

We're here today to share information. The approach we take is to be as open as possible and to consult as many people as we can. We've asked people for their views on the reports carried out on the Investigation Committee by the Attorney General and by me and we're very grateful to everybody who responded. Since the beginning of the year we've met lawyers and groups representing various interests and again we're thankful to all of those people who came to see us and told us what they thought. A lot of research has been done into other inquiries in this country and abroad to see what lessons could be learned for this inquiry. Today is a part of a continuing process of consultation.

One of the first things we have to look at is the basic purpose of the inquiry into child abuse that we in the Investigation Committee have to carry out. The Act mandates an inquiry into child abuse and we're going to do that. There are other provisions in the Act which aren't easy to reconcile with the task of inquiring and that's one of the things I want to talk about this morning.

Let's try to put the inquiry into child abuse into perspective.

- What is it going to do?
- What is it NOT going to do?
- What should it be doing?
- What should it NOT even be trying to do?

The function of the inquiry at its most basic is as we see it to find out whether child abuse took place; if so what was the nature of the abuse; where did it happen; why did it happen; why was it not discovered and stopped; how widespread was it in any institution and how many institutions were contaminated by child abuse. Another vital function of this or any inquiry into child abuse is to look at the present and the future to see what steps can be taken to reduce the risk of abuse of children in care taking place in the future. There is obvious value in trying to understand how and why and where abuses took place in the past but it would be a lob-sided inquiry and

of limited value to society generally if it did not also seek to prevent recurrences. Victims in many inquiries have made clear their interest in preventative measures being recommended. In other words, it is part of the healing process for victims to know that measures are being recommended to prevent what happened to them being done to children in the future.

I have not mentioned as a function of our inquiry the naming of individual abusers. This is a very difficult question and it is the subject of the position paper that we are circulating today. I know that the victims groups to whom we have spoken have said that their members want to see the Investigation Committee naming individuals who committed abuse. The arguments for and against are set out in the paper and I do not want to rehash all of that here this morning. We know that we have a big issue. It was discussed in the Attorney Generals report and also in the review that I carried out although I did not recommend at that stage that naming and shaming should be abandoned. The matter must now be considered.

I should say that when I speak of identifying people who have committed abuse of children, I am referring to people who have not been convicted in criminal cases. If somebody has either pleaded guilty or been convicted in a Court of a crime of abuse of a child or children then it seems to me to be legitimate to take those facts as established and to proceed accordingly. That would mean inquiring where appropriate as to how the person got away with the conduct that constituted the crime and whatever other related issues appeared to arise.

We have to decide this question before we begin hearings into institutions. We plan to begin our inquiry work proper with a hearing into the emergence of child abuse as an issue in Ireland. I'll say something more about that a little later. But following that we propose to start hearings into specific institutions. We can't do that without making a decision as to whether we're going to identify individual perpetrators of abuse.

We intend to make that decision but before doing so we will give people an opportunity to think it over and come back and tell us their views. We are distributing this paper today which discusses the question so that people will know what we see as

the issues; so that the debate will be informed; and also to set out our own thinking. This paper is not a neutral discussion document: it represents our present views. Obviously, we haven't committed ourselves to a particular decision but this is the way our thinking is leading us and this is the way we believe we have to go. It is only fair however to tell people about our thinking and to give them a chance to respond. That is what we are doing as part of the process of consultation. Today's meeting is not a time for discussion. We want people to take the position paper and to think about it. We will have a hearing to consider responses at a formal hearing on the 24<sup>th</sup> May at the Distillery building, Church Street. We will also give representative groups an opportunity of giving their views and discussing the matter subsequent to that hearing. What we have in mind is: first that the lawyers will present the views of the various parties; at a later stage groups representing people, whether they are complainants or respondents, will be able to give their views to the Committee when their lawyers will be welcome to attend but will not be the main presenters. We'll schedule group meetings in consultation with them. Our legal team will of course be pleased to receive submissions from interested parties.

The reason why this issue is so important is because of the impact it has on the inquiry procedures. All inquiries must comply with Rules of Fair Procedures as laid down by the courts. This is a body of rules applying to every inquiry where there is a possibility that a person's good name may be affected adversely. Everybody here this morning is aware that these rules are binding on the inquiry by the Investigation Committee. Even if we wanted to, which is not the case, we simply would not be in a position to depart from fair procedures as defined by the courts. I don't think that the lawyers here representing the different parties will have any disagreement as to what those rules are. The area of possible disagreement is when you come to applying the rules to particular situations, but even there I hope that the room for disagreement will be very small, especially when it is clear how we are going to deal with individuals.

