

CHILD ABUSE INQUIRY

HELD AT ST. STEPHENS GREEN HOUSE
ON THURSDAY, 20TH JULY 2000

BEFORE

MS. JUSTICE LAFFOY

CHAIRPERSON OF THE INQUIRY

ORDINARY MEMBERS:

DR. PATRICK DEASY, Consultant Paediatrician
MS. NORAH GIBBONS, Childcare Director
MR. FRED LOWE, Principal Child Psychologist
DR. IMELDA RYAN, Consultant Child and Adolescent
Pyschiatrist

I hearby certify the
following to be a true and
accurate transcript of my
shorthand notes in the above
hearing.

THE HEARING CONTINUED, AS FOLLOWS, ON THURSDAY 20TH
JULY 2000.

MS. JUSTICE LAFFOY: Good morning, everybody.

This is the second public sitting of the Commission and, like the last public sitting, it is a formal occasion. We have a lot of business to get through and we won't get through it if everybody does not cooperate. We anticipated -- well, I should probably put it in the negative. We did not anticipate that there would be so many people here. This sitting is to deal with procedural and legal issues and we didn't expect such a turn-out. In any event, you are all welcome but I must ask your forbearance and I must ask you not to interrupt the proceedings because, as I have said, we have a lot of business to get through and it is important we get through it.

I want to start by commenting on the fact that the sixth member of the Commission, Mr. Bob Lewis, resigned yesterday and I want to read into the record of the Commission Mr. Lewis's letter to the Minister for Education and Science and I will have some comments when I finish reading the letter. Mr. Lewis wrote to the Minister yesterday, 19th July 2000 as follows:

"Dear Minister,

In recent weeks, statements have appeared in national newspapers alleging or implying that I am being investigated by police in Lancashire as part of a countrywide investigation into allegations of abuse in children's homes and residential schools.

Whilst none of this is true, (I am not subject to any such investigation in Lancashire or anywhere else in the United Kingdom), survivors' groups had been urging their members not to cooperate with the Commission.

I wholeheartedly support the actions taken by the Government in establishing the Commission and it is of paramount importance to me that the Commission should succeed. As you know, I was recommended to your Government by the UK Government and relinquished a number of interests to make time to give to the Commission. I took this role willingly because of my affection for and connections with Ireland and my strong belief in the value of the work of the Commission.

It is therefore with very great sadness, and notwithstanding legal advice that there is no basis to question my membership of the Commission, that I now tender my resignation as a member of the Commission. I hope that by my doing this, the Commission will now be able to get on with its formidable task without the distraction of continuing challenges to my own and others' participation.

I would emphasise that I am not under any such investigation and after a long and successful career, I am a deeply hurt that my professional reputation, integrity and standards are being challenged in this way. They are untrue and profoundly unjust. I had hoped that as the only member of the Commission with actual experience of working in or managing children's homes, I could have brought additional skills and knowledge to the Commission.

I take this course only after anxious consideration. For my own part, I

would have preferred to meet any challenge to my integrity rather than give the opportunity to misguided people to harbour unfounded suspicions about me, nor do I think that the work of the Commission should be disrupted by a process of misguided attacks on the membership. However, I have reluctantly come to the conclusion that the work of the Commission, which I must put first, would be best served if I removed myself as a cause of public controversy, however misguided.

Whilst I have not met you, I had the highest regard shown for the commitment shown by your predecessor when we met and still share your Government's desire to fully understand the issues in order that, if appropriate, you can take action so that no child in the future will experience such abuse.

I wish you well and am truly sorry that circumstances have led me to make such a difficult decision."

There was a copy of a statement he intended to issue enclosed.

Now the Commission endorses everything stated in that letter. It believes that the Government decision at the outset to include in the membership of the Commission a person with "hands-on" experience of working in and managing children's homes and to source that expertise from outside the jurisdiction was a prudent decision. It has proved to be so over the past 13 months. Mr. Lewis has shown an unstinting commitment to the Commission. His managerial and practical experience and his understanding of and empathy with persons who have been in care has informed and guided us. I believe it is not an exaggeration to say, and it is with

regret that I say it, that the value of the work of the Commission will inevitably be diminished by the absence of Mr. Lewis. That is all I want to say on that topic.

Now I want to talk about the order of business.

First of all, there are some common matters that have been raised in a number of submissions and I am going to deal with them at the outset. Issues may arise later but in any event it may shorten matters if I deal with some of the common issues at the outset. Secondly, I will deal with submissions from legal representatives of the survivors. Thirdly, I will deal with submission from legal representatives of the managers. Finally, we have some representations from individuals. Some of them have been dealt with in writing, others we will deal with orally.

Now first of all in relation to the common matters, the first common matter I want to deal with is the question of legal representation. The Commission in its statement made a suggestion as to the legal representation of survivors but it made it clear that adopting such suggestion was a matter of choice. It is clear from the feedback that the suggestion has not found favour. The Commission proposes to grant each person who comes to the Investigation Committee to make an allegation or

Inquiry and lapse of time since alleged abuse occurred has been raised in most of the submissions made on behalf of the managers of the schools. The Commission has been referred in some submissions to the judgments delivered by the Supreme Court on 6th July this year in two judicial review (Prohibition) cases. Linked with this issue in the submissions is an institution's inability to deal with an allegation of abuse because of the death, age or infirmity of persons in the institution at the time the abuse is alleged to have occurred. It is the Commission's view that it would not be appropriate to propound a general policy in relation to these matters. Each allegation must be assessed on its merits. As the Commission stated in its statement, page 19, at each hearing where such difficulties arise it will hear submissions of all interested parties.

Now the question of research and the references that were made to research in the statement at the first public sitting has been raised and I want to deal with that now. Again, if issues remain, they will be dealt with, but perhaps this may shorten matters. A number of submissions from solicitors for managers of schools have raised the issue whether the intended use by the Commission of research data would be in contravention of fair procedures. The Commission is acutely aware of the distinction

between findings of fact which are based on admissible evidence which has been subject to testing in accordance with fair procedures on the one hand and the results of research which is founded on unsworn and untested data on the other hand. In its statement, page 26, the Commission stated that when including the results of research in its reports, it will clearly identify material as being the results of research and not proven fact. It is accepted that only proven fact can form the basis of a finding of fact which adversely affects a person or body. However, the Commission believes that information in relation to the socio, historical and medical background and status during adult life of persons coming to the Commission would contribute significantly to understanding what happened in the past and how current problems should be addressed. The use of such research data will be the subject for discussion in the second phase of the work of the Investigation Committee.

Media Matters:

Two issues have been raised in relation to the media. The first has been raised by an individual survivor whom I do not intend to name. He has submitted that an order should be made in relation to media conduct and respect for victims. He puts his case as strongly as it could be put in the following passage from his letter and I quote from

his letter:

"As my experience of being photographed against my wishes and subsequent publication of same after the previous hearing while in the confines of the Commission room, although not while in session, is very discouraging. This would not be allowed in a courtroom in or out of session, to my knowledge. What dignity we have left must be respected."

And he emphasised that sentence and I will emphasise it. "What dignity we have left must be respected."

The Commission requests that the media have regard to that plea. The second issue was raised by Arthur O'Hagan, Solicitors, who query:

"What restrictions if any the Commission proposes to impose in respect of media reporting concerning proceedings of the Investigation Committee held otherwise than in public?"

The Act -- and I am referring to the Commission to Inquire into Child Abuse Act 2000 -- the Act requires that all meetings of the Confidential Committee shall be held otherwise than in public and that a sitting of the Investigation Committee at which evidence relating to particular instances of alleged abuse is being given shall be held otherwise than in public. It is the Commission's understanding that the same rules of law apply to meetings and sittings which it is directed to hold "otherwise than in public" as applied to Court proceedings which, by Statute, are required to be held "otherwise than in public," for example,

matrimonial proceedings to which Section 34 of the Judicial Separation and Family Law Reform Act 1989 applies. In other words, the rules generally applicable to in camera proceedings apply. The Commission considers that it is under an obligation to ensure that the rules are observed.

Conflicts of Interest:

Submissions have been raised in relation to the protocol which will be in force within the Commission in relation to conflicts of interest. The Commission's staff structure, particularly in relation to the Investigation Committee side, has not been finalised and the protocol is not formally in place but it will be before the Commission commences its substantive work.

I have another observation to make about conflict of interest issues and I want it to be taken on board. The Commission invites all persons who are affected by the work of the Commission to bring to the Commission's attention any situation which it is believed may give rise to a conflict of interest. However, such a matter must be raised in writing with the Secretary of the Commission, Paul Doyle, by the person who believes the conflict affects him or by his legal representative who shall clearly indicate the reasons why he believes there is a conflict. The Commission cannot act on second or

third-hand information, rumour or innuendo.

