

# **Commission to Inquire into Child Abuse Act 2000**

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Third Public Sitting of  
**Commission to Inquire into Child Abuse**  
held on  
**26<sup>th</sup> Sept. 2000**

Commission to Inquire into Child Abuse  
Second Floor  
St. Stephens Green House  
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Dublin 2.

## **Public Sitting: 26<sup>th</sup> September 2000**

As you know, this is a resumption of the public sitting which was adjourned on 20<sup>th</sup> July 2000, to enable the Commission to deal with certain issues which were raised at that sitting.

I must remind everybody that, like the two public sittings which have already been held, this sitting must be conducted with due formality. I fully appreciate that the formal nature of these sittings is frustrating for people who are anxious to participate in the important work of the Commission - the hearings at which persons who have suffered abuse in childhood in institutions will tell their experiences, about which I will talk later. However, as I explained at the first public sitting, the Commission is a unique investigative body. It has been necessary to hold these preliminary sittings in public so that the public and, in particular, all persons affected by the work of the Commission, know how the Commission intends to carry out the job it has been given to do. As I have explained previously, the matters which need to be dealt with at these preliminary public sittings are to a large extent legal

and procedural matters and, unfortunately, by their very nature, are difficult to express in terms which everybody will understand, as we have been told by members of the public. So, once again, I must ask people who find this part of the process frustrating to be patient.

In relation to the order of business today, two major items remained outstanding on the adjournment of the sitting of 20<sup>th</sup> July 2000. These were:

- The making by the Minister for Education and Science of the Scheme for Legal Expenses; and
- Consideration of and action on a submission made by MacGuill and Company, Solicitors, on behalf of certain survivors.

I will deal with those two items first.

I will then outline the progress which has been made by the Commission since the last sitting and I will then indicate where the Commission intends going from here.

### **Legal Expenses Scheme:**

At the public sitting on 20<sup>th</sup> July 2000, having taken account of submissions made by various parties on the issue of legal representation, the Commission made the following rulings:

- (1) Each person who comes to the Investigation Committee to make an allegation or allegations of abuse will be granted legal representation by a solicitor and one counsel of his or her choice for the first phase hearing;
- (2) Each person and/or body against whom an allegation of abuse is made will be granted legal representation by a solicitor and one counsel of his, her or its choice for the first phase hearing;
- (3) Every person or body materially affected by an issue raised in the second phase hearing will be entitled to legal representation; and
- (4) The expenses of legal representation will be defrayed in accordance with the scheme to be made by the Minister for Education and Science under section 20 of the Commission to Inquire into Child Abuse Act, 2000 (the Act).

At the second public sitting, which was attended by Counsel for the State, the Commission emphasised the need to finalise the scheme under section 20 as soon as possible. On the 21<sup>st</sup> July 2000, the day following the public sitting, the Commission formally advised the Minister for Education and Science of the rulings which had been made in relation to legal representation. The Commission pointed out that the Commission members have no expertise in the area of costs of legal representation and stated that they had to leave it to the Minister's Department to work out the detail of the scheme under section 20.

By letter dated 30<sup>th</sup> August 2000, a draft Scheme pursuant to section 20 was submitted to the Commission. The draft was not complete and it did not differ substantially from a draft which had been submitted to the non-statutory Commission on 30<sup>th</sup> March 2000, which the Chairperson rejected as being unsatisfactory.

By letter dated 4<sup>th</sup> September 2000, the Commission reiterated that the Commission members have no expertise in the area of legal costs. It was suggested that, having regard to the difficulties

which the Commission had encountered up to that time, it would be prudent that steps should be taken to ascertain that the scheme in its final form would be acceptable to persons and bodies involved in the work of the Investigation Committee and their legal representatives. It was also stated that the Commission had misgivings as to whether the means testing provisions of the draft scheme were workable.

There, with the Department of Education and Science, the making of the scheme for legal expenses rests. In the absence of the scheme the work of the Investigation Committee will not be able to proceed.