One consequence of the application of the rules of fair procedures is that complainants are subject to cross-examination. The vast majority of people who have complained of child abuse to the Investigation Committee name more than one person who they say abused them. Each of the people accused by a complainant is entitled to be represented and to cross-examine at a hearing into the allegations. You could have

a victim of abuse giving evidence in circumstances where he/she would be cross-examined in turn by counsel on behalf of three or four individual respondents accused of abuse, plus other counsel representing the institution involved and also the State. This is a situation which has been commented on in other inquiries as being a source of further abuse of victims.

Every inquiry into child abuse has made it clear that there are real problems about going far back in time and making specific findings or coming to conclusions as to incidents that happened long in the past. In Australia and in Canada and in Britain there have been inquiries that have drawn attention to the problems that arise in that regard. Miss Justice Laffoy made the same point in this very inquiry. It follows that there are inevitably going to be cases of particular individuals whose experiences, when recounted in evidence, are simply incapable through no fault of the victims of yielding up a firm finding that the named respondent committed the abuse. In view of the difficulties of making specific findings, we have to anticipate that there would be a large number of genuine victims of abuse who would inevitably be disappointed and even distressed at the failure, as they saw it, of the inquiry to validate their complaints. People who suffered abuse many years ago and who may still be affected by their experiences complain of being re-victimised by processes of inquiry that are highly adversarial. They feel branded as unreliable witnesses or worse if the Inquiry is not able to reach a conclusion in respect of a person accused by the witness, when in fact the position could be that the evidence simply did not reach the requisite standard. A high standard of proof is required because (a) allegations of child abuse are very serious and (b) the events happened a long time ago. And fair procedures demand that a person accused of such conduct must be given every facility to make a defence.

The fair procedures we have to comply with are not a set of rules that get in the way of an effective inquiry. It is true that doing things fairly takes longer. But the point is that an investigation that is conducted properly is more likely to reach the right conclusion.

It has been generously acknowledged by complainants who spoke to us that there is a risk in a process leading to naming and shaming of individuals of creating a new class

of victim in people who are wrongly labelled as abusers, which can happen with the best-run inquiries.

A smaller point is that there might well be instances of less heinous abuse which did result in specific attribution of blame. So one could have inconsistencies as perceived by the victims.

It must also be said that approaching the inquiry by examining the individual complaints presents a massive practical and logistical problem. If one were to try to hear every single person who complained to the Investigation Committee the process simply of hearing those witnesses would be impossible to achieve within a reasonable period. Many complainants would have died before their cases were heard. When one adds in the necessity of hearing other evidence concerning particular allegations of abuse the scale of the undertaking is multiplied and the impossibility is even more clear.

Focusing on the practical difficulties is not the best way of looking at the problem of identifying individual perpetrators of abuse. While it is true that it looms as a major difficulty that must be faced by anybody examining how the inquiry should proceed, there are other considerations besides the practical one. The most fundamental one, however, is I suggest that the real point and purpose and value of the inquiry mandated by the Act are made more difficult if not impossible by trying to give every single complainant a right to be heard, with all the implications of that right, in the inquiry into child abuse. All the wider questions which are central to the inquiry would inevitably be postponed to a date long into the future and the inquiry might well never get to them. We think that if we adopt this course of not naming individual perpetrators unless they have been convicted, we will be able to carry out a worthwhile inquiry in a reasonable time and we will produce reports and recommendations.

If we proceed in the way that we are suggesting in our position paper how will the inquiry actually work? As to the specific hearings that we envisage, they will as Miss Justice Laffoy also intended, be based on the institution as a unit of inquiry. We will investigate the role of the State and its agencies in relation to the particular institution.

We will examine all available documentation either from the institution or from other sources which throws light on the issues whether abuse happened in the institution and if so how widespread and of what nature. We are considering hearing as many witnesses as to individual experience of abuse as is necessary to reach a conclusion whether abuse happened, if so of what nature was it and how widespread. It may well be necessary in the case of a particular institution to hear every single complainant in order to answer these basic questions. But if we can answer them having heard fewer complainants we will do so because the hearing of individual complainants while important and even vital is not the end of the matter. We cannot promise or deliver an inquiry into each and every one of the abuses alleged by complainants.

This is an inquiry into child abuse – it is not an inquiry into specific allegations of child abuse. In other words, it is not and cannot ever be a substitute criminal or civil process for trying individual accused people on charges laid by a long list of complainants. We have to concentrate on the important public and social and general purposes that we see as the essence of the Inquiry's function.