They are all the general matters I want to say.

We got a submission, which was very welcome, from the Irish Deaf Society and its submission was in the form of a video recording. We have viewed the video recording and I want to make some observations in relation to that. I know there are some representatives from the Deaf Society here today and I know that this statement is being signed for them. As I have said, we are grateful for the video submission. It has raised some very interesting issues. Some of the issues which have been raised, their relevance to the remit of the Commission will have to be considered in the context of individual hearings so they are matters that cannot be dealt with. The one issue that was of particular interest and of particular relevance for today's proceedings was that it was suggested that the Commission might have regard to the PACE guidelines for interviewing people with a hearing disability in relation to the hearings. In other words, that we follow the guidelines recommended by PACE and that is something we will have regard to and we will also take on board what has been stated in relation to the use of interpreters for interpreting for people with a hearing disability.

While I am on the subject of disabilities, we have

faction -- and I don't use that word in the derogatory sense -- to meet any group or any interest, that it would not be an appropriate thing to do, we have been advised, and we will not do it. Apart from that, it was the Commission's view that what it had to say at the first session should be said in a public forum and should be said to all people who are interested and all bodies who are interested in the work of the Commission and who are going to be affected by its work.

Now that was the course we adopted in our first public statement. What we understand our job to be and the procedures we propose to adopt, those matters were stated in a public forum to the public. Since the first public session, Mr. Frank Clarke, Senior Counsel, who is the Commission's leading Senior Counsel, has on our behalf received representations from a group of solicitors who are represented by Mr. McGill and other solicitors who are here present, I see some of them in the room. These contacts have been very useful and some very important issues have been raised. Now I think it is important to stress that from the solicitors' perspective, the purpose of making the representations has been so that they would be in a position to adequately advise their clients in relation to the working of the Commission. From our perspective, the Commission's view, and in my first

letter to Mr. McGill, I said this, the Commission's view is that it is of extreme importance that everybody who is going to be affected by the work of the Commission should be satisfied with its modus operandi. So it is considered that the discussions which have taken place between Mr. Clarke and the solicitors for the survivors are a useful way of advancing matters in the interests of everybody.

Now the representations and the discussions between Mr. Clarke and Mr. McGill and his colleagues culminated in a letter which we received on Tuesday afternoon and I want to read this letter into the record of these proceedings. The letter is from Mr. McGill and it is addressed to Mr. Clarke, as the Counsel to the Commission to Inquire into Child Abuse. It is to the following effect, and I perhaps should say that if any of the representatives for the managers who are here want a copy of this letter, I will make it available afterwards.

"Dear Mr. Clarke,

I write on behalf of a number of colleagues throughout the country who represent the interests of many survivors of child abuse, both physical and sexual. I wish to take the opportunity of repeating the concerns which have been expressed to you on behalf of our clients. As you know, because of the wrongs visited upon them in their childhood, many of our clients have suffered very greatly and many, including many of advanced years, remain highly vulnerable to this day.

Accordingly, we must be particularly mindful of the unique personal difficulty experienced by each of our clients in re-visiting the painful memories of their childhood.

Our clients view the work of the Commission as an important public undertaking and are anxious that it would be as successful as possible, both in inquiring into the misdeeds of the past and ensuring that there should be no repetition in the future. It is therefore with considerable regret that our clients take the view that the Commission as presently constituted is fundamentally flawed and, regrettably, carries the serious risk of compounding the harm already suffered by our clients.

As your preliminary enquiries will have already established, in many cases, very serious criticism is levelled at the State and in particular against the Department of Education for permitting the now acknowledged appalling state of affairs in regard to child abuse to continue. Indeed, their failure in this regard was acknowledged publicly by An Taoiseach on behalf of the State in his address of 11th May 1999. Unfortunately, as you are aware, in respect of individual survivors, the Department of Education have not admitted legal liability.

Accordingly, our clients are greatly concerned at the significant role to be played in the work of the Commission by the Department of Education, its personnel and resources. Given that the Department itself is under scrutiny, their role appears to be entirely inappropriate and to constitute an unacceptable conflict of interest. That conflict of interest is particularly acute in respect of survivors who, because of the serious loss suffered by them throughout their lives, have instituted or are instituting proceedings against the Department. It is unacceptable from a legal point of view that the Defendant to proceedings who persists in a denial of liability should have the advantage of a preview of the survivors' evidence

through the work of the Commission, perhaps with a view to securing an unfair advantage.

More importantly, on a personal and humane level, as presently envisaged, survivors of abuse, particularly those who have suffered extensively will be required to give evidence on multiple occasions in different fora. On each such occasion there will inevitably be personal distress and a serious risk of acute trauma. As presently constituted, the procedures of the Commission cannot lead to finality of the issues for an individual survivor and can only expose such survivor to the ordeal of giving evidence on repeated occasions at great emotional and personal expense. The present procedures will unnecessarily delay the satisfactory conclusion which all survivors must be entitled to.

It appears to us that the personal difficulties occasioned by the present requirement for multiplicity of hearings and the legal difficulty created by the conflict of interest might be met by the Commission making an interim report as is envisaged in the Act, calling for the provision of an appropriate scheme of compensation to survivors in respect of their losses and the Government accepting same.

It will be clear from the foregoing that until such time as the issue of such a scheme is satisfactorily addressed, it will be difficult for individual solicitors to advise their clients as to whether participation in the work of the Commission is in their personal or legal interest. We would stress that both we and our clients wish the Commission well in its work, but you will appreciate why they have such serious misgivings about the Commission as presently constituted."

Now it seems to me that the nub of that letter is the third last paragraph and I will read that again.

That says as follows:

"It appears to us that the personal difficulties occasioned by the present requirement for multiplicity of hearings and the legal difficulty created by the conflict of interest might be met by the Commission making an interim report as is envisaged in the Act, calling for the provision of an appropriate scheme of compensation to the survivors in respect of their losses and the Government accepting the same."

Now the Commission has not had sufficient time to consider that letter-to give it a proper consideration. I am not at this point in time commenting one way or the other on the letter, save to say that it raises a very important issue which requires very careful consideration and it is going to get that consideration in early course. And, of course, it not only requires consideration by the Commission but it requires the Commission to convey the message contained in it to the Government, which it will do through the Minister for Education. So we are going to consider this letter in early course.

Now that being the case, in order that we have an opportunity to consider the issue, as I say, it is a very significant issue and it needs consideration from a number of respects. Obviously, we have to clarify in our own minds what it means and we obviously have to clarify what impact the suggestion made in it would have on the work of the Commission and, in general, how we should approach the

suggestion. It all requires careful consideration. But until such time as we can do that and until such time as we can convey the message contained in the letter to the Government, it does not seem timely to deal with the other matters of concern to the survivors, which have been raised through Mr. McGill and his colleagues with Mr. Clarke and also the matters which have been raised in submissions made by the Survivors' groups, some of which were very helpful. So subject to everybody's agreement, what I would propose to do is to adjourn all issues of concern raised by survivors which are in controversy to a further public sitting to be held as soon as possible.

Now there are some non-controversial issues and some useful issues raised in some of the submissions we have got from the survivors groups and if everybody is agreeable, what I would propose to do is to deal with those in writing.

Now I am aware from what I have been instructed by Mr. Clarke that the solicitors who represent survivors who have been in discussions with him have stressed to Mr. Clarke how important it is that the matters which have been raised by them be dealt with in a sensitive way. It is not helping anybody's cause by public dissention, by having public controversy, and I would ask that people go along

with the suggestion. Now I must make it clear lest there is any misunderstanding, we accept that Mr. McGill and his colleagues only represent a group of survivors and there are lots of other survivors who may want to make submissions to us. Some groups have made submissions. We ourselves are not quite clear as to what groups are represented by solicitors and what groups are not so that is a bit of a difficulty. But with the agreement of all of you, if it is forthcoming, what I suggest is that we adjourn the controversial concerns of survivors to a further public sitting which I would hope, and I cannot be certain about this because the resolution of all of this is not entirely within our hands, which I would hope may be before the end of August but I cannot be positive on that. But the adjourned date will be notified to the public through the press. That is what I propose but the matter will be dealt with very promptly on this side because we don't want to lose the momentum which has been created by what was a costly advertising campaign. So we don't want to lose that. So we want to move on to getting down to our real work as soon as possible. So that is what I propose and I propose to answer the non-controversial issues raised by Survivors' groups in writing to the survivors groups, if that course commends itself. In the absence of dissention, I take it that it does commend itself. Very well.

