Statement of the Chairperson on Wednesday 16th June 2004

On the 7th May last I spoke at a public meeting of the Investigation Committee at the Shelbourne Hotel and I introduced a position paper which set out a policy for the inquiry into child abuse. The document discussed the question whether naming individual perpetrators of abuse was a practical or realistic option. It came to conclusions and made recommendations.

There are no easy options for an inquiry into child abuse whose remit extends from the late 1930's for some 60 years.

The interests and wishes of victims of abuse even when considered on their own are sometimes in conflict, one with another. In other words, some of the things people want an inquiry to do may be impossible to reconcile with other desires even of the same people. When we add extra elements including fair treatment of people accused of wrongdoing, the equation becomes even harder to balance.

We in the Investigation Committee tried to find a way forward for the inquiry into child abuse which –

- Met the legal requirements laid down by the courts,
- Promised a proper investigation into what happened and why it happened,
- Would not be prolonged to a degree that is unfair and unreasonable and disappointing to everyone involved as well as the public,
- Was practical and focussed and sensitive to participants.

We tried to look at the point and purpose and value of the inquiry mandated by the Act of 2000, and whether they were going to be achieved by examining many hundreds of individual cases in a long sequence of trials.

Speaking on behalf of the Investigation Committee last month, I explained our thinking. It was clear that we had to come to a decision on naming individuals (other than those who were convicted in court) before we began to inquire into particular institutions.

We were candidly of the view at that time that the best – indeed the only realistic – way forward was by abandoning the quest to name individual perpetrators. And let us not forget that the Act of 2000 forbids findings in relation to particular instances of alleged abuse of children.

The position paper contains a full review of the Act and the issues in relation to naming individuals who have not been convicted of abuse. The question was also considered in my introduction of the document. Senior Counsel Mr. MacMahon discussed at the same time how the Investigation Committee would proceed with its inquiry and he detailed the submissions that had been received and the consultations that have taken place.

Following the meeting of the 7th May, a round of consultations took place. First, the parties' lawyers were invited to make submissions and then the various groups were invited to comment.

We have proceeded in this way in order to be as inclusive as possible. Of course we know that we have to make decisions and to conduct the inquiry in the most effective and valuable way. And we are not expecting everyone to agree with all our decisions. We have a job to do and we cannot avoid the responsibility of deciding difficult questions. But we do want people to understand what we are doing and why and our approach is to be as open and considerate as possible. We are not passing the buck and abrogating our duty to choose between different options. We hope that all the participants in the inquiry will understand what we are trying to do, even if some of them don't always agree with us.

I think everybody will agree that –

- it's time for the investigation to get underway,
- there have been enough or even too many reviews and reports and discussions about ways and means,
- all of the participants are getting older and people are understandably impatient to see the inquiry progress.

It is not necessary to re-debate the major issue that we set out at our meeting last month and in the documents that we published.

The two essential features of what we proposed are: -

1. Not to name individual perpetrators of abuse unless they were convicted in the courts;
2. To call witnesses to give evidence of abuse suffered by them to the extent necessary for the inquiry.

These questions have been discussed in previous reviews and reports. The actual suggestions will have come as a surprise to nobody. We decided, however, to announce our policy quite specifically so that there would be no doubt about our intentions and so as to give people an opportunity of coming back with arguments as to why we were wrong.

There is general acceptance of the issues that we have addressed. While there are differences of emphasis here and there, I think it is fair to say that all of the people who responded to our position paper appreciate what we are trying to do and why we made those particular proposals. There were some misunderstandings which we were happy to clear up and once that had been done, a number of people were in substantial agreement with our scheme. The important point about the responses is this. Some people agreed and others did not. Some were enthusiastic and others reluctant supports. But everybody acknowledged the conditions that had to be satisfied. And nobody put forward a rival scheme that could meet the requirements we set out in our documents and which I very briefly summarised at the beginning. The challenge was to see whether some other modus operandi could be devised that would better meet the needs of the situation as agreed all round. None was proposed. In the result, our decision was inevitable.

Decision

We have decided to proceed in accordance with our position paper, that the inquiry by the Investigation Committee will not seek to name individual abusers. We will also call witnesses to give evidence of abuse

suffered by them but only to the extent necessary for the inquiry. I will say more about this later.

Legislative Changes/Amendments

In the review that I carried out before I took up the position of Chairperson of the Commission and the Investigation Committee, I made a number of proposals for amendments to the 2000 Act. They were accepted by the Government. In order to carry into effect the proposals that we have now decided on, some further legislative changes will be needed. We are now finalising those additional requests and they will go to the Government this week for consideration and I hope approval and incorporation into an amending Bill. Inevitably, that is going to take time. I understand that the parliamentary counsel's office is at present working on the amending legislation and I do not think that the additional requests that we are now making will delay the process in any significant way.