What will happen or what options are open to complainants whose evidence it has not been necessary to hear in the investigation of a particular institution? I have said that in some cases it may be necessary to hear all the complainants in a particular institution but I do not think that will be the norm. Neither can I say that we will try to hear as many complainants as possible because that would not be consistent with what we are trying to do in the inquiry. The fact that somebody is not heard in full session, with examination and cross-examination as I have described, is not however the end of the matter. The Commission operates through two committees. We as the Investigation Committee have the task of carrying out the investigation into child abuse. The Confidential Committee is available to people who wish to tell of their experiences in institutions in a sympathetic and entirely non-adversarial and private environment, to experienced professionals whose function it is to hear and record the information they receive and ultimately to report on the accumulated evidence that they have heard and which contributes to the overall picture which will be presented by the Commission in a report. The Confidential Committee commenced hearings in September 2000 and has heard 856 witnesses to date. There are 202 applicants

remaining to be heard. It is open to applicants to the Investigation Committee to transfer to the Confidential Committee if they so wish. The result is that no complainant will be shut out from participating in the work of the Commission.

Everybody who gives evidence whether to the Investigation or Confidential Committee will have his or her contribution respected and used as part of the picture that is built up from all the information that comes to the committees. Reports from both committees contribute to the final report of the Commission to the people of Ireland.

It is true that the Act setting up the Commission provided that people would have an opportunity or recounting their experiences not only to the Confidential Committee but also to the Investigation Committee. This entitlement was discussed in the various reports that have been produced on the work of the Commission. In my report I recommended that this entitlement should be removed because it was simply incompatible with the inquiry function to impose a duty to hear everybody who wanted to give evidence. Whereas the real job that the Investigation Committee has to carry out is not to act like a court hearing dispute between rival parties, it follows that any inquiring body must have the power itself to decide where the inquiry should go, what areas to explore and specifically what witnesses can assist in the inquiry process. The Investigation Committee accordingly cannot be deprived of the power to decide which witnesses it is going to call.

I am of course aware that the issues I am discussing here are to some extent at least the subject matter of litigation. In the challenge brought by way of judicial review by the Christian Brothers some of these questions are raised, although specifically relating to respondents who are dead, who are untraced, who are suffering from memory loss or who are otherwise prejudice by long delays. The appeal to the Supreme Court brought by the Christian Brothers against the decision of the High Court is due to be heard on the 29<sup>th</sup> June and following days. We could I suppose do nothing about this issue knowing that it is going to be debated in the highest court in the State. We could do that in the hope or expectation that the decision of the court would take any choice out of the matter for us. We have decided not to do that and to set out our position so that people will know where we stand. And we will make up

our minds following the debate on the question as soon as we can. It is only fair that people should know what our thinking is independently of any issue that may go to court. It is equally important that the parties to the court case should know our intentions irrespective of the outcome of the court case. It would be giving a false impression if we were to await the outcome of the court case and then if we succeeded in full propose to take a decision that would perhaps render the Supreme Court decision nugatory. Respect for the courts and their processes as well as the participants in the action and also those who are engaged in the work of the Investigation Committee demands that we clarify our thinking and our decisions as soon as possible. This we propose to do. Following the hearing on the 24<sup>th</sup> May and if necessary on following days and the seminar that I have mentioned, we hope to give our decision on the 16<sup>th</sup> June or thereabouts as to how we intend to proceed.

We must make these critical decisions as I have said before proceeding to specific inquiries into institutions so that people will know our approach. As matters stand at present the legislation governing the Investigation Committee and the Commission as a whole has not been amended. While the Government has made it clear that they accepted the amendments which I suggested in my report they have announced that they will not introduce those changes until after the Supreme Court has decided the Christian Brothers challenge. This is entirely in accordance with what I had in mind. It is clear from what I am saying and from the position paper that further amendments will be needed if we decide to follow these recommendations. The changes additional to those already proposed will not be complicated or even lengthy and should be able to be effected without any extra delay.

Whatever we decide as a result of this issue we know that some changes to the legislation are going to take place. We don't have to hold up the resumption of the inquiry while we await those amendments. We intend to proceed as soon as we can with the programme of work which we have set out and which counsel will outline. Once we have announced our decision on the issues introduced here we will proceed in accordance with the legislation and with our stated intentions. We anticipate that hearings will begin into a general background investigation as to the emergence of child abuse on the 21<sup>st</sup> June. We hope to begin inquiries into a specific institution on

the 5<sup>th</sup> July. Let me say a word about our plans for the hearing entitled the emergence of child abuse.

We have a situation where the Taoiseach has issued a formal apology on behalf of the State to victims of child abuse. Incidentally the 5<sup>th</sup> anniversary of the Taoiseach's statement is on Tuesday next which is another reason if one were needed for urgency in getting on with our inquiry. We want to look at the emergence of child abuse as an issue. How did people become aware of it? The Taoiseach's apology of the 11<sup>th</sup> May 1999 marked a transformation in attitudes. How did this change take place and why? It seems to us that this is a legitimate area of inquiry and we want to ask those who apologised to victims of abuse and who contributed to the redress fund— we want to ask them: “ how did you come to apologise? How did you come to contribute to this fund? What conclusions if any or inferences can we draw in the course of our inquiries from your apologies and contributions?” We want to ask these questions to the extent that it is legitimate to do so but no further. We are not concerned with the sufficiency of the contribution made by any organisation or congregation or indeed made by all congregations but we do want to raise legitimate queries, which will throw light on the existence and extent of abuse of children in the past.