MR. KELLY: Judge, I will withdraw our ones as well. I accept what you are saying, your submissions and your concerns, but I just want to be able to speak on one thing regarding which you said earlier, which was Bob Lewis and a little thing that you mentioned there a while ago, you said "stop the momentum." I think the momentum shouldn't have taken place in the first place in that somebody should have listened to the survivors. We weren't consulted.

MS. FAHEY: Where were you in 1996?

MR. KELLY: Would you please let me speak? You don't need our consent and do other things. I would like to speak on this.

MS. JUSTICE LAFFOY: Mr. Kelly, I ... (INTERJECTION)

MR. KELLY: I just want to briefly say to that that Mr. Lewis is gone but I want to say, if I could get this into the open, we are the larger organisation in this country. We did not impugn this man's reputation. Had we been consulted -- that is what I said about momentum -- had we been consulted about the composition of it, and we believe there is three more people and maybe there is skeletons, maybe it should have been investigated, let's not have this again, that maybe we have concerns about other three people.

MS. FAHEY: You are so important.

MR. KELLY: Would you mind, please.
We don't want that to stop
the Commission momentum.

MS. JUSTICE LAFFOY: All right. You have made
your point.

MR. KELLY: So what I am saying is
that we did not want to
impugn Mr. Lewis but at the end of the day, had we
been consulted, and we did raise that his CV alone
automatically disqualified him without any police
investigation and we weren't listened to. So I am
glad we will be listened to and I wanted to submit
that, which I believe you have that. This is
produced by us for anybody that wants it. (LEAFLET
SHOWN) This is our concerns. Now we will withdraw
them until then, until the future date. Thank you.

MS. JUSTICE LAFFOY: Mr. Kelly, do you have a
solicitor acting for you?

MR. KELLY: We do, but can I clear
that matter up? What he
basically informed the Commission is because of the
situation where we found the terms of reference were
unacceptable to survivors, we held public meetings
on this and if the terms of reference weren't
accepted, he informed us that we wouldn't be in
attendance. So what we are basically here for is to
say that we want clarification that we are not part
of the system yet unless you can come back with

something after you meet the government we will be, but here is our solicitor here if you wish to speak to him.

MR. O'SULLIVAN: I appear on behalf
of Irish SOCA.

MS. JUSTICE LAFFOY: Yes, Mr. O'Sullivan, I am
aware of that.

MR. O'SULLIVAN: My difficulty is that my
instructions are not to
participate at this moment in time with the
Commission. I don't think there is anything further
to be added.

MS. FAHEY: May I suggest,
Justice Laffoy, that you
not be bullied by these people.

MS. JUSTICE LAFFOY: Ms. Fahey, I am capable of
running this Commission
myself. I said at the outset that I would not
tolerate any informality. Mr. Kelly has a solicitor
on record with the Commission and I will only hear
the views of Irish SOCA through Gallagher Schatter
in the future and I won't tolerate any further
interruptions. Very well, we will move onto the
managers representations and I am going to deal with
those alphabetically according to solicitor.

We will start with Arthur Cox & Co. Who appears for
Arthur Cox & Co.? Mr. Christle, do you want to make

any submission?

MR. CHRISTLE: Madam Chairman, you have
the written submissions of
the Sisters of Charity which were set out in a
letter. A letter was sent to the Commission setting
out in six pointers the various matters which the
Sisters of Charity wished to raise by way of concern
in relation to your opening statement.

MS. JUSTICE LAFFOY: Yes.

MR. CHRISTLE: I don't want wish to
lengthen these proceedings
this morning. I presume, Madam Chairman, you and
the Members of the Commission have had an
opportunity to read the points.

MS. JUSTICE LAFFOY: Yes.

MR. CHRISTLE: And indeed I note that one
of our concerns or part of
one of our concerns in relation to research was
dealt with in your opening to the public this
morning.

MS. JUSTICE LAFFOY: Yes.

MR. CHRISTLE: Is it the case that the
other matters that were
raised in our submissions have been taken on board
or is it that the concerns ought to be read into the
record this morning again so that the Commission can
then make a public decision in relation to those
matters raised?

MS. JUSTICE LAFFOY: Yes. Obviously, when

there are five or six of us, we have to consider things to some extent in advance. If any of the representatives of the managers here want to make oral submissions, they are free to do so, but we have considered the written submissions insofar as it has been possible to do so and we have formed a view on them. So what I propose to do is refer to each submission sequentially and tell you what our view is for the record.

MR. CHRISTLE: May it please your Lordship.

MS. JUSTICE LAFFOY: So the first question is as follows:

"The first submission which our clients wish to make with regard to the opening statement of the Commission relates to the matters set out at page 16 of the statement. It is stated that in relation to the first phase of the investigation of the Committee's work, that if it is established to the satisfaction of the Investigation Committee that abuse occurred, findings to that effect will be made and recorded in an interim report from the investigation committee to the Commission. Such findings will be final and not open to challenge in the second phase. The Investigation Committee will then move onto the second phase."

Then Messrs. Cox go on to make a case for being in a position to re-open findings of fact made at the end of the first phase in the second phase. Now our

view on that is as follows. We reject the submission that the Commission should not prohibit a challenge to the findings of the Investigation Committee following its inquiry in the first phase. Before a finding of fact is made on the basis of allegations made in the first phase, the Investigation Committee will have heard all of the evidence and all of the submissions in support of the allegation and the Investigation Committee will also have heard every person likely to be affected by an adverse finding on the allegation. All of those persons will have been afforded any opportunity to challenge the evidence in accordance with fair procedures. So there seems to me to be absolutely no basis on which the finality of a finding of fact made at the first stage could be challenged. Everybody will have had an opportunity to be heard, to have their evidence heard and to make submissions at the first phase. In every respect, the rules of fair procedure outlined in the re Haughey case will have been complied with. So it seems to me that there is absolutely no basis on which one would re-open the findings in the second phase, it would make absolutely no sense.

The second and third points raised by Arthur Cox relates to research and I have dealt with those in the general comments. As I have said, the matter of research or how we use research data can be pursued

You are talking way above our heads. You are talking to the people down there that were afforded an education; we weren't. So can you talk our language, please, because we haven't got a clue what you are talking about.

MS. JUSTICE LAFFOY: I am responding to submissions which have been made on legal matters and I am responding to them in the most simple way I can which will ensure at the same time clarity in the response. I won't tolerate interruptions and I will adjourn this hearing if there are any further interruptions.

The fifth issue raised by Arthur Cox is as follows. It is submitted that the components...(INTERJECTION)

MEMBER OF THE PUBLIC: You did this in '54, you did this in '58 and you are doing us now.

MS. JUSTICE LAFFOY: It reads:

"It is submitted that the components regarding the second phase of the investigation committee should be amended to attribute responsibility for an act of abuse not only in an institutional or regulatory framework but if the findings so support to attribute such responsibility within both frameworks, i.e., the reference to "attribution of responsibility for it, whether institutional or regulatory" should be amended to read "attribution of responsibility for it, whether institutional and/or regulatory."

In most cases, it is not difficult to understand how responsibility in

relation to the said abuse could be attributed to both the institution and the appropriate regulatory body."

Now the Commission's considered view on that is as follows. The Commission accepts the proposition that in the second phase of the Investigation Committee's inquiry, the evidence may well support the conclusion that responsibility for abuse should be attributed to both the institution and the appropriate regulatory body. Accordingly, the Commission accepts that the amendment suggested to the last line of page 16 of the statement would more accurately reflect the Commission's thinking. Therefore, the last line should be read as follows: "Attribution of responsibility for it, whether institutional and/or regulatory."

The sixth issue raised by Arthur Cox is as follows:

"It is submitted that the terms of reference of the Commission should allow the opportunity for a religious congregation or institution to call evidence of a general nature from individuals who were contemporaries of a victim of alleged abuse in terms of the benefit and good which those contemporaries derived from their time in care at a particular institution. In this way, a more balanced picture of overall care in a particular institution can be conveyed to the Commission."

The response to this submission is as follows.

Paragraph 2(D) of Part 1 of Appendix D affords every

respondent the opportunity of identifying any witnesses he wishes to be called in support of his response and to furnish the substance of the evidence to be given by such witness. If the evidence of such witness is relevant to the issues before the Investigation Committee, he will be called.

Now the next submission I have is from O'Donovans. Are O'Donovans represented? I think they may have sought an adjournment until two o'clock and I will put it back until two o'clock.

