her/its choice at the first phase hearing;
- (c) that it recognised the entitlement to legal representation of every person or body materially affected by an issue raised in the course of a hearing during the second phase of the work of the Investigation Committee, at which issues relating to the causes, nature, circumstances and extent of abuse and where responsibility for abuse lies, would be dealt with, although it was not possible to address the detail of such representation at that time; and
- (d) that the expense of legal representation would be defrayed in accordance with a scheme made by the Minister for Education and Science (the Minister) under the Act.<sup>11</sup>

The Commission also stated that it would ask the Minister to finalise the scheme as soon as possible.

### **(B) Compensation Scheme**

The issue in relation to compensation was raised in a submission dated 18 July, 2000 (the survivors' solicitors' submission) by a firm of solicitors, on behalf of a number of solicitors throughout the country who represent the interests of many, but not all, survivors of institutional child abuse. In the survivors' solicitors' submission it was contended that "the significant role to be played in the work of the Commission by the Department of Education, its personnel and resources" constituted an unacceptable conflict of interest particularly in the light of a denial of liability by that Department in civil proceedings brought by survivors against the Department. It was also contended that the Commission as constituted could not lead to finality of the issues for an individual survivor, which the Commission understood to mean a survivor who is pursuing or wishes to pursue a civil action, and that being required to give evidence on multiple occasions is detrimental to survivors.

The kernel of the submission was a request that the Commission make an interim report "calling for the provision of an appropriate scheme of compensation to survivors in respect of their losses". The acceptance by the Government of such a recommendation, it was contended, would meet "the personal difficulties occasioned by the present requirement of multiplicity of hearings, and the legal difficulty created by the conflict of interest". Critically, it was stated that, until such time as the issue of such a scheme of compensation was satisfactorily addressed, it would be difficult for individual solicitors to advise their clients as to whether participation in the work of the Commission was in their personal or legal interest.

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<sup>11</sup> Section 20.

The Commission acknowledged that the survivors' solicitors' submission raised a significant issue that required careful consideration. It, therefore, adjourned the sitting to a date to be announced, so that the submission could be considered and the views expressed in it conveyed to the Government, the hope being expressed that the public sitting could be resumed before the end of August, 2000.

## **6. Resumption of Second Public Sitting on 26 September, 2000**

In early September, 2000, when it had become apparent that a resolution of the outstanding issues was not imminent, the Commission advertised the resumption of the adjourned public sitting on 26 September, 2000, so that persons affected by the work of the Commission could be brought up to date. At that sitting the Commission outlined to the public what had transpired since 20 July, 2000 on the two major issues which had been left out-standing on the adjournment, namely, the making of the scheme for pay-ment of legal expenses and the compensation issue raised in the survivors' solicitors' submission. Unfortunately, as the following outline, which was given to the public on 26 September, 2000, illustrates, the Commission was unable to report progress on either issue.

### **(A) Legal Expenses Scheme**

In relation to the making of the scheme for payment of legal expenses, by letter dated 21 July, 2000 the Commission had formally advised the Minister of the rulings it had made in relation to legal representation. It had pointed out that its members had no expertise in the area of the costs of legal representation and left it to the Department of Education and Science (the Department) to work out the details of the scheme. By 26 September, 2000 the scheme had not been made and a draft of a workable scheme had not been submitted to the Commission under the consultation process provided for in the Act.<sup>12</sup>

### **(B) Compensation Scheme**

Following the public sitting of 20 July, 2000, the Commission gave immediate consideration to the survivors' solicitors' submission. The Commission concluded that the establishment of a scheme of compensation for survivors of institutional child abuse was a policy issue for the Government, albeit a policy issue on which the Commission was empowered to make recommendations under the Act<sup>13</sup> and which in the Opening Statement<sup>14</sup> it had identified as a topic it intended to consider in that context. However, it also concluded that it could not publish an interim report on the lines sought in the submission without hearing any evidence or submissions and, in particular, evidence of the extent of the blame that might legitimately be ascribed to State agencies in relation to matters being investigated by the Commission. On the other hand, the Commission recognised that, having regard to the context in which the Commission was established (the apology given by the Taoiseach, on behalf of the State, to victims of child abuse and the package of measures announced by the Government to redress the wrongs they had suffered, including the establishment of the Commission, on 11 May, 1999) and the legislation underpinning it was enacted, the State might, as a matter of policy, be prepared to commit in principle to the establishment of an appropriate body (whether statutory or

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<sup>12</sup> Section 20(1).

<sup>13</sup> Section 5(2).

<sup>14</sup> Page 25.

administrative) to deal with compensation issues. In that event, the Commission would only be concerned with making recommendations as to how the body might be established and operate.

In the light of those conclusions, the Commission wrote to the Minister on 26 July, 2000 in relation to the survivors' solicitors' submission. While it was made clear that the Commission was expressing no view, either positive or negative, on the merits of the arguments put forward in the submission, it was stated that the matters raised in it represented potentially a significant barrier to the effective conduct of the business of the Commission. It was further stated that, if it were Government policy to commit in principle to the establishment of an appropriate body to deal with compensation issues before the Commission should hear evidence of blame, the Commission would be in a position to deal with the issue of the modalities of a compensation scheme at an earlier stage in the conduct of its business, that is to say, after completion of the first phase of the work of the Investigation Committee. It was anticipated that the effective conduct of the business of the Commission could be achieved if the Commission was able to do so. The issues which the Commission considered needed to be addressed in the formation of any such policy decision were outlined as—

- whether such scheme would cover all abuse as defined in the Act,
- whether compensation would be payable provided such abuse occurred in an institution as defined in the Act subject to the caveat that the institution was one for which the State held some responsibility, directly or indirectly,
- that such compensation would be payable on an ex-gratia basis without establishing any liability on the part of the State, but subject to the claimant establishing that he or she suffered institutional abuse within the parameters referred to and resulting damage, and
- that the compensation would be broadly similar to that which would be awarded should a successful claim for damages in respect of such abuse be pursued in a court of competent jurisdiction.

The Commission sought an indication of the Government's position on the issues raised in the letter and that the earliest possible response be made.

By 26 September 2000, apart from a holding response dated 14 August, 2000 from the Department, the only response which the Commission had received was a letter of 21 September, 2000 from the Department stating that it was intended by the end of October, 2000 that a report would be submitted by the Department to the Cabinet Committee on child abuse "with a view to a Government decision on the issue of a compensation awarding body for victims of abuse in childhood".

At the resumed public sitting the Commission informed the public that the resolution of the two outstanding issues which were impeding the effective conduct of the work of the Commission rested with the Department. For its part it was determined, notwithstanding the obstacles it had encountered, that every person who wished to testify to the Commission would get a hearing before the Committee of his or her choice as soon as reasonably practicable. Since then, although the Commission has been able to hear the testimony of persons who have chosen the Confidential Committee, the Commission

regrets and is concerned that no hearing before the Investigation Committee has taken place to date.

Further delay in resolving the outstanding issues has continued to impede the progress of the work of the Commission.

## **7. Obstacles to Progress of the Commission's Work**

### **(A) Legal Expenses Scheme**

While not the only factor which has impeded the work of the Investigation Committee, delay in responding to the Commission's requests that a viable scheme for payment of legal expenses be made has been the most significant obstacle. In the Commission's view, the delay was unnecessary and potentially damaging to the credibility and independence of the Commission. At last, almost a year after the establishment of the Commission, the obstacle has been partially removed to the extent that a scheme providing for the costs of legal representation at the first phase hearings of the Investigation Committee, which the Commission welcomes and considers is workable, was made on 9 May, 2001. The Commission has been advised by letter dated 14 May, 2001 from the Department that "a further scheme will provide for the second phase".

Notwithstanding that partial provision has now been made for payment of costs of legal representation, it is considered that it is in the interest of the credibility of the Commission to outline the lack of progress on this issue after the public sitting on 26 September, 2000, at which the Commission expressed disappointment that there had not been a more obvious willingness on the part of the State to speedily address issues which were then impeding the effective conduct of its statutory functions.

As has been stated earlier, on 20 July, 2000<sup>15</sup>, in so far as it was in a position to do so, the Commission indicated who would be entitled to legal representation at its proceedings (persons making allegations and persons against whom allegations are made before the Investigation Committee) and the nature of the representation (by a solicitor and counsel of choice). Devising a scheme for payment of the costs of such representation is the responsibility of the Minister under the Act.<sup>16</sup> As has been stated, at the public sitting on 26 September, 2000 the Commission made it clear that, in the absence of a scheme making provision for payment of legal expenses, the work of the Investigation Committee would not be able to proceed.

On numerous occasions following that sitting and on a consistent basis the Commission conveyed its concerns to the Department in relation to the lack of progress in making the scheme and the consequence of delay in putting it in place. As early as 17 October, 2000, having reiterated that the absence of the scheme would hinder the Commission in the performance of its statutory functions, the Commission informed the Department that, while the optimum situation from its point of view would be that the solicitors for parties affected by the work of the Commission would signify their satisfaction with the scheme in its final form, if this could not be achieved, the approach should be to produce a final scheme which would not be susceptible to successful legal challenge by any party affected

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<sup>15</sup> Page 4.

<sup>16</sup> Section 20.

by the work of the Commission and which, on objective appraisal, could not reasonably be rejected by the legal representatives of parties who would be remunerated under it.

It was not until 16 January, 2001 that a fresh draft scheme was produced by the Department. That draft was given immediate consideration by the Commission, which concluded that the proposed scheme was inappropriate for implementation by a body the members of which have no expertise in the quantification of costs of legal representation. The Commission also concluded that it would be cumbersome, costly to implement and unworkable.

In the belief that it would be the most appropriate way of conveying the Commission's views to the Department and of speeding up the consultation process, the Commission immediately instructed its leading counsel to act on its behalf in the consultation process. Despite many meetings and contacts, another three months elapsed before a further draft scheme was produced to the Commission. That draft, which was eventually received on 18 April, 2001, was, as the Commission immediately signified, considered to be workable and capable of being carried into effect in relation to costs associated with the first phase of the work of the Investigation Committee.

In the intervening three month period since 16 January, 2001 the Commission had been left in the position of not knowing if, how or when the matter of provision for the costs of legal representation would be resolved. Moreover, it was left in the invidious position of not being able to respond adequately to inquiries from persons affected by the work of the Commission on the issue of the costs of legal representation.

### **Effect of Delay**

The delay in making a scheme for the payment of legal expenses or other provision for enabling a party who is granted legal representation to recoup the cost of such representation from monies provided by the Oireachtas has impacted adversely on the progress of the work of the Investigation Committee. This has been manifested as follows:

- (a) Of the seven hundred and fourteen (714) requests to testify to the Investigation Committee in respect of which preliminary inquiries were being carried out by inquiry officers under the Act <sup>17</sup> at 30 April, 2001, solicitors acting on behalf of persons making allegations of abuse (Complainants) in two hundred and twenty eight (228) cases ( i.e. 32 % of cases) were not prepared to submit statements of the Complainants because of the absence of a scheme. Solicitors who have adopted this approach are also citing the absence of a scheme for payment of compensation as a reason for not actively participating. While, under its administrative procedures, the Investigation Committee imposes time limits for complying with requests, it was felt that, in the absence of proper provision for payment of the costs incurred in legal representation of Complainants, it would not be appropriate, and would serve no useful purpose, to endeavour to enforce the time limits and invoke default procedures. However, now that a scheme has been made providing for the costs of legal representation at the first phase hearings, the Investigation Committee will not desist from enforcing time limits in relation to that phase.

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<sup>17</sup> Section 23.

- (b) As regards requests from Complainants who do not have legal representation and those whose solicitors are actively participating in the work of the Investigation Committee, believing it might be counter-productive to do so in the absence of a scheme for payment of legal expenses and mistakenly believing that finalisation of such a scheme was imminent, the Commission delayed issuing requests for statements to persons against whom allegations of abuse had been made and persons and bodies responsible for managing and regulating the institutions in which the abuse was alleged to have occurred (Respondents). At the end of February, 2001, the Commission concluded that the scheme was not imminent and decided that such requests should be issued. However, it did not endeavour to enforce the time limits provided for in its administrative procedures for compliance with such requests because it considered it would be inappropriate to do so in the absence of provision for payment of the legal expenses of the Respondents to whom such requests had been sent and it was apprehended that any attempt to do so would be resisted by their legal representatives. It is intended that time limits in relation to the first phase of the work of the Investigation Committee will be enforced henceforth.
- (c) The Commission has been unable until now to impose a time limit for accepting a request to have an allegation of abuse investigated. However, the Commission has recently decided to impose a time limit of 31 July, 2001 for receipt of requests to give evidence to the Commission.

Throughout the period from September, 2000 to April, 2001 the Commission's primary concern has been the potential adverse effect on persons affected by the work of the Investigation Committee of the delay in bringing individual allegations of abuse to hearing. It has also been concerned about the impact of delay on its ability to fulfill its statutory functions and the increase in the duration of its work with consequential increases in the cost of the Commission to the State. The Commission's concerns were repeatedly conveyed to the Department.

Now that it is in a position to do so, the Investigation Committee intends to continue its preliminary inquiries and to move on to scheduling hearings in the first phase of its work as expeditiously as possible consistent with justice and fair procedures. It is hoped that the parties who have complained about delay in the past will co-operate with the Commission in its efforts to bring closure, for all parties affected by the Commission's work, to what is a difficult and traumatic element of our collective confrontation with the past.

Irrespective of the stage reached for the implementation of Government decisions on a compensation scheme, now that provision is in place for payment of the cost of legal representation for persons participating in the first phase of the work of the Investigation Committee, the Commission must vigorously press ahead with its inquiry. The Commission is determined to complete the tasks given to it by the Oireachtas as soon as possible, believing that to be in the best interest of persons affected by its work.

## **(B) Compensation Scheme**

On 3 October, 2000 the Minister announced<sup>18</sup> that the Government had agreed in principle

- (i) to establish a body to compensate people who as children were victims of abuse while in the care of institutions in which they were resident and in respect of which State bodies had regulatory or supervisory functions,
- (ii) that “abuse” for the purpose of such compensation would be defined as in the Act, and
- (iii) that compensation would be paid on an *ex-gratia* basis without the need to establish liability on the part of State bodies but subject to the claimant establishing to the satisfaction of the body that he or she had suffered abuse and resulting damage.

Issues concerning the establishment, funding and operation of a compensation body would be the subject of further consideration and decision in the near future.

The views of the Commission were not sought on the issue of a compensation scheme in the period between the Commission’s letter of 26 July, 2000 and the announcement of the Government decision on 3 October, 2000. The Government decision did not envisage the Commission’s having a role in advising on the modalities of a compensation scheme, as had been suggested in the Commission’s letter of 26 July, 2000.

On 27 February, 2001 the Minister made a public announcement<sup>19</sup> that the Government had agreed to his proposals for a compensation scheme for survivors of institutional child abuse. It was also announced that the Government had agreed to the drafting of the legislation which will provide compensation to people who as children suffered abuse in reformatory and industrial schools, orphanages, children’s homes and hospitals; that the Bill will be given priority with a view to having it in place by the summer recess; and that this will be followed by the immediate establishment of the compensation body. The announcement set out the following as the main elements of the compensation scheme:

- It will be a stand alone scheme for *ex-gratia* payments to survivors of abuse.
- Claims will be accepted from people who allege abuse while they were, as children, resident in an institution in respect of which State bodies had regulatory or supervisory functions.
- The compensation scheme will accept claims for a period of three years from the establishment date.
- The compensation awarding body will have as a chairperson a retired or serving senior member of the Judiciary and other members as required.
- Validation of claims by claimants to the compensation body will be conducted in a non-adversarial way, with inquiries confined to establishing essential facts combined with medical/psychiatric assessment of a claimant.
- Compensation will be paid for current and continuing damage caused by abuse, and also for past damage, from which the claimant has now recovered.

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<sup>18</sup> Press release of 3rd October, 2000.

<sup>19</sup> Press release of 27 February, 2001.

- The legislation will provide detailed criteria for awards, including amount of awards for different kinds of abuse and its affects. An independent expert group will be appointed to determine the criteria.

Under the Government proposals there will be no direct interface between the proposed compensation scheme and the work of the Commission

It is the Commission's understanding that the Government decisions have effectively rendered redundant any recommendations in relation to the modalities of a compensation scheme, which the Commission might have made in an interim report at the end of the first phase of the work of the Investigation Committee, at any rate, in relation to residential institutions The Commission regrets the lost opportunity.

### **Impact of Government Decisions on Compensation on Work of the Commission**

It is impossible to assess what impact the Government decisions have had to date on the work of the Commission. Some solicitors acting for persons who have indicated a wish to testify to the Investigation Committee have made co-operation with the Investigation Committee and participation in its work conditional, not only on the making of provision for payment of the costs of legal representation, but also on the putting in place of a statutory scheme for compensation. There is evidence that some persons who have withdrawn requests to testify to the Confidential Committee have done so on the advice of their solicitors pending the putting in place of a compensation scheme. Others have been advised by their solicitors to make participation in the work of the Confidential Committee conditional on the putting in place of a compensation scheme.

As to the future impact of the implementation of the Government decisions on the work of the Commission, the Commission is, and for some time has been, concerned about public confusion in relation to the respective roles of the Commission and the proposed compensation body. Notwithstanding that in the announcement made on 27 February, 2001 the Minister, at the Commission's request, stated that "the Commission is and will continue to be a separate and independent forum carrying out vitally important work", the Commission believes that public confusion continues.

All persons entitled to pursue a claim for compensation under the scheme envisaged in the Government decisions will also come within the remit of the Commission's inquiry. While the concern expressed in the solicitors' survivors' submission about the potential detriment to persons of having to give evidence of childhood abuse on multiple occasions is noted by the Commission, it is hoped that the value of an inquiry into the prevalence of abuse, why it occurred and who was responsible for it will be recognised by all concerned and will encourage those who can assist the inquiry to come forward. It is the Commission's view that it would be regrettable if valuable evidence was lost by reason of persons pursuing a claim for compensation deciding not to participate in the work of the Commission.

On the other hand, a scheme implemented in accordance with the Government decisions will not provide for payment of compensation to all persons who come within the remit of the Commission's inquiry. It is the Commission's view that it would be regrettable if those excluded were discouraged from participating in the work of the Commission, particularly as, in the twenty-first century, treatment of children outside the family home

in non residential settings and in foster care is as relevant as treatment of children in residential settings.

As the Commission has stated at its public sittings, the ultimate success of its work will depend on the volume of evidence which it collects, which, in turn, will depend on the willingness of persons who have suffered childhood abuse in institutions, including non-residential institutions and foster care, to come forward and testify as to the abuse. The Commission's hearings provide survivors of institutional child abuse with a unique opportunity to tell of their experiences in the past and, in doing so, to contribute to the betterment of child care and the protection and welfare of children in the future.

## **8. Substantive Work of the Commission**

Immediately following the first public sitting on 29 June, 2000 the Commission, through an intensive advertising campaign in the State and in the United Kingdom, invited persons to come forward to participate in the Commission's inquiry. Information on the Commission has also been disseminated through the work of groups representing survivors of institutional child abuse and professionals, such as social workers and counsellors, involved with victims of institutional child abuse.

While the initial response to the Commission's invitation was slower than had been anticipated, the overall response up to 30 April, 2001 is regarded as satisfactory. If the majority of those who have indicated a wish to give evidence to the Committees remain willing and able to do so, and persons referred to later whom the Commission believes wish to give evidence, but have not yet registered the wish, come forward, the Commission will have a substantial body of evidence on which to base its findings. This should not deter persons who feel they can contribute to the inquiry, but have not yet decided to do so, from coming forward. Everybody who comes within the Commission's statutory remit, and who submits a request to be heard before 31 July, 2001 will be given a hearing.

Details of the volume of requests received by each Committee are set out in the sections on the Confidential Committee<sup>20</sup> and the Investigation Committee<sup>21</sup> which follow. At 30 April, 2001 requests to give evidence to both Committees, which had proceeded to a hearing or were being processed for a hearing, aggregated one thousand, two hundred and thirty-eight (1,238).

A very small number of requests have not been proceeded with by the Commission because they did not disclose any evidence of abuse within the statutory remit of the Commission. For example, some requests have not been proceeded with because they related to abuse alleged to have occurred in institutions outside the State.

Since the beginning of the year 2001 the Commission has continued to receive requests to give evidence to the Committees of the Commission. Recently there has been a small number of withdrawals from the process, some of which are linked to the announcement of the Government decisions in relation to a compensation scheme. On the other hand, the Commission believes that a considerable number of requests to give evidence to the

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<sup>20</sup> Page 15.

<sup>21</sup> Page 17.

Investigation Committee have not been forthcoming because of the attitude adopted by some solicitors acting for prospective complainants who share the views expressed in the survivors' solicitors' submission referred to earlier. There is evidence to suggest that some at least of these prospective complainants are anxious to participate in the Commission's work.

One of the disadvantages of the delay in addressing the issue of the costs of legal representation is that the Commission has been unable to set a time limit for initiating participation in its investigation. In consequence, it is not possible to predict, one year from its establishment, how long it will take to complete its inquiry. Now that a scheme for payment of legal expenses in relation to the first phase of the work of the Investigation Committee is in place, the Commission has decided to impose a final date for receipt of requests to participate in the Commission's inquiry. All such requests must be with the Commission by 31 July, 2001. Notification of this time limit will be given by public advertisement.

## **9. Work of the Confidential Committee**

At 30 April, 2001 the number of requests to testify to the Confidential Committee which were being processed or had been heard was five hundred and twenty-four (524). A breakdown of the requests according to gender, age and current place of residence of the Complainant is set out in graphic form in Part 1 of Appendix B. An analysis of the requests reveals the following facts in relation to the Complainants:

- Almost 59% are men
- Almost 56% are over fifty years of age
- Approximately 30% are currently resident outside the State

A significant majority of the Complainants have indicated that they wish to give evidence about their childhood experiences in residential care, predominantly while in care in industrial schools or reformatory schools. Some Complainants have indicated that they wish to give evidence in relation to their childhood experiences in more than one such institution.

The Confidential Committee commenced hearings in September, 2000. By 30 April, 2001 one hundred and twenty (120) hearings had been completed. A breakdown of the completed hearings according to gender, age and current place of residence of the Complainant is set out in graphic form in Part 2 of Appendix B.

Pursuant to the Act,<sup>22</sup> hearings of the Confidential Committee are held in private, usually in the presence of a division of two members of the Committee. Each hearing is scheduled for 10 a.m. or 2 p.m. on a working day so as to ensure that the person testifying can recount his or her experiences in full and without any time pressure. He or she may be accompanied by a companion at the hearing or by a professional counsellor. A detailed information pack is sent to each person before attendance to help him or her fully prepare for the hearing. A witness support programme is in place to assist each person before

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<sup>22</sup> Section 11(2).

and after the hearing. Travel and subsistence expenses of the person testifying and, if not accompanied by a professional counsellor, his or her companion or, if accompanied at the hearing by a professional counsellor, a fee and travel and subsistence expenses of the counsellor, are paid by the Commission in accordance with a scheme for payment of witnesses expenses made by the Minister under the Act.<sup>23</sup> In scheduling hearings the Confidential Committee has regard to the age and the state of health and any other relevant facts brought to its attention in relation to persons wishing to give evidence.

Of the hearings completed to date fourteen have been held outside the State, as permitted by the Act.<sup>24</sup> At each such hearing two members of the Confidential Committee have taken evidence from a person wishing to testify in the United Kingdom. Thirteen hearings have been held in Ireland at venues other than the Commission's headquarters in Dublin to facilitate persons unable to travel.

It is the belief of the Confidential Committee that the effect of the hearing and its attendant processes has been beneficial even for the many witnesses for whom recounting their experiences was difficult and painful. This has been borne out by the feedback from many persons who have given evidence. The members of the Confidential Committee wish to acknowledge the courage of persons who have come forward and to express their sincere gratitude to them for assisting the Commission .

Each member of the Confidential Committee has subscribed to a protocol on conflict of interest.

## **10. Work of the Investigation Committee**

At 30 April, 2001 the number of extant requests to testify to the Investigation Committee was seven hundred and fourteen (714). A breakdown of the requests according to gender, age and current place of residence of the Complainant is set out in graphic form in Appendix C. An analysis of the requests reveals the following facts in relation to the Complainants:

- Almost 68% are men
- Almost 56% are over fifty years of age
- Approximately 28% are currently resident outside the State

A significant majority of the Complainants have indicated that they wish to give evidence about their childhood experiences in residential care. As in the case of the Confidential Committee, industrial schools and reformatory schools predominate in these requests and some complainants have indicated that they wish to testify about their childhood experiences in more than one such institution. An analysis of the requests indicates that in approximately one hundred (100) cases the Complainant wishes to testify about his or her experiences in a non-residential school.

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<sup>23</sup> Section 20. The text of the scheme is set out in Appendix E of the Opening Statement, and is available on the Commission's website.

<sup>24</sup> Section 10(7).

The proposed Rules of Procedure of the Investigation Committee, which were appended to the Opening Statement,<sup>25</sup> were amended in response to submissions received by the Commission following the first public sitting. Copies of the Rules of Procedure are made available to all parties participating in the work of the Investigation Committee and are available on the Commission's website.

The Act<sup>26</sup> provides for the conduct of a preliminary inquiry into an allegation of childhood abuse in an institution which the Investigation Committee has been requested to investigate by an inquiry officer. Originally, as stated in the Opening Statement,<sup>27</sup> the Commission intended that civil servants on secondment from Departments of State, other than Departments which have or have had responsibility for children's institutions, would be appointed as inquiry officers. Because of the level of opposition to involvement of public servants in the work of the Commission evinced in the submissions received by the Commission, at the end of July, 2000 it was decided to retain practicing barristers to carry out the functions of inquiry officers. The process of retaining the barristers took until the beginning of December, 2000. The inquiry officers commenced the preliminary inquiries on 11 December, 2000. The work of the inquiry officers in carrying out preliminary inquiries has been impeded and delayed because of the obstacles to progress outlined earlier. At 30 April, 2001 no preliminary inquiry had been finalised in accordance with the Act.<sup>28</sup>

The Act<sup>29</sup> confers wide powers of discovery and production of documents on the Investigation Committee. As was stated in the Opening Statement,<sup>30</sup> it is hoped that persons, including public bodies, who have documents which are relevant to the work of the Investigation Committee will, where requested, produce those documents voluntarily. The Commission takes this opportunity of reiterating that documents which it receives pursuant to a direction for discovery or production or which are voluntarily discovered or produced, without the necessity for a direction, may only be used by the Investigation Committee for the purposes of its work and not for any other purpose. This means, in effect, that such documents may only be made available in the course of the inquiry to persons involved in the inquiry, or a particular aspect of the inquiry, in accordance with the Rules of Procedure of the Investigation Committee.

Because of the high proportion of the work of the Investigation Committee which relates to former industrial schools and reformatory schools, the discovery process in relation to the records of such institutions impacts on the ability of the Investigation Committee to advance its work. The position in relation to discovery of documents and records in relation to such institutions held by the Department was alluded to in the Opening Statement.<sup>31</sup> The up-to-date position is that the Department has made, and is in the course of making, voluntary discovery to the Investigation Committee in E-format of a very considerable body of data in relation to fifty-five former industrial and reformatory schools. It is anticipated that the process will be completed by the middle of June, 2001.

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<sup>25</sup> Appendix D.

<sup>26</sup> Section 23.

<sup>27</sup> Page 4.

<sup>28</sup> Section 23(3).

<sup>29</sup> Section 14(1).

<sup>30</sup> Page 21.

<sup>31</sup> Page 22.

Completion of the voluntary discovery process in relation to an industrial school or a reformatory school is a necessary prerequisite to the scheduling of a hearing of the Investigation Committee in relation to any such school. While the process has taken longer than was anticipated by either the Department or the Commission, the Commission is satisfied that this is attributable to the enormity of the task involved in processing the Departmental files and records in relation to industrial schools and reformatory schools. The Commission is very appreciative of the co-operation it has received from personnel of the Department involved in that task.

Each member of the Investigation Committee and each inquiry officer has subscribed to a protocol on conflict of interest.

## **11. Administration**

Since the Commission was established it has employed personnel or seconded personnel for the duration of the Commission, in accordance with its powers under the Act,<sup>32</sup> to provide administrative support to the Commission, the Confidential Committee and the Investigation Committee.

Mr Paul Doyle, who acted as secretary to the Commission since its establishment, ceased to act in that capacity on 24 April, 2001. The Commission wishes to record its appreciation of Mr Doyle's contribution to the Commission's work.

Two members of staff have been assigned on an exclusive basis to the Confidential Committee. The Commission is satisfied that in terms of deployment of personnel, administrative structures and the configuration of its IT systems, and security of documentary and computer generated data, every reasonable step has been taken to ensure no breach occurs of the hermetic seal of confidentiality which the Act<sup>33</sup> requires should surround the Confidential Committee and its work.

Systems have been put in place for case and document management for the Commission. The Commission wishes to acknowledge the very considerable assistance it has received, and continues to receive, from the Centre for Management and Organisation Development and its personnel in designing and developing the systems.

The Commission recognises that its support staff are occasionally required to work in difficult and stressful circumstances. Appropriate training has been provided and appropriate support and staff care mechanisms are in place.

Each Member of staff has subscribed to a protocol governing conflict of interest and confidentiality.

## **12. The Commission's Legal Team**

Two senior counsel, Frank Clarke S.C. and Deirdre Murphy S.C., and two junior counsel, Isobel Kennedy B.L. and Bernard Condon B.L., have been nominated by the Commission

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<sup>32</sup> Section 9.

<sup>33</sup> Section 27.

for its legal team for the Investigation Committee. One junior counsel, Mary Ellen Ring B.L., has been nominated to advise the Confidential Committee.

### **13. Meetings of the Commission**

Since May, 2000 regular meetings of the Commission have been held. In addition to formulating policy in relation to the implementation of the statutory remit of the Commission and its Committees and the issues raised at the public sittings and dealing with administrative matters, the Commission has commenced consideration of some of the topics on which it proposes to make policy recommendations.

### **14. Working Towards Making Recommendations**

#### **Tracing Family**

The policy matter to which the Commission has given priority during the first year of its work is the topic which it referred to as “tracing family” in the Opening Statement.<sup>34</sup> In this context, the Commission has concentrated on issues concerning persons who, as children, were separated from parents and other family members and were raised in residential institutions or in foster care. For many this has meant that, not only are they deprived of knowledge of their families of origin, but they are also deprived of access to personal information about their childhood. They need access to such information and they need to be able to trace and be united with their kin. In broad terms, the issues which have been considered include:

- The constitutional and legal framework within which such issues are currently resolved,
- Identifying the problems associated with—
  - Accessing personal information which may be of a sensitive nature
  - The tracing or searching process, and
  - Contact and reunion,
- Identifying measures which would facilitate tracing,
- Identifying measures which, subject to due regard being given to the interest of all parties involved, would facilitate reunion, and
- Identifying the measures necessary to give adequate protection to all parties affected by tracing and reunion.

It is the Commission’s view that because of the age, state of health, level of educational attainment, vulnerability and emotional needs of persons who would benefit from such measures, there is an urgent need to address these matters at national level. On the basis that its role in making policy recommendations as provided for in the Act<sup>35</sup> in relation to these issues is not predicated on the making of findings of past occurrence of specific types of abuse, within the meaning of the Act, the Commission has felt free to address these matters in tandem with the carrying out of its inquiry, and because of the urgency, has given priority to them.

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<sup>34</sup> Page 25.

<sup>35</sup> Section 5(2).

The Commission has consulted with a wide range of persons and bodies, including State agencies, on these issues and the consultative process is on-going.

The Commission intends to issue a special report on these issues in early course.

### **Protection of Children in Institutions**

The Commission has also commenced work on issues concerning the protection of children in institutions now and in the future, with particular reference to—

- recruitment, training, support and supervision of personnel,
- regulation and supervision of institutions,
- complaints procedures, and
- mechanisms for ensuring that the voice of the child is heard.

The Commission will shortly be embarking on a broad consultation process with a view to publishing recommendations on these issues at a future date.