We made clear previously that we are not going to wait for amending legislation before we get on with the inquiry. We know that there has been a great deal of delay and it is unnecessary to repeat here what I said before. People have had enough reports and reviews and discussions about the inquiry and its procedures and what they want now is for us to get on with our work and to inquire into child abuse in institutions as we are required to do under the legislation. We must of course bear in mind, before we get the amendments that we are looking for, that we have to comply with the existing legislation. We will do that by proceeding as we are announcing here but we do not think that it will be possible to produce an interim report before we get the legislation changed.

The 2000 Act does not compel the Investigation Committee to identify individuals who have committed abuse but it does permit such naming. We have said we are not going to do that and are looking for an appropriate amendment of the legislation. It could possibly be argued, as set out in the position paper, that the Investigation Committee could be in error if it decided that it would never ever name an individual. Our position is that we are not going to name individuals except those who have been convicted in courts or who have pleaded guilty. As to the second part of our decision regarding the number of victim witnesses to be called, assuming that persons who came to the Investigation Committee with a view to giving evidence actually had a right to give such evidence, an amendment is also needed. Again, all this is discussed in other documents that are in the public domain and I do not intend to get into a further discussion here. But the point is that we need an amendment before we can proceed to the end point of an investigation that is conducted according to our above proposal. Before we issue a report on an institution which we have investigated according to our proposals, we should have the amendments in place.

People should not therefore expect an interim report concerning any investigation until such time as the legislation has been amended.

The changes we are making will enable us, as we have indicated in our documentation previously published and as I have mentioned, to emphasis the importance of institutional issues and systems failures. In this connection, it has seemed to us important not to ignore the methods by which children came to be placed in institutions. When I spoke previously I mentioned the role of the Courts and the relevance of that

question to the matters that we have to investigate. The Committee had previously rejected such an approach because it felt that this matter was not within the terms of reference of the Commission. Our continuing investigations have alerted the Investigation Committee to the materiality of this topic. The importance of the issue to some victims is hard to exaggerate. People were heartened by the reference in my speech to this question and were enthusiastic at the prospect that this area would be followed up by the inquiry. It seems to us that it would be unsatisfactory to ignore this part of the history that we have to explore. In the circumstances, we propose to seek an appropriate amendment to remove any doubt about the relevance of this area to the inquiry into child abuse.

Procedures

We envisage approaching each institution separately. We will first ascertain what the attitude of the relevant congregation is to the complaints that have been made. Does it acknowledge the substantial truth of some or most or all complaints? Apart from the complaints, does the congregation/institution know about abuse that happened there? Has it carried out any inquiries of its own? What protocols or systems were in place to prevent child abuse and to detect any abuses which occurred? What training did the teachers/staff have and what training did the managers or supervisors undergo? How were the religious and staff recruited and engaged? Who were they and what education did they have? As for the resident children, how did they come to be in the particular institution? Where did the children come from, what were their backgrounds and was there a particular pattern that was characteristic? The education of the children will be inquired into. How where they taught and when and what subjects? Food and accommodation: -

questions will be asked to ascertain what the institution says about the conditions of the residents. In listing these questions, I am not trying to be exhaustive. If the managers or congregation want us to do so, we will be happy to indicate the areas of interest, but obviously if something turns up which points us in a different direction or an additional area or inquiry we will pursue that. That in our view is the nature of an inquiry. We do not know at the beginning of our journey where we will end up.

When we have ascertained a lot of the background information about the institution and we know what attitude is being taken to the suggestion of abuse and what extra information is available about abuse, we will be in a position to decide how many of the complainants we need to call in order to fill out the picture.

What we have in mind in our approach to the different institutions is as follows –

- we believe that there is no single mode of investigation appropriate to every institution irrespective of differences in the nature of the abuse alleged or the numbers of residents, or the numbers of complainants and respondents and the nature of the complaints and of the responses to the complaints. "One size fits all" does not apply.
- the way the inquiry deals with an institution has to be decided principally by reference to what is in dispute. If a respondent institution acknowledges the essential truth of the complaints that are made by its former residents who have made statements to the Investigation Committee, that obviously reduces the need to establish the existence as a

fact of abuse in the institution and it makes it a much easier task to find out the scale of the abuse. It may be that the institution is also in a position to give information about abuse that it is aware of even though there may not be a complaint specifically related to that abuse. We have instances where institutions have made known to us information about abuse which was not the subject of any complaint and of which we were completely unaware.