After all, it must seem peculiar to some people that the Commission to Inquire into Child Abuse located in Earlsfort Terrace is asking whether any abuse took place in any particular institution while, a mere two miles away, in another office another body Chaired by another Judge of the High Court is processing large numbers of claims and directing the payment of redress on the basis that abuse was suffered by a large number of applicants. Obviously, the tasks of the two bodies are different and there is no communication between the two. Indeed, statutory confidentiality prevents the exchange of information between the two and I am not complaining for one moment about that.

We want to invite people to let us know what their response is to the suggestion that there was abuse prevalent in their institutions. This is not intended to be an adversarial occasion or one where hostile cross-examination will take place. We anticipate that there will not be cross-examination but we do not shut it out entirely in the case of somebody who has a specific area to question and who has previously

applied to the committee giving details and where the information cannot be otherwise elicited. We want to know whether we can draw any inferences in our approach to institutions from the public apologies and statements that have been made. This public hearing will also be an occasion for exploring some other issues relating to the raising of consciousness about child abuse.

*I want to make clear that we have not closed our minds in any of the questions I am raising here or any other issues to do with the inquiry. Our general approach is as I said at the beginning to aim for openness and consultation as far as we possibly can. That means that if somebody has a better idea or a better way of doing things than we are suggesting we will be only too happy to change our minds. So please feel free to get in touch with us and the best way to do that is to write to the legal team.*

Procedures are often a source of problems for inquiries. We hope that the participant groups will firstly try to agree procedures which they will then suggest to us. Obviously in the event of dispute we will decide. But the areas of dispute should be few and far between since the basic rules are so clear. With regard to particular institutions, we have in mind that it may be necessary in order to achieve fairness to have different approaches depending on what is actually in dispute in regard to that place. In a situation where there is a large measure of acceptance of what the complainants are saying the procedures adopted by the committee may well be quite different from a situation where there is major disagreement or dispute about the existence of abuse. We intend to discuss with the particular institutions and with the representatives of the relevant complainant groups how best each investigation can be achieved. As to matters of procedure we will encourage people to seek agreement subject of course to the Investigation Committee being satisfied that the agreed procedures are in accordance with law and fair and reasonable.

Let me try to summarise how we in the Investigation Committee have come to where we are now. What is this Inquiry for? Is it to establish the truth or falsity of each allegation made by more than 1700 Complainants? And if that is the case, would the same situation have arisen in the event that twice that number of Complainants applied to the Investigation Committee? Or three times or four times? A different view of the function of the Inquiry would be to say that it was to find out how and

why child abuse took place in institutions in this country. Obviously, one would have to start with establishing whether it took place and to what extent it happened. That I think goes without saying but if one has established that there was indeed child abuse in a particular institution and that it was not simply an isolated episode but that it happened on a number of occasions and was perpetrated by a number of individuals amounting to some notion or definition of widespread or systematic or some other word of similar meaning then surely the questions are why it happened and how it happened and why it was not discovered and more general questions. One surely has to look at how children came to be placed in institutions and whether the institutions had the capacity by way of funding or facilities or training of its teachers or other personnel to carry out the function of caring properly for the children who were assigned. What of the Courts which processed children in this system? And the various Government Departments similarly have to be asked questions in relation to the supervision and direction and management and the overall policy dealing with the children who ended up in institutions which are now under the spotlight in our Inquiry. Public attitudes are relevant and one might ask why it was so difficult to alert the public to the facts which would appear to have been subsequently accepted as essentially true on some level of generality even if not in particular circumstances. An Inquiry of this more general kind is an ambitious undertaking but it is one which has the potential to make useful findings, I suggest, and those findings could have some relevance for children in care or at risk in today's circumstances. We would hope to make recommendations for the future. The vision I have of this Inquiry is that it can analyse and understand and explain what happened in the past; it can ascribe responsibility for that- admittedly at a level of some generality- but nevertheless specifying institutions and identifying failures on the part of official bodies where appropriate; it can comment on public and political and social attitudes and on events and policies that underlay those attitudes; it can where appropriate put in context evidence of particular incidents; it can ask how those events can be related to the present; and it can produce recommendations which will have an impact on the treatment of children in care in our modern times.

This Inquiry, in a word, has the potential to make a real and lasting contribution to Irish society and to children now and in the future. If I am right and we actually were

to do something of that kind, would that not be an achievement which would stand as a tribute to those people who had suffered abuse in institutions in the State?