## **15. Vaccine Trials Inquiry**

In mid November, 2000 the Minister for Health and Children announced in the Da/il and Seanad that he was referring to the Commission a copy of a report of the Chief Medical Officer of the Department of Health entitled “Report on Three Clinical Trials Involving Babies and Children in Institutional Settings 1960/1961, 1970 and 1973” (the Vaccines Report). The Commission received the Vaccines Report on 13 November, 2000 and, being satisfied that the issues raised in it are matters which come within the investigative remit of the Commission, indicated its willingness to inquire into those issues in fulfilling its statutory functions. The Commission is awaiting a Government Order under the Act<sup>36</sup> defining the parameters of this function, and that of the Investigation Committee, which it is intended will con-duct the inquiry in relation to vaccine trials.

The membership of the Commission will have to be expanded to deal with this aspect of the Commission’s work and the Commission awaits a Government decision to this effect.

The Commission is eager to embark on the vaccine trials inquiry without further delay.

## **16. Support Services for Survivors**

Since the Commission was established there has been an improvement in the support services for survivors of institutional child abuse, which is welcomed.

The National Counselling Service for adults who experienced childhood abuse has been established and is in operation in each Health Board area in the State. The Department of Health and Children is committed to providing funding for three years for Immigrant Counselling and Psychotherapy (ICAP) to enable it to provide a professional confidential

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<sup>36</sup> Section 4(4).

counselling service for survivors resident in the United Kingdom. Quarterly meetings of the Commission and the Directors of Counselling for the Health Board areas and the Director of ICAP are held to discuss issues of mutual concern. The Commission wishes to express its appreciation of the assistance it has received from these services and, in particular, from the Directors.

The Department of Health and Children is also committed to providing funding for advice and information services in the United Kingdom. Two outreach workers are currently providing this service in the Greater London area, the South East and Wales and in the Midlands (Coventry, Birmingham, Leicester, Wolverhampton and surrounding areas).

The National Office for Victims of Abuse (NOVA) was established in February, 2001 to provide advice and assistance in an impartial and fair manner to victims of childhood abuse in institutions. The Commission staff maintain a liaison contact with the Manager of NOVA. The Commission staff also maintain a liaison function with the voluntary groups which represent the interests of survivors of childhood institutional abuse. The purpose of this function is to provide a process whereby information can be disseminated and practical matters can be raised and dealt with.

## **17. Witness Support**

Experience to date has confirmed the difficult and stressful nature of giving evidence to the Commission. The Commission takes this opportunity of reminding those who will be participating in the Commission's work of measures which have been taken with a view to alleviating the difficulties and addressing any problems which may arise. These are:

- Provision of travel and subsistence expenses for a companion who accompanies a witness, who is not accompanied by a counsellor, in accordance with a scheme made under the Act.<sup>37</sup>
- Provision of a fee and travel and subsistence expenses for a professional counsellor who accompanies a witness in accordance with the Scheme made under the Act.<sup>38</sup>
- Availability of witness support officers to help witnesses in all practical aspects of their contact with the Commission.
- The availability of an emergency outreach counselling service provided by the National Counselling Service.
- The availability of an emergency general practice service at a medical centre close to the Commission's premises.

## **18. The Future**

At the public sitting on 26 September 2000 the Commission expressed disappointment that up to then there had not been a more obvious willingness on the part of the State to speedily address issues which were impeding the effective conduct of the tasks which the Oireachtas had given to the Commission to do. Regrettably, the delay in putting in place

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<sup>37</sup> Section 20. The text of the scheme is set out in Appendix E of the Opening Statement, and is available on the Commission's Website.

<sup>38</sup> Section 20. See footnote 37.

a viable scheme for payment of legal expenses demonstrates that the situation has not fundamentally changed. The Commission's ability to fulfill its statutory functions is contingent on proper and prompt support being forthcoming. It is entitled to expect that this will happen.

The Commission repeats the pledge which it gave at its last public sitting on 26 September, 2000 that, notwithstanding the obstacles it has encountered, every person who wishes to give evidence to the Commission, subject to complying with the relevant administrative procedures, including the Rules of Procedure of the Investigation Committee, will get a hearing before the Committee of his or her choice. Subject to what is stated in the preceding paragraph, it is confident of its ability to fulfill the pledge.

In the view of the Commission the principal obstacle in the way of advancing the hearings of the Investigation Committee, the lack of a scheme for payment of legal expenses, has been removed as regards the first phase hearings of its work, which, as has been previously stated, will now be advanced vigorously. The Commission is determined that the Investigation Committee will not be deflected from pursuing its investigation by any action or inaction on the part of any persons or bodies affected by its work.

The work of the Confidential Committee will continue and persons who wish to tell of their experiences to the Confidential Committee will be heard, priority being given according to age, state of health and any other special circumstances .

The Commission will be mindful at all times of the potential therapeutic benefit to persons who have suffered institutional abuse in childhood of recounting their experiences. Every person who comes forward to testify to either Committee is assured that every effort will be made to ensure that he or she leaves the hearing with a sense of having been fully heard.

As has been previously stated, it is impossible to predict how long it will take to afford hearings to all persons who wish to be heard. What can be predicted with certainty is that the work of the Commission will not be completed within the two year time span envisaged by the Act.<sup>39</sup>

A further interim report will be published not later than 30 November, 2001, by which time it is hoped that it will be possible to give some reasonable prediction as to when the various stages in the Commission's inquiries will be completed and to report further progress on the continuing work on formulation of policy recommendations.

Persons for whose benefit the Commission was established, and who are in a position to do so, will have to decide for themselves whether they want to assist the Commission in carrying out a full investigation into the events of the past. It is hoped that they will assist, not only in their own interest but so that the lessons to be learned from the past can benefit the children of the future.

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<sup>39</sup> Section 5(5).

As was stated in the Opening Statement,<sup>40</sup> the Commission is a unique investigative body. It has powers and privileges similar to those conferred on Tribunals of Inquiry to enable it to fulfill its investigative remit and ascertain the true facts. Its hearing processes are intended to be, and are capable of being, a source of healing for a person who gives evidence of abuse he or she has suffered. A person or body against whom an allegation is made is afforded the opportunity to defend his, her or its reputation. Failure to utilise those processes or obstruction of them would be a lost opportunity.

It is the Commission's belief that the processes of the Commission are likely to result in a more accurate, comprehensive and authoritative exposition of the prevalence of childhood abuse in institutions in the past, why it occurred and who was responsible for it, than any other process available in the State.

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<sup>40</sup> Page 3.

## **Appendix A**

### **Membership of Commission**

#### **Chairperson**

The Honourable Ms Justice Mary Laffoy, Judge of the High Court (Chairperson of the Investigation Committee).

#### **Ordinary Members**

Dr Patrick Deasy, Consultant Paediatrician (Confidential Committee).

Ms Norah Gibbons, Childcare Director (Chairperson of the Confidential Committee).

Mr Bob Lewis, CBE, retired Director of Social Services (Stockport, United Kingdom).<sup>1</sup>  
(Confidential Committee).

Mr Fred Lowe, Principal Clinical Psychologist (Investigation Committee).

Dr Kevin McCoy, retired Chief Inspector, Social Services Inspectorate, Northern Ireland.<sup>2</sup>  
(Confidential Committee).

Dr Imelda Ryan, Consultant Child and Adolescent Psychiatrist (Investigation Committee).

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<sup>1</sup> Resigned 19th July, 2000.

<sup>2</sup> Appointed 21st November, 2000.

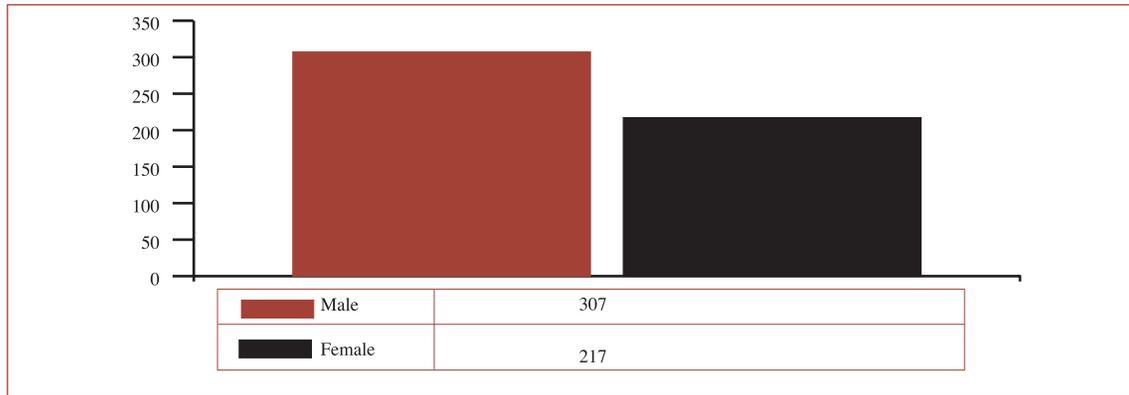
## Appendix B: Part 1

### Confidential Committee Statistics

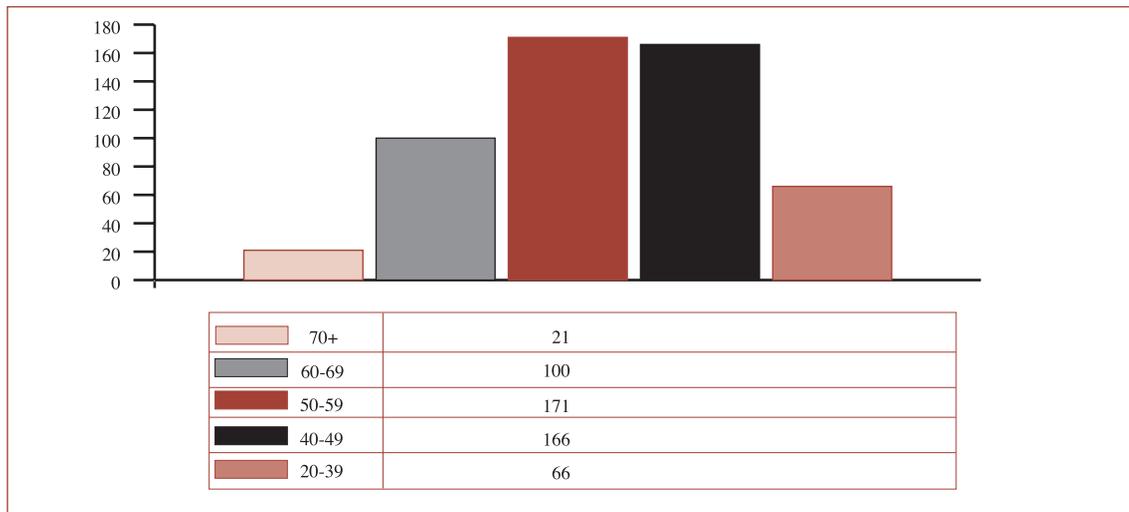
Total number of requests extant at 30 April 2001: 524

The breakdown is as follows:

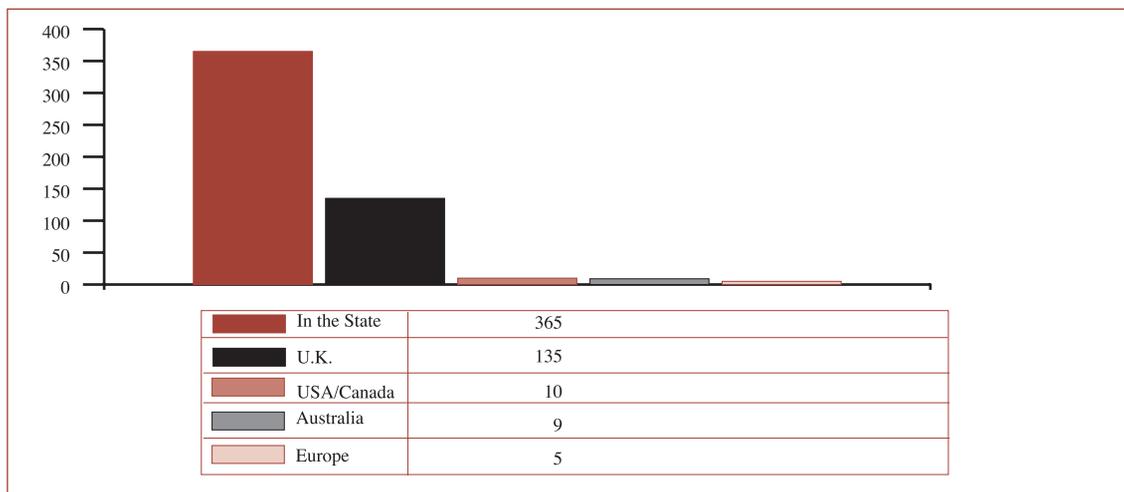
#### Gender



#### Age



#### Current Place of Residence

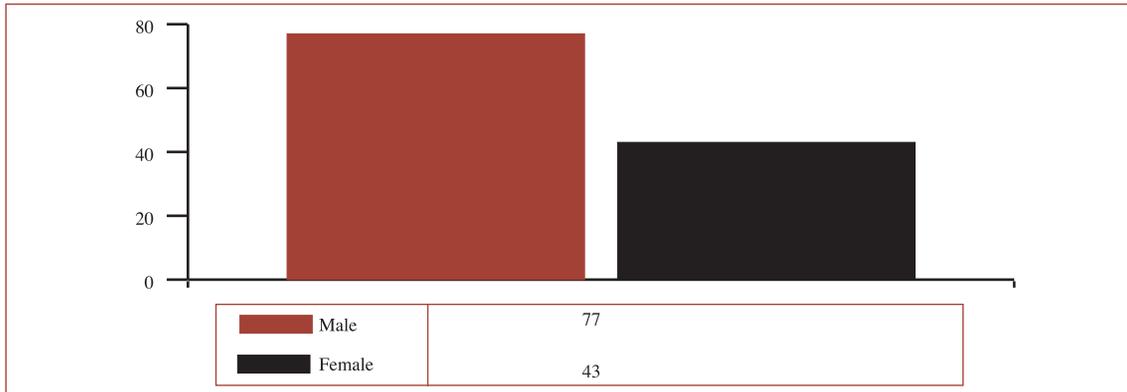


## Appendix B: Part 2

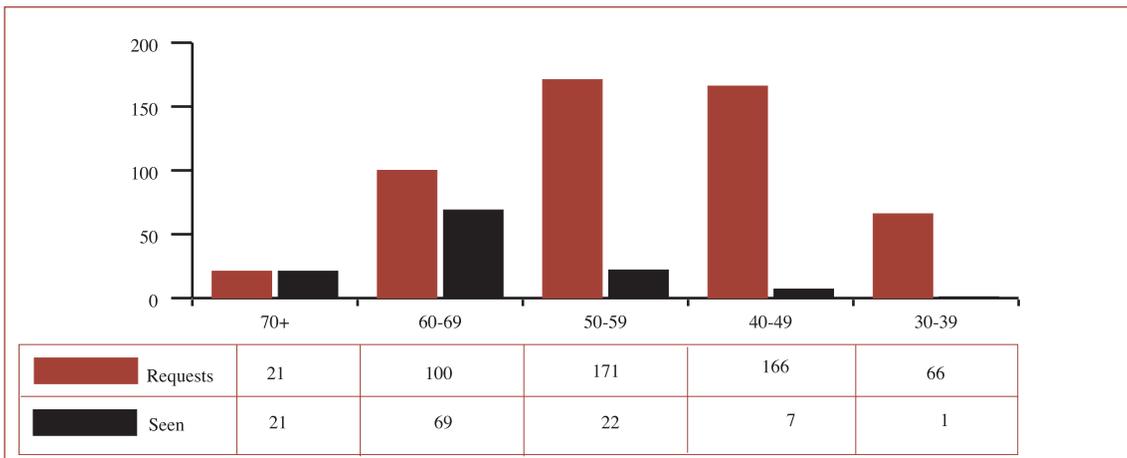
### Confidential Committee Statistics

Total number of hearings completed at 30 April 2001: 120

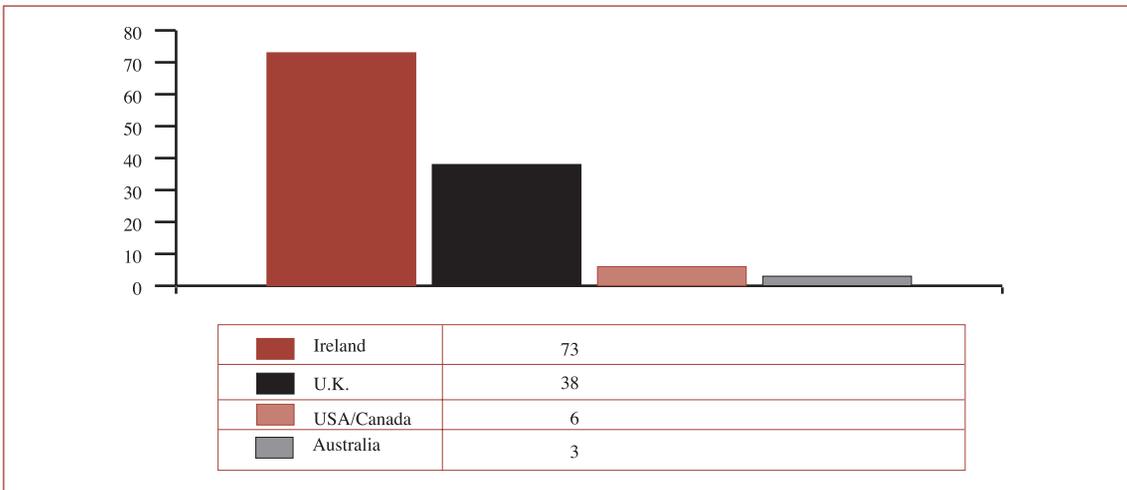
**Gender**



**Age**



**Place of Residence**

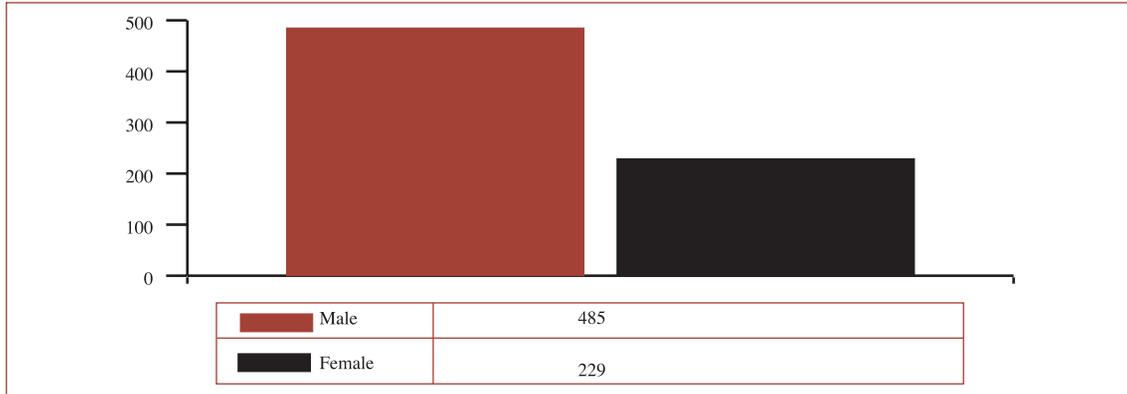


## Appendix C

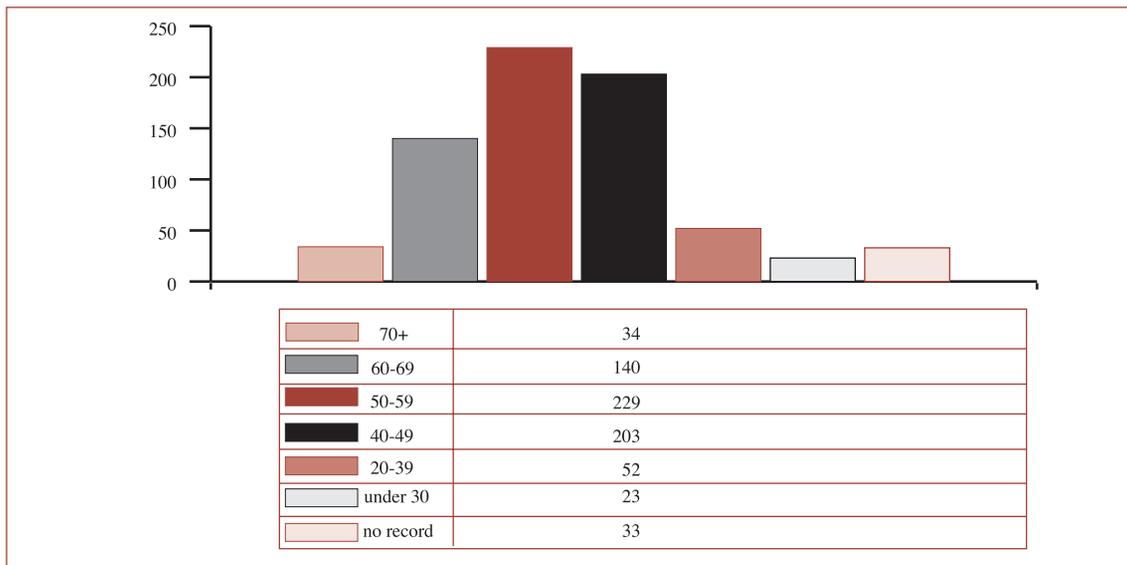
### Investigation Committee Statistics

Total number of requests extant at 30 April 2001: 714

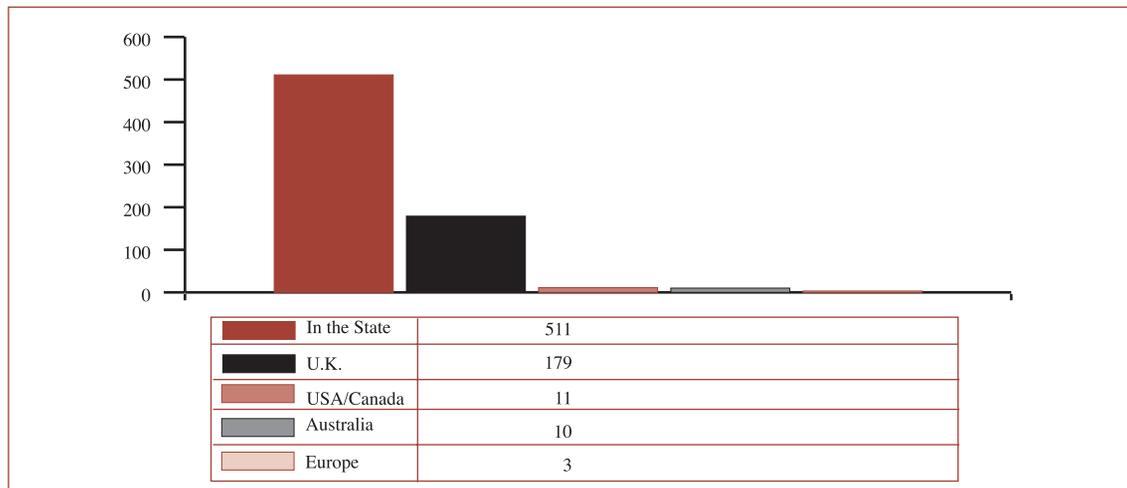
#### Gender



#### Age



#### Current Place of Residence



# APPENDIX C



# **Commission to Inquire into Child Abuse**

## **Second Interim Report**

**November 2001**

Published by:  
Commission to Inquire into Child Abuse,  
Second Floor,  
St. Stephen's Green House,  
Earlsfort Terrace,  
Dublin 2.  
Tel.: (01) 662 4444  
Callsave: 1850 20 11 20 (Rep. Of Ireland)  
Lo-Call: 0845 3098 139 (N.I. and U.K.)  
Website: [www.childabusecommission.ie](http://www.childabusecommission.ie).



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## 1. Purpose of the Second Interim Report

In accordance with its statutory obligation under the Commission to Inquire into Child Abuse Act, 2000 (the Act)<sup>1</sup>, the Commission to Inquire into Child Abuse (the Commission) published its first Interim Report (the Interim Report) on 22 May, 2001, in which it informed the public of the work it had carried out since its establishment on 23 May, 2000. It also outlined the obstacles which had impeded its work during the first year of its existence. The most significant obstacle had been the failure of the Minister for Education & Science (the Minister), in accordance with his power under the Act<sup>2</sup>, to make a scheme for payment of expenses of legal representation before the Investigation Committee. In the Interim Report, the Commission set out its view that that obstacle had been partially removed just before publication, to the extent that a scheme providing for the costs of legal representation at the first phase hearings of the Investigation Committee had been made on 9 May, 2001 and the Commission had been informed that a further scheme would provide for the second phase. The other significant obstacle to the progress of the work of both the Investigation Committee and the Confidential Committee had been the stance adopted by the legal representatives of many survivors of institutional child abuse that, until such time as the issue of a scheme for payment of compensation to their clients was satisfactorily addressed, it would be difficult for them to advise their clients as to whether participation in the work of the Commission was in their personal or legal interest. The Interim Report recorded that on 27 February, 2001 the Minister had made an announcement that the Government had agreed to proposals for a compensation scheme for survivors of institutional child abuse and the drafting of legislation to give effect to the proposals. Under the proposals there would be no direct interface between the proposed compensation scheme and the work of the Commission.

As was stated in the Interim Report, as of mid May, 2001 it was impossible to predict how long it would take to afford hearings to all persons who wish to give evidence to the Commission, although it was possible to predict with certainty that the work of the Commission would not be completed within the two year time span envisaged by the Act<sup>3</sup>. However, partial provision having been made for the payment of the costs of legal representation before the Investigation Committee, the Commission announced—

- (a) the imposition of a closing date, 31 July, 2001, for receipt of requests to give evidence to the Commission, and
- (b) that thenceforth the time limits provided for in the Rules of Procedure of the Investigation Committee in relation to the first phase of its work would be enforced.

It was hoped that by 30 November, 2001 it would be possible to give some reasonable prediction as to when the various stages in the Commission's inquiries would be completed. Against that background the Commission promised to publish a further Interim Report not later than 30 November, 2001.

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<sup>1</sup> Section 5(5).

<sup>2</sup> Section 20.

<sup>3</sup> Section 5(5).

This Interim Report is published in fulfilment of that promise to give the public, and, in particular, those persons affected by the work of the Commission, information on the progress which has been made during the last six months and to attempt to forecast how the work will be advanced in the future.

The preparation of this report was completed by the Commission on 23 November, 2001 and it records matters in relation to the Commission's functions up to and including that day.

## **2. Closing Date**

The Commission announced in the Interim Report that the final date for receipt of requests to participate in the Commission's inquiry would be 31 July, 2001, and that notification of this time limit would be given by public advertisement. The advertising campaign commenced on 22 May, 2001. Over the following period of two months, the Commission conducted a comprehensive advertising campaign, in the print media in the State and in the United Kingdom and in the broadcast media in the State, announcing the closing date. Information on the closing date was also disseminated through the work of groups representing survivors of institutional child abuse in the State and in the United Kingdom and professionals involved with victims of institutional abuse. Notice of the closing date was also given to adult residential institutions.

The response from persons wishing to give evidence to the Commission was considerable. As was stated in the Interim Report, as at 30 April, 2001 requests to give evidence to both Committees aggregated one thousand, two hundred and thirty-eight (1,238). Following the closing date the volume of requests to give evidence to both Committees had increased to three thousand, one hundred and forty-nine (3,149). Details and an analysis of the volume of requests received by each Committee are set out in the sections on the Confidential Committee and the Investigation Committee which follow.

Despite representations that the closing date should be extended, the Commission, having considered all relevant factors, has decided that the closing date should be adhered to. The factors considered by the Commission in reaching this decision were as follows:

- (a) The Act<sup>4</sup> requires the Commission to publish to the general public its report on its investigation within two years from the establishment day, 23 May, 2001, or such longer period as the Government, after consultation with the Commission, may specify by Order, a draft of which has been laid before each House of the Oireachtas and approved by resolution of each House. When the Commission announced the closing date on 22 May, 2001, half the time span allotted by the Oireachtas for completion of its work had expired. At the closing date more than fourteen of the twenty-four months allotted by the Oireachtas for completion of its work had expired and over a year had elapsed since the Commission had first invited requests to give evidence. In the circumstances, the Commission considers that the imposition of the closing date was reasonable and that it was consistent with the proper exercise of its statutory obligations. The Commission believes that, on the basis of the requests to give evidence

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<sup>4</sup> Section 5(5).

which were received within the time period prescribed by it, it will be in a position, in the course of its investigation, to procure as a complete a picture as is possible within a reasonable period of time, as envisaged by the Oireachtas, of the prevalence of abuse in institutions, the causes, nature and circumstances of such abuse and who was responsible for it.

- (b) Having regard to the passage of time since many of the matters which are being investigated by the Commission are alleged to have occurred, the age profile and state of health of many of the persons making the allegations, and the age profile and state of health of the majority of persons against whom allegations are made, fairness and justice requires that the Commission's investigative remit be fulfilled with reasonable expedition. One of the purposes of imposing and adhering to the closing date is to ensure that this will occur.
- (c) It is the Commission's belief that the publication of its final report on its investigation as soon as reasonably practicable is desirable in the interests of the generality of persons who are participating in the work of the Commission, many of whom submitted requests to give evidence more than a year before the closing date. Until the final report is published it is unlikely that such persons will enjoy all the therapeutic benefits which the Oireachtas intended would accrue to such persons on the implementation of the Commission's statutory remit. Any relaxation of the closing date would delay completion of the Commission's work and would not be in their best interests.
- (d) The Commission has adopted all reasonable measures to inform the public and, in particular, persons affected by its work, of its statutory remit and the implementation of that remit, including the imposition of the closing date. The response it has received supports this conclusion. The Commission is satisfied with the level of response from persons who are currently resident outside the State.

The Commission is now concentrating on processing for hearing the large volume of requests which are pending and on scheduling and conducting hearings.

### **3. Increased volume of work: Additional Resources**

The large response to the Commission's invitation to give evidence to its Committees, which only became manifest in the second half of July, 2001, has necessitated the allocation of increased resources, financial, personnel and physical, to the Commission.

The Commission submitted proposals to the Minister's Department for augmenting the personnel and resources of the Commission. The Commission is satisfied with the Minister's response to the proposals and to requests for additional resources.

Details of the current personnel, staff and legal advisers of the Commission are set out in Appendix A.

### **4. Work of the Confidential Committee**

The total number of requests to testify to the Confidential Committee which have already been heard or which currently are being processed for hearing is one thousand, one

hundred and ninety-two (1,192). The corresponding figure at 30 April, 2001 was five hundred and twenty-four (524). Accordingly, between that date and the closing date there was more than a twofold increase in the work of the Confidential Committee.

A breakdown of the requests according to gender, age and current place of residence of the persons making allegations of abuse (Complainants) is set out in graphic form in Part I of Appendix B. An analysis of the requests reveals the following facts in relation to the Complainants:

- 55% are men
- 45% are women
- 59% are over fifty years of age
- 32% are currently resident outside the State.

The pattern recorded in the Interim Report, in relation to the institutions the subject of the requests, is repeated in relation to the total number of requests now pending. A significant majority of the Complainants have indicated that they wish to give evidence about their childhood experiences in residential care, predominantly while in care in industrial schools or reformatory schools. Some Complainants have indicated that they wish to give evidence in relation to their childhood experiences in more than one such institution. Of the institutions and settings in respect of which it is indicated that Complainants wish to testify, 68% constitute industrial schools and reformatory schools.

During the six months since the Interim Report was published, the hearings of the Confidential Committee have continued. By 23 November, 2001 two hundred and fifty-four (254) hearings have been completed. A breakdown of the completed hearings according to gender, age and current place of residence of the Complainant is set out in graphic form in Part 2 of Appendix B. The Confidential Committee has continued the practice of taking account of the age and state of health and any other relevant facts brought to its attention in relation to persons wishing to give evidence when scheduling hearings.

Of the hearings completed to date thirty-six (36) have been held outside the State, as permitted by the Act<sup>5</sup>. Twenty-three (23) hearings have been held in Ireland at venues other than the Commission's headquarters in Dublin, to facilitate persons unable to travel. The Confidential Committee anticipates that, as the age profile of persons whose hearings are being scheduled decreases, the necessity to conduct hearings outside the Commission's head-quarters will also decrease.

In order to cope with the increased volume of work, the Commission, in its proposals to the Minister in relation to personnel, has sought the appointment of an additional full-time commissioner and sanction for the employment of an additional witness support officer for the Confidential Committee. Approval has been granted. On the assumption that the additional personnel will be in place by January, 2002, the Commission's best estimate of the period it will take to afford hearings to all persons who wish to be heard

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<sup>5</sup> Section 10(7).

by the Confidential Committee, as reflected in the requests to give evidence which are pending, is that it will take until June, 2004.