- where there is a high level of co-operation as described, so that the fact of abuse is accepted and the scale is relatively easily established, it is obviously unnecessary to concentrate on hearing a large number of witnesses. How many are heard will depend on what remains in dispute in regard to the abuse after acknowledgements are taken into account and the needs of the inquiry to get background information as to the detail of the abuse.
- in a different situation, while an institution may say that it is denying one kind of abuse as having been widespread in the institution, it may nevertheless accept that other conduct falling within the definition took place fairly generally. For example, it has been indicated to us that some institutions will accept that violence was a feature of life for the residents whereas they do not accept that sexual abuse was prevalent. One can anticipate that there may be respondents who will acknowledge that there was little in the way of emotional comfort for residents but they may point to conditions in society generally or to the exigencies with which they had to contend, including the numbers of their residents and possibly the limited training and instruction in

child care that was available for their teaching and management staff.

- I am trying to indicate in these examples the range of issues that is likely to be thrown up in the course of inquiring into the different institutions. We cannot lay down a specific procedure. We have to say to people that the way we approach the institution depends on the issues appropriate to that situation. We intend to call as witnesses a sufficient number of complainants to deal with the issues relevant to the particular institution. Once we have satisfied ourselves by considering the necessary quantum of evidence there will, I expect, remain a body of complainants (and indeed individual respondents) who have not been called to give evidence.
- as to witnesses who do not give evidence in the formal hearings before the Investigation Committee, we do not of course intend to ignore them. The first option that they will have is to transfer to the Confidential Committee. This is not a second class compartment but is an entirely separate option that is available to any participant in the work of the Commission. A large number of victims of abuse have chosen to take this course. People who have expressed willingness to come to the Investigation Committee have the right under the Act to change their minds and move to the Confidential Committee. In mentioning here that this option is available, I am particularly anxious not to give the impression that it is a consolation prize to somebody who has not “made the cut” for the Investigation Committee.

- Again, depending on the attitude adopted by the respondent institution, it may be possible to hear the evidence of remaining Investigation Committee complainants in a non-adversarial setting and based on accepting their previous written statements as evidence. This would greatly accelerate the hearing process and would afford the witnesses an opportunity to be heard in a formal setting by the committee of their original choice.
- further options exist by way of participation in peacemaking or reconciliation processes which we hope to facilitate between willing participants and also possibly the inclusion of statements of victims of abuse, when suitably redacted, in a book of remembrance. I'll say a little more about this in a moment.

We will also engage in the inquiries detailed in our meeting of the 7th May. This was described by Noel MacMahon S.C., in his statement that day.

We are happy to discuss with complainants and respondents how best to conduct the inquiry into the particular institution. The decision ultimately must be one for the Investigation Committee as to how to carry out the inquiry, but in broad terms, that is what we intend. The legal requirements are clear as to what protections exist where there is potential for making adverse findings against people, so there is no need for controversy about the law that is applicable. Problems arise in this area because of disputes about applying the law to the particular circumstances. In other countries, it is done by agreement between the parties and there is no reason why that cannot happen here if people want

to do so. We will consider objections or problems that are made known to us by parties whether they are victims or institutions or anybody else. We want to carry out the best investigation possible in accordance with the legal rules. There need be no dispute about that, and so any issues that are thrown up should be capable of being dealt with by agreement. In default of agreement, again, the duty of the Committee is to make up its mind and that it will do.

Approaches to the Inquiry

This is an inquiry into child abuse in institutions. It is not a series of cases that we are bringing against individual persons or, indeed, particular congregations. We are not laying charges against, for example, the Sisters of Mercy or the Christian Brothers. It is true that complainants have furnished written statements to us outlining what they say is abuse they suffered at the hands of people who were working in institutions in which they were resident. But we don't take those complaints and then marshall them as a bill of indictment against institutions or people. The complaints are documentary materials which are of assistance to us in the course of our inquiry.

We have made clear, in the course of informal meetings with the interest groups involved in the work of the Investigation Committee, that we approach our work in a spirit of inquiry. If we take a particular institution – say an industrial school - we will begin by asking the management and superiors of the congregation what they know about abuse in the institution in the relevant period. We expect that we will get information about this issue in the documentary materials that are provided to us under discovery orders. It is the very essence of an inquiry to start by

asking questions. The approach to the question in this way is more open and inquisitive, I suggest, than one concentrated on specific allegations made by complainants and the answers to those complaints. Complaints and responses are, of course, relevant to the inquiry but we think we should start off by asking what the institution knows about abuse of children in its care in the various ways that the term "abuse" is defined in the legislation. We will explore that knowledge. The attitudes of the institutions to the complaints which have been made known to them is very important. But it would be wrong to think that this would be entirely or even principally a complaint-driven investigation.

We hope that respondent congregations and institutions will feel able to co-operate as fully as possible with the work of the Investigation Committee. In fairness, it has to be acknowledged that a number of religious congregations have taken a position of spectacular Christian concern for the victims of abuse and for finding out the truth.

