

Commission to Inquire into Child Abuse Act, 2000

Statement

Delivered at

First Public Sitting of

Commission to Inquire into Child' Abuse

held on

29th June 2000

Commission to Inquire into Child Abuse,
Second Floor,
St. Stephen's Green House,
Earlsfort Terrace,
Dublin 2.

1. Purpose

The purpose of this public sitting of the Commission to Inquire into Child Abuse is to explain to the public, and, in particular, to the survivors of institutional child abuse and other persons affected by its work, the Commission's understanding of the tasks it has been given in the Commission to Inquire into Child Abuse Act, 2000 (the Act) and how it proposes to carry out those tasks.

2. **Background**

On 11th May 1999, the date on which the last of the three television programmes in the *States of Fear* series of programmes was broadcast by RTE, while announcing a package of measures to be introduced relating to childhood abuse, the Taoiseach acknowledged that abuse had ruined the childhoods of many children in the past and on behalf of the State and of all of the citizens of the State he apologised to the victims of child abuse "for our collective failure to intervene, to detect their pain, to come to their rescue". One of the measures announced was the establishment of a Commission to Inquire into Childhood Abuse. That Commission, in the first instance, was to be established on a non-statutory basis with broad terms of reference and with the initial task of making recommendations to the Government on the terms of reference, on how it would operate and on what powers and protections it required to carry out its work.

The non-statutory Commission, which comprised three of the members of this Commission, made recommendations to the Government in two reports dated the 7th

of September 1999 and the 14th of October 1999 respectively, in which it recommended, among other things, that the Commission should be put on a statutory basis. The reports were published at the same time as the publication of the Commission to Inquire into Child Abuse Bill, 2000 on the 2nd February, 2000.

This Commission was established on the 23rd May, 2000 pursuant to the Act, which had become law on the 26th of April 2000. The Act, which in broad terms gave effect to the recommendations in the two reports, governs the functions, powers and procedures of the Commission.

3. **The Commission**

The Commission, as established under the Act, consists of a chairperson and five ordinary members. Details of the members of the Commission are set out in Appendix A. The membership of the Commission reflects a wide range of qualifications and professional experience in areas which will be under consideration by the Commission.

As a statutory body mandated to inquire into a matter of grave public concern, the Commission is unique. While under the Act it has powers and privileges similar to those conferred on Tribunals of Inquiry and Committees of the Houses of the Oireachtas to enable it to fulfil its investigative remit, it is also intended that its hearing process will be a source of healing for survivors of institutional childhood abuse and to that end it has unique features which will be outlined later in this statement.

The Commission and its members are independent in the performance of their functions.’

4. The Staff of the Commission

Under the Act ² the Commission has a range of options in relation to recruitment of staff. Details of the current administrative and other staff of the Commission are set out in Appendix B. The five members of the administrative staff who are on secondment from the Department of Education and Science provided administrative services for the non-statutory Commission. None of these seconded staff has been involved in the Department of Education and Science or elsewhere in the consideration of or processing any complaint of or other matter relating to child abuse. Moreover none has had any administrative or management responsibility in the Department of Education and Science or elsewhere for industrial schools or reformatory schools.

The inquiry officers, who under the Act³ will carry out a preliminary inquiry for the Investigation Committee in relation to each allegation of abuse coming before that Committee, will not be recruited from any Department of State **which** has or has had responsibility for children in institutions. This includes, for example, the Department of Education and Science, the Department of Health and Children or the Department of Justice, Equality and Law Reform.

¹ Section 3(3)

² Section 9

³ Section 23

5. Conflicts of Interest

There will be in force within the Commission a protocol, which will bind the members of the Commission, its staff and advisers, for identifying potential conflicts of interest and ensuring that a member of the Commission or of its staff or any adviser does not become involved in any matter which comes before the Commission or a Committee of the Commission where such involvement would give rise to a conflict of interest. The protocol will be strictly enforced by the chairpersons of the Commission and the Confidential Committee.

Under the Act⁴ the Committees of the Commission are permitted to act in divisions. This will enable the Committees to deal with any conflict situations which may arise. It will also enable the Committees to complete their work more efficiently.

6. The functions of the Commission

Under the Act⁵ the Commission has been given three principal tasks to perform.