The foregoing prediction assumes that the caseload of the Confidential Committee will remain static. There are two factors which may impact on the ultimate outturn: the withdrawal from the process of persons who have signified their desire to give evidence, either because of the enactment of the Residential Institutions Redress Bill, 2001 (the Redress Bill) or for some other reason, such as transferring to the Investigation Committee; and the transfer of persons who have indicated a wish to give evidence to the Investigation Committee to the Confidential Committee, as is provided for in the Act<sup>6</sup>. It is impossible to predict what, if any, impact the foregoing factors will have.

If the work of the Confidential Committee is to have the therapeutic effect intended by the Oireachtas it is crucial that the division of the Confidential Committee which conducts each hearing allots sufficient time for the witness to fully recount his or her experiences without any time constraints.

## **5. Work of the Investigation Committee**

Of the total number of requests to give evidence to the Commission on hand, one thousand, nine hundred and fifty-seven (1,957) represent requests to testify to the Investigation Committee. This represents an increase of approximately 175% on the figure recorded in the Interim Report for extant requests to testify to the Investigation Committee as at 30 April, 2001, seven hundred and fourteen (714).

A breakdown of the requests according to gender, age and current place of residence of the Complainant is set out in graphic form in Appendix C. An analysis of the requests reveals the following facts in relation to the Complainants:

- 72% are men
- 28% are women
- 57% are over fifty years of age
- 34% are currently resident outside the State.

Repeating the pattern recorded in the Interim Report in relation to the requests then pending, a significant majority of the Complainants have indicated that they wish to give evidence about their childhood experiences in residential care. As in the case of the Confidential Committee, industrial schools and reformatory schools predominate in these requests and some Complainants have indicated that they wish to testify about their childhood experiences in more than one such institution.

When the Interim Report was published on 22 May, 2001, although the Commission had been in existence for a year, very little progress had been made in the work of the Investigation Committee. Two inquiry officers had been conducting preliminary inquiries in accordance with the provisions of the Act<sup>7</sup> for over five months. However, because of

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<sup>6</sup> Section 19.

<sup>7</sup> Section 23.

the obstacles which were hindering the work of the Investigation Committee, which have already been alluded to, no preliminary inquiry had been completed and no case had been scheduled for hearing. Regrettably, the Investigation Committee cannot report much improvement during the past six months for the reasons outlined below.

The Investigation Committee took immediate steps, as promised in the Interim Report, to enforce the time limits prescribed in its Rules of Procedure for submission of statements. As was reported in the Interim Report, at 30 April, 2001 solicitors acting on behalf of Complainants in two hundred and twenty-eight cases were not prepared to submit statements because of the absence of a scheme for payment of legal expenses and the absence of a scheme for payment of compensation. By the end of May, the number of cases in which Complainants were in default in submitting statements had risen to three hundred and sixty-three cases (363). In each of those cases the Complainant was allowed a further period of four weeks to 29 June, 2001 in which to submit a statement. Unfortunately, to date the outstanding statements have been submitted in only sixty-three (63) of the three hundred and sixty-three (363) cases (i.e. 17% of the cases).

When it became apparent that a substantial number of non-compliant Complainants, 83%, had failed to meet the deadline of 29 June, 2001 imposed by the Investigation Committee, in an effort to advance matters, the Commission instructed its legal team to ascertain the views of the solicitors acting on behalf of those Complainants. Their views were set out in a letter dated 20 July, 2001 from Mac Guill & Company, on behalf of the solicitors, to the Commission's leading counsel, Mr Frank Clarke S.C. In that letter, it was stated that, because of the exclusion from the terms of the Redress Bill of substantial categories of childhood victims, and because of concerns relating to the mode of assessment of compensation provided for in the Bill, the point had not arrived whereby the solicitors could with confidence advise their clients in relation to the work of the Commission. Moreover, dissatisfaction was expressed with the existing scheme for payment of the costs of legal representation. That scheme was described as "seriously flawed". The Commission was asked to agree to or support a request for taxation of costs in default of agreement.

By letter dated 27 July, 2001 the Commission conveyed the solicitors' views, as set out in the letter of 20 July, 2001, to the Minister's Department. On the question of legal costs, the Commission indicated that if, instead of the existing scheme, there were to be provision for taxation of the legal costs of parties appearing before the Investigation Committee by a Taxing Master of the High Court in default of agreement, the Commission would have absolutely no objection to that course, as, from the Commission's perspective, the provision would be workable. The Commission pointed out to the Minister's Department that, in view of the impasse reflected in the letter from Mac Guill & Company, it would be difficult for the Commission to give a reasonable prediction as to when the various stages of the Commission's inquiry would be completed in the further Interim Report which it had promised to publish not later than 30 November, 2001.

In a response dated 31 August, 2001 from the Minister's Department, the Commission was assured that every effort would be made to avoid delays to the Commission's work.

Moreover, the Commission has been informed, through its legal team, that the Minister is agreeable in principle to the taxation of the costs of legal representation at both phases

of the work of the Investigation Committee and proposes to move an amendment at committee stage of the Redress Bill to amend the Act to so provide. Currently the Investigation Committee is carrying into effect the existing scheme in accordance with its terms, as it is required to do under the Act<sup>8</sup>. However, the Commission will implement the amending provision if and when enacted.

The Commission makes no comment on the solicitors' objections to the Redress Bill because, in line with announcement made by the Minister on 27 February, 2001 in relation to his proposals for a compensation scheme for survivors of institutional child abuse, the Commission has no function whatsoever in relation to the matters provided for in the Bill.

While the Commission wishes to afford a hearing to every person who has signified a desire to give evidence to the Investigation Committee, it is of the view that it cannot continue to countenance failure to comply with the time limits included in its procedural rules. The time limits exist for the same reason that the closing date was imposed: to ensure that the inquiry is concluded with reasonable expedition, as envisaged by the Oireachtas; to obviate prejudice to persons against whom allegations are made (Respondents), many of whom are old or physically or mentally infirm; and to bring closure for the generality of persons who are participating in the work of, and co-operating with, the Commission.

During the past six months the Investigation Committee has endeavoured to enforce compliance by Respondents with their statutory obligation to furnish statements in accordance with the Act<sup>9</sup> within the time limits prescribed in the Rules of Procedure of the Investigation Committee. While the Investigation Committee appreciates that, because of the passage of time since the matters alleged occurred, difficulty and delay may be encountered in responding to a request for a statement, nonetheless, the Investigation Committee has been concerned that the lack of response on the part of some of the Respondents might be indicative of an unwillingness to assist in the advancement of the work of the Investigation Committee. Such an attitude could not be tolerated. Steps have been taken, and are being taken to ensure that all Respondents fulfil their statutory obligations in relation to production of statements and complying with the directions of the Investigation Committee.

The Commission wishes to make it clear that the time has come for all Complainants, who have signified a desire to give evidence to the Investigation Committee, to decide whether they wish to participate in the process. If they do, they must comply with the requirements of the Investigation Committee in accordance with its Rules of Procedure. Any Complainant who does not comply, will be deemed to have withdrawn from the process. The Commission relies on their legal representatives to advise them of the implications of this. Similarly, Respondents must comply with the requirements of the Investigation Committee in accordance with its Rules of Procedure. Where necessary, the Commission, as it is entitled to do under the Act<sup>10</sup>, will invoke the assistance of the High Court in procuring compliance with directions it is empowered to issue to Respondents.

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<sup>8</sup> Section 20(3).

<sup>9</sup> Section 23(2)(b).

<sup>10</sup> Section 14(3).

So far, the Investigation Committee has only been able to schedule five cases for hearing. Two hearings have been completed. One hearing has been postponed. In the two remaining cases, the Complainants withdrew from the process. The Investigation Committee is currently scheduling cases in which preliminary inquiries have been completed for hearing from January, 2002 onwards.

In order to cope with the increase in the caseload of the Investigation Committee, two additional inquiry officers have been retained and are working full-time on preliminary inquiries and additional support staff are being recruited.

Predicting with any degree of accuracy how long it will take to afford hearings to all persons who wish to be heard by the Investigation Committee remains problematical. The following factors militate against any accurate estimation:

- (a) The difficulty in determining the length of many of the preliminary inquiries currently being carried out by inquiry officers. Apart from the difficulties already alluded to in procuring compliance with the statutory obligations of Complainants and Respondents to produce statements, these difficulties mainly stem from the complex nature of some of the allegations, which involve multiple institutions, multiple individual alleged perpetrators, some of whom may be dead or difficult to trace; the fact that there is separate legal representation for the various Respondents; and procuring compliance with directions for discovery, production of such documents and such like.
- (b) Difficulty in predicting how many cases will proceed to a hearing. It is anticipated that some Complainants, who have indicated a wish to be heard, may withdraw altogether from the process because of the enactment of the Redress Bill or for other reasons, for example, transferring to the Confidential Committee. It is also possible that some Complainants, as they are entitled to under the Act<sup>11</sup>, will transfer from the Confidential Committee.
- (c) Difficulty in assessing the length of each hearing, because of the varying degree of complexity of the allegations.

Whatever the volume of cases the Investigation Committee ultimately has to deal with, and however complex the cases are, it is the view of the Investigation Committee that the first phase of its work should be completed around the same time as the projected completion of the work of the Confidential Committee, around June, 2004. In order to achieve that objective, the Commission has made a suggestion to the Minister as to how the person-nel of the Commission empowered to make findings of fact in relation to the matters being investigated by the Investigation Committee might be supplemented. On the basis of the current caseload and the Commission's knowledge of the nature and complexity of the cases, in order to complete the hearings of individual allegations in the first phase of the work of the Investigation Committee, it will be necessary for two, or perhaps more, divisions of the Investigation Committee to be sitting simultaneously. The necessary resources in terms of personnel empowered to make findings of fact, administrative support and legal advisers, will have to be made available to the Investigation Committee, if it is to complete the first phase with reasonable expedition.

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<sup>11</sup> Section 19.

Any extension of the first phase of the work of the Investigation Committee beyond June, 2004 could not be so regarded.

The number of parties involved in, and the probable length of the second phase of the work of the Investigation Committee, depends on the outcome of the first phase and, in particular, the number of institutions in respect of which the Commission is satisfied that abuse was established in the course of the first phase hearings. It is estimated that at the conclusion of the first phase hearings, a period of preparation for the second phase hearings of at least six months duration will be necessary. Therefore, it is unlikely that the public hearings of the Investigation Committee, to determine why abuse occurred and the attribution of responsibility for it, will commence before the year 2005, assuming the first phase hearings do not conclude until June, 2004.

Based on the current case load, it is anticipated that the work of the Investigation Committee will not be completed and that the Commission will not be in a position to publish its final report until some time in the year 2005 at the earliest.

## **6. The nature of the inquiries being carried out by the Investigation Committee and the Confidential Committee**

The Commission avails of this opportunity to remind the Complainants, who have indicated a wish to give evidence to the Commission, of the following matters:

- (a) the nature of the inquiries which are being carried out by the Investigation Committee and the Confidential Committee respectively;
- (b) what is entailed in the preliminary inquiries being carried out by the inquiry officers on behalf of the Investigation Committee;
- (c) the manner in which the hearings of individual allegations are conducted by the Investigation Committee and the Confidential Committee respectively; and
- (d) the type of findings which may be included in the respective reports of the Investigation Committee and the Confidential Committee.

To help Complainants review their choice of Committee, these matters are explained in Appendix D. An Information Leaflet, which is designed to explain the Commission's work to survivors of institutional child abuse, may be obtained from the Commission and is posted on the Commission's website.

As it is obliged to do by the Act<sup>12</sup>, each Committee will conduct the hearings at which evidence of abuse is given in an atmosphere that is as sympathetic to, and as understanding of, the Complainants as is compatible with the rights of others and the requirements of justice and as informally as is possible in the circumstances. However, it is important that Complainants are fully aware of the differences between the two Committees and make a fully informed choice of the Committee they wish to attend at an early stage in their participation in the process.

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<sup>12</sup> Section 4(6).

A Complainant who has indicated that he or she proposes to have legal representation before the Investigation Committee should be fully advised of these matters by his or her legal representatives and, if there is concern that the nature of the process of the Investigation Committee would be excessively stressful for the Complainant, consideration should be given to transferring to the Confidential Committee at an early stage. In the small number of cases in which the Complainants, who have indicated an intention to testify to the Investigation Committee, currently do not have legal representation, less than 10% of the cases, the Complainants have been informed twice of the existence of the scheme for payment of legal expenses. Any Complainant who does not have a legal representative on record with the Investigation Committee will be reminded of his or her entitlement to transfer to the Confidential Committee.

## **7. Supports for Witnesses at Hearings**

The Commission also avails of this opportunity to remind persons participating in the work of both the Confidential Committee and the Investigation Committee of the measures which are in place to give them support at hearings, which were outlined in the Interim Report, namely:

- Provision of travel and subsistence expenses for a companion accompanying a witness, who is not accompanied by a counsellor.
- Provision of a fee and travel and subsistence expenses for a pro-fessional counsellor who accompanies a witness.
- Availability of witness support officers to help witnesses in all practical aspects of their contact with the Commission.
- The availability of an emergency outreach counselling service provided by the National Counselling Service.
- The availability of an emergency general practice service at a medical centre close to the Commission's premises in Dublin.

The Commission is making arrangements for the provision of an interpretative service to facilitate Complainants and other witnesses with hearing impairment.

## **8. Vaccine Trials Inquiry**

As was stated therein, at the time of the publication of the Interim Report the Commission was awaiting—

- (i) a Government Order under the Act defining the parameters of the function of the Investigation Committee in conducting an inquiry in relation to vaccine trials following the referral to the Commission of a copy of a report of the Chief Medical Officer of the Department of Health entitled “Report on Three Clinical Trials Involving Babies and Children in Institutional Settings 1960/1961, 1970 and 1973” in mid November, 2000 and
- (ii) a Government decision expanding the membership of the Commission to deal with this aspect of the Commission's work. The Commission to Inquire into Child Abuse Act, 2000 (Additional Functions) Order, 2001 (S.I. No. 280 of

2001), which was made on 19 June, 2001 pursuant to the Act<sup>13</sup>, confers additional functions on the Commission in relation to inquiring into vaccine trials.

By Government decision made on 13 November, 2001, Professor Edward Tempany was appointed an ordinary member of the Commission. Professor Tempany has been assigned to the Investigation Committee. A Division of the Investigation Committee comprising the Chairperson and Professor Tempany will conduct the Vaccine Trials Inquiry.

Two additional inquiry officers and additional support staff are being retained to carry out the preparatory work. Subject to suitable provision for the costs of legal representation being in place, it is hoped that the public hearings in relation to the Vaccine Trials Inquiry will commence in April, 2002.

## **9. Research**

The Commission has received sanction in principle for the funding of a research project into the long term effects of institutional child abuse. The research brief is in the course of being finalised and the Commission will shortly be advertising for expressions of interest from suitable research bodies to conduct the research.

## **10. Working towards making Policy Recommendations**

As was stated in the Interim Report, the policy matter to which the Commission gave priority during the first year of its work is the topic which it referred to as “tracing family” in the Opening Statement, delivered at the first Public Sitting of the Commission on 29 June, 2000. This work is nearing completion and the Commission intends to issue a special report on this matter in early 2002.

The Commission has been informed by Barnardos that, with the support of the the Department of Education & Science, it is expanding the independent information, advice and counselling service it has provided since 1977 for persons separated from their families of origin. The primary focus of the expanded service will be to support persons raised in residential care to access their personal records and in their subsequent adjustment and decision making. It is expected that the expanded service will be operational early in 2002. The Commission is pleased to be able to bring this development to the attention of persons affected by its work. An information brief issued by Barnardos is posted on the Commission’s website.

## **11. Extension of the Commission’s Remit**

Under the provisions of the Act<sup>14</sup> the Commission is required to publish its final Report within two years of its establishment, that is to say, before 23 May, 2002. In view of the volume of requests to give evidence which the Commission has received and the difficulties which the Commission has encountered in advancing its work, as outlined in

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<sup>13</sup> Section 4(4).

<sup>14</sup> Section 5(5).

the Interim Report and this Report, the Commission will be seeking an extension of the period for completion of its work for a further three years from 23 May, 2002. On the basis of the current caseload of the Commission, even with all of the resources in terms of personnel, finance and physical resources which it has sought, it is improbable that the Commission could complete its work any earlier than the end of May, 2005.

## Appendix A

### 1. Personnel of Commission

#### Chairperson

The Honourable Ms Justice Mary Laffoy, Judge of the High Court (Chairperson of the Investigation Committee).

#### Ordinary Members

Dr Patrick Deasy, Consultant Paediatrician (Confidential Committee).

Ms Norah Gibbons, Childcare Director (Chairperson of the Confidential Committee).

Mr Fred Lowe, Principal Clinical Psychologist (Investigation Committee).

Dr Kevin McCoy, retired Chief Inspector, Social Services Inspectorate, Northern Ireland (Confidential Committee).

Dr Imelda Ryan, Consultant Child and Adolescent Psychiatrist (Investigation Committee).

Professor Edward Tempany, Consultant Paediatrician (Investigation Committee).

### 2. Staff of Commission

#### Staff on secondment from Public Service

Finbarr Kelly (Department of Finance): Secretary to the Commission.

Patrick Curley (Department of Social Community and Family Affairs): Registrar of Investigation Committee.

Mary Durack (Department of Education & Science).

John Keenan (Department of Education & Science).

John Nolan (Department of Enterprise, Trade & Employment).

Mary Ryan (Department of Finance).

Helen Lynch (Department of Education & Science).

Margaret Byrne (Department of Education & Science).

Carthage Minnock (Courts Service).

#### Other Staff

Gerry Cronin B.A. Ph.D

Ann Broad

Jillian Ryan

### 3. Inquiry Officers

Paul Ward B.L.

Laura Rattigan B.L.

Cathy Carron B.L.

Aidan McCarthy B.L.

### 4. Legal Team

Frank Clarke S.C.

Deirdre Murphy S.C.

John Major B.L.

Anne Reilly B.L.

Mary Ellen Ring B.L.

## Appendix B: Part 1

### Confidential Committee Statistics

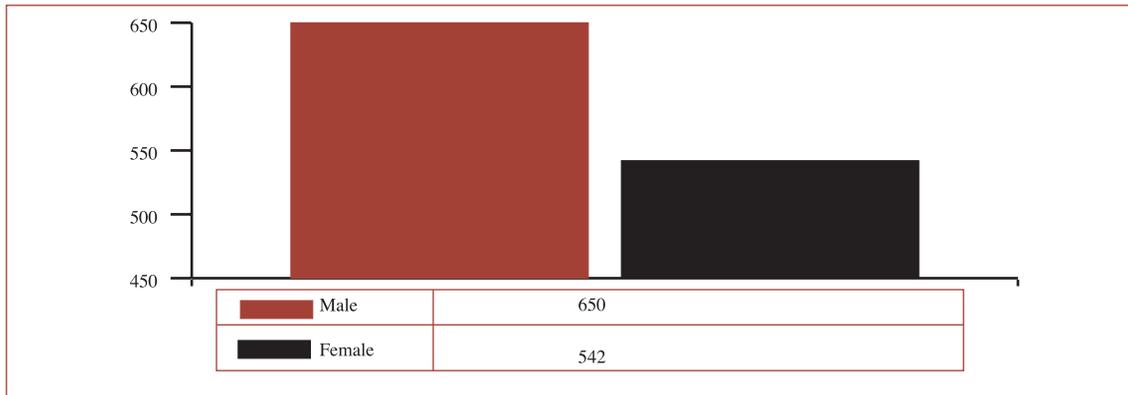
Total number of requests: **1,270**

Withdrawals: **14** Transfers to Investigation Committee: **64**

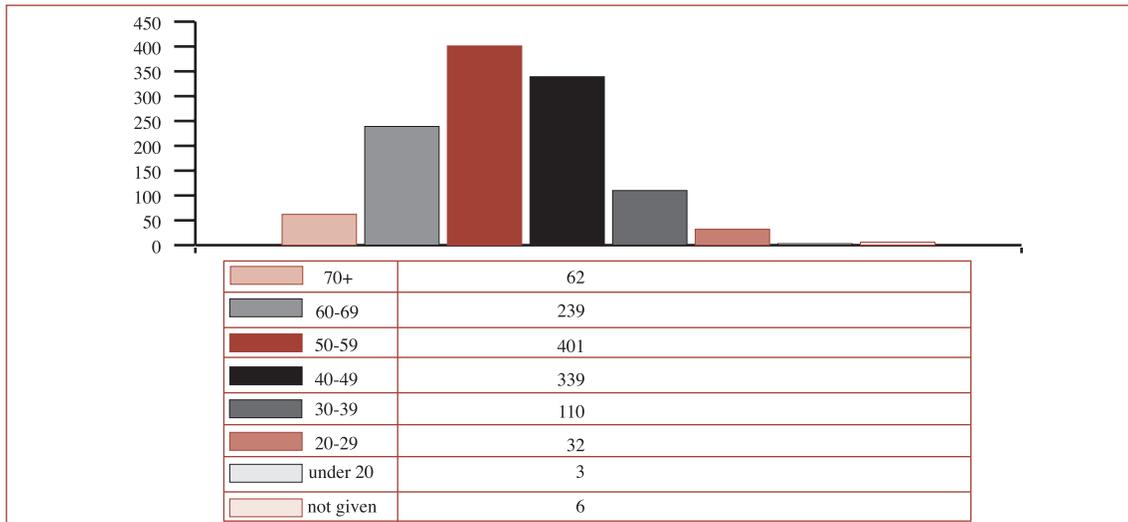
Remaining requests: **1,192**

The breakdown is as follows:

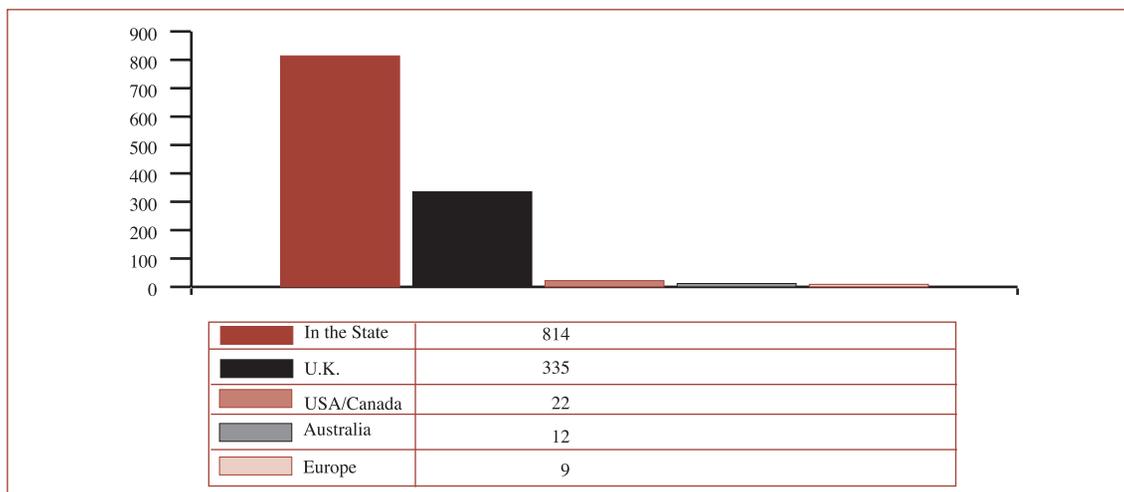
**Gender**



**Age**



**Current Place of Residence**

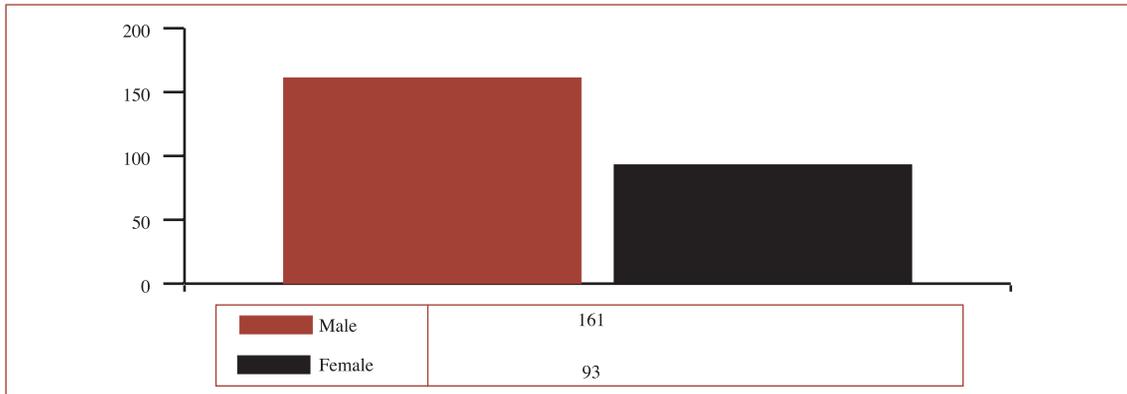


## Appendix B: Part 2

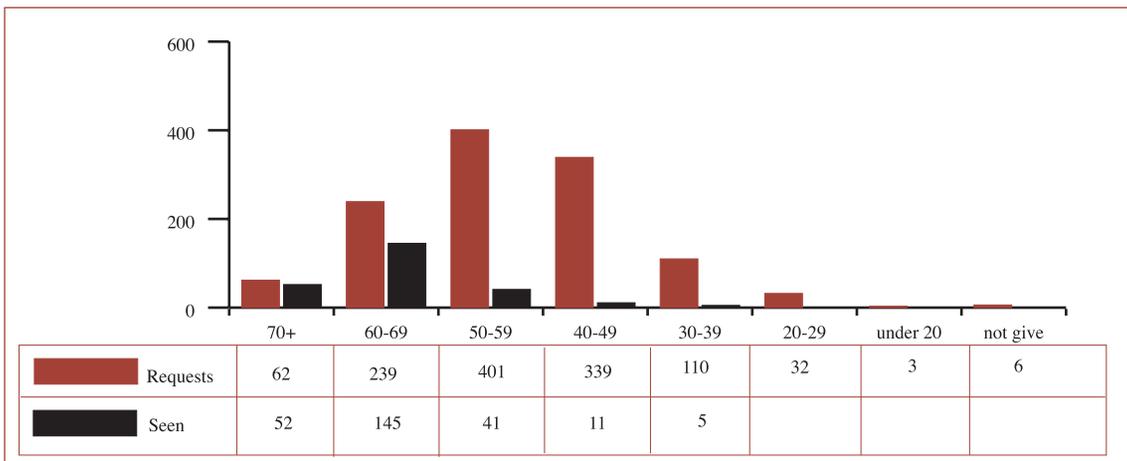
### Confidential Committee Statistics

Total number of hearings completed: 254

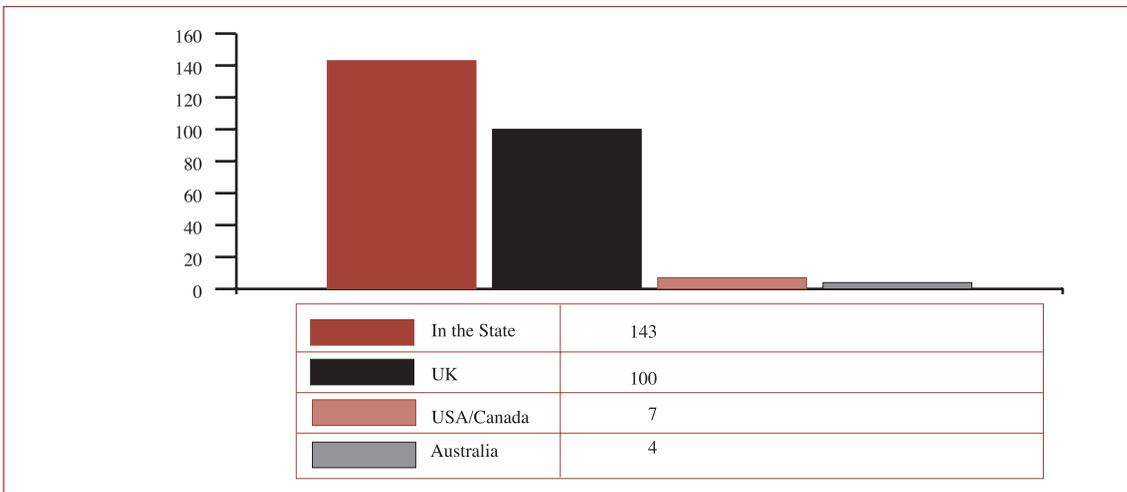
#### Gender



#### Age



#### Place of Residence



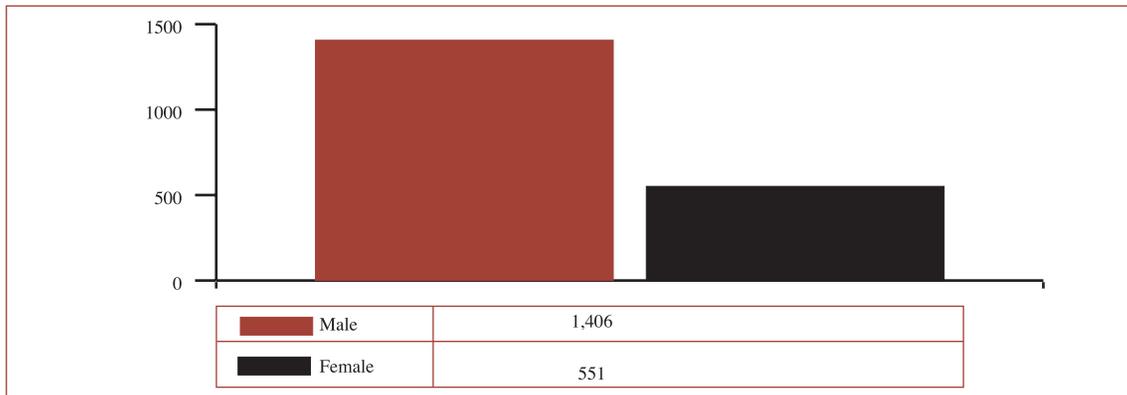
## Appendix C

### Investigation Committee Statistics

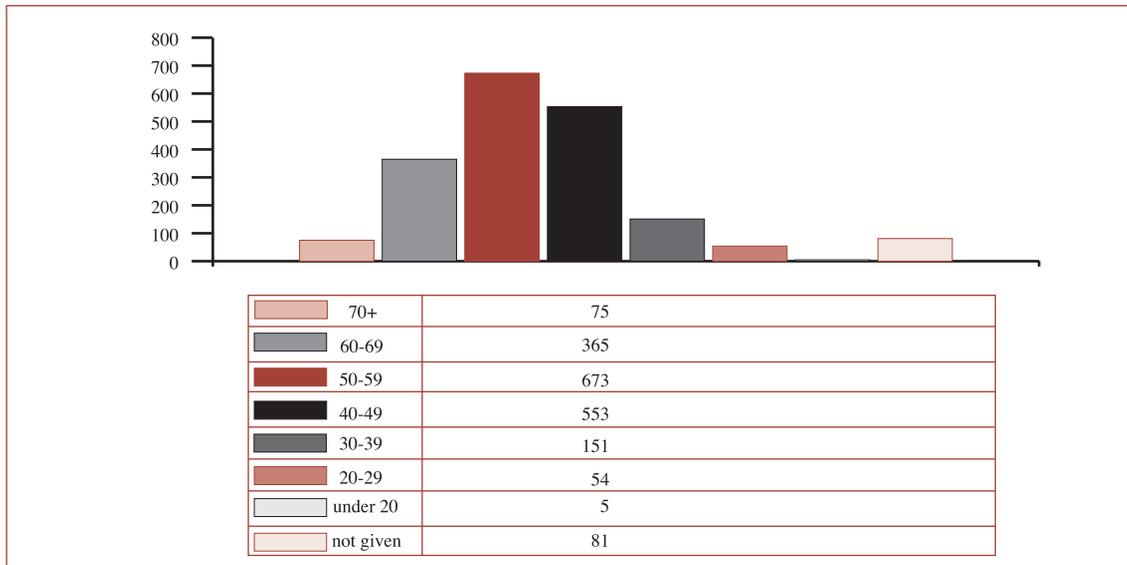
Total number of requests: **1,957**

The breakdown is as follows:

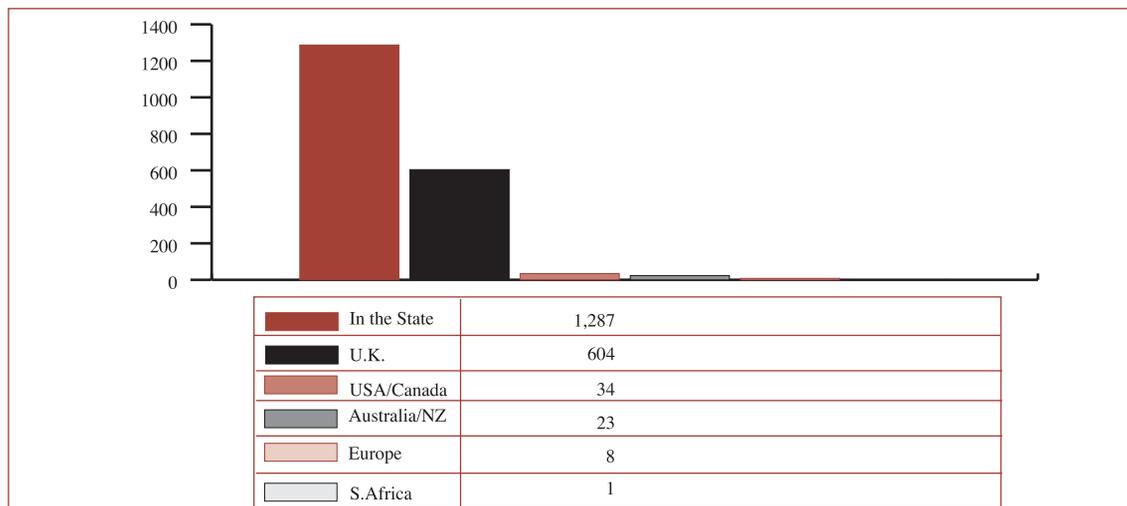
#### Gender



#### Age



#### Current Place of Residence



## Appendix D

### Choice of Committee

#### The Investigation Committee

As was pointed out in the Opening Statement delivered at the first Public Sitting of the Commission on 29 June, 2000, it will be open to the Investigation Committee to reach conclusions, which will be recorded in its Report as findings, where it is appropriate to do so on the evidence, that abuse occurred in a particular institution during a particular period and to name the institution and the person who committed the abuse. Because of this, the Investigation Committee must give every person who, and every institution or other body which, may be the subject of a conclusion which would adversely reflect on him, her or it the opportunity to defend himself, herself or itself.