I have a submission from O'Flynn Exhams but it deals with the matter of the lapse of time, age and infirmity which I have already dealt with in the general observations so I have nothing further to say on that.

I have a submission from Arthur O'Hagan on behalf of The Sisters of Mercy.

MS. NI RAIFEARTAIGH: I am instructed by Arthur O'Hagan on behalf of The Sisters of Mercy. I think you have a written submission and we would be happy if you would respond to that. There is perhaps just one matter arising today of a practical nature, which is whether there will be a transcript of today's proceedings and whether that could be made

available?

MS. JUSTICE LAFFOY: I will have to look into that.

MS. NI RAIFEARTAIGH: Perhaps if I leave that issue with you, Chairperson, but perhaps it can be answered in the course of the day.

MS. JUSTICE LAFFOY: Yes, I will have to look into that.

MS. NI RAIFEARTAIGH: Subject to that, we would be happy with the answer to written submissions that you will deal with.

MS. JUSTICE LAFFOY: It is appropriate that I put everything out into the public. I did agree to furnish a transcript to the Irish Deaf Society as they were in a particular situation but I thought it wasn't going to be practicable to sign the entire proceedings but I see it is happening. But in any event, I will deal with the submissions made by Arthur O'Hagan.

MS. NI RAIFEARTAIGH: I should perhaps just say, Chairperson, that we would anxious so have a copy of the transcript on the basis that it constitutes part of the...(INTERJECTION)

SOLICITOR FOR O'FLYNN EXHAMS: I would have to say, in relation to the last submission, on behalf of O'Flynn Exhams we would also be anxious for the transcript to become

available.

MS. JUSTICE LAFFOY: Very well.

MR. CHRISTLE: Madam Chairman, we would
echo that submission

MS. JUSTICE LAFFOY: Very well. A means will be
found. There will be no
preference, a means will be found of communicating
the proceedings of the Commission to everybody on
the same basis. But how that is to be done -- there
are other concerns in relation to transcripts such
as copyright which will have to be looked into, I
don't know what the situation is. All right, I will
deal with the submissions from Arthur O'Hagan.

The first question raised is as follows.

"Breadth of subject matter of Commission:
Given the wide time-span encompassed by
the Commission's subject matter of
enquiry and the ensuing possibility
that some of the allegations of abuse
made to the Commission may involve
alleged events of considerable
antiquity, in what manner does the
Commission propose to deal with:

- (A) allegations involving respondents
who are now deceased?
- (B) allegations involving respondents
who by reason of age or infirmity
are no longer capable of giving
instructions or evidence?
- (C) allegations of events at such
remove in time that the person
against whom the allegation is made
is seriously prejudiced when
defending the allegation?"

That is a matter I have dealt with in the general

comments at the start and I don't propose to elaborate on that.

The divisional work of the Commission: The question raised here relates to the protocol in relation to conflicts. That is paragraphs A and B and I have dealt with those in the general observations I made at the start. Now, paragraph C and D:

"How many members will sit on a division of the Investigation Committee?"

If the whole Investigation Committee does not sit as a committee of three, it will be two.

"Is it envisaged that the Chairperson of the Investigation Committee will chair each division of it?"

And the answer to that is yes, provided a conflict of interest does not emerge. In my own particular case, I think it is highly unlikely that there will be a conflict of interest because I have not been involved in work involving child abuse either as a practising barrister or as a judge. But, of course, obviously if there is a conflict of interest, I can have no involvement. But subject to that, I probably will chair every hearing of the Investigation Committee.

Now questions are raised in relation to the order of business. The questions are:

"(A) How does the Commission propose to group or categorise the totality of complaints received by the Commission for the purpose of the work of phase 1 of the Investigation Committee?

(B) In what sequence does the Commission propose that the work of Phase 1 of the Investigation Committee be done in relation to all the allegations or groups of allegations?

(C) Is it envisaged that there will be a closing date for receipt of complaints to be dealt with by the Investigation Committee in Phase 1 or is it possible that such complaints may be made and received by the Commission during the entirety of phase 1?"

The view we have come to on those questions is as follows. The Investigation Committee intends to order its business in such a way as to ensure efficiency and not to create any undue inconvenience for any party affected by the Committee's work. It is intended that there will be a cut-off or closing date for receipt of requests to appear before the Investigation Committee. The closing date will be published in the national press. It is not possible at this juncture to say when the cut-off will be.

Now the next issue raised by O'Hagans relates to definitions and I am afraid this is a little bit technical and the reply will be a bit technical but there is no way of avoiding this. Question A is:

"Is it envisaged that acts or omissions falling within the full scope of the definition of abuse set out in Section 1(1) of the Act will be investigated by the Commission in Phase 1 of the work of the Investigation Committee?"

The response to that is that the Investigation Committee will be investigating allegations of abuse as defined in Section 1(1) of the Act during the first phase of the Inquiry. That is what it is mandated to do.

"(B) What is meant by the phrase "implicates in the alleged abuse" in paragraph 1(D) of Appendix D?"

The answer to that is that the phrase "implicates in alleged abuse" means "is alleged to be involved in alleged abuse".

"(C) What is meant by the phrase "contributed to the occurrence of abuse" in paragraph 2(A) of Part 2 of Appendix D?"

The answer to that is that the words "contributed to the concurrence of the abuse" are taken from Section 4(1)(b)(iii) of the Act. The Investigation Committee's understanding is that in determining the extent to which the various factors set out in subparagraph (iii) of paragraph (b) of Section 4(1) contributed to the occurrence of abuse, it is required to attribute responsibility for the abuse to one or more of those factors.

There then is an issue in relation to legal representation which I have dealt with. Then there is an issue in relation to expenses and I will read that question.

"What consultation has taken place to date between the Commission and the Minister concerning the expenses of legal representation of parties against whom allegations are made to the Commission?"

The response to that is that there has been no consultation between the Commission and the Minister concerning the expenses of legal representation of parties against whom allegations are made to the Commission. However, for completeness, it should be stated that on 30th March 2000, the non-statutory commission was furnished with a draft scheme for payment of legal expenses which the Chairperson rejected as being unsatisfactory.

Subsequently, before the statutory Commission was established, the Chairperson discussed the matter of the scheme for payment of legal expenses generally with a legal representative of the Minister and a representative of the Attorney General. On that occasion, the Chairperson raised the issue as to whether the various managers, using that expression in the sense in which it is used in Appendix D, of the institutions would be prepared to present a combined front in relation to representation before the Investigation Committee.

The seventh issue raised by O'Hagans is media reporting and that matter has already been dealt with.

written submission and it is this, that because of the consequences of the findings to be made by the investigative committee that I think we would be urging upon you, Chairman, to consider what I would refer to as the higher civil standard of proof, the balancing of probabilities but at the higher end of that weighing scales. Obviously, that is the standard of proof that would be applied in, say, disciplinary hearings where professional misconduct was being alleged against individuals of a particular profession and I would just like you to bear that in mind, particularly having regard to the lapse of time and the matters raised in the Supreme Court on Friday of last week. So I would just like to urge the higher civil standard of proof upon you.

Finally, Chairman, to add two further matters. One, could I join with Miss Ni Raifeartaigh in indicating that we would be very conscious that we would like a copy of the transcript of today's date. Finally, Chairperson, you mentioned in your opening statements the issue of the media and you have referred in particular to the dignity of victims and their requirements to be protected from, perhaps, unnecessary photography whilst coming and going from the workings of the Commission. Could I urge you, Chairperson, to extend those comments also for the benefit of the respondents, the managers, their

families and their witnesses who are also going to come to assist the Commission in its work and I think that their dignity must also be protected and I would urge that you would approach the media on that basis, that their dignity also needs to be protected. Thank you very much.

MS. JUSTICE LAFFOY: On the last point, the approach of this Commission is going to be to deal on an even-handed basis with everybody it has to deal with. In relation to the letter which I quoted from, from the individual survivor, I requested the media to have regard to the plea in that letter and I would extend that request to the media dealing with all people who come to the Commission. The Commission has to adopt an evenhanded approach from the start, but of course, there are matters that happen outside this building that we cannot control. But I would plead, I would request the media to treat everybody who comes here with dignity.

MS. IRVINE: Thank you, Chairman.

MS. JUSTICE LAFFOY: Now in relation to the submissions, the first submission raised on behalf of the Christian Brothers deals with the manner in which evidence is to be given at the first phase. Those of you who are familiar with the statement will recollect that we envisage the hearings in the first phase being as informal as possible to put everybody at ease. The

Members of the Commission will ask the questions. But in relation to the complainant, the Commission is mindful of the injunction, if I may put it that way, in the Act that we must treat complainants or we must treat survivors as sympathetically and as informally as the interests of justice permit and we intend doing that.