Our inquiry is not a process to see whether the Committee can come up with evidence which establishes that abuse took place in a particular institution, in the teeth of opposition from that institution which denies everything and which says that every single allegation made by the complainants is wrong. We want to up-end that process and I hope that congregations will accept that they have responsibilities to the victims of abuse and those who complain, even if some of them are thought to be in the wrong, and to the community as a whole and also to the congregations and their own members. No devout religious can feel comfortable putting victims of abuse through further trauma and distress if that can be avoided.

There is a fear among some of those who are co-operating fully with the inquiry in ascertaining the extent of abuse in their institutions that other congregations who resist what we are trying to do will fare better in the final result of the inquiry process. In other words, there will be condemnation of the co-operating congregations while those who oppose and resist the inquiry will escape any sanction or even a finding that abuse took place in their institutions. I wish that we could dismiss such a fear as being unfounded.

One very obvious example of real co-operation is when an institution tells the Investigation Committee about abuse which is not the subject of any particular complaint from an individual resident.

I hope that now that we have announced our decision about individuals, it will mean that congregations which were uneasy previously are able to review their attitudes to the inquiry.

What we cannot achieve

Our inquiry can achieve a great deal and within a reasonable time. There are advantages for all the participants in having these investigations brought to a timely conclusion. Again, these are matters that have been discussed a great deal and we do not need to spend much more time considering them here. I set out previously some skeleton of a vision of what we could achieve and I think everybody involved in this inquiry knows what the possibilities are. There is, however, something that no inquiry can achieve and which is often described by victims of abuse as being highly desirable and even necessary. That is reconciliation.

No matter how searching our inquiry is into each institution and no matter how just and measured our conclusions there will remain, as elusive as at the start of our investigation, the issue of reconciliation between victims of abuse and the congregations of which the abusers were members. No process of inquiry can of itself deliver that outcome. It is true that there is a degree of closure and vindication achieved by way of formal inquiry but it would be a mistake to ignore the potentially enormous benefits to be got from reconciliation. This, in essence, is a process which is engaged in by participants in the issue of abuse often with the assistance of a facilitator. It is unnecessary to set out a precise scheme and it is probably undesirable to do so because one of the features of any scheme of reconciliation is that the participants have an input into how it should be managed and operated. Assuming, in regard to a particular institution, that the victims or a substantial number of them wished to engage in a process of reconciliation and so was the congregation involved, we, as the Investigation Committee, would be happy to look to see how we could facilitate that process. I think that one would have to have victims involved and also the relevant congregation but the State would also have an involvement because of its position as a stakeholder in the process of the investigation and as a body whose conduct is also under investigation. This is not simply a listening centre or an advice process or a counselling system, but it is, rather, an exploration by all the participants or most of them (I am leaving out for consideration actual abusers but that does not necessarily have to happen) and they are all equal participants. There is, in other words, no person in charge of the process although the facilitator will of course play an important role in steering the discussions but he or she is not a participant and does not purport to be a person in charge because there is no person in charge. The point about this process is that it can yield up achievements that are limited only by the imagination and

the capacities of the people who are participating. At one level, it is possible even that an institution could co-operate with its former residents and with the State personnel who were assigned, and with the facilitator and anybody else with a relevant position as stakeholder in the process, so as to produce an acknowledgement of the amount of abuse, a description of the nature of that abuse and an investigation of the causes of the abuse and what facilitated it and made it possible, and what happened so as to prevent the abuse being discovered and ended. The process could, if appropriate, end in an apology and expressions of understanding all round. There are circumstances in which a process of this kind could achieve far more than a formal investigation could ever do. **But it is not even a situation where participants have to pick one or the other.** There is no reason why the paths of reconciliation and peacemaking cannot be followed as far as possible and where that is not possible, the issue can go back to the Investigation Committee. Or, if it turns out that nothing can be achieved in a substantial way by the peacemaking process, then the Investigation Committee remains committed and available to proceed in the formal way that I am describing. What I am saying here, in a word, is that if people are interested in investigating the potential of peacemaking and reconciliation we, as the Investigation Committee, will be very happy to encourage that and to provide as much in the way of facilities as we can. The minimum requirement is that the victims, in substantial numbers, in respect of a particular institution are interested in this kind of reconciliation and that there is agreement by the congregation involved to pursue the same path. I think we can safely assume that the State will wish to promote and participate to the extent necessary in the process. If we have such agreement then we, as the Committee, will be very happy to explore possibilities with the people involved. But it may not be possible to

achieve the minimum level of agreement necessary and if that happens, so be it. It is also the case that such agreement may be possible in respect of some institutions and their former residents but not others, and again, that does not pose an insuperable problem. And if at the end it transpires that it is simply not possible to achieve a degree of substantial reconciliation, I still don't think that anything has been lost and the pursuit of the prospect or possibility is of itself of some value.

Schedule of Hearings

- Our plans for 21st June and following
- Our plans for 7th July - Ferryhouse/Upton
- Our plans for September
- Our plans for 5th October - Goldenbridge