A person who wishes to give evidence to the Investigation Committee about abuse he or she suffered in an institution (Complainant) must give or produce to an inquiry officer a statement which contains details of the allegations which he or she wishes the Investigation Committee to hear. A copy of the statement and any documents which accompany it are sent by the inquiry officer to every person and every body (Respondent) against whom an allegation is made in the statement. Each Respondent must submit a statement to the inquiry officer responding to the matters set out in the Complainant's statement. On receipt of the statements, the inquiry officer pursues such lines of inquiry as are considered necessary. When such inquiries are completed, the inquiry officer submits the papers to the Investigation Committee with recommendations as to the witnesses who should be called at the hearing, documents the production of which should be required, and such like. In other words, in the course of the preliminary inquiry by the inquiry officer, the facts alleged by the Complainant may be challenged by the Respondents and the inquiry officer takes steps to fully investigate the facts with a view to putting evidence to establish the truth before the Investigation Committee.

At the hearing before the Investigation Committee each individual Respondent against whom an allegation of abuse is made is entitled to be present, as is the representative of the body which managed the institution in which the abuse is alleged to have occurred at the time it is alleged to have occurred. The representative of the regulatory body responsible for the institution at that time, for example, in the case of an industrial school or a reformatory school, the Department of Education and Science is also entitled to be present. In addition to the members of the Investigation Committee, each of the parties present or the legal representative of each is entitled to address questions to the Complainant and to challenge the truth of the evidence which the Complainant gives on oath. Moreover, each party present is entitled to give evidence on oath. Such further witnesses as the Investigation Committee considers may be able to assist it in establishing the truth are also called to give evidence on oath.

Each party involved in a hearing before the Investigation Committee is entitled to be accompanied at the hearing by his, her or its solicitor and counsel. A family member, companion or counsellor accompanying a party to a hearing is not permitted to be in attendance at the hearing, except while he or she is giving evidence, if called as a witness. Waiting rooms are available for accompanying persons in the Commission's premises.

### **The Confidential Committee**

As it was pointed out in the Opening Statement, a person against whom, or an institution in respect of which, an allegation of abuse is made before the Confidential Committee will not be notified of the making of the allegation and will not have an opportunity to answer the allegation or to defend himself, herself or itself. However, the Confidential Committee may not name, or disclose information which would lead to the identification of, the witnesses before the Confidential Committee or the persons they allege committed abuse or any institution or any other person.

Hearings of the Confidential Committee are held in private, usually in the presence of a division of two members of the Committee. Each hearing is scheduled for 10 a.m. or 2 p.m. on a working day so as to ensure that the person testifying can recount his or her experiences in full and without any time pressure. He or she may be accompanied by a companion at the hearing or by a professional counsellor. A detailed information pack is sent to each person before attendance to help him or her fully prepare for the hearing.



# APPENDIX D



**Additional Resources and Review of Mandate  
Correspondence and Public Announcements between Minister for  
Education & Science (Minister) / Department of Education &  
Science (Department) and the Commission to Inquire into Child  
Abuse (the Commission)**

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Residential Institutions Redress Unit,  
Department of Education and Science,  
Marlborough Street,  
Dublin 1.

Mr. Finbarr Kelly,  
Commission Secretary,  
Commission to Inquire into Child Abuse,  
Floor 2 St. Stephen's Green House,  
Earlsfort Terrace,  
Dublin 2

21<sup>st</sup> August 2002

**Re: Additional Resources**

Dear Finbarr,

I refer to previous correspondence concerning the Commission's request for additional resources.

We had a meeting on 7<sup>th</sup> August with the Department of Finance to discuss the matter. At the meeting, it was agreed that the Government should be apprised of:—

- (i) the resourcing needs of the Commission
- (ii) any associated implications for the resourcing of this Department (e.g. the capacity in Athlone to manage an accelerated IC process)
- (iii) the cost of legal representation
- (iv) the duration of the Commission's work

We are grateful for the information provided in respect of the estimated cost of legal representation for some IC cases heard to date. If available, we would also like an estimate of the cost of the recent Procedural Hearings and the High Court case. We know that a High Court judgement is awaited in respect of legal representation and that this may have a significant impact on legal costs for the future IC cases.

We would like to advise the Government of the likely duration of the Commission's work and would appreciate any observations the Commission may have on this matter.

We will ask Mr. McMenemy SC to make contact with Mr. Clarke SC to arrange an early meeting.

I look forward to hearing from you.

Yours sincerely,

Signed: Gerry Murray  
Gerry Murray  
Principal Officer

Office of the Secretary General  
Department of Education and Science

Hon. Miss Justice Laffoy  
Chairperson  
Commission to Inquire into Child Abuse,  
Floor 2,  
St Stephen's Green House,  
Earlsfort Terrace,  
Dublin 2.

2 October, 2002

Dear Judge Laffoy

I refer to recent correspondence with the Commission on the subject of its additional resourcing requirements. The Minister is conscious of the strong wish of the Commission to press forward with the proposed divisionalisation of the Investigation Committee. He fully supports the Commission in its efforts to carry out its statutory functions as set down by the Oireachtas. The divisionalisation proposal in itself, of course, carries substantial additional costs of which the Government needs to be appraised and to consider. In this connection the Minister intends to seek the views of his Cabinet colleagues on this matter within the next few weeks. In addition, examination of these additional requirements provides an opportunity for the Government to consider more generally of the work of the Commission and the expected costs and timescale associated with completing that work.

The Department understands that the Commission anticipates (assuming a divisionalisation of the Investigation Committee) that that Committee will complete Phase 1 of its work by May 2005. Phase 2 will follow immediately and take up to an additional year, with the Commission being in a position to publish a Report in mid to late 2007. It is accepted that there are some uncertainties with this timetable — for instance it is not known how many of those who have applied to have their cases heard by the Committee will actually complete the process.

As regards cost, the single biggest cost is likely to be legal fees. At present estimates, based on the costs of cases which have been heard to date, it appears that legal costs will exceed €150 million. When consideration is given to Phase 2 hearings and any further procedural hearings or challenges to the Commission in the Courts, it appears not unreasonable to assume that legal costs alone could reach approximately €200 million.

The information provided to date by the Commission is much appreciated as are the Commission's views which emerged in the recent discussions between Mr. Clarke, SC and Mr. McMenemy, SC. However, the Minister considers it essential that there be a common, shared understanding between the Department and the Commission on the key issues of cost and timescale so that the Government can be confident that it has all the information

it needs to assist its consideration of the current proposals for additional resources. I would be grateful, therefore, for confirmation by the Commission of the Department's understanding of these issues and for any additional views which you may wish to add at this stage.

Yours sincerely,

Signed: John Dennehy  
John Dennehy,  
Secretary General.

Mr. John Dennehy  
Secretary General  
Department of Education & Science  
Marlborough Street  
Dublin 1

3<sup>rd</sup> October 2002

Re: Additional Resourcing Requirements for Commission

Dear Mr. Dennehy

I refer to your letter of the 2<sup>nd</sup> inst.

At the outset may I reiterate the urgent necessity for a decision on the Commission's request for additional resources to enable the Commission to fulfil its statutory remit, which request was first made to your Department in the Commission's letter of 10<sup>th</sup> June, 2002. Without the additional resources, the Commission simply cannot do the job it has been mandated by the Oireachtas to do.

I would comment on the points made in your letter and make some additional observations as follows:

### **1. Divisionalization of the Investigation Committee**

The necessity for the divisionalization of the work of the Investigation Committee was outlined in the Commission's letter to you of 9<sup>th</sup> November 2001 in which the suggestion was made that the Commission to Inquire into Child Abuse Act, 2000 might be amended to provide for the establishment of a panel of professional personnel with a legal, medical, psychiatric, psychology and/or social work qualifications and expertise from which a person could be selected to sit with a Commissioner on the Investigation Committee to deal with a particular case and make findings of fact on the evidence. Obviously, that suggestion found favour both with your Department and with the Government and provision for the panel of fact-finders ("deciding officers") was made in the Residential Institutions Redress Act, 2002, which, as you know, was enacted on 10<sup>th</sup> April 2002.

The necessity for the Investigation Committee to act in divisions remains. Indeed, it is greater than was anticipated in November 2001. At that stage, it was anticipated that the work load of the Investigation Committee would involve hearing an estimated 1,500 complainants. The rate of attrition anticipated in November 2001 has not materialised. The current position is that 1,800 complainants, who have signified a wish to give evidence to the Investigation Committee, remain in the process.

It is essential that the Investigation Committee has the resources to hear all of the complainants and to conduct the first phase of the inquiry into institutional child abuse mandated by the Act of 2000 within a reasonable time-frame. It is the view of the Investigation Committee that, at the outside, that part of its work must be completed by July 2005, which is the time frame we are aiming for, not May 2005. The major factors

which militate against a situation which would result in any further prolongation of the work of the Investigation Committee are as follows:

- (a) The age profile and expectations of the persons making allegations, the state of health of many of them and the expectations of all them engendered by the Taoiseach's apology on 11<sup>th</sup> May 1999, the establishment of this Commission by the Act of 2000 and the facilitation of the expedition of the work of the Investigation Committee by the provision for a panel of deciding officers in the Act of 2002.
- (b) The age profile of such of the persons against whom allegations are made or who were involved in the running of the institutions as are still alive, and the physical and medical capacity of most of them to participate in the inquiry, in addition to the stress which any unnecessary prolongation of the inquiry will cause them.
- (c) The exacerbation of the difficulties inherent in conducting an inquiry in relation to incidents which occurred and states of affairs which existed over a time span of 60 years from 1940 as time marches on, and, in particular, the difficulties created by the death and incapacity of available witnesses.

In short, any prolongation of the first phase of the work of the Investigation Committee beyond the middle of 2005 threatens the ability of the Investigation Committee to complete its work and the proper fulfilment of the Commission's mandate.

I would disagree with your conclusion that the divisionalization proposal in itself carries substantial additional costs. In my view, it is more likely that the overall cost will be diminished, rather than increased, if the Investigation Committee works in divisions. The volume of work which has to be processed will remain the same, as will the costs attendant on processing it, whether it is processed by three full time Commissioners or by four full time Commissioners augmented by persons drawn from a panel of fact-finders remunerated on a per diem basis. The legal and administrative back up required will remain the same whether the work is processed over three years or seven years.

While, in my view, it is not likely that there will be any additional overall cost arising from divisionalization, it is true that divisionalization has budgetary implications in that, certainly, the burden of the costs will be felt at an earlier stage in the process than would otherwise be the case.

If the 1,800 complainants currently in the process remain with it, even with the additional resources outlined in the recent discussions which took place between the Commission's legal team, Mr. Frank Clarke S.C. and Ms. Deirdre Murphy S.C., and the Departments counsel, Mr. John Mc Menamin S.C., it is unlikely that the Commission will be able to publish a report before mid 2007. However, as you point out, there are uncertainties in estimating the duration of the work of the Commission. One imponderable is whether all of the 1,800 Complainants will see the process through. It may well be that, when the Redress Board is in the course of processing claims, the work of the Investigation Committee will fall off. That remains to be seen. I have to say that I was surprised that the enactment of the Act of 2002 did not result in a greater diminution in the work load of the Commission.

Another imponderable is whether the Investigation Committee will encounter the level of resistance to progressing its work expeditiously, which it has hitherto encountered. Because of the issues which arose between solicitors for complainants and your Department, the Investigation Committee did not succeed in getting in statements from two thirds of the complainants until almost two years had elapsed after the establishment of the Commission., i.e. between April and June this year. It is hoped that in the future the Investigation Committee will have the co-operation of Complainants' solicitors. What is more difficult to predict is the level of resistance which will be encountered from persons and bodies being investigated. Contrary to the public position being adopted by them, I have to say that, in general, such persons and bodies are not co-operating with the Commission in the sense of voluntarily facilitating the conduct of the inquiry. Indeed, it is true to say that the general approach is a defensive and adversarial approach which, of course, the persons and bodies in question are, as a matter of law, entitled to adopt. Moreover, the Investigation Committee has encountered considerable difficulty in procuring compliance with its requests and directions. Regrettably, as regards past experience, the foregoing comments also apply to your Department and the Department of Health & Children.

## **2. Costs of Legal Representation of Complainants and Respondents**

It is true that, as with any public or statutory inquiry where persons or bodies under investigation are entitled to seek and be awarded the cost of legal representation on the basis of taxed costs, the single biggest element in the overall cost of the Commission inevitably will be the cost of legal representation of such persons and bodies. As you know, the Act of 2000, as enacted, provided for payment of costs of legal representation in accordance with a scheme made by your Minister. Such a scheme was made by your Minister in May 2001 and, as the Commission recorded in its first Interim Report published in May 2001, it welcomed the making of that scheme and considered it workable. At all material times subsequently that remained the position of the Commission, which adopted a neutral position on the issues raised by the various parties affected by the work of the Commission as to the adequacy of the costs provided for under the scheme. The provision for taxation of costs was introduced as an amendment to the Act of 2000 in the Act of 2002.

The increase in the overall cost of the Commission is a direct result of the decision that parties appearing before the Investigation Committee, whether complainants or respondents, would be entitled to have their reasonable costs of representation discharged on the basis of taxation, in default of agreement, and the implementation of that decision in the Act of 2002.

I am not in a position to either agree with or dispute your Department's estimate of the overall cost which the Exchequer will have to bear for taxed costs of legal representation before the Investigation Committee. The ultimate outturn in relation to legal costs will depend on how the imponderables referred to in paragraph 1 above turn out.

The cost of challenges to the Commission in the Courts is included in your estimate of the overall costs. I should, perhaps, point out that there has been only one challenge to the Commission in the High Court to date — an application for judicial review of a decision of the Investigation Committee to adhere to the deadline of 31<sup>st</sup> July 2001 for

receipt of requests to testify. That application, which is still pending, is being vigorously defended. The only other court involvement of the Commission was an application initiated by the Commission under section of the Act of 2000 for approval of a determination limiting the number of legal personnel in attendance at hearings at which persons making allegations of abuse give evidence. That matter was heard by the High Court last June and the judgment is to be delivered next Tuesday, 8<sup>th</sup> October 2002. The Commission is not aware that other challenges are in the offing, but, of course, one cannot predict what the future will bring.

### **3. Interim Report**

Although it is not under any statutory obligation to do so, it has been the Commission's intention to publish periodic reports during the currency of its extended mandate. As the Commission has not reported since November 2001, it is anxious to publish a further Interim Report apprising the public of the current state of the performance of its statutory remit and its predictions as to the future course of its work as soon as possible, and, in any event, no later than next November. If the next Interim Report is to be meaningful, the Commission must be able to indicate to the public in realistic terms its capacity to process the work it has on hand and to conduct its statutory inquiry.

### **4. General Consideration of the Work of the Commission**

I note that it is proposed that, in the near future, the Government will consider the work of the Commission generally and the expected costs and time scale associated with completing that work. The Commission is anxious to give your Department and the Government as clear a picture as possible of the likely cost to the Exchequer of the implementation of the Commission's mandate in accordance with the Act of 2000, as amended by the Act of 2002. It is for that reason that it was suggested that there be discussions between the Commission's legal team and the legal team retained by your Department, because it is felt that the lawyers who are involved in the process on a day to day basis are in the best position to evaluate the difficulties which the Investigation Committee is encountering and is likely to encounter in the future. If it is felt that either the members of the Commission or the administrative or legal personnel working with the Commission can be of any further assistance, please let me know.

Having said that, I feel I must point out that the nature of the inquiry which the Commission is mandated to conduct is the result of policy decisions made by the Government on the basis of two reports submitted by the non-statutory Commission in September and October 1999, which decisions were endorsed by the Oireachtas in enacting the Act of 2000. The statutory amendment in relation to costs of legal representation, which it is acknowledged is the single biggest cost factor in the overall cost of the Commission, is the result of a Government decision which was also endorsed by the Oireachtas in enacting the amendment to the Act of 2000 contained in the Act of 2002. The Commission is endeavouring to give effect to the policy of the Government and the will of the Oireachtas and it is to that end that it needs the additional resources.

Finally, as the Commission's request for additional resources for the Investigation Committee was varied in the discussions between the Commission's legal team and the Department's legal team, I would suggest that it would be prudent for the Department to commit to writing its understanding of the Commission's current requirements and to submit it for consideration to the Commission, so as to obviate any controversy at a later stage as to what was discussed by counsel.

Yours sincerely

Signed: Mary Laffoy

Ms. Justice Laffoy

Chairperson

## REQUEST FOR ADDITIONAL RESOURCES

### Issue

This paper is a response to the request contained in a letter dated 26<sup>th</sup> November 2002 from the Department of Education and Science seeking clarification—

“...regarding the comparison between the Commission continuing as presently constituted and staffed, how many hearings could be finalised in a year, how long Phase 1 will take, etc. and the same information should the Investigation Committee work in four divisions?”

### Imponderables

As has been pointed out since early November 2001, when the Commission suggested a legislative change to empower it to conduct the inquiry of the Investigation Committee through a number of divisions working simultaneously, predicting with any degree of reasonable accuracy how long it will take the Commission to fulfil its mandate is very difficult. Among the imponderables are:

- The number of Complainants to the Investigation Committee who will have to be heard.
- The complexity of the allegations made by a Complainant — whether they relate to two or more institutions, the number of individuals against whom allegations are made, whether the allegations encompass various types of abuse and so forth.
- The length of time it will take to prepare for the hearings and, in particular, the length of time it will take to procure compliance with requests for statements and directions for discovery and production of documents.
- The duration of the hearings and, in particular, the extent to which persons and bodies against whom allegations are made adopt a defensive and adversarial approach.

### Modularisation of work of Investigation Committee

Two-thirds of the Complainants who have applied to give evidence to the Investigation Committee, in absolute terms approximately 1,200 Complainants, did not comply with requests for statements detailing their allegations until the enactment of the Residential Institutions Redress Act, 2002 and the imposition of a deadline of 30<sup>th</sup> June, 2002 for receipt of statements. On expiry of the deadline, the Investigation Committee reviewed its procedures and decided to adopt a modular approach in the conduct of its inquiry, which would focus on a particular institution, for example, a particular industrial school, or on a particular category of institutions, for example, hospitals. That is the approach which it is envisaged will be adopted whether the Investigation Committee inquiry is conducted—

- with the membership and staff as presently constituted (scenario A), or
- through four divisions working simultaneously and with the staff and legal personnel to support four divisions (scenario B).

### **Scenario A**

The current position is that preliminary investigations are taking place in relation to allegations by approximately 1,700 Complainants. One module (Newtownforbes Industrial School) is at an advanced stage of preparation. Preliminary work has begun on others. When the time for submissions on the Framework of Procedures recently published by the Investigation Committee expires on 5<sup>th</sup> December next, the Investigation Committee proposes prioritising the preparation of other modules. As the Department's legal team has already been advised, the intention is to prioritise Dundalk Industrial School, Artane Industrial School and Goldenbridge Industrial School.

If the Investigation Committee were constrained to operate under scenario A next year, it is envisaged that the Newtownforbes module and the Dundalk module would be completed and the Artane module would be in progress at the end of the year. Assuming some level of attrition on the number of Complainants to be heard, because of death, satisfaction with redress etc., it could take between seven years and ten years from the commencement of the year 2003 to complete Phase 1 of the work of the Investigation Committee.

### **Scenario B**

If the Investigation Committee were in a position to work through four divisions preparing modules and conducting hearings simultaneously, it would propose to commence both the Artane module and the Goldenbridge module early in the year 2003 and to run both modules simultaneously until completed. The two other divisions would be working simultaneously on smaller modules. When the position was reviewed at the commencement of September last, the Investigation Committee's legal team estimated, albeit on a very crude basis, that, subject to the additional resources coming on stream without delay, it should be possible to complete Phase 1 by the end of July 2005. Given the uncertainty as to when the additional resources are likely to be in place, that projected end of Phase 1 may not be realistic. However, for the reasons set out below in relation to the impossibility of properly implementing the Investigation Committee's mandate under scenario A, it is considered that the Investigation Committee would have to aspire, and work, to implementing Phase 1 of the mandate by the end of July 2005.

### **Impossibility of Scenario A**

It will not be possible for the Investigation Committee as presently constituted, and with the level of staff and legal personnel by which it is presently supported, to properly fulfil its statutory remit.

The antiquity of the majority of the allegations being investigated by the Investigation Committee has already given rise to considerable difficulty for the Investigation Committee. A ruling of the Investigation Committee on issues in relation to the consequences of lapse of time, following a procedural hearing at the end of July 2002, may be the subject of a legal challenge in the High Court in the near future. While there was consensus among the parties represented at the procedural hearing that the Investigation Committee was not culpable for, or for contributing to, delay in having allegations dealt with up to that time, it is probable, unless the Investigation Committee can demonstrate in the short term that it is in a position to complete Phase 1 within a reasonable timeframe, that it will be alleged that the Investigation Committee is culpable of delay which is

prejudicing the ability of persons against whom allegations are made to defend their reputations. The longer it takes the Investigation Committee to do its work, the greater the risk of a successful legal challenge.

Apart from the possible legal consequences of the fulfilment of the Investigation Committee's remit being unduly protracted, it is not in the interests of any of the parties involved in the process that the Investigation Committee should not be in a position to complete Phase 1 of its work within a reasonable timeframe. Of particular concern are the following considerations:

- The need to bring closure for Complainants and for other victims of abuse in childhood, many of whom are old and in bad health.
- The avoidance of unfairness to individuals against whom allegations have been made, which may not stand up following investigation. Many of the individual Respondents are very old. Some are in bad health. It may be that, in certain cases, the end of their lives are being unfairly blighted by the stress of a prolonged investigation. Issues of fairness also arise in relation to individuals against whom allegations have been made, who are still of working age, whose capacity to work in institutions may be affected.

Having regard to the volume of allegations which the Investigation Committee is currently investigating and the complexity of the issues to which they give rise, if the mandate of the Investigation Committee is to be fulfilled properly and in accordance with constitutional justice, scenario A is not a viable option.

## **The Confidential Committee**

The Confidential Committee has completed 554 hearings. It is estimated that it will have completed hearing the remainder of the persons who have signified a wish to give evidence to it by the end of 2004.

The Confidential Committee is fulfilling its statutory remit in the overall context of the provisions of the Commission to Inquire into Child Abuse Act, 2000, which envisages the published report of the Commission being based on the work of both the Confidential Committee and the Investigation Committee. It is considered that to postpone the publication of the results of the inquiry being conducted by the Confidential Committee for any prolonged period of time after completion of the hearings of the Confidential Committee would be unfair and, perhaps, detrimental to the interests of the persons who have, or will have, recounted their experiences to the Confidential Committee, in most cases with difficulty, in the expectation that the conclusions to be drawn from their experiences would be the subject of a published report within a reasonable timeframe, which would be of benefit to society.

If the work of the Commission is to have a meaningful outcome, and is to be seen to have a meaningful outcome, it must be completed within a reasonable timeframe.

## **Department of Education and Science as Respondent**

Most of the allegations being investigated by the Investigation Committee relate to institutions for which the predecessors of the Minister for Education and Science had regulatory responsibility. The ability of the Department to respond within a reasonable timeframe to requests for statements and for discovery and production of documents is essential to the efficient implementation of the work of the Investigation Committee. The Investigation Committee is appreciative of the efforts which the officials in the Department and the Department's legal team have made in assisting the Commission. However, it appears to the Investigation Committee that there has been an absence of Departmental policy to deploy sufficient appropriate resources to ensure that the Minister can comply with his statutory obligations as a Respondent in the process. If the situation is not remedied, the work of the Investigation Committee will be put in jeopardy.

29<sup>th</sup> November 2002

Signed: Mary Laffoy Chairperson  
Commission/Investigation Committee

Signed: Norah Gibbons  
Chairperson  
Confidential Committee

Office of the Minister for Education and Science,  
Marlborough Street,  
Dublin 1.

The Honourable Justice Mary Laffoy,  
Chairperson,  
Commission to Inquire into Child Abuse,  
Floor 2  
St. Stephen's Green House,  
Earlsfort Terrace,  
Dublin 2.

5<sup>th</sup> December, 2002

Dear Judge Laffoy,

I refer to your request for additional resources to be provided to the Commission to Inquire into Child Abuse to allow for the Investigation Committee to work in four divisions instead of the present one.

As previously outlined to you in a telephone conversation with a senior official from my Department on the 20<sup>th</sup> November 2002 the Government had requested additional information regarding this request and had, following a discussion on the issue, decided to give the matter further consideration in early December.

At a meeting held on 3<sup>rd</sup> December 2002 the Government—

agreed in principle to the provision of the additional resources as requested. The Commission should proceed with the process of filling new posts in a gradual fashion; and

directed that a review of the terms of reference of the Commission which should involve a consultation process with the Commission, the Survivor Groups, the Departments of Health and Children; Justice, Equality and Law Reform and be led by the Office of the Attorney General should commence immediately. The review is to be completed by mid-February 2003

directed that a review of the individual entitlement of interested parties to legal fees for representation at the Commission be commenced in consultation with the office of the Commission, the office of the Attorney General and the Department of Finance.

Any changes to the mandate of the Commission occasioned by the review may, of course, reflect on the final amount of additional resources provided to the Commission with adjustments being made at the end of February 2003. In this regard the Commission should consider the appointment of any additional staff being made on a short contract basis, say six months, to allow for revised staffing levels when the review is completed.

Officials from my Department will be in contact with you shortly regarding the provision of additional staffing resources and a timetable for the review of the terms of reference.

I hope that this decision will meet the needs of the Commission and would like to thank you for the recent additional information which clarified a number of issues for me.

Yours sincerely,

Signed: Noel Dempsey  
Noel Dempsey T.D.  
Minister for Education & Science

Mr. John Dennehy  
Secretary General  
Department of Education & Science  
Marlborough Street  
Dublin 1

6<sup>th</sup> December 2002

Re: Request for Additional Resources

Dear Mr Dennehy

The Investigation Committee of the Commission has considered the Government's response to the Commission's request for additional resources, as communicated in a letter dated 5<sup>th</sup> December, 2002 from the Minister, which I received this morning.

May I say at the outset that the Investigation Committee has no objection in principle to a review of its statutory functions being carried out by the Attorney General, welcomes being involved in the consultation process and looks forward to assisting the Attorney General in every way it can.

The Investigation Committee does not fully understand the import of the Government decision and requests clarification on two points.

First, it is noted that the Government—

“directed that a review of the individual entitlement of interested parties to legal fees for representation at the Commission be commenced in consultation with the office of the Commission, the office of the Attorney General and the Department of Finance”.

Save to say that it is assumed that it was not the intention of the Government to trench on the statutory independence of the Commission or to interfere in any way with discretions conferred by the Oireachtas on the Investigation Committee, the Investigation Committee does not understand the nature of the review contemplated. Immediate clarification of the intentions of the Government in this regard would be welcomed.

Secondly, it is the assumption of the Investigation Committee that, by virtue of the fact that its request for additional resources was confined to servicing the Investigation Committee, the remit review contemplated by the Government is, likewise, confined to the remit of the Investigation Committee, and has no effect on the work of either the Confidential Committee or the Vaccine Trials Division. Confirmation that this understanding is correct would also be welcomed.

While the Government decision gives the appearance of accepting the need for greater resources, it seems to the Investigation Committee that, having regard to the totality of the elements of the decision, the same amounts in substance to a refusal of the request for additional resources pending the outcome of the remit review with an indication that, in the light of the extent of the remit which may remain subsequent to such review,

additional resources may be considered. We can see no other reason for the necessity to fill posts on a gradual basis, retain personnel on short term contracts, and the adjustment of the level of resources to be made available in the light of the completion of the review, unless the decision of the Government is in substance to postpone any real decision on resources until after decisions have been taken in relation to the remit review.

It also seems to the Investigation Committee that the only reasonable inference to be drawn from the decision of the Government taken as a whole is that there is a significant possibility that the result of the contemplated review will leave the Commission (and, in particular, the Investigation Committee) with a reduced remit. Unless there was such a realistic possibility, then the Investigation Committee can see no basis for not implementing the increased resources sought immediately.

The Investigation Committee, must, therefore, operate on a basis that it has notice of at least a significant possibility that some of the matters currently within its remit will not remain so subsequent to the review, and the enactment of any legislation which may be required as a result of the determinations of the Government made on foot thereof. This does place the Commission in an invidious position.

The Investigation Committee must now consider what action it is to take during the currency of the review. On the one hand, if it is to continue to operate within its existing remit, it will necessarily cause very significant expense indeed to be incurred, which will be borne out of public funds, and will place a very substantial burden on many third parties by requiring compliance with their current obligations. It is important that the scale of those obligations, both financial and otherwise, are fully understood by the Department.

The Department will be aware, both from its involvement in the procedures of the Commission, and from previous correspondence and contact in relation to Commission resources, that the Investigation Committee has been involved in a procedural review, as a result of which it published on a provisional basis a procedural framework document requiring formal submissions by yesterday. It has always been the Investigation Committee's intention to consider the representations made on foot of the publication of the provisional framework document within as short a time as possible, and to publish a finalised version of same within approximately ten days of the closing date for the receipt of submissions. It has also been made clear publicly that immediately upon the finalisation of the framework document, and contingent on the resources which the Commission has requested being made available to it, the Investigation Committee would also publish an indication of the manner in which the various modules identified would be distributed between its four divisions, together with an indication of the order in which those modules would be dealt with by each division. A necessary consequence of the publication of a running order in such form is that parties would be given tight, but realistic, deadlines for complying with their obligations in relation to the finalisation of replying statements as required under the Commission to Inquire into Child Abuse Act, 2000, and the making of discovery (also as required under the Act) so as to enable preparatory work for the conduct of all modules (but most particularly those scheduled to start in early course) to advance.