Now we indicated in the statement that complainants -- and that is just the shorthand we are using for people who make complaints and I hope that word does not give offence and it is not intended to give offence, but we have indicated that a survivor who comes to tell us about his experiences will have the choice of recounting his evidence orally, of telling his story, or alternatively he will have made a statement and if he prefers that option, the statement can be written into the record.

Now we have indicated in the statement, and again this is a technical matter, we have indicated in the statement that the evidence of other witnesses who are supporting the complainant will be taken in the same way as the complainant's evidence. Similarly, the respondent's witnesses who support the respondent, their evidence will be taken in the same way as the respondents. Actually, the way the appendix is drawn and the rules are set out has led to an inadvertent imbalance and it would be the

intention of the Commission that, while the complainant would have the option of telling of his experiences orally, all other witnesses, their statements would be read into the record and I propose that the rules be amended to provide that. The reasoning is in the interests of efficiency, in the interests of shortening the hearings, making the proceedings shorter for everyone and it seems to be a fairer way of dealing with it. So, in effect, we are accepting that submission but it is only a very minor matter, I think. I will just read it out. I have explained what it is about but I will just read out what our considered view is.

"The Commission accepts that there is an inadvertent imbalance in paragraph 3 Part 1 of Appendix . It proposes to address this imbalance by inserting the words "save that his or her statement shall be read into the record" at the end of the subparagraph C. It is the Commission's view that in compliance with its obligations under Section 4(6) of the Act, the Investigation Committee should afford to a complainant (i.e. to a survivor) the choice of recounting his evidence viva voce or having his statement read into the record.

However, it is believed that the statements of all other witnesses should be read into the record."

But, of course, as the rules set out in Appendix D provide, that every witness will be given the opportunity to elaborate on his statement, but it is just that what we want to ensure is that the statements from the outset are as full as possible

and that the hearings are not unduly long. It is purely a procedural matter.

The second point raised by Maxwell Weldon & Darley in their formal submission relates to the Confidentiality Committee. I propose in relation to that merely reading out the Commission's considered view because I think there is a misunderstanding of the function and of the power of the Confidential Committee.

"The Commission does not accept that there is any reasonable ground for the grave concern expressed relating to the non-definition of the words "findings of a general nature" in Section 15(1)(c) of the Act. Section 16(2) of the Act precludes the Confidential Committee from making findings in relation to particular instances of alleged abuse and it also precludes the Confidential Committee from naming or setting out information which would lead to the identification of complainants, alleged abusers, institutions in which abuse was alleged to have taken place or any other person."

In essence, what Maxwell Weldon & Darley are asking the Commission to do is to refrain from basing its report on the findings of the Confidential Committee and it is asking it to abrogate part of its statutory duty. This it cannot do. So we see no ground for concern in relation to the findings of the Confidential Committee. The third question is the question on which Ms. Irvine elaborated on, the question of the standard of proof. I will merely reiterate that the Investigation Committee will adhere to the rules of

evidence and will test the evidence under the standard of proof required in civil proceedings before the Superior Courts. The standard of proof we will be applying is the standard we indicated; the balance of probabilities. That was the standard that was applied by the Waterhouse Committee in the North Wales Inquiry and we consider it is the appropriate standard and we will probably be guided to some extent by the authorities referred to in Waterhouse which gives a clear indication of when the standard has been achieved. So that deals with that.

Now there were a number of submissions in the letter from Messrs. Maxwell Weldon & Darley and I think I will deal with them because we have considered them and it is as well to deal with all of these matters as openly as possible. Again, I am afraid some of the matters are somewhat technical. The first question raised was that:

"The Congregation would ask for clarification of the Commission's understanding of the definition of "manager" and "regulator" as set out at 1(b) and (c) of the Preamble to Appendix D. In particular, the Congregation would ask the Commission to clarify whether in its opinion the word "regulator" is seen as including the congregation, staff or committee which may attached to a particular industrial school."

Our response on that is as follows. The definitions of "manager" and "regulator" in the preamble to

Appendix D are intended to encompass every person or body who might come under scrutiny by reason of the duty imposed on the Investigation Committee by Section 12(1)(d) of the Act. Because of the diversity of institutions with which the Commission is concerned, it is not possible to define the boundary between manager and regulator in a general sense. Whether a person or body is a manager depends on the nature of the institution and the circumstances in which the various categories of persons making complaints were under the care of the institution. In the case of an industrial school, because of the diverse circumstances in which children were cared for in such an institution, the Commission considers that it should not give a general answer to the query raised, but in due course it will give an answer by reference to the specific facts of a particular case.

I don't think it makes an awful lot of difference whether a particular body or person comes within either definition, one definition or the other. The idea is to capture everybody who should come under scrutiny and whom the Commission is required to scrutinise.

The second question raised was in relation to research and I have dealt with that.

The third question related to the scheme for legal

expenses and I have dealt with that.

The fourth question is:

"The Congregation would wish to place the Commission on notice that in the course of Stage 1 of the Investigation Committee's work, there may be circumstances in which a conflict of interest as between the Congregation and an individual member thereof may arise. In such circumstances, the Congregation would expect that the individual concerned would be legally represented by another firm of solicitors and Counsel. However, insofar as the evidence in such circumstances would also have substantial relevance to the congregation as a whole, we would expect to be made a party to each such individual complaint."

I think it should have been obvious from what I said earlier what the answer to that is. If there is a conflict between the member of the congregation and the congregation, legal representation will be granted to both. The fifth question deals with deceased members of the congregation.

"The Congregation would ask the Commission to adhere to the practice adopted in other jurisdictions of not naming a deceased person in any of its reports unless such deceased person has been convicted of a criminal offence relevant to the Commission's work."

I have already dealt with that in a general manner and the Commission's view is that it should deal with each individual case as it arises in the

context in which it arises. We are not going to predetermine any issue or prejudge any issue or fetter the way we operate in any way. We said that in the opening statement. In any situation where the alleged abuser is dead, we will consider the totality of the evidence and we will hear submissions and we will make a decision on what is before us, but we won't predetermine any such issue.

There were also some submissions in the covering letter which don't require a response but do require a comment and the comment is that the Commission does not accept that the overall impression created by the Act, the statement of the Commission and its proposed rules might suggest that a respondent's rights would be subservient to those of the complainants. The Commission does not accept that contention.

Now the next submission is from Millett & Matthews on behalf of The Good Shepherd Congregation.

MR. KEANE: May it please you, Madam Chairman. I appear on behalf of the present members of The Good Shepherd Congregation Ireland with Mr. Patrick Keane SC. We have submitted our written submissions and have really nothing further to add except once again to echo the request that we would have a transcript of today's proceedings.

MS. JUSTICE LAFFOY: First of all, I have a general observation to make on this submission. The Commission rejects the contention that the Acts and its proposed implementation are unfair to the Congregation. The Commission also rejects the contention that the Act is unconstitutional and in breach of the Congregation's constitutional and natural rights. As a post - 1937 Act of the Oireachtas, the Act carries the presumption of constitutionality. It is implicit that the Commission will implement the Act in accordance with fair procedures and the Commission intends to do so.

Now in relation to the specific propositions advanced on behalf of the Congregation, the comments are as follows. I do not know whether it is necessary to read the questions into the record.

I think the responses indicate the substance of the points made. The answer to the first point raised is that the manner of hearing evidence and conducting the Inquiry will neither be unfair nor unconstitutional. Our response to the second query is that the ethos of the Act is not pro accuser and anti accused. Our response to the third question is: We construe paragraph A of the definition of abuse in Section 1(1) on the basis that the words "wilful", "reckless" or "negligent" qualify the failure to prevent as well as the infliction of

physical injury. I do not know whether that is clear, Mr. Keane, or would you like me to read your question and read the response again?

MR. KEANE: It would probably be appropriate.

MS. JUSTICE LAFFOY: Yes. Question 3 was:

"The definition of abuse includes the failure to prevent the infliction of physical injury to a child even where there is no evidence that such failure was either wilful, reckless or negligent."

Our response to that is that the Commission construes paragraph (a) of the definition of abuse in Section 1(1) of the Act on the basis that the words "wilful, reckless or negligent qualify the failure to prevent, as well as the infliction of, physical injury.

Our response to the fourth question is there is no presumption or pre-judgment as contended. Now I will read the question.