These are:

1. To listen to persons who have suffered abuse in childhood in institutions **telling** of this abuse and making submissions;
2. To conduct an inquiry into abuse of children in institutions since 1940 or earlier and where abuse occurred to find out why it occurred and who was responsible for it; and
3. To report directly to the public on the results of the inquiry and on the steps which should be taken now to deal with the

⁴ Section 11(6)

⁵ Sections 4&5

continuing effects of abuse and to protect children in institutions from abuse now and in the future.

In performing these tasks, the Commission and its Committees must take into account the meanings given to certain words and expressions, for example “abuse”, “child” and “institution”, in the Act⁶.

In relation to the work of the Commission, “abuse” means physical abuse, sexual abuse, and other acts and omissions, for example, neglect and emotional abuse, which have serious consequences for a child.

In relation to the work of the Commission, “child” means a person who has not attained the age of eighteen years, so that the Commission and its Committees are concerned with the experiences of a person before his or her eighteenth birthday.

In relation to the work of the Commission, an “institution” means a school, an industrial school, a reformatory school, an orphanage, a hospital, a children’s home and any, other similar place and a foster home. However, the Commission and its Committees are not only concerned with what happened within an institution, but they are also concerned with a situation in which abuse of a child, which took place outside an institution, was caused or contributed to by a person with responsibility for the child in the institution. For example, if a child from a residential institution was

⁶ Section 1(1)

abused while in outside employment arranged by the institution, that is a situation which the Act' requires the Commission to look into.

The work of the Commission does not extend to abuse suffered by a child while in the care of his or her own family, whether the abuse was perpetrated by a member of the family or by a third party. For example, the work of the Commission does not extend to abuse of a child living and being cared for at home-

- (i) where the abuse was perpetrated by a neighbour;
- (ii) where a child in part-time or full-time employment was abused by his or her employer;
- (iii) where abuse was perpetrated in a sports club by a coach or another person in authority, or
- (iv) where abuse was perpetrated by a group leader or other person in authority in a group or club situation.

7. The Structure of the Inquiry

Under the Act the Commission is to carry out its tasks of listening to survivors of abuse and conducting an inquiry into abuse in institutions since 1940 or earlier through its Committees. Two Committees have been established under the Acts , the Confidential Committee and the Investigation Committee. Details of the membership of each Committee are set out in Appendix C. As required by the Act⁹ there is no overlap between the membership of the two Committees.

⁷ Section 1(2)

⁸ Section 10

⁹ Section 10(6)

While both Committees will contribute to fulfilling all of the functions of the Commission, its healing or therapeutic role, in the main, will be fulfilled through the work of the Confidential Committee, whereas its investigative role, in the main, will be fulfilled through the work of the Investigation Committee.

8. Evidence

Under the Act¹⁰ the Commission and the Committees of the Commission may require a witness to give his or her evidence on oath. All witnesses who give evidence to the Investigation Committee shall be required to give their evidence on **oath**.

In making its findings of fact, the Investigation Committee will-

- (i) apply the standard of proof applicable in civil proceedings in a court, that is to say, proof on the balance of probabilities, and
- (ii) the findings will be based only on evidence which would be admissible in a Court, so, that in making its findings, the Investigation Committee shall not rely on hearsay.

To avoid adversely affecting the therapeutic effect of giving evidence to the Confidential Committee, persons coming forward to that Committee will not be required to give evidence on oath.

The Confidential Committee, in its report to the Commission, shall identify findings which are based on evidence which could not be tested or challenged and was not

corroborated, so as to enable the Commission to disclose these matters in its reports, as required by the Act'

The Act¹² requires the Commission and its Committees to bear in mind the need of persons who have suffered abuse in childhood to recount to others such abuse, their difficulties in doing so and the potential beneficial effect on them of so doing. It enjoins the Commission and its Committees to conduct hearings at which evidence is given in such a manner as to afford persons who have suffered abuse to give their evidence in an atmosphere that is as sympathetic to, and as understanding of, them as is compatible with the rights of others and the requirements of justice and as informally as possible in the circumstances. The Commission, through its Committees, will hear all persons who come forward to tell of abuse they have suffered in institutions in childhood. No such person will be refused a hearing. The Commission expects, and it will take steps to ensure, that persons coming forward to testify as to abuse are treated in the healing manner envisaged by the Oireachtas. In the case of the Investigation Committee, in hearing the testimony of such persons, the rules of evidence may be relaxed where necessary to prevent the healing effect of testifying being jeopardised, but the Committee will hear submissions as to what evidence it may use in making its findings.