In many cases, Respondents (and, in particular, managerial Respondents) necessarily have to consult with members of Congregations (many of whom are abroad), former employees and associates and such like and to consider and consult whatever documentation may be available to them so as to enable them to put in replying statements. The Department will

be well aware of this fact from its own experience in relation to the filing by it of replying statements. This means that a very substantial amount of work indeed will have to be put into the compilation of the replying statements, and the necessary compilation of relevant documentation, if the tight but reasonable time limits contemplated by the Investigation Committee are to be imposed and complied with. It seems, therefore, likely that the third party costs that will be incurred over the next number of months will be very substantial indeed. The Investigation Committee estimates, that if it is to continue enforcing its current remit it will be insisting on the filing of statements numbering well into the thousands within that time frame. It will also be making Discovery Directions which will require many parties to apply very significant resources in relation to commencing the compilation of documents required to be disclosed on foot of such Directions. While it is difficult to give any accurate estimate as to the amount of third party costs which the State will have to bear on foot of the above, a very rough calculation makes it clear that many millions of pounds, perhaps even tens of millions of pounds of third party costs will be incurred over the next relatively short period should the Commission continue to operate under its current remit pending the result of the review.

The Investigation Committee's concern is that a significant portion of that expense may turn out to have been incurred in relation to matters which cease (either in whole or in part) to be within the Commission's remit as a result of that review. It must, therefore, be seen that very significant public expenditure indeed may transpire to have been incurred in relation to material (whether in the form of replying statements or discovery) which ultimately ceases to be any practical benefit to the Commission in the light of any revised remit. Furthermore, individual parties and managerial Respondents will have had the significant burden of dealing with these matters in circumstances where some, at least, of them might have been spared all, or part of, that burden in the light of the reviewed remit.

Having regard to those very serious matters, the Investigation Committee is most concerned that to continue with its current remit, pending the review, will leave it open to the legitimate complaint that it has incurred very substantial public expense, and placed upon many parties a burden, which either was unnecessary or increased over that which was necessary in the light of the revised remit which ultimately is put in place.

On the other hand, the Investigation Committee is concerned that it is currently bound by its existing statutory remit. If it is not to continue (unless and until the Oireachtas, by amending legislation, alters that remit) to carry out that obligation as best it can, it is open to the legitimate criticism that it is in breach of the statutory requirement placed upon it by the legislation. Furthermore, and as pointed out in previous documentation passing between the Commission, on the one hand, and the Department and the office of the Attorney General, on the other hand, while there has not as yet been any accusation analogous to prosecutorial delay in relation to the activities of the Commission, any failure to press ahead vigorously with the procedures contemplated in the framework document may lead to such accusations in the future.

Finally, the Investigation Committee is concerned that while the Government decision contemplates a completion of the remit review process by mid-February, its experience to date does not give it great confidence that this time limit will be met. In the context of time which it has taken to deal with its request for additional resources, coupled with its past experience in relation to the time which it took to deal with other issues (such as the Government decision in principle in relation to redress, and the questions concerning the

nature of the costs to be awarded to parties appearing before the Commission) which the Commission notified the Department were delaying in practical terms its ability to comply with its remit, the Committee is concerned that there must be a very real risk (most especially, having regard to the consultation process contemplated, which it notes, and fully understands is an essential part of any review) that the review will take longer to complete than anticipated. Furthermore, if the review were to recommend an alteration in the Commission's remit, the same can only be put into practical effect by amending legislation with an inevitable further delay (even in the case of expedited legislation) before the Commission's statutory obligations are actually changed. The Investigation Committee, has already drawn attention to the fact that the time scale envisaged in its original proposals, while remaining as its aspiration, is already unlikely to be met in the light of the delay in responding to its request for resources. If it is not to press ahead in implementing the result of its own procedural review by virtue of the uncertainty which has been caused by the remit review, the time frame will necessarily slip further back. On the other hand (and in the light of the fact that there is a real risk that the period of time that will elapse before any legislative amendments are put in place may be greater than the time specified in the Government's determination for the conclusion of the remit review), if it does, not the costs and burdens of so pressing ahead will be all the greater.

For all the above reasons, the Investigation Committee feels that it is now placed in an impossible position. If it is to press ahead, it will be open to legitimate criticism that it has incurred huge public expense, and placed major burdens on many third parties, at a time when it knew that there was a real possibility that at least some of that expense, and some of those burdens, would ultimately be unnecessary and be wasted. If it does not press ahead, it is open to the criticism that it is not complying with its statutory obligations. The Investigation Committee would be minded to suspend the operation of its current procedures until such time as the remit review is complete and any alterations of its mandate brought into force by legislation. However, it feels that it cannot adopt this course absent enabling legislation. It does, however, feel that such enabling legislation would be very simple indeed, and would solve the extreme difficulties into which the Investigation Committee has been placed as a result of the Government decision.

The Investigation Committee would welcome a very early response to this letter, and, at any rate, not later than 13<sup>th</sup> December next. It is in a position where it is required at some stage during the week commencing the 16<sup>th</sup> December to publish its final framework of procedures, and it feels that it must, in conjunction with that publication, state its position in relation to what is to happen over the following three or four months pending the result of the remit review. The Investigation Committee will be placed in an impossible position in relation to indicating what its intentions are unless it has available to it the Government's response to the issues raised above.

Pending a response, the Investigation Committee will not embark on any initiative which is likely to give rise to liability for costs not already accruing.

Yours sincerely

Signed Mary Laffoy  
Ms. Justice Laffoy  
Chairperson

Office of the Secretary General  
Department of Education and Science

13 December 2002.

The Honourable Justice Mary Laffoy  
Chairperson,  
Commission to Inquire into Child Abuse,  
Floor 2,  
St. Stephen's Green House,  
Earlsfort Terrace,  
Dublin 2.

Dear Judge Laffoy,

Thank you for your letter of 6 December regarding the decision of the Government of 26 November concerning the allocation of additional resources to the Commission. I hope I can provide the clarification of the decision that you have requested.

Firstly, I would like to emphasise that the review decided on by the Government is confined to the Investigation Committee. The purpose of the review, being led by the Attorney General, is to address legislative changes so as to approach the issue of abuse in institutions on the basis of the Commission not being required to conduct an investigation in relation to every allegation of abuse. Consideration is to be given to changing the Commission to Inquire into Child Abuse Act, 2000 so as to provide that findings, at least in respect of residential institutions, can be predicated on a statistically valid sample of allegations. If this is practical and legally possible (and that is one of the issues to be addressed in the review) then it will only be in respect of those allegations that there will be full hearings with all of the legal and constitutional rights applying to those hearings.

The review of the legislation will be carried out in consultation with the Commission, whose views in this matter are of the utmost importance. It is also intended to consult with representatives of the victims of abuse. It is clear that any change of the remit of the Investigation Committee which emerges from the review can only be effected through amending legislation. The review itself, and any legislation arising from it, will be treated as a matter of priority both by the Attorney General's Office and this Department.

In engaging in the review, the Government is not seeking to interfere with the statutory independence of the Commission. Equally, it is not seeking to interfere with the discretion vested in the Investigation Committee. Obviously therefore, the Investigation Committee must continue to discharge its statutory duties and operate within its existing remit, in such a manner as it considers to be appropriate. Until an amendment is made to the existing legislation there can be no other analysis of the Committee's obligations. Hence the Investigation Committee should proceed to take whatever steps it considers are appropriate so as to operate in accordance with its current remit.

It is not a legal option to suspend the work of the Investigation Committee pending the enactment of any amending legislation. Indeed as you point out there is not current legal basis for the suspension and legislation will not be passed by the Dáil between now and the last day of this session. However, if the review process becomes protracted then legislation of such a nature can be considered. The position in that regard can be reviewed in January 2003.

Whether a statistical sampling process could include all those cases that are now to be processed by the Investigation Committee is a matter that will be addressed in the review process. It is not my intention to allow unnecessary expenditure to occur. Indeed the object of the review is to address the issue of costs in the context of the best way to serve the public interest. An estimate of the level of legal costs is that they will be of the order of €150/200 million and this needs to be considered in the context of the review.

It should, however, be clarified that any changes in the law, in relation to the entitlement to legal costs or the granting of a discretion on wider grounds to those stipulated in the legislation to refuse such costs, will only apply prospectively. Accordingly, any legislation that is introduced will not affect any orders as to costs made by the Commission or any liability created to-date. What is envisaged, at this juncture, is the introduction of more specific grounds upon which the Commission can, in its discretion, decide to refuse costs to one or more parties appearing before it. It should be pointed out that this is very much a preliminary view of the approach to be adopted by the Government on the issue of costs.

I trust that I have clarified the issues which you have raised and that the Committee is reassured that the Government has agreed to provide the additional resources to the Commission, which it requires under its present remit. It may be that the resources finally to be employed by the Committee may be less than what would now appear to be necessary, but that cannot be determined until the review is completed.

Yours sincerely,

Signed: John Dennehy  
John Dennehy  
Secretary General

Communications Unit  
(Press/Information Office)  
Department of Education and Science,  
Marlborough Street,  
Dublin 1.

**PRESS STATEMENT**  
**FROM**  
**THE MINISTER FOR EDUCATION AND SCIENCE,**  
**MR. NOEL DEMPSEY T.D.**  
**RE: LAFFOY COMMISSION**

**20<sup>TH</sup> DECEMBER 2002**

The Government decided on 3<sup>rd</sup> December 2002, in the context of granting a request for additional resources from the Laffoy Commission, to engage in a process of reviewing the operations and remit of the Commission to Inquire into Child Abuse and in particular its Investigation Committee.

In that regard the Government intends to liaise with the Commission and the representatives of victims of abuse in institutions. The object of the review is to seek to identify statutory mechanisms that will assist the Commission in inquiring into abuse in institutions.

It is the intention of the Government that the review will focus upon procedural and substantive changes and upon alterations in the remit of the Investigation Committee with a view to facilitating a speedier and less costly discharge of its mandate from the Oireachtas.

It is intended that this review will ensure that appropriate findings are made, in respect of institutions, in a manner that is consistent with fair procedures and the public interest in reducing the extent of legal costs.

The review is expected to be concluded in February 2003 but pending implementation of its recommendations the Commission will continue to operate under its existing remit. An estimate of the extent of the legal costs that may arise from the operations of the Commission, and in particular, the Investigation Committee, is of the magnitude of €150-200 million.

Mr. Noel Dempsey T.D.  
Minister for Education & Science  
Marlborough Street  
Dublin 1

26<sup>th</sup> March 2003

Re: Government Review of Mandate

Dear Minister

At its monthly meeting yesterday the Commission resolved that I should write to you to express the Commission's grave concern at the delay in publication of the outcome of the review of the Commission's mandate, which on 3<sup>rd</sup> December 2002 the Government directed should take place.

As you know, the Government decision was made in the context of consideration of a request for additional resources from the Commission, which request, having first been made in early June 2002, had by then been under consideration for six months. The length of time it took to deal with the Commission's request had been a source of grave concern to the Commission and had been the subject of a veritable barrage of communications from the Commission to your Department.

I do not intend to rehearse here at length why the Commission considers that the delays in resourcing the Investigation Committee and in defining its remit with certainty are detrimental to the proper performance of the functions of the Commission. I take the liberty of referring you to a Memorandum dated 29<sup>th</sup> November 2002, signed by the Chairperson of the Confidential Committee, Ms. Gibbons, and by myself, which was submitted to your Department and which outlines the reasons.

I should, perhaps, remind you that the legal challenge, founded on the antiquity of the majority of the allegations which the Investigation Committee is investigating, which was anticipated in November last, has materialised. As a co-defendant with the Commission in the proceedings, you will be aware that the action will probably be heard by the High Court on 13<sup>th</sup> May next.

Moreover, I believe it is important that I should emphasise once again the need to bring closure for Complainants and for other victims of abuse in childhood, many of whom are old and in bad health. It cannot be doubted that the likelihood of adverse impact of the protraction of a process, which was promised just short of four years ago, on victims of abuse will be perceived as the most reprehensible aspect of the delays to which the Commission has been subjected.

At its meeting yesterday the Commission also noted with concern an apparent tardiness on the part of your Department in dealing with requests for specific sanctions and determinations, which are exclusively within the competence of your Department, subject to the approval of the Department of Finance, some of which are not affected by the review. The Commission would be grateful if you could use your good offices to accelerate responses.

Since receiving the Secretary General's letter of 13<sup>th</sup> December, 2002, in response to my letter of 6<sup>th</sup> December, 2002, the Investigation Committee has been endeavouring to operate in accordance with its current statutory mandate. It has not, however, published its final framework of procedures, pending the publication of the outcome of the Government review, which it had hoped would have been published by now. There is a real apprehension among its members that the credibility of the Investigation Committee is likely to be undermined if it cannot finalise and publish its future *modus operandi* very soon. There is also an overwhelming sense of frustration, as the preliminary work which has been carried out to date indicates that there is an important job of work to be done and that it is in the public interest that the inquiry should be prosecuted with speed and vigour.

The Commission would appreciate if you would take its concerns on board and endeavour to move the process forward.

Yours sincerely

Signed Mary Laffoy  
Ms. Justice Laffoy  
Chairperson

Mr. Noel Dempsey T.D.  
Minister for Education & Science  
Marlborough Street  
Dublin 1.

10<sup>th</sup> April 2003

Re: Government Review of Mandate

Dear Minister

I refer to my letter dated 25<sup>th</sup> March 2003, which was delivered to your office on 26<sup>th</sup> March 2003.

In a response to a request for sanction for the appointment of two Junior Counsel to the Investigation Committee, I received a letter from the Secretary General's office yesterday, 9<sup>th</sup> April, 2003, which, while stating the obvious, that pending the outcome of the review process it is clearly difficult to identify the precise resource requirement needed by the Commission, suggests that, in making appointments, the Commission should consider a provision which would allow for it to foreshorten the length of an appointment or for the regular review of the contract. I am writing separately to the Secretary General in relation to the particular difficulty to which that suggestion gives rise.

However, rightly or wrongly, I infer from the letter that the publication of the outcome of the review process is not imminent. If the inference I have drawn is correct, I anticipate that my colleagues in the Commission will be concerned for a number of reasons. First, the decision of the Government made on 3<sup>rd</sup> December 2002, as communicated to the Commission, stipulated that the Review was to be completed by mid-February 2003. Secondly, relying on the *bona fides* of assurances it was given that the review and any necessary amending legislation would be given priority, the Commission "bent over backwards" to assist the Attorney General, as leader of the review. Indeed, the Commission had hoped, and I believe had grounds for such hope, that any necessary amending legislation would be nearing enactment by now.

The next full meeting of the Commission will take place on Tuesday 29<sup>th</sup> April next. I will need to be in a position on that day to inform my colleagues as to—

- (a) when the outcome of the review is to be published, if it has not been published by then, and
- (b) the timescale for enacting any consequential amending legislation.

I would appreciate if you could give me your Department's "best estimate" on the issues raised at (a) and (b) as soon as possible. The intervention of the Easter break diminishes the time available for preparation for the meeting of 29<sup>th</sup> April and the vacancy in the office of Secretary to the Commission, which was the subject of my letter of 2<sup>nd</sup> April 2003, also creates difficulty.

Yours sincerely

Mary Laffoy  
Ms. Justice Laffoy  
Chairperson

Office of the Minister for Education and Science,  
Marlborough Street,  
Dublin 1.

Ms. Justice Laffoy,  
Chairperson,  
Commission to Inquire into Child Abuse,  
Floor 2,  
St. Stephen's Green House,  
Earlsfort Terrace,  
Dublin 2.

17<sup>th</sup> April 2003

### **Re: Government Review of Mandate of the Commission**

Dear Justice Laffoy,

I refer further to your letters of 25<sup>th</sup> March 2003 to me and 10<sup>th</sup> April 2003 to the Secretary General in connection with the above matter and, in particular, the concern of the Commission at the delay in publication of the outcome of the review.

I can assure you that I share the Commission's view that it is important to bring closure for Complainants and that a protracted process over a significant number of years would reduce considerably the benefit to Complainants that may otherwise be obtained. Indeed it was with this thought foremost in mind that the Government decided to review the mandate of the Commission with a view towards ensuring that the Commission would be enabled to carry out its work in a timely and effective manner.

In this context I understand that the Commission met with the Attorney General and representatives of his Office on a number of occasions and contributed its view to the Attorney General on matters that could be considered in the context of the review. I also understand that the final views of the Commission were received on February 20<sup>th</sup> and subsequently some amendments to the Appendices, suggested by the Commission, were agreed on 27<sup>th</sup> February.

The Report was subsequently brought to Government on 4<sup>th</sup> March — the very next Government meeting so there was no delay on the part of the Attorney General or this Department.

I can confirm that the Report on the Review of the Commission was brought to Government by me on 4<sup>th</sup> March 2003. The Government noted the Report and following that meeting, my Department drafted the Heads of a Bill to amend the Commission to Inquire into Child Abuse Act of 2000.

These Heads of a Bill were presented to Government by me at its meeting of 4<sup>th</sup> April 2003. The Government approved the draft Heads of a Bill and these are now in the course of being translated into a draft Bill.

I accept that the publication of the Report on the Review of the Commission has not yet occurred but it is the case that publication of the Review is a matter of political judgement for the Government. The Government, at the meeting of 4<sup>th</sup> April referred to above, decided it will publish the Review with the Bill. I can understand how the non-publication of the Report may have caused some concern to the Commission but you will note from the progress outlined in the preceding paragraphs that its non-publication at this stage has not obstructed or delayed the necessary work that is now taking place with regards to putting the necessary legislative amendments in place. The decision to publish it with the Bill is a political decision that has been properly made by the Government as to it being the most appropriate date for the publication of the Review.

I hope that this clarifies the position for you for the moment. Please note that a reply to your letter of 10<sup>th</sup> April 2003 to the Secretary General in relation to the appointment of Junior Counsel and other sanctions requested by the Commission relating to the employment of further staff is currently being prepared and will issue shortly from the Secretary General.

Yours sincerely,

Signed: Noel Dempsey  
Noel Dempsey TD,  
Minister for Education and Science.

Office of the Minister for Education and Science,  
Marlborough Street,  
Dublin 1.

The Honourable Justice Mary Laffoy  
Chairperson  
Commission to Inquire into Child Abuse  
Floor 2, St. Stephen's Green House  
Earlsfort Terrace  
Dublin 2.

25<sup>th</sup> April 2003.

### **Re: Government Review of Mandate**

Dear Judge Laffoy,

I refer to your letter of today's date in which you make reference to, and enclose a copy of, a letter that was hand delivered to my Department on 10<sup>th</sup> April 2003. I would firstly like to assure you that I did not receive this letter and had no knowledge of its contents when replying to you in my letter of 17<sup>th</sup> April 2003. Furthermore I am most concerned to find that neither my own Office nor the Residential Institutions Redress Unit have as yet received any letter addressed to me from the Commission on that date. With your permission I will ask one of my officials to pursue that matter with your Office.

In relation to the two specific questions which you raised at (a) and (b) of your letter dated 10<sup>th</sup> April 2003 my response is as follows:

- (a) As outlined in my letter to you of 17<sup>th</sup> April 2003 the Government, at its meeting on 4<sup>th</sup> April 2003, decided that the Review will be published with the Bill. The draft Heads of the Bill were approved by Government on that date and work pursuant to these Heads is underway.
- (b) It is not possible for me at this stage to give a commitment to an exact timescale for the bringing forward or enactment of amending legislation. However I wish to assure both yourself and the other members of the Commission that every effort will be made, both my Department and the Office of the Attorney General, to ensure that any proposed legislation will be brought to the Houses of the Oireachtas before the Summer break.

I hope this is of assistance to you for your meeting on Tuesday 29<sup>th</sup> April.

Yours sincerely

Signed: Noel Dempsey  
Noel Dempsey T.D.  
Minister for Education and Science

Office of the Minister for Education and Science,  
Marlborough Street,  
Dublin 1.

The Hon Ms Justice Mary Laffoy  
Chairperson  
Commission to Inquire into Child Abuse  
Floor 2  
St. Stephen's Green House  
Earlsfort Terrace  
Dublin 2

**Re: Laffoy Commission (“the Commission”)  
Review — Second Phase**

4 July 2003

Dear Ms Justice Laffoy,

I acknowledge receipt of your letter of 23 June and I have noted the contents thereof. In the light of the matters adverted to in your letter, I think it appropriate that I outline the current position in relation to the review of the remit of the Commission.

As you are aware, last December the Government announced it was initiating a review of the remit of the Commission. The review was completed, within the time limited for it, and a report submitted to the Government. It is an extensive review that recommends significant alternations of a substantive and procedural nature. The recommendations have been the subject of a Heads of Bills — approved by the Government — and are currently reflected in draft legislation being prepared by the Office of the Parliamentary Counsel. However, it has been decided to engage in a further review of the operations of the Commission. This second phase of the review is ongoing and is likely to result in more substantial changes to that envisaged in the first review. Officials in my Department and officials in the Office of the Attorney General are regularly engaged in discussions concerning this review.

In the meantime, proceedings commenced by the Christian Brothers have been heard in the High Court. A decision from Mr Justice Henry Abbott is imminent. The implications of that decision (an any appeal pursued from it) for the operations of the Commission are clear and obvious. Lapse of time issues that may arise, in respect of allegations, could have a substantial effect on the number of applications, before the Investigation Committee, that would result in a definitive conclusion.

The Government considers it appropriate that before this second phase review is completed that it is receipt of the judgment in the Christian Brothers case and, if there is an appeal, the judgment of the Supreme Court.

In the context of this second phase of the review the Government would be obliged to receive, from the Commission, further information in the form of a report. The

Government would be assisted, in the course of the second phase of the review, if it could be apprised of the information identified hereunder. I wish to emphasise that I do not seek details of any individual complaint. Nor do I seek to identify any specific individual against whom a complaint has been made. The focus of the information as sought is upon general trends and general information.

I would be grateful if the Commission — when it has completed its assessment of the information available to it — could furnish a report dealing with the following:

- (a) The nature of allegations of abuse made against institutions;
- (b) The nature of allegations of abuse made against individuals;
- (c) The age profile of those making complaints;
- (d) The age profile of individuals against whom complaints have been made;
- (e) The number of individuals, against whom complaints have been made, who are dead;
- (f) The number of individuals, against whom complaints have been made, where it may be suggested that they are seriously ill or suffering from any impairment of body or mind that could potentially affect their defence of these allegations;
- (g) The number of complaints made in respect of specific decades, e.g. the number of complaints in, for instance, the 1940s;
- (h) The numbers by class of institutions against whom complaints are made;
- (i) The number of individuals against whom complaints have been made;
- (j) The number of persons (whether complainants, institutions or individuals in religious orders) who are likely to seek and be granted representation in respect of the complaints outlined above;
- (k) Details of legal costs in the context of the number of cases before the Investigation Committee;
- (l) The estimated duration of hearings in respect of all allegations based on the current personnel levels;
- (m) The likely overall duration of the Investigation Committee's hearings in respect of the totality of complaints referred to it for investigation.

I am conscious of the fact that while this review is ongoing costs continue to be incurred. It is manifestly in the public interest that costs do not continue to be incurred in respect of matters that may not ultimately be investigated. However, costs incurred by the Commission in obtaining discovery and statements will enable it to give the report sought in this letter. In the overall context I believe that these incurred costs will be a relatively small proportion of the total costs which the review seeks to significantly reduce.

While of course I appreciate that the Commission is independent, in the discharge of its remit, it may wish to take account of this public interest — in the context of the second phase of the review — in the manner in which it orders its procedures. That is a matter, or course, for your discretion.

I would be grateful if the Commission was in a position to confirm that it will furnish the report, as sought in this letter, and the time span within which that report can be furnished.

Yours sincerely,

Signed: Noel Dempsey  
Noel Dempsey T.D.  
Minister for Education & Science

10<sup>th</sup> July, 2003

Mr Noel Dempsey T.D  
Minister for Education and Science,  
Office of the Minister,  
Marlborough Street,  
Dublin 1.

Dear Minister,

### **Re: Review of Mandate of Commission**

I refer to your letter of 4<sup>th</sup> July, 2003. As promised in my acknowledgement of 7<sup>th</sup> July, 2003 I have convened a meeting of the Commission at the earliest possible date. I am now in a position to respond comprehensively to your letter.

#### **1. Commission's understanding**

- 1.1. In the interests of clarity, I will set out the Commission's understanding, based on the information contained in your letter, of the current status of the Government review of its existing mandate as set out in the Commission to Inquire into Child Abuse Act, 2000, as amended by the Residential Institutions Redress Act, 2002.
- 1.2. The review which was conducted by a review group led by the Attorney General and which resulted in —
  - a report, which was noted by the Government on 4<sup>th</sup> March, 2003, and
  - Heads of a Bill to amend the Act of 2000, which were approved by the Government on 4<sup>th</sup> April, 2003,

is no longer regarded as “stand-alone” review. It is now regarded as the first phase of a more comprehensive review.

- 1.3. The timeframe, as outlined in your letter of 25<sup>th</sup> April, 2003, for publication of the outcome of what is now regarded as the first phase of the review — publication of the review at the same time as the Bill which it was hoped would occur before the Dáil went into Summer recess — is not now being to adhered to. The implementation of that review through amending legislation in the short term is not now proposed.
- 1.4. A Government decision has been taken to embark on a second phase of the review and this is currently ongoing. The outcome of the entirety of the review process is likely to result in more substantial changes than the significant changes, both substantive and procedural, which are reflected in the review noted by the Government and embodied in the Heads of Bill approved by the Government.

- 1.5. It is not intended to conclude the entirety of the review until the issues raised in the High Court proceedings entitled Murray and Another - v - CICA and others (Record No.2003/1998P) have been finally determined, either by the High Court or the Supreme Court, in the event of an appeal from the High Court.
- 1.6. In summary, the Government has already approved the introduction of legislation to give effect to significant alterations, both substantive and procedural, of the Commission's existing statutory remit. The Government is likely to be asked to approve even more substantial changes following the conclusion of the civil proceedings referred to at 1.5. The amendments to the Act of 2000 contemplated will all be implemented at the same time.
- 1.7. If the Commission's understanding does not accord with the true position in any respect, it would be appreciated if the Commission could be apprised of the true position.

## **2. Comment on pending High Court proceedings**

- 2.1. The Commission considers that it would be inappropriate for it to comment on the third paragraph of the letter of 4<sup>th</sup> July, 2003 other than to state that the views expressed appear to be predicated on the challenge of the Plaintiffs in the proceedings to the Ruling of the Investigation Committee dated 18<sup>th</sup> October, 2002 being successful, which, in turn must be based on the assumption that the Ruling is wrong in law. Obviously, the Commission does not agree with that view.
- 2.2. The Commission does not know when judgment will be given by Mr. Justice Abbott in the civil proceedings. However, on the basis of advice, the Commission considers that it is reasonable to assume that the issues raised in the proceedings will be the subject of an appeal to the Supreme Court, whatever the outcome in the High Court. The Commission estimates, again on the basis of advice, that, in the event of an appeal, it is unlikely that the proceedings will be concluded before early 2004 at the very earliest. In suggesting this timeframe, the Commission considers it appropriate to record that the Commission has used its best endeavours to expedite the proceedings and in that regard has received full cooperation from the Plaintiffs and the State parties involved and the President of the High Court. It would not anticipate any change of attitude in the future.
- 2.3. As you know, at the core of the case being made by the Plaintiffs in the proceedings is the proposition that the lapse of time since many of the events which the Investigation Committee is mandated to inquire into occurred is prejudicial. As the Commission has always made clear in its dealings with your Department, it is crucial that delay in implementing the Commission's remit, whether as a result of indecision in relation to the parameters of the remit, inadequate resourcing or some other reason, is not engrafted on to the lapse of time which has undoubtedly occurred, so as to give any person or body whose conduct is being inquired into a further ground for alleging prejudice.

### 3. Consequences of Government decisions for Commission

- 3.1. It is now clear that it is the intention of the Government that the Investigation Committee will not implement its current statutory remit.
- 3.2. The “shape” and content of the ultimate remit of the Investigation Committee is fluid and will not be finally determined until 2004 at the earliest.
- 3.3. Pending the conclusion of the pending review, the operations of the Investigation Committee are being conducted against a background of uncertainty as to the task which the Investigation Committee ultimately will be mandated to perform.
- 3.4. The current situation gives rise to even greater uncertainty than prevailed when the Commission was notified, by letter dated 5<sup>th</sup> December, 2002, of the Government’s decision to review its mandate. Correspondingly, the concerns set out in the Commission’s letter of 6<sup>th</sup> December, 2002 to the Secretary General of your Department now apply with even greater force. The Commission notes that there is consensus that it is manifestly in the public interest that costs do not continue to be incurred in respect of matters that may not ultimately be investigated.
- 3.5. The Commission considers that, having regard to its understanding of what is proposed in relation to its remit, it is incumbent on it to take account of the public interest and to conduct its work in a manner that has regard to that interest. Given that it now has knowledge that ultimately it will not be fulfilling its existing statutory functions, the Commission must consider what investigative work, if any, the Investigation Committee can do pending the conclusion of the review. This gives rise to two questions. The first is a fundamental question: what can it properly do? The second, which is dependent on the answer to the first, is: what can it usefully do?.
- 3.6. On the first question the Commission, on the basis of legal advice, has concluded that it would not be proper for the Investigation Committee either to conduct evidential hearings or to issue discovery directions in reliance on its existing statutory powers, which are exercisable only for the purposes of its current statutory functions. In fact, the Investigation Committee has not conducted any evidential hearing and no discovery direction has issued, other than directions to your Department and the Department of Health and Children, since the Commission was notified of the review of its mandate in December 2002.
- 3.7. There is enclosed with this letter a copy of an Opinion given by Frank Clarke S.C. to the Commission, in which Mr. Clarke concludes that there is a strong case to the effect that the Investigation Committee would be acting *ultra vires* in making any further discovery or production directions pending the result of the review, on the basis that, in doing so, the Investigation Committee would be making directions under one statutory remit in the knowledge that the results thereof were only likely to be used in a significantly different statutory

regime. Mr. Clarke opines that this could be well be argued to be an improper purpose.

#### **4. Action necessary**

- 4.1. It is crucial that persons involved in the process of the Investigation Committee are informed of the current position without delay. As your Department is aware, from its inception the Commission has been gravely concerned about the potential for damage to persons involved in the process of the failure to implement the Commission's remit in a timely fashion. I can do no better than quote from a Memorandum dated 29<sup>th</sup> November, 2002, which was furnished to the Department in support of a request for additional resources, which was submitted on 10<sup>th</sup> June, 2002. In the Memorandum it stated as follows:

“Apart from the possible legal consequences of the fulfilment of the Investigation Committee's remit being unduly protracted, it is not in the interests of any of the parties involved in the process that the Investigation Committee should not be in a position to complete Phase 1 of its work within a reasonable timeframe. Of particular concern are the following considerations:

- The need to bring closure for Complainants and for other victims of abuse in childhood, many of whom are old and in bad health.
- The avoidance of unfairness to individuals against whom allegations have been made which may not stand up following investigation. Many of the individual Respondents are very old. Some are in bad health. It may be that, in certain cases, the end of their lives are being unfairly blighted by the stress of prolonged investigation. Issues of fairness also arise in relation to individuals against whom allegations have been made, who are still of working age, whose capacity to work in institutions may be affected.”

- 4.2 It appears to the Commission that, as the decisions which give rise to the current situation have emanated from the Executive, the proper course is for the public, including the persons involved in the process, to be notified of the decisions through a press statement either from the Government Press Office or from your Department and in such other manner as is deemed appropriate. In this connection, it appears to the Commission that whatever announcement is made should have regard to the press statement which was issued on 20<sup>th</sup> December, 2002, which announced the review directed by the Government on 3<sup>rd</sup> December, 2002, the nature of that review and the expected timescale for the conclusion of the review. It should clearly state the current status of that review and the decisions which have been made as to the future mandate of the Commission.
- 4.3 Following a public announcement of the current status of the review and the decisions which have been made as to the future mandate of the Commission, the Commission will announce the steps it intends taking to ensure it continues its work in a manner which could not give rise to—

- an allegation of abuse of process in the future, or
- the accrual of unnecessary costs and expenses, either within the Commission or externally in relation to the involvement of persons who are part of the process, whether voluntarily as Complainants or compulsorily as a result of being the subject of allegations of abuse which are being inquired into.

It is envisaged that the parties involved in the process will be notified individually of the approach the Commission intends to adopt in relation to matters which affect them pending conclusion of the review. In addition it is envisaged that a notice will be posted on the Commission's website.