"Section 4(1)(a) (of the Act) is drafted on the presumption and pre-judgment that all persons heard before the Commission have been subjected to child abuse prior to any chance being afforded that the persons alleged to have inflicted or prevented such abuse being given a chance to defend themselves."

Our response to that is that there is no such presumption or pre-judgment as is contended.

Attention is drawn to Section 4(1)(b) of the Act

which makes it clear that the inquiry relates to circumstances in which the Committee is satisfied that abuse has occurred.

Paragraph 5 deals with the issue of lapse of time and I have already dealt with that in general terms.

Paragraph 6 raises concerns about the findings of the Confidential Committee and I will read the submission.

"There appears to be a proposed refusal of access of our clients and/or their representatives to hear such accusations as may be made against them before the Confidential Committee, even if not given a right to cross examine their accusers, while permitting the findings of that committee to be used in preparing a report under Section 5(3) with merely a rider that such findings were based on unchallenged testimony. Such findings would almost certainly be widely and sensationally reported in the media with minimal reference to the rider and by reason of the relatively small amount of bodies running institutions during the relevant time would almost certainly give rise to untold damage to our clients' good name and reputation."

Our response to that is that it is believed that the concern in relation to the findings of the Confidential Committee is unfounded given the wide range of institutions covered by the Act and the fact that it also covers foster care.

Issue 7 is:

"The provisions of Section 5(3) to the effect that a finding that an institution committed such abuse means that the opprobrium of such finding shall blacken the names and reputations of all our members, irrespective of when they joined the congregation or the positions held by them. An institution, and certainly those maintained by the members of The Good Shepherd Congregation, is not a legal person and cannot defend itself or give instructions but may nevertheless under the Act have findings made against it which, for the reasons I have referred to above, are likely to reflect badly on our clients."

Our response to that is that the Congregation will be given an opportunity to refute any allegations made in respect of institutions maintained by the congregation through the members for the time being of the congregation.

Submission 8 is in the following terms.

"In the present circumstances and in particular, having regard to the period of time to be investigated means that the vast majority of accusers are likely to be of full age. The presumption of innocence on the part of our clients, both during and after the publication of the reports of the Commission and the Committees, which is an inherent part of Irish law, has been overridden in the Act and in the proposed means of implementation. The findings of abuse proposed will, it is likely, also comprise and be understood by the media and the public to comprise criminal offences and in the absence of a proper criminal trial of any of our clients, their names or features which might identify them should not be published and ..."

I think this is an important point and should not be

overlooked. The Commission's response to this is that the work of the Commission involves making findings of fact. It will not ascribe either criminal responsibility or civil liability. The presumption of innocence is not affected.

The question of legal representation has been dealt with in my general comments.

The tenth issue is:

"The granting of a right to a person making allegations of abuse against another to stop testifying at any time while not affording such right to the person so accused is unfair and unjust."

The Commission's response to that is that it is not accepted that the non compellability of a person making allegations as to abuse suffered by himself is unfair. If a person chooses to stop testifying, the person against whom it was thought he would testify is no longer at risk.

Number 11:

"The proposed potential relaxation of the rules of evidence before the Investigation Committee for accusers and not the accused is likewise unfair and in breach of the rights of the accused. Similar concerns attach to the provision of possible publication of the names of the accused, while affording absolute privilege to the reports and utterances of the Commission and the Committees. In the

event of a wrongful finding made in such a report or utterances, the accused person would have no redress."

The Commission's response to that is that none of the matters contended for give rise to unfairness or breach of rights. There will be a verbatim transcript of evidence of every hearing before the Investigation Commission. The findings of the Investigation Committee will be made in clear terms. A person who perceives that a finding made against him is wrong may make objection or may seek redress by way of judicial review as he considers appropriate.

The twelfth issue is:

"The suggestion that the allegations of abuse by former members of our clients' congregation who may be dead or untraceable will be fully heard and aired and only subsequently will a decision be made as to how that allegation will be dealt with is plainly self-contradictory and against all principles of the right to be heard and defend oneself. In criminal law, no prosecution could continue after the death of the accused and in civil law, a strict period of two years only is allowed for proceeding against the estate of a deceased person by reason of the severe difficulties of the defence."

Again, I would make the point that this is a fact finding exercise. We are not ascribing criminal responsibility or civil liability and I have already

dealt with the issue of lapse of time and how we will deal in a situation where the alleged abuser is dead; we will consider the evidence in the context of the particular allegation and make a decision on that basis, having heard everybody who has an interest in that particular hearing.

Mr. Keane, is there anything else arising?

MR. KEANE: Yes, the last paragraph, Chairman, just relates to the -- it is once again procedural.

MS. JUSTICE LAFFOY: Yes.

"The Investigation Committee will, insofar as is reasonably practicable to do so, schedule the hearing of allegations against a particular institution one after another."

That is common sense and we intend to do things as sensibly and as conveniently and as efficiently as possible. It may not be always practicable to do that but, as I said, on behalf of the Commission in the statement delivered at the first public sitting, we are going to do our best to accommodate everybody. Obviously, there will be situations in which we can't do that but we will do our best.

I think I am coming to the final submission on behalf of the managers and that is Messrs. Sheehan & Co. on behalf of the Oblates of Mary Immaculate.

MR. MAGUIRE: May it please you, Chairman. I am

Conor Maguire, Senior Counsel, and I appear with Mr. Colm O hOisin on behalf of the Oblates.

Chairman, we treated the letter really as notice of submissions. It does cover the submissions that I intend to make. You have dealt with quite a number of the items already in respect of it but there are some matters that I would like to address you briefly on.

MS. JUSTICE LAFFOY: Yes.

MR. MAGUIRE: They relate somewhat to practical matters and procedural matters, some to matters of principle and there are some question so there is really a different order in respect of the quality of what I want to say to the Commission.

MS. JUSTICE LAFFOY: Do you want to follow the order in which you gave notice or what way will you deal with it?

MR. MAGUIRE: I am in your hand as to whether you wish to deal with the letter on the basis of what is contained in that and then I will come back and deal with the matters that I want to address. Or if you prefer me to tell you what I regard as uppermost important?

MS. JUSTICE LAFFOY: That is perhaps the best way.

MR. MAGUIRE: Yes. I am very conscious of the fact that the question of the status of the Confidential Committee

has already been raised and indeed has been dealt with to some extent by you, Madam Chairperson, but we would have residual concerns about the way in which that has been approached. Now I appreciate that it has been very clearly set out at page 11 of the statement that you made on the first day, that no person or institution will be named or identified and, indeed, you have reiterated that here today. But that begs the question as to what are the matters of general nature which will then be taken into consideration because we would have a concern, and it is fully appreciated that it is the nature and intent of that portion of the proceedings which have been set up, but the reservation that we would have obviously is that it is contemplated in the Act and indeed stated in the statement that that will be taken into consideration in the report. There seems to be somewhat of a question mark over what matters are left, if all of the matters which are referable to either institutions or individuals are to be left out and I would appreciate it if you could develop that particular point further, either here or later, but there is a residual concern in respect of that.

The second matter which again I want to refer to briefly is the question of the right of the order to be represented in Phase 1 of the Investigation Committee. This is partly a question also and it revolves around, I suppose, the interpretation of

what a respondent is in terms of the definition in the schedule because clearly the way that it reads in the first instance is that it is a question of the complainant "implicating" and that word itself you have referred to and amplified it by saying by somebody "being involved", but even the word "involved" still seems to leave it up to the complainant to have the part of bringing the order in my instance into play, as it were, as a respondent in the first phase of the Investigation Committee's proceedings. I would be concerned that a situation could arise in which there may be an interest of the Oblates in hearing and being part of those proceedings where the complainant has not specifically involved them and I think that the test that should be used as to whether they should be heard in those proceedings or at that stage would be whether they were parties who were likely to have an adverse finding made against them, not a matter of it being up to the complainant to implicate or involve, as you have indicated. So I would ask that that definition be re-thought or re-worded to some extent.

MS. JUSTICE LAFFOY: I can assure you,
Mr. Maguire, on that point
at this stage, this is purely a terminological
problem because what is clearly intended is that any
person who is likely to have an adverse finding made
against him should have representation. I will look

at the terminology but that is purely a terminological difficulty, if there is one. I don't see it myself, quite frankly, but then maybe I am biased seeing as I drafted it.

MR. MAGUIRE: I appreciate that, Madam Chairperson, but our concern essentially is on the basis that has already been addressed here, which is that the findings are unassailable, effectively, those findings that are made, and we feel that in order for the rights of the order to be vindicated that it would be necessary to be in a position to cross-examine and I welcome the assurances that you are giving in respect of that particular point.