**Submissions by Solicitors for Certain Survivors:**

At the second public sitting, I read into the record of the proceedings a submission made to the Commission by MacGuill and Company, Solicitors. The submission was made on behalf of a number of solicitors throughout the country who represent the interests of many, but not all, survivors of child abuse. It was made by letter dated 18<sup>th</sup> July, 2000 to the Commission's Counsel,

Mr. Frank Clarke, S.C. In summary, the solicitors expressed the view that “the Commission as presently constituted is fundamentally flawed” and advanced two arguments in support of that view. First, it was alleged that “the significant role to be played in the work of the Commission by the Department of Education, its personnel and resources” constituted an unacceptable conflict of interest, particularly in the light of a denial of liability by that Department in civil proceedings brought by survivors against that Department. Secondly, it was contended that the Commission as presently constituted cannot lead to finality of the issues for an individual survivor, presumably meaning a survivor who is pursuing or wishes to pursue a civil action, and that being required to give evidence on multiple occasions is detrimental to survivors. The nub of the solicitors' submission was contained in the following paragraph:

“It appears to us that the personal difficulties occasioned by the present requirement of 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 the same”

It was stated that until such time as the issue of such a scheme is satisfactorily addressed, it would 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.

At the public sitting it was acknowledged by the Commission that the submission made by the solicitors raised a significant issue which required careful consideration. The sitting was adjourned to a date to be announced, so that the submission could be considered and the message contained in it conveyed to the Government. It had been hoped that the issue would be resolved in sufficient time to resume the public sitting before the end of August.

Unfortunately, it was not possible to resume before the end of August, as had been hoped. I will now outline what happened subsequent to the public sitting on 20<sup>th</sup> July, 2000.

The Commission gave immediate consideration to the submission.

It concluded that whether or not a scheme of compensation is established for survivors of institutional child abuse is a policy issue for the Government. It is a policy issue on which the Commission is authorised to make recommendations in accordance with its statutory power in relation to action which should be taken to alleviate or otherwise address the effects of abuse. As the Commission announced at its first public sitting it is an issue it proposes considering. However, the Commission concluded that it could not publish an interim report on the lines sought in the submission at this juncture without hearing any evidence or submissions and, in particular, evidence of the extent of the blame that might legitimately be ascribed to State agencies in relation to matters being investigated by the Commission. On the other hand, the Commission recognised that, having regard to the context in which the Commission was established and the

legislation underpinning it was enacted, the State might, as a matter of policy, be prepared to commit in principle to the establishment of an appropriate body (whether statutory or administrative) to deal with compensation issues, thus leaving the Commission only with making recommendations as to how the body might be established and operate. In summary, the Commission's view was that a compensation scheme is a policy issue for the Government, but it is a policy issue on which it is entitled to make recommendations. While it could not do so at that juncture, not having heard any evidence or submissions, it believed that Government policy might enable it to accelerate the recommendation process.

Accordingly, the Commission wrote to the Minister for Education and Science on 26<sup>th</sup> July, 2000 in relation to the solicitors' submission. The Commission made it clear that it was expressing no view, either positive or negative, on the merits of the arguments put forward in the submission but conveyed its view that the matters raised in the submission represent potentially a significant barrier to the effective conduct of the business of the

Commission. It was stated that, if it were Government policy to commit in principle to the establishment of an appropriate body to deal with compensation issues before the Commission hears evidence of blame, the Commission would be in a position to deal with the issue of the modalities of a compensation scheme at an earlier stage in the conduct of its business, that is to say, after the completion of the first phase of the work of the Investigation Committee. It was anticipated that the effective conduct of the business of the Commission could be achieved if the Commission was able to do so. The issues which the Commission consider need to be addressed in the formation of any such policy decision were outlined:

- whether such scheme would cover all abuse as defined in the Act.
- whether compensation would be payable provided such abuse occurred in an institution as defined in the Act subject to the caveat that the institution was one for which the State held some responsibility, directly or indirectly;

- that such compensation would be payable on an ex-gratia basis without establishing any liability on the part of the State, but subject to the claimant establishing that he or she suffered institutional abuse within the parameters referred to and resulting damage;
- that the compensation would be broadly similar to that which would be awarded should a successful claim for damages in respect of such abuse be pursued in a Court of competent jurisdiction.

The Commission sought an indication of the Government's position on the issues raised in the letter and that the earliest possible response be made.

It became apparent by 10<sup>th</sup> August, 2000 that it was unlikely that the Commission would be in a position to convene the resumed public sitting before the end of August and all individuals, groups and legal representatives who had participated in the public

sitting on 20<sup>th</sup> July, 2000, of whom the Commission had a record, were notified accordingly by letter.