- 4.4 The Commission is conscious of the fact that any announcement which is made which clearly reflects the reality of the current status of the implementation of the Commission's existing remit is likely to impact adversely on the willingness of persons and bodies involved in the process to cooperate with the Investigation Committee. Inevitably, given that the Investigation Committee will not be in a position to use its powers to compel attendance of witnesses, discovery and production of documents and such like, without such cooperation the capacity of the Investigation Committee to do anything useful will be greatly hampered.

## **5. Information sought in form of Report**

- 5.1. The Commission has considered the request for information in the form of a report contained in the letter of 4<sup>th</sup> July, 2003. It must have regard to the fact that the Act of 2000 mandates the Commission to report to the public.
- 5.2. As you know, various State agencies, including your Department, are the subject of the Commission's inquiry. In the interests of fairness and justice, the Commission must treat those agencies in the same manner as it treats other bodies or individuals which are the subject of the inquiry. It follows that information furnished to State agencies must also be published so that other persons and bodies involved in the process are not disadvantaged. Moreover, the Commission has been advised that it must be satisfied that, in furnishing or publishing information, it will not differentially advantage any person or body (for example, a State agency) over any other person or body.
- 5.3. The Commission recognises the necessity of keeping your Department fully informed in relation to the costs and other implications of its resource requirements, the timing of meeting its resource requirements and its ongoing operations. Insofar as it is in a position to do so in a manner consistent with its remit, the Commission will furnish the information sought in your letter. A document, in which each of the categories of information sought is dealt with, is in preparation and will be furnished to you not later than next Monday. It is the view of the Commission that all of the information furnished to your Department which bears on the inquiry itself must be made available to the public.

- 5.4. The sources of the information furnished will be set out in the Document. The Commission considers it prudent to record that the information supplied will not be derived from the fruits of the exercise of any of the statutory powers conferred on the Investigation Committee by s.14 of the Act of 2000, e.g. power to make discovery directions, which powers may only be exercised for the purpose of the statutory functions of the Investigation Committee.

The Commission recognises the urgency of implementing the necessary action. Nonetheless it would appreciate receiving prior notice of any statement which it is intended to issue in relation to the Commission. The Commission would be anxious to adequately prepare for reactions both from the public and its own personnel.

I am sending a copy of this letter and the enclosure to the Attorney General.

Yours sincerely,

Signed: Mary Laffoy  
Ms. Justice Laffoy  
Chairperson

**CLIENT:** Commission to Inquire into Child Abuse

**RE:** Discovery Issues

## **COUNSEL'S OPINION**

### **1. INTRODUCTION:**

- 1.1 I have been asked to advise on certain issues which may arise concerning discovery resultant from a potential change in the remit of the Commission, and, in particular, that of the Investigation Committee thereof ("The Committee"). The Government announced an intention to review the remit of the Commission in December, 2002. Following consultation with, amongst others, the Commission, the Government apparently considered and approved a report recommending certain changes in the Commission's remit, and other legislative changes which would have been likely (insofar as the Commission understands the unpublished proposals) to improve the efficiency and effectiveness with which it, and, in particular, the Committee, would carry out its mandate.
- 1.2 In general terms, it is understood that had the change of remit recommended in the above report been implemented by means of legislative change the Committee would have been empowered to make a selection (based upon statutory criteria) of the individual instances of alleged abuse into which it would formally enquire. At the most general level, those instances which had the greatest capacity to add to the overall picture of abuse in Institutions would have been those chosen. However, the Commission has now received an indication from the Government that a further or second review is to be carried out which is designed to bring about an even greater alteration in its remit. Having regard to the fact that the stated position of the Government is that such a review is likely to be completed only when the final result in the challenge brought by the Christian Brothers to the ruling of the Investigation Committee in relation to lapse of time issues has been handed down, it is reasonable to infer that there may be a very substantial reduction indeed in the number of individual cases that may properly be looked into on foot of the revised terms of reference that may be in place after the completion of such a review. It is against the background that the question of the status and propriety of making Discovery Orders under the current regime arises.

### **2. THE QUESTIONS:**

- 2.1 Two questions seem to arise. They are:—
- (a) Whether documents discovered under the current statutory regime might still be used in an inquiry whose terms of reference had altered significantly, and, in particular, whether the above might be the case where the evidential status of documents so discovered might itself alter by reason of statutory intervention; and

- (b) The propriety of making Discovery Orders now under the current regime having regard to the state of knowledge of the Commission as referred to above.

I deal with these in turn.

### 3. THE USABILITY OF DISCOVERED DOCUMENTS:

- 3.1 The first question that arises under this heading is as to whether it would be permissible to use documents discovered while one remit was in place for purposes connected with an altered remit. At this point in these advices I do not deal with the evidential status of such documents, but merely their use in an “ordinary” discovery sense. The potential problem arises from the long established principle that documents discovered in the course of civil litigation can only be used by the party who benefits from such discovery for the purposes of the litigation in the course of which they are discovered.
- 3.2 It is well established that there is an implied undertaking by the party on whom a list or affidavit of documents is served, or to whom the documents are produced, that he will not use them, or any information obtained from them, for a collateral or ulterior purpose. **Alterskye -v- Scott** (1948) 1 ALLER 469. This implied undertaking is so wide as to bind any person or body into whose hands the documents may come, where that person knows that they have been obtained by way of discovery; **Distillers Company (Biochemicals) Ltd. -v- Times Newspapers Ltd.** 1975) 1 ALLER 41. An improper use of the documents thus amounts to a contempt of Court.
- 3.3 It is, thus, unlawful for a party who has gained access to confidential documents of another party on foot of Discovery to use them for any purpose outside the litigation. While this rule is well established, and would, it seems to me, be imported into the statutory regime set up under the Commission’s legislation, it does seem to me that that rule in itself would be capable of being displaced by appropriate statutory intervention. While the matter would not be wholly free from doubt, I do not feel that such a statutory amendment (which expressly permitted, notwithstanding the above rule, the use of documents for an essentially similar purpose, i.e. a statutory enquiry into child abuse) would have constitutional difficulties.
- 3.4 The specific statutory authorisation for Discovery is vested in the Chairperson of the Committee under Section 14 (1) (d) which permits such Chairperson to “direct in writing any person to make Discovery on Oath of any documents. . .”. The same sub-section provides that the Rules of Court relating to the discovery of documents in proceedings in the High Court should apply in relation to the discovery of documents pursuant to the Section, with any necessary modifications. Similarly, the power to direct the production of documents is contained in Section 14 (1) (c), and must be taken to be analogous to the power of the Courts in civil litigation to direct production of documents discovered. It is also necessary to consider Section 14 (4) (e) which provides

that a person doing anything in relation to matters before the Committee, which, if done in relation to proceedings before a Court, would be contempt of that Court, shall be guilty of an offence. It seems clear, therefore, that the net effect of the above statutory provisions is to impose an implied undertaking on the part of any party having the benefit of Discovery, and inspection of documents, an implied obligation to use them solely for the purposes contemplated by the Act, with breach thereof amounting to an offence under the Act. While it may be that certain areas of Discovery and inspection may be suggested to the Committee by persons who are in the nature of parties before it, the process is not confined to such parties, and is in all cases a matter ultimately for the Chairperson herself. In those circumstances, it seems to me that the proper construction of the Section (including its importation in the manner referred to above of the High Court regime into the Discovery process) is to impose a similar obligation on the Committee as would apply to a moving party for Discovery, and/or inspection in civil litigation. However, that does not appear to be a fundamental rule of law, but a construction of the Section and the relevant law of civil procedure. It is for that reason that I believe that an appropriate statutory amendment can deal with the matter.

#### **4. EVIDENTIAL STATUS:**

- 4.1 A more serious question, however, arises in relation to any potential change in the evidential status of such documents. Clearly, any such change would require a statutory intervention. The real question that arises is as to whether such a Statute could be retrospective in the sense of altering the status of documents already discovered so as to enable them to be regarded as prima facie evidence of their contents. While the precise current thinking of the Government on legislative change is not known to the Commission, it is aware that a change along the above lines was amongst the matters to which consideration was given during the first review. Given that the Government are aware, from discussions held between the Commission's legal team and the Government's advisers, of the potential legal difficulties under this heading, it must be likely that the Government would incorporate in any relevant legislation an express term dealing with the retrospectivity argument.
- 4.2 The real question would be whether any such retrospective provision would be constitutional. It seems to me that same is ultimately a matter for the Government and its legal advisers, or the Courts. However, I have come to the view that it is probable (though by no means certain) that such a measure could withstand constitutional challenge on the basis of the presumption contained in **East Donegal** to the effect that all proper procedures would be carried out by the statutory body concerned. On that assumption, the Commission would have an obligation to hear any party who had made discovery prior to the change in the status of discovered documents as to the propriety, or otherwise, on a case by case basis, of using the documents so discovered in the new regime.

## **5. CONCLUSIONS ON STATUS:**

On this basis, I am inclined to the view that any difficulties concerning either the evidential status or usability of previously discovered documents are capable of being remedied by appropriate legislative measures.

## **6. PROPRIETY:**

- 6.1 This issue arises under a significantly different legal heading. The Committee currently has a power to order discovery and production (see paragraph 3.2 above). It is clear from the scheme of the Commission's legislation and production that the purpose for which that power is conferred is one directly connected with the gathering of evidence for hearings of the type contemplated in the current legislation.

The functions of the Investigation Committee are as set out in Section 12 (1) of the Act. They are to provide for those who have suffered abuse an opportunity to recount same, to enquire into abuse, and to determine the causes, major circumstances and extent of such abuse. Thus, the functions of the Committee are closely associated with the determination, insofar as it is possible, of the truth, or otherwise, of individual allegations made by persons in the course of exercising the statutory opportunity conferred upon them in Section 12 (1) (a). The power to order discovery and inspection under Section 14 must necessarily be a power which is intended to be used solely for the purposes of furthering the above functions. As the whole scheme of the Act contemplates those functions, insofar as they are exercised by the Committee, being fulfilled by means of hearings at which evidence is heard, it does seem clear that the purpose for which the statutory power of discovery and production is conferred is to enable the Committee to gather evidence which it may, or may not, place before such hearings, either by means of proving the documents themselves, or by virtue of the fact that the documents indicate witnesses who might properly be called. While such hearings are not confined to hearings involving a consideration of the allegation of abuse of persons exercising the opportunity referred to in Section 12 (1) (a), such hearings necessarily amount to a significant part of the current remit of the Committee, and, thus, any Discovery Orders which would currently be made must be directed towards the collection of evidence as a preliminary to hearings of the type currently mandated by the legislation.

- 6.2 Given that the Commission is now aware that there is a very real possibility that in most, if not all, cases, hearings of the type currently contemplated are unlikely to occur, the Commission is faced with a difficulty. It is well settled that a statutory body upon whom a power of any sort (but, most particularly, a power which allows it to force, under compulsion, another party to do something) is obliged to use the power solely for the purposes for which the power was conferred. To do otherwise would be to act *ultra vires*.

The law in this area is sometimes taken to encompass the so-called "improper purpose" test. In this context, same refers to the fact that, in enacting a Statute, the legislator is assumed to have a definable purpose or object. Such lack of

good faith exists where a public body “intends to achieve an object other than that for which it believes the power to have been conferred” (see de Smith, page 544). The concept is, thus, wider than malice, which arises only where the exercise of the power is motivated by personal animosity. It is difficult to find a case exactly on point as almost all of the authorities are concerned with a statutory body taking into account a purpose which is not within its then current statute, rather than one which is faced with a difficulty stemming from its knowledge that its statutory purpose is about to be changed. For example, in **The State (Cussen) -v- Brennan** (1981) IR 181, a decision of the Local Appointments Commissioners appointing a Consultant Paediatrician was struck down by virtue of the affording of weight in the selection process to a knowledge of Irish which was not a specified qualification made by the Minister for Health on foot of his powers under the Health Act. While it might, therefore, be argued that the Committee is confined to its current statutory remit in the exercise of its powers, and should not have any regard to its knowledge as to the likely change in its remit, I am of the view that the issue is less straightforward.

- 6.3 Given the Commission’s current state of knowledge, it seems to me that there would be very serious questions indeed about the Commission using its existing discovery and production powers for a purpose other than one directly connected with the gathering of evidence for hearings which are at least broadly of the type contemplated under the existing legislation. The proposals contained in the original Remit Review would not, in my view, have altered the nature of the inquiry to such a significant extent such as might impact on the purpose for which documents discovered might be used. However, there is a real risk that what is now contemplated by the Government, or, more accurately, what may now emerge from the second review, may amount to a very different type of inquiry indeed, where the purpose and status of Discovery Orders, and the documents obtained on foot of them, may be significantly different from that currently contemplated. The contrary argument would be that the overall purpose (i.e. the conducting of an inquiry into child abuse in institutions) remains the same. However, as indicated above, there is a strong arguable case that the proper statutory purpose under the current Act, for which Discovery and Production Orders are made, is simply as an aid to evidence gathering with a view to facilitating ultimate oral hearings on the issues in relation to which the discovery has been made. It is, thus, closely analogous to the purpose of discovery in civil litigation, which is towards the same end.

Perhaps, the clearest judicial description of the purpose of discovery and production is to be found in the Canadian case of **Pearlman -v- National Life Assurance Co.** (1917) 39 OLR 141. In that case, the machinery of discovery and production was stated to be “for the purposes of enabling an action to be fairly and properly tried”. The appropriate analogy is that the purpose of discovery and production directions by the Commission under the current remit is to enable the fair and proper consideration of allegations of abuse made by individuals, and findings of abuse generally on foot of evidential hearings. It is

not to enable the Committee or the Commission to produce a report of a type which is qualitatively different from that currently contemplated.

- 6.4 On that basis, I feel that there is a strong case to the effect that the Committee would be acting ultra vires in making any further Discovery or Production Orders pending the result of the second Remit Review on the basis that, in so doing, the Committee would be making Orders under one statutory remit in the knowledge that the results thereof were only likely to be used in a significantly different statutory regime. This could well be argued to be an improper purpose. Without the protection of amending legislation (in place prior to making such directions) to cover the above difficulty, I would, therefore, have to advise the Committee that it would be unsafe, at this stage, to make any further Discovery or Production Orders.

FRANK CLARKE, S.C.

Dated the 10<sup>th</sup> day of July, 2003.

Office of the Minister for Education and Science,  
Marlborough Street,  
Dublin 1.

The Hon Ms Justice Mary Laffoy  
Chairperson  
Commission to Inquire into Child Abuse  
Floor 2  
St. Stephen's Green House  
Earlsfort Terrace  
Dublin 2

15 July 2003.

**Re: Government Review of the Commission**

Dear Ms. Justice Laffoy,

I refer to previous correspondence in connection with the Government's ongoing review of the remit of the Commission. As you are aware the Department of Education and Science has made discovery to the Commission in respect of the documentation sought from it. In the event that the Commission requires any further information or documentation from the Department I have instructed my Officials to make the same available and to take whatever steps are necessary to ensure continued full co-operation with the Commission.

The purpose of this letter, however, is to outline the limits of the current review of the remit of the Commission. I wish to make it clear for the record, that the review will not encompass any changes that will limit or reduce the remit of the Commission in relation to investigating the responsibility of the State and, in particular, the Department of Education and Science in respect of abuse in institutions.

I trust the above clarifies the situation.

Yours faithfully,

Signed: Noel Dempsey  
Noel Dempsey, T.D.,  
Minister for Education and Science.

25<sup>th</sup> July, 2003

Mr Noel Dempsey T.D.,  
Minister for Education and Science,  
Office of The Minister,  
Marlborough Street,  
Dublin 1,

## **Re: Review of Mandate of Commission**

Dear Minister,

I refer to previous correspondence culminating with your letter of 15<sup>th</sup> July, 2003.

The Commission has met to reconsider your letter of 4<sup>th</sup> July, 2003 and its response to that letter, which was dated 10<sup>th</sup> July, 2003, in the light of the statement contained in your letter of 15<sup>th</sup> July, 2003 that the review will not encompass any changes that will limit or reduce the remit of the Commission in relation to investigating the responsibility of the State and, in particular, the Department of Education and Science in respect of abuse in institutions.

As was stated in paragraph 3.6 of the Commission's letter of 10<sup>th</sup> July, 2003, on the basis of legal advice, the Commission has concluded that it would not be proper for the Investigation Committee either to conduct evidential hearings or to issue discovery directions in reliance on its existing statutory powers, which are exercisable only for the purposes of its current statutory functions. It follows that once a public announcement of the current status of the review and the decisions as to the future mandate of the Commission has been made, the Commission will be constrained to notify the parties involved in the process of the Investigation Committee that it will not be conducting any further evidential hearings or issuing any further discovery directions until the review is concluded and such variations of its remit as the Government sees fit to implement are in place.

Moreover, as was stated in paragraph 4.3 of the Commission's letter of 10<sup>th</sup> July, 2003, at that stage, the Commission will also have to announce the measures it intends adopting to prevent the accrual of unnecessary costs and expenses pending the final determination of its remit.

As things stand, the legal personnel retained by the Commission are analysing documentation and conducting intensive inquiries in relation to certain institutions with a view to prioritising the hearings in relation to those institutions. It is the view of the Commission that, until—

- the review of the Commission's remit is finalised,
- the criteria for the selection of Complainant evidence (if the remit of the Investigation Committee will not extend to hearing all Complainants who have expressed a wish to be heard) are established,
- and the criteria for selecting the institutions to be investigated (if all the institutions which fall within the current remit of the Investigation Committee are not to be investigated) are established,

it would not be appropriate for it to make any assumptions as to which Complainants' allegations are likely to be heard or which institutions are likely to be investigated.

It is also the view of the Commission that, notwithstanding the assurance given in your letter 15<sup>th</sup> July, 2003, pending the final determination of the remit of the Investigation Committee, the Commission is hampered in advancing its inquiry into the responsibility of the State for abuse in institutions for a number of reasons. First, having regard to the two phased structure of its inquiring remit necessitated by the provision of section 4(1)(b)(ii) of the Act of 2000, which requires the Commission to be satisfied that abuse occurred before determining the causes, nature, circumstances and extent of abuse, the issue of responsibility only arises when abuse has been established. Secondly, under its existing remit, the attribution and/or apportionment of responsibility for abuse arises in the context of a broad inquiry into the institutions themselves and the systems of management, administration, operation, supervision, inspection and regulation of the institutions. It is not the function of the Commission to inquire into the responsibility of the State separately from the responsibility of the management of institutions. Thirdly, under its existing remit, the Commission is mandated to make determinations in relation to the manner in which the functions of management, administration, operation, supervision, inspection and regulation were performed by the persons or bodies in whom they were vested, which brings into focus not merely a Department of State or the political head of a Department of State at a given time, but also the officers of that Department. In short, it is the view of the Commission that, as things stand, its only function is to investigate the responsibility of the State and State agencies within the context of its existing remit.

In practical terms, accordingly, the effect of the Government's decision to embark on a further review of the Commission's mandate is that it is extremely restricted in the manner it may go forward with its existing remit confident that it is acting a manner that is both proper and in the public interest. This immediately impacts on the work which the Investigation Committee may usefully do and has implications for persons involved in the work of the Investigation Committee — members of the Commission and legal and administrative personnel. It is the view of the Commission that these implications, and the consequences which flow from them, will have to be addressed once the decision in relation to the review of the Commission's remit is publicly announced.

It is hoped that the foregoing clarifies the approach the Commission proposes to adopt in the light of its knowledge of the further review of its remit.

Finally, as was stated in the Commission's letter of 10<sup>th</sup> July, 2003, the urgency of implementing the necessary action arising out of the decisions which have been made in relation to the Commission's remit is recognised. Nonetheless, for the reasons stated in that letter, the Commission would appreciate receiving prior notice of any statement which it is intended to issue in relation to the Commission.

Yours sincerely,

Signed: Mary Laffoy  
Ms. Justice Laffoy  
Chairperson

Department of Education and Science,  
Marlborough Street,  
Dublin 1.

The Hon. Ms Justice Mary Laffoy  
Chairperson  
Commission to Inquire into Child Abuse  
Floor 2  
St. Stephen's Green House  
Earlsfort Terrace  
Dublin 2

18 August 2003

Dear Ms Justice Laffoy,

I refer to your letter of to-day's date concerning the Review of Mandate of the Commission addressed to the Minister for Education and Science, Mr. Noel Dempsey T.D.

While the Minister is out of the office to day, the contents of your letter have been brought to his attention and he has asked me to respond to your letter and let you know the latest position.

It had been hoped that following consultation with groups representing the survivors of child abuse that a public announcement would have been made in mid August. Regrettably, arising from people's unavailability during the holiday period and the need to give lengthy notice to representatives of groups living outside the State it has not be possible to hold such consultations to-date. A meeting is, however, being held with representatives of the survivors' groups to-morrow 19 August. Following the completion of this consultation process it is intended that an announcement will be made in a week or ten day's time. The Minister has asked me to let you know that he will make arrangements to ensure that the Commission is given notice of the date of the announcement some days in advance.

I hope that this helps clarify the position for you.

Yours sincerely,

Signed: Peter Baldwin  
Peter Baldwin  
Assistant Secretary

19<sup>th</sup> August, 2003

Mr. Noel Dempsey T.D.,  
Minister for Education and Science,  
Office of the Minister,  
Marlborough Street,  
Dublin 1.

## **Re: Review of Commission Mandate**

Dear Minister,

The Commission, having at its meeting today considered the letter dated 18<sup>th</sup> August, 2003 from Mr. Peter Baldwin, Assistant Secretary in your Department, has decided that I should write to you in the terms following:

1. The Commission's understanding of the current status of the review of its mandate, as set out in the Commission's letter of 10<sup>th</sup> July, 2003 to you in response to your letter of 4<sup>th</sup> July, 2003, which has not been controverted in subsequent correspondence, is that prior to 4<sup>th</sup> July, 2003 a Government decision was taken to embark on a second phase of the review, which is likely to result in more substantial changes than the significant changes, both substantive and procedural, recommended by the Attorney General in the first phase, the outcome of which has not been published. It has been inferred that it is the intention of the Government that the Investigation Committee will not implement its current statutory regime.
2. Based on that understanding and on the legal and practical ramifications of the decision for the work of the Investigation Committee, it is the view of the Commission, as was stated in the letter of 10<sup>th</sup> July, 2003, that it is crucial that persons involved in the process of the Investigation Committee, whether as persons making allegations or as persons or bodies against whom allegations have been made, are informed of the current position without delay. That is the task of the Government which made the decision.
3. As has been made clear in previous correspondence it is for the Commission, which is an independent statutory body, to determine how the Government decision impacts on its existing statutory mandate and what steps it must take to ensure that it carries out that mandate properly and in accordance with law.
4. Against the foregoing background, it is the Commission's understanding from the letter of 18<sup>th</sup> August that a public announcement of the decision of the Government, which was communicated to the Commission in your letter of 4<sup>th</sup> July, 2003, will be made sometime during the week commencing 25<sup>th</sup> August next. It is assumed that the reference to a "consultation process" with "groups representing the survivors of child abuse" means no more than the communication to those organisations of the fact of the decision, which has already been communicated to the Commission.

5. The Commission, accordingly, is preparing to put in train next week the steps which it considers necessary to ensure that the work of the Investigation Committee is conducted in a manner which could not give rise to—
- an allegation of abuse of process in the future, or
  - the accrual of unnecessary costs and expenses,
- pending the completion of the review.

Yours sincerely,

Signed: Mary Laffoy  
Ms. Justice Laffoy  
Chairperson

Office of the Minister for Education and Science,  
Marlborough Street,  
Dublin 1.

The Honourable Ms Justice Laffoy,  
Chairperson,  
Commission to Inquire into Child Abuse,  
Floor 2,  
St. Stephen's Green House,  
Earlsfort Terrace,  
Dublin 2.

28 August 2003

**Re: a) Review of Mandate of Commission — public announcement  
b) Request for additional information**

Dear Ms. Justice Laffoy,

I refer to previous correspondence in relation to the ongoing Review of the mandate of the Commission and in particular, to Mr. Baldwin's letter to you of 18<sup>th</sup> August 2003 and your reply of the 19<sup>th</sup> August 2003.

As outlined in Mr. Baldwin's letter, I can confirm that it is my intention to make a public announcement in relation to the ongoing review shortly. In this regard, I enclose for your information a draft Press Release that has been prepared. While the enclosed draft may yet be subject to some changes between now and the actual announcement, the substance of the announcement will not be significantly altered. I expect at this stage that the actual announcement will be made on Monday next, September 1<sup>st</sup>.

It is intended to consult further with the Commission in the course of the next phase of the review so that its views and experience can inform the process and I would be grateful for its assistance in that regard.

Yours sincerely,

Signed: Noel Dempsey  
Noel Dempsey, T.D.,  
Minister for Education and Science.

29<sup>th</sup> August, 2003

Mr. Noel Dempsey T.D.,  
Minister for Education and Science,  
Office of the Minister,  
Marlborough Street,  
Dublin 1.

**Re: (a) Review of Mandate of Commission — public announcement  
(b) Request for additional information**

Dear Minister,

I refer to your letter of 28<sup>th</sup> August, 2003.

I have brought the contents of your letter and the proposed Press Release enclosed with it to the attention of all of the members of the Commission. While it is not proposed to comment on the views expressed in the Press Release now, that is not to be taken as tacit acceptance by the Commission or by members of the Commission that those views are correct.

In the past, the Commission has furnished information requested by your Department insofar as it considered it proper to do so in accordance with its statutory mandate. Consistent with that policy, on 28<sup>th</sup> July, 2003, the Commission furnished to you an Information Document containing its response to the queries raised in your letter of 4<sup>th</sup> July, 2003. As the Information Document disclosed, some of the data contained in it is subject to revision. As soon as more reliable data is available, it will be furnished promptly to you. Furthermore, the Commission will deal promptly with any request for additional information which it considers it can properly furnish to you having regard to its statutory functions. However, the Commission, on the basis of legal advice, is not satisfied that it would be appropriate for it to engage in any other consultation in relation to the further review of its remit proposed in the Press Release.

Yours sincerely,

Signed: Mary Laffoy  
Ms. Justice Laffoy  
Chairperson

## **PRESS RELEASE**

### **Minister for Education and Science, Noel Dempsey T.D., announces second phase of Review of the Commission to Inquire into Child Abuse**

**1 September 2003**

The Minister for Education and Science, Noel Dempsey TD, today announced the decision to of the Government to engage in a second phase of a review relating to the Commission to Inquire into Child Abuse.

Last December the Government announced that it was initiating a review of the remit of the Commission. The purpose of the review was to examine the procedures of the Commission, to ascertain if they could be amended with a view to achieving the original intentions of the Government within a more reasonable timeframe, and in a cost effective manner. It is estimated that were the Commission to continue with its current remit, the provisions in the 2000 Act would mean that it would take the Commission approximately 8 to 11 years to complete its work. There was serious concern that such delays would prejudice the Commission's inquiries, facilitate legal challenges being launched against its determinations and possibly prevent complaints being investigated. There was also a concern that, were the Commission to have to continue operating in the confines of the 2000 Act, substantial legal fess estimated at €200 million could be incurred, the vast bulk of which would be payable to persons against whom complaints have been made before the Investigation Committee.

The review was completed and a report submitted to the Government. The recommendations are currently reflected in draft legislation being prepared by the Office of the Parliamentary Counsel. However, following on from that review, further amendments are being considered which are likely to result in more substantial changes to the remit of the Commission to those recommended in the first phase of the review. Any further changes that arise out of the second phase of the review will be reflected in the draft legislation currently being prepared.

Furthermore the Government considers it would be prudent to await the judgement of a recent case taken by the Christian Brothers in the High Court, prior to the enactment of any legislation giving effect to the recommendations of the review.

In making the announcement regarding the second phase of the review today, the Minister said that, *"The Commission is performing a vital task in providing survivors of abuse with an opportunity to recount the abuse they have suffered, to inquire into the widespread abuse that occurred and to report to the public. However, there is a need for it to complete its work within a reasonable time. Justice delayed is justice denied and this is all the more important where you are dealing with people's lives which have been blighted by past failures of the State. One group alone has told me that, since the beginning of this year, 11 of their members have died. We are dealing with tragic circumstances where people simply want an opportunity to tell of their experiences and, in some cases, to inquire into abuse in*

*the institution they were resident in. I want to ensure that the Government does everything in its power to ensure that survivors of abuse have that chance”.*

The Minister gave a commitment that a draft Bill would be published as soon as the second phase of the review is completed and the judgement in the High Court case is to hand. He also indicated that consultation will continue to take place: *“Consultation is central to my approach on this matter and, since the Government’s apology on institutional abuse, my Department has consulted with survivors’ groups on all aspects of our approach and this consultation will continue.”*

The Minister further confirmed that the review and subsequent legislation will not encompass any changes that will limit or reduce the remit of the Commission in relation to investigating the responsibility of the State, and in particular, the Department of Education and Science, and the roles of the various managerial authorities in the respect of the abuse that took place.

## **Commission to Inquire into Child Abuse**

### **Statement**

The Commission has noted the announcement made by the Minister for Education and Science concerning the decision of the Government to engage in a further stage of the review of the remit of the Commission.

It seems clear that, while no final decision has yet been made as to the precise alterations proposed to the Commission's Terms of Reference, some significant changes are being considered. These changes will affect the workings of the Investigation Committee. It seems highly probable that the work of the Investigation Committee will be altered in a way which will mean that some evidence now relevant will cease to be material to that Committee's remit. In those circumstances the Investigation Committee has decided that, for legal, practical and financial reasons, it would be wrong to continue with the gathering and assessment of evidence (including discovered material) some of which is likely to fall outside the scope of being relevant to the task which it will ultimately be asked to complete. The Commission has decided, therefore, that pending the announcement of the results of the Government's review, it will not use its power to gather further evidence and it will not plan for any further hearings of the Investigation Committee.

Parties, whether Complainants or Respondents, should not commit any further resources to preparation for evidence gathering or hearing until the Investigation Committee has had an opportunity to consider the position in the light of the conclusions of the Government's review.

It is not understood that any alteration in the role of the Confidential Committee is under consideration. This Committee will carry out its functions as heretofore.

It is the Commission's intention to issue a further Interim Report in November, 2003.

September, 2003.

# APPENDIX E



## **Formal Submissions by Commission to Government Review**

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2. Paper entitled “Possible Approach to Selection of Complainant Evidence” first submitted to the Attorney General on 12 <sup>th</sup> February, 2003 and resubmitted on 4 <sup>th</sup> March, 2003 with statistical data as to the estimated total number of allegations sexual and serious physical abuse by alleged multiple abusers and the estimated number of individual Respondents deleted	386

## **Paper submitted to the Attorney General on 29<sup>th</sup> January, 2003**

### **COMMISSION TO INQUIRE INTO CHILD ABUSE**

#### **POSITION OF COMMISSION IN RELATION TO GOVERNMENT REVIEW**

##### **1. INTRODUCTION:**

The purpose of this Paper is to set out the considered position of the Commission in relation to the review announced by the Government into its remit. At the request of the Attorney General, the Commission met with the Attorney General (who leads the Government's Review), and also arranged for a series of meetings between senior members of the Commission's Legal Team and the Attorney General and his officials. As a result of those meetings, the Commission determined to formulate its views by inviting each of its committees to separately consider the issue and report back to the Commission as a whole. As a result of those reports, and further considerations, the Commission has come to the views set out in this Paper.

##### **2. THE CORE ISSUES:**

###### **(a) Selection:**

As the Commission understands it, the primary aim of the Review is to attempt to determine a suitable manner in which the volume of individual cases which will need to be "tried" by the Investigation Committee may be significantly reduced, with a consequent substantial saving in time and costs. At the same time, it is desired to enable the Investigation Committee to reach conclusions in relation to the widest possible range of issues which might be said to come within its competence. These two aims necessarily pull in opposite directions in that the former tends towards less inclusive terms of reference, while the latter tends towards more inclusive terms. It is the Commission's understanding, therefore, that a balance between the two is what needs to be struck. The Commission is of the view that the best method of attempting to strike such balance is to confer upon the Investigation Committee a wider discretion in relation to which cases need to go to full hearing. It is felt that such a measure (as opposed to any more mechanical or deterministic methodology) is likely to go best towards meeting a reasonable balance, as outlined above. However, the Commission is also of the view that any such discretion should require to be exercised in relation to specific criteria which should be set out in the Statute itself. This is so for a number of reasons. Firstly, the above balance appears to the Commission to be essentially a matter of policy which requires to be dealt with in the legislation rather than a matter for the Commission. Secondly, it is felt that it would be unsatisfactory to leave the Commission with a discretion to hear some, but not other, cases without giving guidance as to the basis upon which the selection should be made. The Commission, therefore, feels that a statutory discretion with statutory criteria would appear to be the best option.