Just to give it a practical effect, there may be circumstances in which a particular allegation has been made in which the order has not been implicated but in which the background or the context in which that particular allegation is being considered requires there to be a context set by perhaps a witness from the Order or perhaps a representation on behalf of the Order and that is the concern.

MS. JUSTICE LAFFOY: Perhaps I might indicate at this point, and it might be in ease of your position, that the reason that the definition of "respondent" is framed in the way in which it is framed is because it is envisaged that a complainant may make a complaint that he was

abused by Mr. A in Institution X and he may also additionally say; 'And on that very day, there was an inspector from the regulatory authority in the institution and he saw it happening.' In those situations, I would envisage that there would be three respondents; the alleged abuser, the proprietor of the institution and the regulatory authority. But in most situations in the first phase, we envisage that a complaint will be made against an individual or that an individual abused somebody in an institution and in that situation, there would be two respondents; the alleged abuser and the institution. Does that make it clear why the definition is cast the way it is? Because there may be other people beyond the alleged abuser and the institution implicated. There may be a regulatory authority implicated at that stage in the first phase.

MR. MAGUIRE: I understand, and I fully accept what you are saying in respect of a particular example; it was felt that if perhaps it was widened to some extent by putting persons likely to have adverse findings made against them, I think it would be a reassurance and I accept entirely the assurances that you are now giving, Chairman.

MS. JUSTICE LAFFOY: Yes, I will certainly look at that because that is certainly the intention and that would seem to me to

be what the law requires in any context such as this, that any person likely to have an adverse finding made against them are entitled to be heard.

MR. MAGUIRE: Chairman, just then to go on to the next point that I wish to make, it has already been made and I know that you strongly made your rulings in respect of this, but it is the question of the burden of proof. Essentially, a lot of the matters in which you propose to find fact or which you are charged with finding fact or matters which facts give rise to an allegation of criminal conduct and my submission is, very very simply, that if that is the position in respect of a particular allegation, then the standard should be the criminal standard in order to protect the rights of the person against whom the particular factual allegation is being made, which will in most instances or at least in a lot of instances one can contemplate will amount to an allegation of criminal conducts.

The next submission that I want to make, Chairman, again you have addressed this to some extent but it is to do with the question of the respondents' witnesses anonymity and we would ask, Chairman, that in the same way that the complainants are being granted a right to anonymity that the respondents' witnesses should also be granted the same right. I would again ask you just to reiterate -- I think

you have said it clearly but insofar as media reporting and media coverage and media photographs are representations of the respondents, that they be treated in the same way and that a very strict embargo be imposed in that regard.

There is a separate matter and I don't think it appears in the letter and it is a matter maybe that you may not deal with today but I would like to flag the fact that it is made and maybe you can treat it as an application. We have a particular problem as an order and that is that the records, as far as we are concerned, we don't have the records. We were not in possession of the records in relation to events that will be under investigation and I know you do have powers to direct Discovery. Now in the first instance, I understand from what you have said that you are having the documents scrutinized and in fact reduced to electronic form, but as I understand it, that relates to the records in the Department of Education.

MS. JUSTICE LAFFOY: Yes.

MR. MAGUIRE: It seems to me, Chairman, that there is also the question of documents which certainly in our case would be in the possession of the Department of Justice and also may be in the possession of the Department of Health and in the circumstances where the houses were in fact transferred to the OPW and

some of the documents and records along with them, there may be a question of documents in the possession of the Office of Public Works. Now if you wish to do so, you can take this as an application for Discovery against those departments, but we obviously need to have access to those documents at a very early stage. We understand the difficulty in relation to the enormity of the task involved in scrutinising the vast amount of documentation. We don't want to increase that but you will appreciate that in a position where we don't have documentation that it is necessary for us to have those if these matters are to be investigated properly and if our rights are to be maintained.

MS. JUSTICE LAFFOY: Do you have a difficulty, Mr. Maguire, in relation to the documents in the Department of Education or is it only in relation to documents in other departments?

MR. MAGUIRE: Primarily, the position is that we have been in correspondence with the Department of Education and we understand the position that they are in. They are trying to comply with the requests that you have made of them. As I understand it from what you have said in your opening statement, you are going to have those scanned on to disc, which should meet the situation. But I think for purposes of ensuring

that we have an access or a right of access to those documents that it would be appropriate to make an Order for Discovery against the Department of Education as well.

MS. JUSTICE LAFFOY: I can only make an Order for Discovery in the context of a specific allegation having been made. I do not know whether we have any request in relation to any of the Oblates' institutions yet. But Discovery Orders would be made in the context of a particular allegation.

MR. MAGUIRE: The real problem becomes one of the time frames that will be involved because the last thing that we want to do -- you are under a specific constraint in respect of your reporting and I know that you are anxious to get on with the business of the Commission and we don't want to be responsible in any way for delaying the hearings of the Commission but we do need those documents.

MS. JUSTICE LAFFOY: Mr. Maguire, this is an issue that we will have to consider but I think it is not inopportune that you have raised the question of documentation because it is something that I overlooked and that in fact I would like to deal with now. You are quite right, we said in our opening statement that we are getting in electronic form all of the documentation in the Special Education Branch in Athlone and that relates

running of the orders, obviously, but we don't have the original documentation of the institutions. That is the problem.

MS. JUSTICE LAFFOY: Are you talking about documentation that was the property of the Oblates as opposed to records of the Department?

MR. MAGUIRE: Documentation which were generated in the course of the administration by the Oblates of the particular institutions and which are no longer in our possession.

MS. JUSTICE LAFFOY: But assuming the Oblates were still running an industrial school or a reformatory, are they documents that would be in the Department?

MR. MAGUIRE: As I understand it, Chairman, and I cannot answer your question very fully, but as I understand it, they are in the Department of Education.

MS. JUSTICE LAFFOY: They are Department documents?

MR. MAGUIRE: They are documents that were handed over to the Department of Education as I understand it but I haven't very specific instructions as to a date of the documents in that respect.

MS. JUSTICE LAFFOY: I think, and I might as well say this in public, I

think the position is unclear because your solicitor wrote to the Commission some time ago and the understanding that was derived from the letter from your solicitor was that documents belonging to the oblates had been furnished to the Department of Education. My understanding on the basis of the enquiries I have made is that the documents in relation to Daingean in the Department are departmental records and that there is no body of documents that would have been regarded as oblate documents.

MR. MAGUIRE: Which were handed over.

MS. JUSTICE LAFFOY: Yes. That is my understanding now on the basis of the enquiries I have made.

MR. MAGUIRE: Yes. I think, Chairman, having raised the point, I would ask you perhaps to defer a consideration of it because I understood that there was a question of Oblate documents being in the Department and also Oblate documents being with the OPW when they physically took over the institutions. But I don't want to be taken as stating that categorically and perhaps if I raise it either in correspondence with you or in the next public hearing, we will pursue the matter further. But you can see the perspective from which I am coming.

MS. JUSTICE LAFFOY: We have made enquiries in relation to the Department

of Education but I have made no enquiries in relation to the OPW or the Department of Justice or the Department of Health, but my understanding is that there isn't a body of documentation in Athlone which would be regarded as Oblate documentation but I can raise it again.

MR. MAGUIRE: Yes. There is just one further point, Chairman, it is the final point and it is the question in relation to the right to cross-examine, which I think is dealt with at page 29. It is just the phraseology that is used in respect of it. You say that: "The evidence of the complainant will be taken in the following manner." What it says then, it does not use the word "cross-examine" but it says:

"The Members of the Committee may address questions to the complainant. Each respondents or his legal representative may address questions to the complainant."

I do not know whether that is a deliberate non-use of the word "cross-examine".

MS. JUSTICE LAFFOY: Yes, I would have thought that would have been picked up on, that it was a deliberate non-use of that word.

MR. MAGUIRE: I do not know if there is any difference in the terminology?

MS. JUSTICE LAFFOY: No.

MR. MAGUIRE: That answers the question,

Chairman.

MS. JUSTICE LAFFOY: Yes. Just to deal with
the points that

Mr. Maguire has raised, we have considered all of these points. First of all in relation to the standard of proof, we have decided and we are not departing from the decision that it will be the standard of proof applicable in civil proceedings; proof on the balance of probabilities. Again, I reiterate, and I don't think I can say this too often, this is an investigative process. We are making findings of fact. We were not ascribing criminal responsibility, we are not ascribing civil liability.

