

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 9th September 2002, and the Final Ruling, dated 18th October, 2002, (both of which are available on the Commission's website – 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 30th 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 31st 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 20th 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 31st 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 9th 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 5th 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 subsection (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.