However, the Commission feels that the determination of the precise criteria to be included in the Statute is fundamentally a matter of policy which should be determined by the Government and the Oireachtas. Those criteria have an impact both in relation to the inclusivity/exclusivity balance, and also to the priorities in the remit of the Investigation Committee, both of which are, in the view of the Commission, policy considerations for the Government. The Commission would, however, be willing to consider any criteria which might be proposed in advance of a final determination as to their inclusion in the legislation, with a view to assisting the Government on the question as to the likely effect of the adoption of those criteria on the scale of the inquiry which would be required to be conducted by the Investigation Committee. The Commission accepts that it is in the best position to give a view as to the likely practical effects of the implementation of such criteria.

**(b) The Position of Persons Not Selected for Full Hearing:**

The Commission acknowledges that a difficulty will be created in relation to persons who have indicated a wish to be heard before the Investigation Committee whose evidence is not selected for inclusion in hearings by virtue of the operation of criteria such as those referred to above. In particular, the Commission is mindful of the fact that all persons were initially given an assurance that their evidence would be heard, and were also led to believe that the Committee before whom they would be heard was essentially a matter of their choice. The Commission agrees with the views of the Confidential Committee that the dynamic of its inquiry would necessarily be altered in an unhelpful way if persons were “forced” to go before it, with not being heard at all being the only alternative available to them. While there already exists (and would, presumably, remain) provision for an entirely voluntary change of mind on the part of an individual, it is unlikely that all persons not chosen to have their evidence heard before the Investigation Committee would readily accept such a voluntary transfer. It seems inevitable, therefore, that there will be a category of persons who will not be selected for hearing, but who would be unwilling participants in the Confidential Committee. Similarly, no method by which the views of such persons could be taken into account in the determinative process of the Investigation Committee can be utilised without exposing the evidence of such person to being tested in the same way as all other witnesses, thus defeating the purpose of the remit review. The Commission does not have a ready solution to this problem, but acknowledges the need to attempt to make some appropriate provision for the inclusion of those persons in the process. The Commission is willing to listen to any proposals for dealing with this problem.

### **3. OTHER ISSUES:**

In the course of considering its response the Commission has considered a number of other issues that arise at a legislative level, and puts forward the following matters for consideration by the Government.

**(i) Independence of Commission:**

The Commission is concerned about public perception of the appropriateness of the Commission being reliant on the Department of Education and Science for its resources and that Department being the Commission's communication channel to Government given that:—

- The Department's conduct over the past 60 years is being investigated by the Commission, and
- The Department has a contractual arrangement with the religious orders which managed residential institutions in the past, which might be perceived as not being conducive to support for the Commission's investigation of the conduct of those orders, which the Commission is mandated to conduct.

The Government may consider that the functions reposed in the Department of Education & Science in relation to the Commission should be reposed in another Department of State (other than the Department of Health and Children or the Department of Justice, Equality & Law Reform).

**(ii) Two phase process of the Investigation Committee:**

The two phase process of the Investigation Committee necessitated by the words "where it is satisfied that abuse has occurred" in Section 4(1)(b)(ii) of the Act of 2000 is a likely source of additional cost and delay in the fulfilment of the remit of the Investigation Committee. Consideration may be given to the deletion of those words.

**(iii) Naming of Individuals:**

The Government will be aware of the fact that the Congregation of the Christian Brothers has intimated that it intends challenging the determination of the Investigation Committee in relation to "lapse of time" issues, and, in particular, the naming of individuals in any reports of either the Investigation Committee, or the Commission as a whole, where lapse of time would be likely to have led in civil or criminal proceedings before the Courts to a determination by the Court that such proceedings could not go ahead. In substance (as the Commission understands it) the challenge will suggest in the alternative that the Investigation Committee was wrong in its determination, or that if it was right, and mandated by the legislation to act in the way contemplated, the legislation itself would be inconsistent with the Constitution. It should be noted that the proposed scaling down of the remit along the lines suggested by the Government would not seem to have any effect on this issue, and, thus, the revised legislation will remain open to a similar challenge. It may be that some consideration should be given to specifying within the legislation the basis upon which individuals might be named, whether by reference to the importance of so doing in the light of the criteria now to be placed into the Act, or such other criteria or basis as might be considered appropriate.

**(iv) Definition of Relevant Period:**

The Investigation Committee, and the Commission as a whole, has had to consider issues raised by Respondents in relation to the definition of "relevant period" contained within the Act. It is highly arguable that the only discretion conferred upon the Commission (and it is the Commission rather than the individual

committees that have the discretion) is to change the date of commencement or termination of the relevant period with universal effect. In other words, the Act does not permit the consideration of individual cases outside the statutory relevant period, but does permit the Commission to extend the relevant period if it feels that it is appropriate to do so. In particular, it would seem that there may be difficulties in specifying a different relevant period for the Confidential, as opposed to the Investigation, Committee. However, the problems which the Investigation Committee would have in going significantly back beyond the statutory cut-off point of 1940 do not appear to apply to the Confidential Committee, and consideration might be given to permitting the Commission to specify different periods in respect of the two Committees.

**(v) Definition of Abuse under Sub-Section (c) and (d):**

This issue has again been canvassed, at least on an initial basis, in arguments put forward on behalf of Respondents. Under the two relevant Sub-sections, the definition of abuse for the purposes of the Act is extended to deal with various types acts or omissions. However, the definition is so constructed as to make it arguable that the Commission is required to satisfy itself on an objective basis that the person concerned actually suffered serious harm as a result of the acts or omissions complained of. Thus, it is arguable that a robust individual who suffered significant inappropriate action on the part of the management of an institution may not be regarded as having been abused by virtue of the fact that that individual did not (as a matter of fact) suffer serious harm. On the other hand, a person who was subjected to a significantly less adverse regime (viewed objectively), but who has, in fact, suffered harm as a result thereof, may come within the definition. The definition, therefore, seems in itself to be inappropriate. Of even greater concern, it raises the question of whether the Investigation Committee in particular might need to have evidence in each case as to the fact of harm before it could conclude that abuse under the relevant sub-paragraphs occurred. The Government may wish to consider whether it might be more appropriate to include a definition that would allow the Commission to make a finding of abuse, where it might be reasonable to assume that the acts or omissions concerned would have caused serious harm.

**(vi) Section 25 Hearings:**

The current legislation provides that Section 25 hearings must be in private. The Government may wish to consider making that an option rather than leaving it as mandatory. The matter came into some focus when certain Respondents who had been parties to the “lapse of time” hearing requested that the Commission should refer the matter to the Court under Section 25. As it happens, the Commission declined that request. However, had it acceded in whole, or in part, to same, an anomalous situation whereby the original hearing before the Investigation Committee was (in accordance with the Investigation Committee’s discretion) held in public, would be followed by a further hearing into precisely the same issues which would necessarily have been held in private.

**(vii) Reports:**

The Government may wish to consider altering the position in relation to the reporting structure of the Commission. There may be merit in permitting either

Committee to produce both interim reports and reports which are final in respect of the issues which they address. Given the wide range of work which both Committees have to attend to, an ability to bring finality to some portions of their work may be considered desirable. It may also be considered appropriate that the Commission should have the facility to publish directly any report of either Committee, whether it be interim, final in respect of certain issues, or final in the ultimate sense. If the Government were persuaded that this facility should be permitted, then the Commission considers that, for the purposes of avoiding any risk of inappropriate cross-fertilisation between the two Committees, either Committee should only be permitted to present a report to the Commission as a whole when the Commission so determines, and that publication of any such reports should be in the discretion of the Commission.

**(viii) Inquiry Officers:**

Given that the combination of the selective remit currently under consideration, and the “modularisation” already determined upon by the Investigation Committee in its procedural framework document, will lead to procedures more akin to those experienced at Tribunals of Inquiry, it may be that the need for statutory officers in the nature of the Inquiry Officers would become redundant. However, the powers conferred upon them to require statements from persons, etc. should be maintained even if a decision is made to abolish the post. Those powers might be retained and be conferred upon the Investigation Committee itself, with a power given to it to delegate to any official or consultant. This latter is necessary to enable the Commission to arrange for its Legal Team to interview potential witnesses, which will become an even more important aspect of the process in the event of a selection having to be exercised in relation to which witnesses should be called.

**(ix) Additional Powers:**

In addition to the matters which were already in the contemplation of the Government, and which were addressed by the Attorney General at his meeting with the Commission, the Government might wish to consider conferring upon the Investigation Committee a power to seek answers to specific questions in the form of mandatory replies to particulars, or interrogatory style requests. This would again be of considerable assistance in narrowing the issues, and in the selection of the evidence that will need to go to a full hearing.

**(x) Determination of Confidential Committee:**

It is considered that the provisions of the Act of 2000 which delimit the functions and form of determinations of the Confidential Committee should be reviewed in the light of the decision of the Supreme Court in the Maguire -v- Ardagh (the Abbeylara case). In particular, consideration should be given to whether the functions of the Confidential Committee should include the conduct of an inquiry as provided for in Section 4(1)(b) of the Act of 2000.

In the light of the differences in the process between the Confidential Committee and the Investigation Committee, consideration might be given as to whether the word “findings” is an appropriate description of the results of the considerations of the Confidential Committee. In substance, its purpose is to give a voice to those persons who come before it, and to present their story in a collective way with such

additional observations as may arise. Given the concerns of a subsequent challenge, maintaining as far as possible the clear distinction between the separate functions of the Investigation and the Confidential Committee is important. The wider discretion in respect of the presentation of reports may contribute to this in part. An alteration in the language used in relation to the contents of the reports of the Confidential Committee may also make a contribution in that regard.

It may be considered prudent to provide against the eventuality that the workload of the Confidential Committee is greatly increased by voluntary transfers of persons not selected for a full hearing before the Investigation Committee. In that event, it is suggested that the situation would be best met by a provision along the lines of Section 23(A) of the Residential Institutions Redress Act, 2002, subject to the variation that a more appropriate “shorthand” than “deciding officers” is used.

**(xi) Vaccine Trials:**

As the Government will be aware, the remit of the Commission was extended to deal with the so-called Vaccine Trials issue by Government Order. Given the opportunity for legislation, the Commission feels that it might be more appropriate at this stage to create a separate committee charged with the conduct of the Vaccines Trials Inquiry. Some of the language and provisions contained in the Act relevant to the Investigation Committee (which is currently charged with conducting the inquiry into the Vaccines Trials issue) for obvious reasons are more appropriate to the general remit of that committee rather than the Vaccines Trials questions. There may be some consequential amendments required in the light of a positive decision on this issue.

## **Paper first submitted to Attorney General on 12<sup>th</sup> February, 2003**

### **Possible Approach to Selection of Complainant Evidence**

#### **Policy Matter**

In its paper presented to the Attorney General on 29<sup>th</sup> January 2003 the Commission stated that the determination of the precise criteria to be included in an Act of the Oireachtas amending the Commission to Inquire into Child Abuse Act, 2000 (the Act of 2000) for selecting Complainant witnesses is fundamentally a matter of policy which should be determined by the Government and the Oireachtas. That remains the Commission's position. However, having found the proposals contained in the working paper considered at the meeting with the Attorney General on 6<sup>th</sup> February, 2003 to be unworkable and likely to be the subject of legal challenge, the Investigation Committee suggests that consideration might be given to the following approach, which is outlined in "broad brush" terms. The Investigation Committee's legal team is available to discuss the approach in more detail, if the Review Group considers it would be useful.

#### **Distinguishing Different Types of Abuse**

It is suggested that, in determining criteria for selection of Complainant witnesses, a distinction should be drawn between:

- (1) Sexual abuse and physical abuse (paragraphs (a) and (b) of section 1(1) of the Act of 2000);
- (2) Emotional abuse (paragraph (d) of section 1(1) of the Act of 2000); and
- (3) Neglect (paragraph (c) of section 1(1) of the Act of 2000).

The various types of abuse are distinguishable from each other for the following reasons:

- (a) Abuser specific: sexual, physical and emotional abuse are invariably inflicted by a specific abuser or specific abusers. Neglect is the product of a system of management, although responsibility for the system may repose in one specific individual or a number of specific individuals, rather than in a group of individuals as an organisation.
- (b) Context: context is not an issue in determining whether sexual abuse has occurred and arises only to a limited extent in determining whether physical abuse has occurred, in that rules governing imposition of corporal punishment or prevailing attitudes to corporal punishment may be relevant. Context does come into play in relation to determining whether emotional abuse occurred, in that awareness and understanding of the nature of emotional abuse, or absence of such, at a particular point in time may be relevant. Neglect must be determined in accordance with the prevailing norms and standards of the time.
- (c) Positive experiences: in determining whether neglect occurred, it is necessary to hear evidence of witnesses who consider their experience of living in an institution was positive.

## **Modular Approach**

The Investigation Committee has decided to adopt a modular approach to the work of the Investigation Committee. The institution will be the unit of investigation. Accordingly, the selection of Complainant witnesses will take place in relation to the module, i.e. the institution.

## **The Fundamental Test**

The fundamental test in the selection of evidence is whether it enables the Investigation Committee to carry out its statutory remit properly, which is to ascertain the full and true facts as to—

- the nature, circumstances and extent of abuse in institutions in the relevant period;
- the “players” involved, including individuals, institutions and regulatory authorities;
- where responsibility lies for the abuse; and
- why it happened.

It is understood that to enable it to fulfil its remit, it is intended to give additional powers to the Investigation Committee, for example, to confer the status of evidence on discovered material. The Complainant evidence will be part only of the body of evidence available to the Investigation Committee. The Investigation Committee will also have at its disposal the fruits of discovery and third party evidence.

## **Sexual/Physical Abuse: Selection Criteria**

It is suggested that Complainant witnesses should be selected by reference to both (1) abuse specific criteria and (2) abuser specific criteria.

Abuse specific criteria should include:

- (a) the range and severity of the alleged abuse,
- (b) the duration and frequency of the alleged abuse,
- (c) the age of the Complainant at the onset and at the end of the alleged abuse,
- (d) the level of coercion and threats used,
- (e) the nature of the relationship between the alleged abuser and the Complainant,
- (f) the setting in which the abuse occurred — whether in a residential or non-residential setting,
- (g) the number of abusers, and
- (h) the condition of the complainant — whether under intellectual or physical disability.

The abuser specific criteria should include:

- (i) the volume of complaints against the alleged abuser,
- (ii) the range of allegations against the alleged abuser — temporal and territorial, and
- (iii) whether the alleged abuser has been subject to investigation either by the Gardai or a Health Board and whether he/she has been involved in Court proceedings, either criminal or civil.

In applying the criteria, in practice it would be necessary to identify—

- the institution the subject of the module,
- the allegations of sexual/physical abuse within the module,
- the alleged abusers within the module,
- the volume of complaints against each alleged abuser across all of the institutions being investigated, and
- other evidence of such abuse within the institution or against each alleged abuser.

As things stand, the total number of allegations of sexual and serious physical abuse by alleged abusers being investigated is substantial, and includes multiple allegations against a significant number of individual respondents. It is the view of the Investigation Committee that it should investigate each alleged multiple abuser but that it should be left to the Investigation Committee to select the Complainant witnesses to testify against each alleged abuser applying the criteria set out above.

Consideration should be given to allowing a discretion to the Investigation Committee to decline to investigate allegations in relation to which the Investigation Committee would be precluded from reporting a finding by reference to paragraph (c) of section 13(2) of the Act, for example, where there is a single allegation against an abuser or in respect of an institution.

### **Emotional Abuse — Selection Criteria**

In addition to the abuse specific and abuser specific criteria listed above in reference to sexual and physical abuse at (a), (b), (c), (g), (h), and (i) and (ii), the following additional criteria should apply for selection of Complainant witnesses who allege emotional abuse:

- whether emotionally abusive interactions pervade and characterise the child's experience.

### **Neglect — Selection Criteria**

In relation to neglect, the application of the fundamental test will involve ascertaining the full and true facts as to life in the institution at the particular time. The sources of evidence will be:

- discovered material,
- Complainant evidence,

- third party evidence, including evidence of former residents who consider their experience of life in the institution was positive.

The abuse specific criteria set out above in relation to sexual and physical [abuse] at (a),(b), (c), (f) and (h) and the volume of complaints in relation to the institution should be applied in selecting Complainant witnesses.

The order in which evidence will be taken is a matter for determination by the Investigation Committee in applying the modular system.

Consideration might be given to providing that neglect be investigated at institutional level, recognising that in such event the abuser could not be identified in a finding. It is difficult to estimate what savings in terms of time and cost would ensue.

### **Amendment of the Act of 2000**

The foregoing suggestions might be accommodated by amending the Act of 2000 as follows:

- (1) Limiting the entitlement of a person to testify to the Commission, provided for in paragraph (a) of section 4(1), to an entitlement to testify to the Confidential Committee.
- (2) Limiting the function of conducting an inquiry, provided for in paragraph (b) of section 4(1), to the Investigation Committee.
- (3) Giving the Investigation Committee a discretion to select Complainant evidence to satisfy the fundamental test and listing the criteria for selection.

### **Consequences of implementing Suggestions**

The inevitable consequence of adopting the suggestions outlined above or, indeed, any approach which takes away from persons, who have indicated a willingness to testify to the Investigation Committee, the statutory right to be heard which they now have is that persons not selected will be disappointed. However, the Investigation Committee does not see any way in which such persons can have an involvement in the process over and above the very considerable assistance they will have given to the Investigation Committee by submitting statements. The statements are the “starting blocks” which enable the Investigation Committee to pursue lines of inquiry, direct discovery, find independent witnesses and so forth. While it would be regrettable that all persons who are willing to testify would not be heard, the model of inquiry which is in contemplation of the Attorney General will result in a more effective and focused inquiry and will enable the Investigation Committee to report within a reasonable timeframe, if a method of selection of Complainant evidence which is not unduly prescriptive can be devised.

### **Conclusion**

While reiterating that the Investigation Committee considers it inappropriate, and has no desire, to trespass into the area of policy, which is properly the domain of the executive

and the legislature, it is anxious that the policy makers should have the benefit of its experience in endeavouring to fulfil its existing statutory mandate. As will be noted from the observations contained in the Introduction to its Framework of Procedures published on 8<sup>th</sup> November, 2002, the Investigation Committee has encountered difficulties.

# APPENDIX F



**COMMISSION TO INQUIRE INTO CHILD  
ABUSE**

**INVESTIGATION COMMITTEE**

**FRAMEWORK OF PROCEDURES**



## A. Introduction

The purpose of this document is to indicate the framework for procedures which it is proposed will be adopted by the Investigation Committee (the Committee) in fulfilling the first phase of its statutory mandate to

- hear the testimony of complainants, who have elected to give evidence to the Committee about abuse they allege they have suffered which comes within the remit of the Committee, and
- conduct an inquiry into abuse of children in institutions during the relevant period, as defined in the Commission to Inquire into Child Abuse Act, 2000 (the Act), to establish whether abuse occurred before investigating the causes, nature, circumstances and extent of such abuse in the second phase of its work.

As was stated in the Provisional Ruling, dated 9<sup>th</sup> September 2002, and the Final Ruling, dated 18<sup>th</sup> October, 2002, (both of which are available on the Commission's website — [www.childabusecommission.ie](http://www.childabusecommission.ie), or on request from the Commission) of the Committee on issues in relation to lapse of time and allied issues, which were the subject of a procedural hearing held in public at the end of July 2002, less than one third of the persons who had signified a wish to testify to the Committee had, by the end of March 2002, submitted statements detailing their allegations. Following imposition of a final date for submission of statements of 30<sup>th</sup> June, 2002, in the period between the end of March and the final date, the Committee received approximately 1,200 statements from complainants. Receipt of these statements enabled the Committee to get an overview of:

- the total number of complainants who wish to testify,
- the nature of the abuse in respect of which they wish to testify,
- the alleged perpetrators of abuse about whom they wish to testify,
- the institutions or institutional settings in which they allege abuse occurred
- the number of complainants who wish to testify about more than one institution, and
- in general, the issues which are likely to arise on the evidence which the complainants will give, assuming they testify in due course, and on the inquiry.

For the first time, the Committee was in a position to assess its potential workload and to consider how it would deal with the workload in the most timely and cost efficient manner consistent with the entitlement of complainants to a fair hearing and the rights of respondents against whom allegations are made to defend their reputations and to fair hearings.

Accordingly, the Committee, as was announced in the Provisional Ruling, decided to review its procedures.

The review of procedures has taken into account the experience of the Committee to date in hearing allegations of complainants who submitted statements in response to requests under the Act before the end of March 2002. The experience has been that, in the main and with a few exceptions, the respondents have adopted an adversarial, defensive and legalistic approach in the process. The Committee has always recognised the right of a

person or body which is brought into the process as a respondent to be afforded a reasonable means of defending himself or herself. Accordingly, it has striven, through its procedures, to ensure that such right is safeguarded and that its proceedings are conducted fairly and in accordance with the constitutional principles. While it is recognised that, in adopting the stance which has been adopted, respondents are not acting improperly, the factual position is that the majority of allegations are being contested or, alternatively, the strict proof of allegations is being called for. The inevitable consequence of this approach will be an increase in the amount of detailed evidence which would otherwise have to be heard. In so far as respondents contend that they are co-operating with the Committee, in practice they are doing no more than complying with their statutory obligations and doing so reluctantly, in the case of some respondents, and under protest, in the case of others.

In reviewing the procedures the objective has been to devise measures whereby the Committee will be able to carry out its inquiry in such a way that it can ascertain the full and true facts on the questions it has been mandated to inquire into within a reasonable timeframe in the interest of all parties, whether voluntarily or compulsorily involved in the process.

## **B. A Framework**

In view of the broad scope of the Committee's mandate to conduct the inquiry—

- the range of conduct and behaviour comprehended by the definition of “abuse”,
- the timeframe of the inquiry, extending as it does from at least 1940,
- the range of institutions and institutional settings covered by the definition of “institution”, and
- the varied circumstances of the complainants, many of whom make allegations in respect of more than one institution,

it has become clear that different procedural rules may be necessary in order to deal fairly and effectively with different aspects of the inquiry and the various combinations of factual circumstances which arise. Therefore, it has been suggested by the Committee's legal team that what should be set forth in this document is a framework for procedures, which may be subject to adjustment for the purposes of different aspects of the inquiry and various combinations of factual circumstances and the associated hearings, so as to reflect the nature of the issues anticipated to arise and the fairest and most efficient procedures for resolving those issues.

Within the framework, in so far as they are consistent with it, and subject to the matters addressed later in section L, the existing Rules of Procedure of the Investigation Committee (the Rules) will continue to apply. With a view to ensuring the necessary flexibility to deal, as they arise, with issues or eventualities which may not have been foreseen, it is necessary that both the framework and the Rules of Procedure should be flexible. Accordingly, the Committee reserves the right to adopt such procedures as it considers appropriate in relation to the conduct of its inquiry or any part of it and, subject to giving reasonable notice to any person or body thereby affected, may depart from the procedure outlined in the Rules or in this framework document.

## **C. Modularisation**

The framework is predicated on the decision already announced in the Provisional Ruling and the Final Ruling that the unit of the inquiry is the institution during the relevant period or parts of the relevant period. This decision recognises that the organisation of the business of the Committee and, in particular, the first phase of it, must be focused on and take account of the institution and what happened in it. This framework gives effect to the proposal to deal with each institution under investigation or, where appropriate, each such institution in respect of a particular period, on a modular basis.

The Commission has sought from the Minister for Education and Science sufficient resources to enable it to conduct its hearings through four divisions working simultaneously preparing for hearings and hearing modules. The implementation of the procedures envisaged in this document is wholly contingent on those resources being made available as a matter of urgency.

A module may be sub-divided in time, for example, by reference to the period of responsibility of a particular manager of an industrial school. However, it is recognised that the same division, in so far as is practicable, should deal with all sub-divisions of the module in relation to that industrial school.

Some complainants were, during childhood, in more than one institution and are alleging abuse in respect of more than one institution. In such cases, it is considered necessary and unavoidable that the complainant will be involved in more than one module. For instance, if the complainant was in Institution A up to the age of 10 years and in Institution B between the age of 10 and 16 years, the complainant will be heard in the module in relation to Institution A and also in the module in relation to Institution B, if he or she has admissible complaints against both institutions. It is recognised that the respondents to the allegations in respect of Institution A may consider the evidence in relation to Institution B to be relevant to the allegations in respect of institution A and *vice versa*. Each respondent involved in the allegations in relation to either institution will be given notice of the hearing of the complainant's allegations in relation to the other institution prior to the preliminary hearing referred to later in section E, and will be heard as to the appropriateness of being represented at the hearing or part of the hearing in relation to the other institution.

## **D. Pre-Hearing Procedures**

### **1. Preliminary Investigations**

The preliminary investigations being carried out by the Inquiry Officers in accordance with section 23 of the Act of 2000 will be processed to conclusion in the case of each complainant. The requests for respondents' statements under section 23 (2) (b) of the Act of 2000 must be complied with. In relation to each institution in respect of which a statement has been requested under section 23 (2)(b), the legal representatives for the institution in question have received all of the complainants' statements in respect of that institution. It is the view of the Committee that there is no basis in fairness for seeking the postponement of compliance with such requests pending the finalisation of the framework of procedures.

Respondents are reminded that, under the Rules, if they wish to proffer a witness for consideration by the Committee, a statement should be submitted containing the substance of the evidence to be given by the witness.

## **2. Modules**

As soon as the Commission has obtained sanction from the Minister for Education and Science for the additional resources necessary to enable the Investigation Committee to operate through four divisions, the modules for hearing will be identified and each module will be assigned to a division. It is envisaged, for instance, that there will be a separate module for each industrial school and each reformatory school in respect of which allegations are made. Similarly, in relation to residential special schools and schools for deaf children, there will be a module for each school. It is also envisaged that there will be a module for national schools (i.e. non-residential primary schools), a module for secondary schools, a module for hospitals and a module relating to foster care. It is anticipated that the procedures provided for in this document may require to be adjusted in preparing and processing the hearings in relation to multi-institution modules.

When the modules have been identified and assigned, a matrix will be published identifying the totality of the modules and, in respect of each, identifying the division (although not necessarily the members of the division) to which it has been assigned and estimating when the pre-hearing procedures should be completed and when the various stages of the hearing process are likely to occur.

Subject to the Commission obtaining a decision as a matter of urgency securing the early availability of the necessary resources, the objective is to complete all modules and all other hearings in the first phase of the work of the Committee at the end of July 2005.

## **3. Discovery**

In the case of single institution modules, some of which have already been identified, discovery directions under section 14 (1) of the Act of 2000 will issue to each relevant person or body to procure discovery of all documentation and data relevant to abuse within the institution for the relevant period, with particular reference, but not limited to, the complainants who will be testifying in that module. In the case of other modules, discovery directions appropriate to the circumstances of the allegations under investigation will issue.

## **4. Other Evidence**

The Committee will gather all other relevant evidence, apart from the direct evidence of the complainant and the respondents and such of the evidence proffered by the complainants and the respondents as it considers relevant and conducive to the proper conduct of the inquiry. In this connection, the Committee will pursue lines of inquiry suggested by the documents discovered. The Investigation Committee also intends advertising for evidence from all available sources other than persons who were the subject of the invitations to give evidence, which were advertised prior to 31<sup>st</sup> July 2002, namely, persons who allege that they were abused while in institutional care. For example, the Committee will seek to elicit testimony from—

- social workers, child-care workers, doctors, nurses, lay-workers, members of religious orders, civil servants and other public servants and any other persons who worked in or who had contact with institutions which are the subject of the Committee's remit, as part of their working lives and who are not already involved in the process,
- people who lived in the locality of residential institutions, who can give evidence as to their dealings with, and the role of, the institutions in their local communities, and
- persons who consider that their experiences of childhood in an institution were positive experiences.

In the case of single institution modules, it is anticipated that the institution being inquired into will be identified in the advertisement.

## **5. Book of Documents**

The evidence and information gathered as a result of the pre-hearing procedures and investigations will be assembled in Books of Documents for circulation to complainants and respondents involved in the hearings and for use at the hearings. The Books of Documents will be assembled as follows:

- (a) Book A shall consist of statements and documents of general relevance to the institution the subject of the module, which the Committee's legal team considers will be useful for "setting the scene" as a prelude to hearing the evidence it is intended to adduce in relation to the allegations and the inquiry. It is hoped that the matters which might usefully be covered in this segment of the documentation will be the subject of agreement. It is also hoped that consultation with the relevant participants in the module might result in an agreed statement of facts in relation to matters such as the history of the institution, the number of children cared for in the institution at a particular time and suchlike, with a view to inducing efficiency and cost saving. The Committee has been advised that the precise content of the "setting the scene" phase of the module, whether it is to be based on evidence or on an agreed statement, should not be the subject of rigid pre-ordained parameters, but should be the subject of discussion in each case.
- (b) Book B shall consist of the statements and documents of relevance to the direct evidence of, or directly supporting or contradicting, the allegations of abuse made by complainants within the module.
- (c) Book C shall consist of statements and documents of relevance to all other evidence being adduced in the module and gathered through the discovery process, as a result of responses to the advertisements for evidence (other than the evidence of complainants) or otherwise.
- (d) Book D shall consist of all other documents and materials which have been obtained by the Committee in relation to the module but which the legal team considers should not be included in the Books of Documents for the hearings, but which, nonetheless, require to be disclosed to the parties, for example,

medical reports submitted by a complainant or a respondent in relation to matters in respect of which it is not intended to adduce evidence.

Each complainant shall receive a copy of Book A, Book C and Book D and the portion of Book B relevant to the complainant. Each respondent shall receive a copy of each book, save that an individual respondent shall receive only a copy of the portion of Book B relevant to the allegations against him.

The attention of a respondent will be drawn to any material which the Committee's legal team considers may be relied on as providing cross-corroboration between the allegations of one complainant and those of another.

### **E. Preliminary Hearing**

At least three weeks in advance of the evidential hearings in relation to each module a preliminary hearing will be held for the purpose of hearing submissions with a view to resolving, in advance of the evidential hearings, any procedural or legal issues which arise. To facilitate preparation for the procedural hearing, the Books of Documents will be circulated to all relevant parties at least six weeks before the date scheduled for commencement of the evidential hearings. The preliminary hearing will be held *in camera*. However, directions given may be published on the Commission's website or otherwise but without identifying any complainant or respondent. It is envisaged that issues which cannot be resolved through correspondence and discussions with the Committee's legal team, and which require a decision of the division to which the module is assigned, will be dealt with at the preliminary hearing. By way of example, the types of issues which could arise for consideration and resolution at a preliminary hearing are as follows:

- (a) Whether certain issues or evidence are properly included in the "scene setting" phase or the general phase of the module, as the case may be.
- (b) Whether additional documentation should be included in the Books of Documents for the hearing.
- (c) Whether certain evidence, to which fundamental objection is taken by a party, is admissible.

At the preliminary hearing submissions will be heard as to the extent to which the evidential hearings will be heard *in camera* or in public. In this connection, the Committee will have regard to the provisions of section 11 (3) of the Act of 2000 which, while requiring hearings at which evidence relating to particular instances of alleged abuse of children is being given are held otherwise than in public, enjoins the Committee to have regard to the desirability of holding other hearings in public in considering whether it is appropriate so to do. When furnishing the Books of Documents, the Committee's legal team will indicate which, if any, hearings the Committee is contemplating hearing in public.

In relation to the costs of legal representation, the Committee confirms and ratifies the position it adopted at the Second Public Sitting of the Commission held on 20<sup>th</sup> July 2000. Each person participating in a module as complainant will be allowed legal representation by a solicitor and one counsel of his or her choice in the module, to the extent that such participation is permitted. Each respondent, and each person or body who is granted

representation in accordance with the principles outlined in paragraphs 7.4 and 7.5 of the Final Ruling will be allowed legal representation by a solicitor and one counsel of his, her or its choice in the module to the extent that such participation is permitted. In so far as any person or body participating in the module considers that the interests of fairness and justice requires that such a person or body is entitled to a higher level of legal representation, submissions on that issue will be heard at the preliminary hearing.