On the question of the Confidential Committee, I take the point that the Act is vague in the sense that it refers to general findings of fact but it does indicate the type of findings which cannot be made and you are going to have to extrapolate backwards from that. The difficulty for me in dealing with this particular issue is that the Confidential Committee is autonomous. I am not going to tell the Confidential Committee what type of findings it can make. The Confidential Committee will be advised by Mary Ellen Ring. She will be specifically assigned to them because their work has to be confidential. They will make findings which, as the Act says, will not name any person, whether

it is the person making the complaint, whether it is the person against whom the complaint is made or whether it is an institution. There will be general findings and I think it is reasonably easy to extrapolate from that what the nature of the findings will be. I don't think I can put that aspect of the matter any further.

On the question of the media, again in relation to taking photographs and all of that, I can only request that that be done. In relation to the other matters, anonymity in relation to what happens in the proceedings, as I have said, the in camera rules apply in relation to the hearings. The records -- we will leave that in abeyance for the time being. Is there anything else, Mr. Maguire?

MR. MAGUIRE: No, Chairman, those are my submissions.

MS. JUSTICE LAFFOY: Very well. Then if there is nothing further, we will adjourn the public session until 2 p.m. and we will deal with O'Donovans.

SOLICITOR FOR O'DONOVANS: Madam Chairperson, if those submissions might be made now?

MS. JUSTICE LAFFOY: Certainly.

SOLICITOR FOR O'DONOVANS: Thank you for allowing the adjournment. Those submissions were made in letter form dated 30th July

2000.

MS. JUSTICE LAFFOY: Yes. Do you want me to
read the submission into
the record and then indicate our response?

SOLICITOR FOR O'DONOVANS: Yes, Chairperson.

MS. JUSTICE LAFFOY: Very well. This is a
submission in writing from
O'Donovans on behalf of the Rosminnions

...(INTERJECTION)

SOLICITOR FOR O'DONOVANS: On behalf of Fr. Joseph
O'Reilly.

MS. JUSTICE LAFFOY: Yes, sorry, on behalf of
Fr. Joseph O'Reilly of
St. Joseph's, Clonmel. The first submission is:

"Great concern is felt that an institution may
lack evidence of particular events or
that such witnesses as it might have
could be aged or infirmed. Delay in
making complaints creates a harmful
imbalance in evidence which is felt to
threaten the fairness of the
Commission's procedures. Could the
Commission indicate...."

And there are a number of questions.

"...that any report of the Confidential Committee
will not be considered until after the
Investigation Committee has made its
findings on specific instances of
abuse?"

Our response to that is as follows. Section 5(1) of
the Act provides that the Commission shall, in
preparing its report, have regard to the reports of
the Investigation Committee and the Confidential
Committee. It follows that the Commission cannot

prepare its report until it has the reports of both Committees before it. The two Committees are wholly independent of each other. The general findings of the Confidential Committee will not be considered by the Commission until after the Investigation Committee has made its findings.

The next question raised is that the findings of the Investigation Committee will reflect, where appropriate, the absence of corroboration of complaints and, secondly, the difficulty encountered by an institution in the circumstances of delay.

Now in relation to that, our response is that the Investigation Committee cannot commit itself in advance to indicating what, if any, weight it will give to the absence of corroboration in relation to a particular allegation or particular allegations. I have already dealt with the lapse of time issue.

Then there is a query in relation to the inquiry officers and I think the response to the query will be adequate. The duties of the inquiry officers involve the gathering and collation of information. They are specifically precluded by the Act from making any determination or finding (Section 23(3)) and they cannot compel the answering of a question or the production of a document (Section 23(7)). It is not envisaged that they would require the use of

a protocol analogous to that contained in Children First for investigation of allegations. However, they are subject to the duty of disclosure provided for in Section 28(2) of the Act.

The Third issue is O'Donovans requested a change of the order of evidence set out at paragraph 3(A)(iii) and (iv) of Schedule D and our response to that is that subparagraph (d) of paragraph 2 of Part 1 of Appendix D will be amended to provide that the statement to be furnished by a respondent to the inquiry officer may include details of any direction under Section 14 which the respondent requests the Chairperson of the Investigation Committee to make. However, in the interests of fairness, a corresponding amendment will be made to subparagraph (a) of paragraph 2.

Perhaps I should say a word about that. In the procedures in relation to the hearings of allegations of abuse, you will recollect that the inquiry officer will either take a statement or will be furnished with a statement from the complainant. Now in that statement, I think a good point was raised in this submission and I think in that statement that the complainant should be in a position to say to the Investigation Committee: "We would like you to make a Discovery Order" or "We would like you to issue a witness summons."

Each respondent will have a corresponding right. So it is really expanding to enable us to know at an early stage what witness summonses or Order for Discovery or directions of Discovery the various parties want us to make. So that is a good suggestion.

Also in some of the representations communicated through Mr. Clarke to us, there was also a suggestion in relation to the question of the cross-examination of a complainant in the event of a respondent not having furnished a statement and it seems to me to be a matter which would improve the overall fairness of the scheme and I propose that that change be incorporated in the rules. But what we will do is, on the basis of the submissions we have acceded to, we will re-cast the rules so that the rules are clearer and fairer.

The fifth issue was: We request clarification of the practice envisaged in respect of supplemental statements. This is all beginning to sound very adversarial and as I said at the first session, we are really only putting a structure on this, but in any event, just to make this clear, the purpose of the requirement of a statement is to give notice of what a witness intends to testify to a person who may be affected by the testimony so that the latter has an opportunity to address it. All proceedings

before the Investigation Committee are inquisitorial. It is envisaged that a statement will primarily constitute an outline of the facts to be deposed to and that a supplemental statement will contain an outline of facts which were overlooked in the original statement. It is no more than that. It is a method of giving notice of what somebody intends to say.

The sixth query:

"We request that some procedure or present acknowledgment of the opportunity of extension of time for compliance with a request by an inquiry officer should be made."

The point is made that if a respondent, say, or indeed a complainant has difficulty complying with the time limit, that that should not be regarded as being reprehensible. The Commission's response to that is that the Commission has stated in paragraph 2 of the Preamble to Appendix D that the time for compliance with a request or a direction may be extended at the discretion of the Investigation Committee. Each application for an extension will be considered on the merits. That is our response to that.

The seventh query is again the question of age and the possibility of persons being infirm at this stage and there is a request that the Commission consider that such persons, in other words aged and

infirm respondents, may be afforded the benefit of a companion or supporter in appearing before the Investigation Committee. Our response to that is as follows: Attention is drawn to page 30 of the statement where it is stated that if the need for support for persons required to attend before the Investigation Committee to answer allegations of abuse arises, the Commission will make arrangements to have it provided that such a person may be accompanied by a companion. However, the Investigation Committee will apply the same rule in relation to such companions as it intends to apply to companions accompanying persons making allegations; the companion will not be allowed to be present in the hearing room save while he is giving evidence if he is a witness. The companion may wait in a nearby room. The Investigation Committee will be sympathetic to a request for a break in the proceedings. So we are going to treat everybody even-handedly.

So they are O'Donovans submissions and I think they have all been dealt with.

Now I know that this perhaps has been a difficult session for some people because of the legality of the issues raised and what I would propose in relation to the submissions we have dealt with, on behalf of the managers, is that we can prepare a booklet with the submissions and the responses and

it might be clear to everybody then what has actually been decided, although of course the verbatim transcript will be available.

I did say at the outset that we had submissions from some individuals and I propose dealing with them, if they have not been dealt with, most of them, in writing. But there was one good submission which we found helpful from Paddy Doyle and there was one point raised in it that I want to deal with publicly. He raised the point about the Commission having an e-mail address and having a website on the Internet and I just want to say that this was something we gave a lot of consideration to and having considered it, we decided that it was not a safe way to do business having regard to the nature of the matters we are dealing with. We made that decision some weeks ago and we feel vindicated by what happened in PowerGen recently in relation to that. We appreciate the other suggestions made by Mr. Doyle, but that one we feel could be very very risky and we are not prepared to take that risk, although in ordinary circumstances it would be an efficient way of doing business.

So if there is no other matter arising, I will adjourn this until we are in a position to deal with the point raised in Mr. McGill's letter and we will give notice of that. If I may say at the very end

thank you once again for your attention and I think you will all have appreciated that perhaps my cross words at about eleven o'clock paid off. We have got through the business efficiently. We couldn't get through the business if I allowed interruptions. So I didn't mean to be cross, I just meant to get the business done efficiently. So once again, thank you for your attention.

THE HEARING WAS THEN ADJOURNED TO A LATER DATE