The Commission received a holding response from the Department of Education and Science by letter dated 14<sup>th</sup> August, 2000 in which it was stated that, while the Minister was aware of the Commission's view of the importance for its effectiveness of a decision as soon as possible, and along the lines proposed, receiving a Government decision on the matter might be difficult in the immediate future because of the holiday period. In the letter, it was questioned whether the reservations expressed in the submission on behalf of the solicitors are shared generally by survivors of abuse.

By letter dated 18<sup>th</sup> August, 2000, the Commission apprised the Department of the level of response which the Commission had received to its intensive advertising campaign. That level of response bore out the Commission's view that matters raised in the solicitor's submission were proving to be a significant barrier to the effective conduct of the Commission's business.

On 1<sup>st</sup> September, 2000 the Commission decided to resume the adjourned public sitting today so that persons affected by the work of the Commission could be brought up to date.

The only further response which the Commission has received to its letter of 26<sup>th</sup> July 2000 was received on 22<sup>nd</sup> September. I will quote the text of that response, a letter dated 21<sup>st</sup> September 2000, from the Department of Education and Science. It is in the following terms:

*"In view of the forthcoming public sitting of the Commission on 26<sup>th</sup> September I think it is opportune that I should outline developments on the issue of establishing a compensation awarding body for victims of abuse in childhood since my letter to you of 14 August. The Government have not as yet made a decision on establishing a compensation body. The reason for this is in part due to the fact that the Cabinet did not meet during most of August - a likely difficulty which I flagged in my letter of 14 August. More significantly, however, is the fact that any decision regarding a compensation tribunal raises complex issues which*

*require research and consultation before proposals can be brought before the Government. In your letter you refer to some of the key issues - definition of abuse, definition of place where abuse occurred, issues of liability and damage assessment and the amount of compensation. This Department has now prepared a comprehensive draft report on the issue of a compensation tribunal, drawing where it is available on international experience. This has been circulated for consideration to the secretaries general of those Departments whose Ministers make up the Cabinet Committee on Child Abuse. It is intended that by the end of October a report will be submitted to the Cabinet Committee with a view to a Government decision on the issue of a compensation awarding body for victims of abuse in childhood.*

*I will update you on progress in this matter."*

There the matter rests, unless Counsel for the State has been instructed to advance the matter further.

The Commission is disappointed that there has not been a more obvious willingness on the part of the State to speedily address

issues which are impeding the effective conduct of the tasks which the Oireachtas has given the Commission to do. It is worth recalling that at the time the Taoiseach, on behalf of the State, apologised to victims of child abuse, almost eighteen months ago, these tasks were seen as being an important aspect of the State's approach to redressing the wrongs to which the apology related.

### **The Future:**

It is important that I should emphasise, as I emphasised on the last occasion, that the Commission is fully aware that the solicitors on whose behalf MacGuill and Company made the submission only represent some survivors. There are many survivors who are very anxious that the Commission's work should proceed. The ultimate success of that work will depend on the volume of evidence which the Commission collects. This, in turn, will depend on the willingness of persons who have suffered childhood abuse in institutions to come forward and testify as to the abuse. The Commission is determined that, notwithstanding the obstacles it has encountered to date, every person who wishes to testify to the Commission will get a hearing before the Committee of his or her

choice as soon as reasonably practicable. To this end, during the past two months, the Commission's work has continued and the following is its current position:

**Non-contentious submissions made by individual survivors and survivors' groups:**

As was agreed at the sitting of 20<sup>th</sup> July 2000, these submissions have been responded to in writing and the responses were circulated at the end of July.

**Confidential Committee:**

The Confidential Committee commenced its hearings on 12<sup>th</sup> September last. I think it would be reassuring for survivors who wish to come to the Confidential Committee if I told you something about how that Committee is operating. In scheduling hearings, the Committee gives priority on the basis of age and special needs where these factors are brought to the attention of the Committee. Of course, the objective is to give every person coming to the Committee an opportunity to be heard as soon as possible. The Committee has a dedicated staff team working with

its members, Ms. Gibbons, who is now the Chair, and Dr. Deasy. A witness support system is in place. When his or her hearing has been scheduled, each survivor receives a detailed information leaflet outlining what to expect at the hearing. He or she is invited to call in advance to see the hearing room. On arrival he or she is greeted by the witness support officer and is introduced to the Committee members. After the hearing is completed, the witness support officer is again available to assist. Every effort is made to alleviate the distress associated with recounting past experiences. The scheme for payment of travel and subsistence expenses is in operation.