## **F. The Evidential Hearings**

In general, and subject to what is stated in sections G, H and I following, the evidential hearings in each module will consist of three stages which reflect the format previewed in the Books of Document designated Book A, Book B and Book C.

The first stage, the opening stage, will, either through sworn testimony or an agreed statement, “set the scene” for the module. It is envisaged that all or part of this stage may be held in public.

During the second stage, the core evidence in relation to the allegations of each complainant participating in the module will be heard sequentially. This will include

- the direct evidence of the complainant,
- the direct evidence of any respondent answering the allegations made by the complainant, and
- the evidence of any witness supporting or contradicting the evidence of the complainant or any respondent answering the allegations made by the complainant.

It is envisaged that the hearing of each complainant’s allegations and the response thereto at this stage will be private to that complainant and the respondents against whom that complainant has made allegations.

During the third, or general, stage all other evidence relevant to the module will be adduced. It is envisaged that all or part of this stage may be heard in public.

In so far as it is necessary to do so to preserve the anonymity of complainants or other persons who were the subject of abuse in childhood—

- pseudonyms will be used at public hearings and
- details of identity and personal information will be redacted or pseudonyms will be used in documents (including transcripts) which are circulated to persons who would not be properly privy to such documents in accordance with the *in camera* rules.

In determining whether, and to what extent, the first and third stages will be heard in public, the division of the Committee to which the module is assigned will have regard to the extent to which the identification in public of a respondent at a stage prior to the making of a determination or a finding in relation to the allegations against that respondent is fair.

## **G. Evidence of Context**

As has been stated in paragraph 4.3 of the Final Ruling, it is the view of the Committee, that, in applying the Act of 2000, and, in particular, paragraphs (c) and (d) of the definition of “abuse” in section 1, in determining whether conduct or a state of affairs which it has been established occurred or existed constitutes abuse, the conduct or state of affairs must be measured against the prevailing norms and standards of the relevant time. It is recognised, therefore, that before a determination or finding may be made that an individual respondent perpetrated abuse or that abuse occurred in a particular institution at a particular time, the division of the Committee assigned to hear evidence in relation to the relevant module must have regard to evidence of the historical, social and economic context in which the conduct or state of affairs alleged to constitute abuse occurred.

In relation to evidence of context which is materially specific to a particular module, it is intended that such evidence will be adduced during either the first stage or the third stage of that module. Issues in relation to this type of evidence of context will be dealt with at the preliminary hearing in relation to the particular module.

Subject to what is stated in section I following, the Committee has decided to reserve its decision as to when other evidence of context will be taken and, in particular, whether it will be adduced in a particular module and, if so, at what stage, or at a general public hearing which will have general application to all or a number modules. In this connection, the Committee recognises that its desire to fulfil its remit in a timely, efficient and cost effective manner is at all times subject to the overriding imperative that it must act fairly and without violating the rights of any person or body involved in the process. Therefore, it recognises that the undesirability of the frequent repetition of the same or similar evidence in the process (for example, in all or many of the modules), on the one hand, must be balanced against the logistical difficulty of leading evidence of context in a manner in which it can be properly acted upon by a division in making a finding or determination without straying beyond the bounds of fairness or infringing the rights of any party affected by the evidence, on the other hand. It is recognised that in attempting to achieve a proper balance regard must be had to following factors:

- (a) If evidence of context is potentially material to the making of an adverse finding against any individual or managerial respondent, such respondent is entitled to be heard in relation to the evidence.
- (b) The proper fulfilment of the statutory mandate of the Committee may require that the interest of one or more complainants, or complainants in general, is heard in relation to the evidence of context.
- (c) Every member of a division is required to have regard to the evidence of context in making a determination or finding must hear the evidence first hand.
- (d) Any person or body who might be materially affected by the evidence of context must have an opportunity to make final submissions in relation thereto, which, if the evidence of context were adduced at a hearing of general application at the completion of the modules, could result in the postponement of the submissions and the conclusion of the modules for an unduly long period.

Having regard to the foregoing considerations, the Committee states the following general propositions:

- (i) It recognises that, in achieving a proper balance, it should tend towards the inclusion of as much evidence of context as is possible in individual modules, notwithstanding that this may result in repetition. However, in adopting this approach, it would be hoped that, when recurring issues have been raised and dealt with, persons and bodies involved in the process might accept the decision and desist from pursuing points previously unsuccessfully raised.
- (ii) It would be expected that contextual issues of a purely factual nature, as opposed to matters of expert opinion, for example, what regulations were in force regulating the use of corporal punishment in various types of schools during various periods, would be the subject of agreement as part of the pre-hearing process and would be the subject of an agreed statement of fact in the opening stage, without the necessity of formal proof. In the example suggested, it is acknowledged that an issue might arise as to whether the regulations in questions were brought to the attention of an individual respondent or a managerial respondent and that any agreement would have to be without prejudice to such issue.
- (iii) It is recognised that evidence of context may vary over the period of time (the relevant period) to which the Committee's inquiry relates. It may be that circumstances would dictate that evidence of context should be focused on a particular time-span and adduced in appropriate modules relating to the particular time-span.
- (iv) It is recognised that the application of fair procedures requires that a person or body in the position of a respondent is entitled to know the entire case against him, her or it before being required to give evidence, subject however to the entitlement of the Committee to lead evidence which becomes available at a later stage which such respondent should have made available, through discovery or otherwise, before being required to testify. Accordingly, in so far as there may be evidence that might be relevant to the ultimate determination of the division in respect of issues raised in a module, which is not intended to be tendered within the module, a respondent will be given notice of that evidence before the module commences.

The Committee will hear submissions from all affected parties in relation to evidence of context at the preliminary hearing.

## **H. Evidence of Elderly Complainants and Respondents**

It may be necessary, and the Committee reserves the right, to hear the core evidence relating to allegations by an elderly or infirm complainant or against an elderly or infirm individual respondent in advance of the planned hearings in relation to the module. However, it is recognised that in that eventuality, evidence of which the individual respondent was not put on notice before he or she was required to give evidence cannot form the basis of a finding against that person.

## **I. Memory**

As was stated in the Final Ruling, the Committee recognises that issues may arise in relation to memory. It is considered that it would be helpful to the Committee in the proper fulfilment of its statutory remit, and that it would be in the interest of all persons and bodies involved in the process, if at an early stage in the process a special public hearing was scheduled to hear expert evidence in relation to memory generally, the development of memory, the effects of lapse of time on memory, the effects of trauma on memory, repressed memory and recovered memory and allied issues.

What is in contemplation is the scheduling, as soon as reasonably practicable, of a joint public hearing before two divisions of the Committee: the division assigned to hear the module in relation to a residential institution for girls formerly managed by the congregation of religious sisters referred to as the first Management Respondent in the Final Ruling; and the division assigned to hear the module in relation to a residential institution for boys formerly managed by the congregation of religious brothers referred to as the second Management Respondent in the Final Ruling. At the joint public hearing, representation would be granted to the first Management Respondent and the second Management Respondent and to a representative complainant from each module. It would be hoped that the format of the hearing, the experts to be called to give evidence and the issues to be dealt with would be the subject of agreement between the respective legal teams for the parties who are granted representation and the Committee's legal team. Failing such agreement, those matters would be the subject of a joint determination by two divisions. Following the hearing, the transcripts would be made available to the members of every division, whether as member of the Committee or as deciding officer appointed pursuant to section 23A of the Act of 2000, as amended.

The approach contemplated is based on the assumption that it would be accepted by persons and bodies involved in the process that the members of every division could have regard to the evidence adduced at the joint public hearing, notwithstanding that a member of the division may not have heard the evidence first hand. The application of the opinion of the experts in relation to a particular complainant would be a matter for submission, and, if necessary, additional expert evidence, in the module. Where necessary, copies of the transcripts of the joint public hearings would be made available to persons or bodies involved in a module.

## **J. Submissions**

At the close of the evidential hearings of a module all persons or bodies who have been allowed representation at the module will be afforded an opportunity to make written submissions within a reasonable period, which will not be greater than four weeks. A hearing will be scheduled at the expiry of that period at which parties who have made written submissions will be afforded an opportunity to speak to the written submissions.

In the event that at the time of completion of the evidential hearings in the module evidence of context, which may have a material bearing on determinations or findings to be made in respect of the respondents involved in the module, is or is intended to be the subject of a general hearing which has not been completed, a person or body who was granted representation in the module may elect either to—

- postpone making submissions until the taking of that evidence is completed, or
- make submissions, subject to the entitlement to vary or amplify the submissions at the conclusion of the taking of that evidence.

In general, in implementing paragraph 9.2 of the Final Ruling, which states that, in considering whether to make a determination or finding which identifies a person as being responsible for abuse and/or identifies the institution in which the abuse occurred, where the passage of time between the events alleged to constitute the abuse and the determination is significant, the Committee will consider the question of prejudice flowing from the effects of the passage of time before making the determination or finding and, in so doing will, apply the test whether it is unsafe to make the determination, the Committee will invite and hear submissions from the relevant parties at the completion of the module. However, in the case of an individual respondent, the Committee may, at its discretion, invite and hear such submissions at an earlier stage, for example, when all evidence which it is intended to adduce against that individual respondent has been heard.

## **K. Costs of Legal Representation**

The jurisdiction of the Committee to grant legal representation and to make directions for payment of the costs of such representation is now contained in section 20 A of the Act of 2000, as amended, the text of which is set out in the Appendix.

The manner of determination of the level of legal representation which will be allowed is dealt with earlier in section E.

Participation by a person or body, who has been granted representation, in the first or third stage of a module and in any general hearing held to take expert evidence or evidence of context will be the subject of certification in advance by the division. A direction for payment of costs will be made only in relation to participation which has been so certified by the division. A certificate to participate will be granted where such participation is necessary in the interest of fairness and justice or is otherwise reasonable having regard to the contribution which the person or body may be reasonably expected to make to the resolution of the issues which arise and the ascertainment of the full truth in relation to the matters being investigated. The Committee reserves the right, where it is appropriate, to appoint a person or body to represent a particular category of persons or bodies or interests.

Subject to—

- the provisions of section 20 A of the Act, as amended, and
- the Commission obtaining the necessary sanction, which has been sought, from the Minister for Education and Science to enable the Committee to put in place mechanisms for dealing with Bills of Costs,

it is the intention of the Committee to make directions for payment of, and discharge, costs of legal representation as they arise as follows:

- (1) A direction for the payment on account, pending agreement or taxation, of the costs of preparation and filing of a statement in accordance with section 23 (2)

of the Act, which the Committee deems to be in accordance with the provisions of the Act and the Rules and the Committee's Guidelines, will be made on request of the party who submitted the statement. Such payment shall be of an amount which a legal costs accountant, nominated by the Committee, advises represents a fair and reasonable payment on account for preparation and filing of such a statement.

- (2) On completion of a module, which shall be deemed to occur when the evidential hearings have been completed and the hearing of oral submissions has concluded, notwithstanding that evidence of context which may have an impact on the determinations and findings to be made in the module may remain to be heard, a direction for payment of the costs of participation in the module, as certified by the division, will be made.
- (3) After the completion of all hearings, a direction for payment of any costs of participation in a module not already provided for will be made.
- (4) Where a person or body is granted representation at a public hearing dealing with issues of general application, as a general rule, a direction in relation to payment of costs of such representation shall be made at the completion of the hearing.
- (5) In the case of any complainant who submitted a request to give evidence to the Committee on or before 31<sup>st</sup> July, 2001 who has since died or become incapacitated to the extent that he or she is unable to give evidence, a request for payment of the costs of preparation and filing of a statement and any other participation in the work of the Committee will be entertained on receipt of notice of such death or incapacity.

Notwithstanding the foregoing, the entitlement of a person or body who is allowed representation to a direction for payment of costs is subject to the provisions of—

- sub-section (3) of section 20 A.
- sub-section (5) of section 20 A.

## **L. Rules of Procedure**

### **1. Attendance of Legal Representatives at Evidential Hearings**

It has been held by the High Court on an application of the Commission pursuant to section 25(1) of the Act (Record Number 2002 194 Sp.) that the Committee does not have jurisdiction to limit the number of solicitors and counsel who are in attendance at evidential hearings at which persons who allege they have suffered abuse in childhood recount the abuse. Accordingly, Rule 5 of Part 1 of the Rules of Procedure will henceforth be applied having regard to the judgment of the High Court, which was delivered on 9<sup>th</sup> October 2002.

### **2. Documents submitted with Statements**

Documents and materials intended to be included in Book D will not be put before the Committee with the Inquiry Officer's report and rule 2 (e) of Part 1 of the Rules shall henceforth be applied accordingly.

### **3. Transcripts**

Where it is considered appropriate, the Committee will authorise the furnishing of copies of transcripts of hearings, including evidential hearings, to persons or bodies represented in the proceedings before the Committee subject to—

- the safeguards referred to earlier in section F being observed, and
- such further safeguards, including an appropriate undertaking from the solicitor for such person or body, as is considered necessary, being observed.

Rule 7 of Part 1 of the Rules is relaxed to the foregoing extent.

### **M. Submissions in relation to Framework Document**

The Committee invites submissions in relation to the framework for procedures set out in this document, such submissions to be in writing and to be addressed to the Registrar, Investigation Committee, Commission to Inquire into Child Abuse, St. Stephen's Green House, Earlsfort Terrace, Dublin 2. Submissions which arrive not later than the 5 p.m. on 5<sup>th</sup> December 2002 will be considered by the Committee before it finalises the framework.

## APPENDIX

### Section 20A of the Act

*(as contained in section 32 of the Residential Institutions  
Redress Act, 2002)*

- (1) The Investigation Committee may allow a person appearing before it to be represented by counsel or solicitor or otherwise.
- (2) Subject to sub-section (3), the Commission may pay such reasonable costs arising out of the representation referred to in sub-section (1) to the person so represented as are agreed between the Commission and that person or, in default of agreement, such costs as may be taxed by a Taxing Master of the High Court.
- (3) Where the Chairperson is of the opinion that a person has failed to co-operate with or provide assistance, or has knowingly given false or misleading information, to the Investigation Committee and there are sufficient reasons rendering it equitable to do so, the Chairperson may, on his or her own motion or pursuant to an application by a person appearing before the Investigation Committee, refuse to allow the whole or part of the costs of appearance to such person, and may make an order directing that the whole or part of such costs—
  - (a) of any person appearing before the Investigation Committee by counsel or solicitor, as may be taxed by a Taxing Master of the High Court in default of agreement, shall be paid to the person by the first-mentioned person, or
  - (b) incurred by the Investigation Committee, as may be taxed by a Taxing Master of the High Court in default of agreement, shall be paid to the Minister for Finance by the first-mentioned person.
- (4) The Commission may pay to a person (other than a person referred to in sub-section (2)) who makes discovery of documents pursuant to a direction under section 14(1)(d) appearing before the Investigation Committee by counsel or solicitor such reasonable costs of appearing as may be agreed between the Commission and that person or, in default of agreement, as may be taxed by a Taxing Master of the High Court.
- (5) Where, in accordance with this section, expenses or costs are agreed or taxed, the Commission, or, as the case may be, the Taxing Master shall have regard to—
  - (a) any expenses and costs paid to the person by the Residential Institutions Redress Board and
  - (b) any expenses and costs paid to the person by the State in respect of any litigation concerning the same, or substantially the same, acts complained of to the Investigation Committee,

for the purpose of ensuring that payment is not made more than once for any matter arising out of such expenses or costs.

# APPENDIX G



**Commission to Inquire into Child Abuse Act,  
2000**

**Statement**

**Delivered at Public Sitting of**

**Commission to Inquire into Child Abuse**

**Division of Investigation Committee**

**(Ms. Justice Laffoy and  
Professor Edward Tempany)**

**held on**

**23<sup>rd</sup> January 2002**

Commission to Inquire into Child Abuse,  
Second Floor,  
St. Stephen's Green House,  
Earlsfort Terrace,  
Dublin 2.



## **Purpose**

The purpose of this public sitting of this division of the Investigation Committee of the Commission to inquire into child abuse is to explain the Commission's role in investigating vaccine trials. In this statement the division will outline its understanding of its statutory functions, in other words its terms of reference in inquiring into vaccine trials. There will follow an outline by the Commission's leading counsel, Mr. Flank Clarke Senior Counsel, of the manner in which the Commission's legal team proposes to advance this module of the Commission's work.

## **Commission to Inquire into Child Abuse Act 2000**

The Commission to Inquire into Child Abuse Act 2000 which was enacted on 26th April 2000 provided for the establishment of the Commission to Inquire into Child Abuse to perform the functions conferred on it by or under the Act. The Commission itself was established on 23rd May 2000. In addition to the principal functions which are conferred on the Commission by the Act, that is to say to provide a forum for hearing allegations of and to conduct an inquiry into abuse of children in institutions from 1940 to the present time and to report on the inquiry, the Act empowers the Government by Order to confer on the Commission and its Committees such additional functions or powers connected with their functions and powers for the time being as may be considered appropriate. By virtue of the Commission to Inquire into Child Abuse Act 2000 (Additional Functions) Order 2001, that is Statutory Instrument no. 280 of 2001, additional functions in relation to certain vaccine trials which involved children in institutions were conferred on the Commission.

## **Background to the making of the Order**

Since the early 1990's three vaccine trials which were conducted in the State in the 1960's and 1970's have been the subject of media interest which has given rise to public debate. Of particular concern has been the fact that some of the children who participated in the trials were resident in children's homes or orphanages at the time of such participation and questions have been raised as to the ethical propriety of the trials. In July 1997 the then Minister for Health gave a commitment to the Dail to make inquiries in relation to the matter. The inquiries were conducted by the Chief Medical Officer of the Department of Health and Children, Dr. James Kiely, who prepared a report entitled "Report on three Clinical trials Involving Babies and Children in institutional settings in 1960/61, 1970 and 1973" which was laid before both Houses of the Oireachtas in November 2000.

It being the view of the Minister for Health and Children that the matters dealt with in the report required further investigation the report was referred to the Commission on 13th November 2000 to conduct such investigation.

As is recited in the Order, that is to say in the Statutory Instrument, the Commission requested the Government to define the parameters of its investigation into the matters arising from the report. After consultation with the Commission the Order was made on 19th June 2001, that is to say the Statutory Instrument was made on 19th June 2001. The functions conferred on the Commission by the Order: Vaccine Trials By the Order, functions, which will be outlined later in this statement are conferred on the Commission

in relation to any vaccine trial which falls within either of the two categories of vaccine trials referred to in the Order.

The first category comprises the three vaccine trials the subject of the report, that is to say the CMO's report, being the following trials:

- **Trial 1:** This was a trial in which 58 infants resident in five children's homes in the State took part which sought to compare the poliomyelitis antibody response after vaccination with a quadruple vaccine (diphtheria, pertussis — that is whooping cough — and tetanus (DTP) and polio combined) with standard vaccines in use at the time which consisted of DTP and polio administered separately and at different sites. This trial was conducted between December 1960 and November 1961. The results of the trial were published in the British Medical Journal in 1962.
- **Trial 2:** In one strand of this trial, 69 children resident in an orphanage in Dublin had blood taken. 12 were subsequently administered intranasal rubella — that is German measles — vaccine. In another strand of this trial, 23 children living at home in a rural area in the midlands were administered the same vaccine. The purpose of the trial was to investigate whether there was a propensity for intranasally administered vaccine to spread to susceptible contacts, for example pregnant women, and to estimate antibody levels and acceptability of the intranasal technique of 6.vaccination. The trial was conducted during 1970. The results of the trial were published in the Cambridge Journal of Hygiene in 1971.
- **Trial 3:** In this trial 53 children, in "Mother and Baby" homes and children's homes in Dublin and 65 children living at home in Dublin were administered vaccine to compare the reactogenicity of the commercially available batches of Trivax vaccine (that is a proprietary name for Diphtheria Tetanus and Pertussis vaccine) and Trivax AD vaccine with a vaccine of equivalent efficacy but in relation to the pertussis or whooping cough component of lesser potency. This trial was apparently conducted in 1973. The outcome of this trial was not published.

The second category of trial referred to in the Statutory Instrument is specified in the following terms in the Statutory Instrument and I quote:

“... Any systematic trials of a vaccine or the mode of delivery thereof to test its efficacy or to ascertain its side effects on a person found by the Investigation Committee to have taken place during the period commencing on 1st January 1940 and ending on 31<sup>st</sup> December 1987 and to have been conducted in an institution following an allegation by a person that he or she as a child in the institution was a subject thereof. . .”

The background to the inclusion of this category in the Order is that the publicity surrounding the vaccine trials issue generated communications to the Department of Health and Children by individuals who asserted that they had been in vaccine trials of the type being investigated within the Department, if not necessarily the three trials being investigated. At the request of the Minister for Health and Children the Commission indicated its willingness to investigate assertions of that type and to include in its inquiry

any further trial if its investigations should lead to a finding that such trial had occurred and involved children in institutions.

In order to come within the second category a vaccine trial must fulfil all of the following requirements:

- (a) First it must be a systematic trial of either the vaccine or the mode of delivery of the vaccine the purpose of which is to test the efficacy of the vaccine or to ascertain its side effects on a person to whom it was intended to be administered.
- (b) Secondly, the trial must have taken place in the years 1940 to 1987 inclusive. Incidentally, 1987 is the year in which the Control of Clinical Trials Act 1987 was enacted.
- (c) Thirdly, the trial must have been conducted in an institution. And that expression is defined in the Act of 2000 as including, and I quote: "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."
- (d) Fourthly, there must be a finding by the Investigation Committee that such trial took place and was conducted in an institution during the years 1940 to 1987 inclusive and such finding must follow on from an allegation by a person that he or she as a child participated in the trial in the institution. And the word "child" is defined in the Act of 2000 as: "A person who has not attained the age of 18 years."

The Commission by public advertisement published in newspapers with circulation within the State and amongst members of the Irish community in the United Kingdom has invited any person who alleges that as a child in an institution, for example in a children's home or in an orphanage, between 1940 and 1987 he or she was the subject of a vaccine trial to contact the Commission before 15th February 2002. That is 15th February next. The advertisement will be repeated shortly. Every contact, whether as a result of the advertisement or otherwise, will be investigated and any vaccine trial which fulfils the requirements stipulated in the Order, that is to say in the Statutory Instrument, will be inquired into.

It is possible that in the course of investigations being carried out into vaccine trials, the existence of a trial which fulfils the requirements necessary to fall within the second category save that it has come to the attention of the Commission from a source other than the source stipulated in the Order may emerge. And the source stipulated in the Order is an allegation by a person that he or she as a child in the institution was the subject of the trial. In that event, if such further trial emerges in the course of our inquiries, in that event the Commission will give careful consideration to seeking from the Government an Order under the Act empowering the Commission to inquire into such trial.

## **The Additional Functions**

In relation to each vaccine trial which falls within either category provided for in the Order the Commission has a twofold function, namely to conduct an inquiry and to publish a report.

## **The Inquiry**

The Order stipulates the nature of the inquiry to be carried out. It is an inquiry into the circumstances, legality, conduct, ethical propriety and effects on the subjects thereof of each vaccine trial which falls within either category provided for in the Order. It is the Division's view that as such it gives the Commission a broad, not a narrow remit. In particular, it is the understanding of the Division that:

- The work "circumstances" comprehends all aspects of the trial whether specifically alluded to or not, including the background to its inception, its purpose and its outcome;
- The word "legality" connotes compliance or noncompliance with the regulatory regime, whether statutory, for example under the Therapeutic Substances Act 1932, or whether created by secondary legislation which was in force at the relevant time;
- The "conduct" of a trial means all aspects of the implementation of the trial, including the devising of the protocol or plan in accordance with which the trial was to be carried out, the practical day-to-day implementation of the trial and the recording of the outcome of the trial;
- The expression "ethical propriety" connotes adherence or non-adherence to ethical norms and guidelines prevalent at the relevant time both nationally and internationally in relation to clinical research and trials involving human beings and in particular involving children;
- The reference to "effects" on the subjects of a trial envisages both benign consequences and adverse reactions and consequences.

The foregoing analysis of the terminology of the Order which stipulates the nature of the inquiry is not intended to be exhaustive of all relevant factors but merely illustrative of the Division's understanding of the parameters of the inquiry defined by the Order.

In the case of each trial the relevant factors will have to be considered where appropriate by reference to the acts and omissions of all persons and bodies promoting, funding, conducting licencing or otherwise authorising and facilitating the trial and all persons and bodies charged with responsibility for the person, health and well-being of each child who participated in the trial. By way of illustration, in the case of the three trials the subject of the Chief Medical Officer's report it is envisaged that the Division will be concerned with:

- The conduct of the manufacturer of the vaccine.
- The conduct of the research body or institution and the personnel involved in the conduct of the trial.
- The conduct of the statutory and/or other regulator charged with responsibility for the regulatory regime in force at the relevant time.

- The conduct of any health, local or other public authority involved directly or indirectly with the trial.
- The conduct of the manager of the institution or other person with de facto responsibility for a child who, while in the institution, was a subject of the trial.
- And the conduct of each Department of State charged with responsibility for the health and well-being of such child.

## **The Report**

It is specifically provided in the Order that the inquiry mandated by the Order is to be carried out through the Investigation Committee, which is a Committee of the Commission provided for in the Act. The reporting function of the Commission under the Order is coextensive with the reporting function of the Investigation Committee under the Order. The scheme of the Order is that the Investigation Committee is required to prepare a report in writing of the results of the inquiry, specifying in the report the determinations or findings it has made in the conduct of the inquiry and to furnish it to the Commission. The Commission's function is to prepare and publish to the general public a report in writing specifying the determinations made by the Investigation Committee in its report. In other words, the division of the Investigation Committee conducting the inquiry into vaccine trials reports to the Commission as a whole. The Commission then publishes its report, but in so doing the Commission is limited to reporting determinations or findings made by the Investigation Committee.

## **The personnel conducting the Inquiry**

As has been stated, it is provided in the Order that the investigative remit of the Commission in relation to vaccine trials shall be carried out through the Investigation Committee. Under the Act the Investigation Committee is empowered to act in divisions. When the Order was made the composition of the Investigation Committee comprised the Chairperson and two ordinary members. Because the two ordinary members were precluded on the grounds of conflict of interest from participating in the inquiry mandated by the Order the Commission asked the Government to appoint an additional member to the Commission who would be assigned to the Investigation Committee to participate in the vaccine trials inquiry. On 13<sup>th</sup> November 2001 the Government appointed Prof. Edward Tempany, a retired consultant pediatrician, as a member of the Commission. Prof. Tempany has been assigned to the Investigation Committee, a division of the Investigation Committee consisting of the Chairperson, that is myself, I am Mary Laffoy, I am a Judge of the High Court, and Prof. Tempany, who is sitting with me today, will conduct the inquiry and prepare the report thereon in accordance with the provisions of the Statutory Instrument and the provisions of the Act.

## **Conflict of interest**

All members of the Commission, including the members of this division, are bound by a protocol on conflict of interest which also binds the other statutory officers of the Commission, the inquiry officers provided for in the Act and the Commission's legal advisors. It is intended that any other advisors or consultants retained in connection with the vaccine trials inquiry will be bound by similar rules for identifying potential conflicts

of interest and ensuring that an advisor does not become involved in any matter where such involvement would give rise to a conflict of interest. All members of the staff of the Commission are bound by similar rules.

The protocol and rules on conflicts of interest are strictly enforced. The invitation already issued publicly by the Commission to all persons who are affected by its work is extended to persons affected by the work of this division, namely to bring to the attention of the division any situation which it is believed may give rise to a conflict of interest. However, the division wishes to reiterate the view already expressed publicly at a public sitting by the Commission that such matter, in other words a suggestion of a potential conflict of interest, should be raised in writing with the Secretary of the Commission, Mr. Finbar Kelly, by the person who believes the conflict affects him or her or his or her legal representative, who should clearly indicate the reasons why he believes there is a conflict. The Commission cannot act on media reports, second or thirdhand information, rumour or innuendo.

## **Evidence**

The same approach will be adopted by the Division in the conduct of the vaccine trials inquiry as is adopted by the Investigation Committee in relation to the performance of its other functions. All witnesses who give evidence shall be required to give evidence on oath as is permitted by the Act. In making its determinations or findings the Division will:

- (i) Apply the standard of proof applicable in civil proceedings in a court, that is to say, proof on the balance of probabilities.
- (ii) The determination, in other words the findings, will be based only on evidence which would be admissible in a court, so that for instance in making findings of fact this Division will not rely on hearsay.

## **Public hearings**

The Act provides that a hearing of the Investigation Committee at which evidence relating to particular instances of alleged abuse of children is being given shall be held otherwise than in public. Other hearings may, if the Committee considers it appropriate having regard to the desirability of holding such meetings in public, be held otherwise than in public. At this juncture the Division does not foresee that any circumstances are likely to arise in which it would be appropriate to hold the hearings of this Division in camera. Accordingly, the intention is that all hearings of the Division will be held in public. However, if any unforeseen factors emerge, the appropriateness of hearing particular evidence in public having regard to such factors will be addressed.

## **Legal Representation and Costs**

It is recognised that every person or body whose conduct is impugned in the course of the inquiry or who may be materially adversely affected by a determination of the Division is entitled to legal representation in the process. It is also recognised that there are other interests to which it may be considered appropriate to grant legal representation having regard to the nature of the inquiry, for example the public or a section of the public which is the focus of the inquiry. Applications for legal representation will be taken following

the close of Mr. Clarke's opening statement, but they will only be taken in relation to the three trials which have been identified in the Chief Medical Officer's report, because of course we do not know what other trials will be investigated into. However, when all of the contacts and communications from the public in relation to the possible existence of other trials which come within the Commission's remit have been investigated a further preliminary sitting will be convened to apprise the public of the results of such investigations and the course the Division proposes to adopt in consequence. At that stage the issue of legal representation in relation to any other trials which are thrown up will be re-addressed if necessary.

Currently the payment of expenses, including legal expenses, of parties appearing before the Investigation Committee is governed by Section 20 of the Act. That section empowers the Minister for Education and Science to make a scheme providing for the payment by the Commission of expenses incurred in relation to attendance before the Investigation Committee. A scheme is in place for payment of the expenses of lay witnesses. Moreover, a scheme made by the Minister for Education and Science on 9th May 2001 is in place for payment of legal costs and expenses incurred in respect of legal representation at the first phase of the proceedings of the Investigation Committee, which hearings are held in camera. At present there is no scheme in place under Section 20 providing for the costs and expenses of legal representation at proceedings of this Division which it is intended will follow in broad terms a Tribunal model of process.

However, by letter dated 21st January 2002 the Department of Education and Science has advised the Commission as follows, and I am quoting from the letter:

“In order to clarify matters I would like to inform the Commission that as a matter of policy it is proposed that all reasonable legal costs incurred by a person and arising from inquiries made by the Investigation Committee will be made from public funds. The Minister will propose the appropriate amendments.” By which I understand to mean amendments to our Act of 2000.

“At report stage of the Residential Institutions Redress Bill 2001.” That bill is going through the Dail at present and what we have been told is that the Minister will propose the appropriate amendments to the Act of 2000 at report stage of the Residential Institutions Redress Bill 2001.

It is the Commission's understanding that the amendment will provide for taxed costs in the ordinary sense in which that expression is used in inter partes matters. The Commission has been informed that the report stage of the bill in the Dail is scheduled for 20th February 2002. That is 20th February next.

### **Inquiry into Vaccine Trials, not Vaccines generally**

This is something I want to stress. It is important that the public should appreciate that the functions of the Division relate to vaccine trials, the three vaccine trials the subject of the Chief Medical Officer's report and any other trials which fall within the second category provided for in the Order. The common feature of the trials which the Division is empowered to investigate is that they were conducted on children and they were conducted on children who were in institutions. It is no function of the Division to investigate vaccines generally or the administration of vaccines to children in the past in

any circumstances other than in the course of a trial conducted wholly or partly in an institution.

### **Inquisitorial process**

In conclusion, the Division wishes to emphasise the inquisitorial nature of this process. It is a fact finding process, not a process which is capable of giving rise to a determination of criminal responsibility or civil liability. However, it is a process which must be and will be conducted in a manner consistent with constitutional and natural justice. The modus operandi which will be adopted for this distinct module of the Commission's work for gathering evidence, determining its relevance and presenting relevant sworn testimony to the Division will ensure that every person or body whose conduct is impugned or is likely to be the subject of an adverse finding is afforded reasonable means of defending himself or herself in the manner laid down by the Supreme Court in *In Re Haughey*

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