**Counselling:**

The National Counselling Service is now in operation in all areas in the State. The Service is community based and is a free, dedicated professional service for survivors of childhood abuse in Ireland. A freephone number is available to aid contact with the Service in each Health Board area. The Service offers individual counselling, couple counselling, counselling for family members, group therapy and information on other services within the

community. The service offered will depend on the needs of the survivor attending the Service. Survivors who have concerns about using the National Counselling Service will be facilitated to access other services to meet their needs. Survivors can also choose to avail of counselling in a county or in a Health Board area other than their own.

Over the summer, the Commission has had very useful contacts with the Project Directors and the Counsellors operating the Service. There is agreement in principle to the provision of an emergency outreach service for the Commission. The Commission is very appreciative of the assistance it has received from the Service.

Over the summer the Commission has also put in place contingency arrangements for access for witnesses to medical services if the need arises.

### **The Investigation Committee:**

It has to be acknowledged that the Investigation Committee has not made as much headway in processing the requests it has received over the last three months as its members would have wished. This is because over the summer the Investigation Committee has been concerned with putting in place staff, administrative structures and I.T. systems, including access to the documentation of the Special Education Branch of the Department of Education and Science in Athlone, and this work is ongoing. It is hoped that so much of this work as is within the Commission's control will be completed within a month.

It has been decided to assign two Junior Counsel to perform the functions of Inquiry Officers and the selection process is ongoing.

I want to assure all persons who wish to testify to the Investigation Committee that it has always been and continues to be the main objective of the Committee to give such persons the opportunity to testify as soon as possible. As I have already mentioned, the absence of a scheme for legal expenses will stall the Committee's work. The Commission again requests the Minister to make a

scheme under section 20 which will be operable as soon as possible. As soon as the scheme is in place, the Commission will furnish a copy of the scheme to every person who has requested to meet the Investigation Committee or to his or her legal representative and all other persons who are on record with the Commission as having participated in the public sittings to date.

The Committee's rules of procedure, which were set out in Appendix D of the statement delivered at the first public sitting, have been amended following the submissions made at the second public sitting and the amended rules were circulated to interested parties early in August. Any further submissions in relation to the rules will be dealt with through correspondence or at the private hearings.

**Communication with Survivors:**

Some groups representing survivors have sought meetings with the Commission since the Commission was established. In all cases, the Commission has indicated that it would not be appropriate for the Commission to meet with any section of the

public interested in its work to the exclusion of others. The Commission is a Commission of Inquiry and it is required by law to conduct its business in accordance with fair procedures. It has been suggested that the Commission might communicate with survivors through the media. This approach would also be inappropriate. When the Commission has information to communicate to the public or any section of the public, it does so at a public sitting such as this public sitting.

One line of communication to the Commission for persons affected by the Commission's work is through the Commission's legal team. This approach was adopted by the legal representatives of survivors represented by MacGuill and Company. The Commission is considering, in consultation with Mr. Clarke, whether a procedure could be established, which is fair to all persons affected by the Commission's work, whereby the Commission's legal team could meet with survivors' groups. However, there are difficulties in establishing such a procedure. Groups and individuals who have legal representatives can only be dealt with through those legal representatives to ensure that the

Commission does not cut across the solicitor/client relationship. Moreover, it is not always clear who has authority to speak on behalf of a group. However, notwithstanding these difficulties, the matter is still under consideration.

As most of you know, the Commission has produced an information leaflet which is specifically designed to explain the Commission's functions and the manner in which it will operate for survivors. There are also diagrams available in the reception area, which are complementary to the information leaflet. These show the role of survivors in the process and the purpose of the public sittings to date.

Finally, I would like to repeat what I said earlier. The success of the Commission's work depends on the volume of evidence the Commission gathers. The Commission has invited persons who have suffered abuse as children in circumstances which are within its remit to come forward and recount their experiences. The Commission needs to hear from such persons in order to fulfil its remit to investigate child abuse, to make recommendations to

redress past wrongs and to improve the way children will be cared for by the State in the future.