¹⁰ Section 22

¹¹ Section 5(4)

¹² Section 4(6)

9. The Confidential Committee

Under the Act ¹³ the main task of the Confidential Committee is to listen to persons who have suffered abuse in childhood in institutions telling of this abuse and making submissions. The significant feature of the manner in which the Confidential Committee will conduct its business, and what distinguishes it from the Investigation Committee, is that, subject to certain limited and specific exceptions provided for in the Act¹⁴, persons giving evidence to the Confidential Committee are guaranteed total confidentiality in relation to their evidence and any documentation that they may produce. To that end every hearing of the Confidential Committee is required to be held in private¹⁵. The only persons present will be the members of the Confidential Committee, the person giving evidence and, if that person so wishes, a companion who will be required to agree to the confidential nature of the proceedings.

A person against whom, or an institution in respect of which, an allegation of abuse is made before the Confidential Committee will not be notified of the making of the allegation and will not have any opportunity to answer the allegation or to defend himself, herself or itself. However, the Confidential Committee may not name, or disclose information which would lead to the identification of, the witnesses before the Confidential Committee or the persons they allege committed abuse or any institution or any other person¹⁶.

Moreover, while the Act requires the Confidential Committee to reach conclusions, on the basis of the evidence it receives, in relation to the occurrence of abuse of

¹³ Section 15(1)

¹⁴ Section 27(2)

¹⁵ Section 11(2)

children in institutions since 1940 or earlier, as the evidence will not have been tested and as persons and institutions against whom allegations have been made will not have had an opportunity to defend themselves, the Confidential Committee will only be able to reach conclusions, recorded in its reports, interim and final, as findings, of a general nature. No person or institution will be named or identified in any report of the Confidential Committee.

As the Act¹⁷ requires the Commission to make as complete a record as is practicable of the proceedings of the Commission and its Committees, it is intended that an audio recording will be made, as unobtrusively as possible, of each hearing of the Confidential Committee. No copy or transcript of the audio recording of a hearing shall be released by the Confidential Committee to any person unless it is so ordered by the High Court in the exceptional circumstances provided for under the Act and on the terms of such order¹⁸. However, if a witness objects to the making of an audio-recording, a record of the hearing in the form of notes will be taken by the members of the Confidential Committee present. No copy of the notes shall be released unless it is so ordered by the High Court as aforesaid and on the terms of such order.

A witness, who may be accompanied by the companion who attended the hearing before the Confidential Committee with him or her, will be afforded an opportunity, if he or she wishes, to listen to the audio recording of his or her meeting with the Confidential Committee in the office of the Commission as soon as reasonably practicable after a request from such person is received. It will not be permissible to make any other record of the hearing.

¹⁶ Section 16(2)

¹⁷ Section 7(6)

¹⁸ Section 27(2) & (3)

Insofar as it is possible to do so against documents in the possession of public bodies in the State to which the Confidential Committee has access. the Confidential Committee will verify that a witness before the Confidential Committee was in the institution in which the abuse was alleged to have occurred at the relevant time and any other relevant facts capable of verification without breaching its duty of **non-disclosure**.

The Act guarantees the confidentiality of information given to the Confidential Committee by making it an offence for any person, whether a member of the Confidential Committee, a member of staff assigned to the Confidential Committee or an adviser or expert retained by the Confidential Committee, to disclose any information provided to the Confidential Committee¹⁹. Moreover, the Act ensures that documents furnished to and generated by the Confidential Committee will never be made public²⁰. In relation to what will happen when the Commission has finished its work, in general under the Act the Commission has a discretion as to the custody and disposal of its records, subject to compliance with the National Archives Act, 1986²¹. The records of the Confidential Committee will not be subject to the provisions of the Act of 1986²² and, accordingly, the Commission will have an absolute discretion as to their custody and disposal. No final decision can be made at this juncture in relation to these matters. The Commission gives an assurance to persons concerned that the guarantee of confidentiality in relation to information given to the Confidential Committee will be honoured. Persons who will give information in confidence and

¹⁹ section 27(1) & (6)

²⁰ Section 27(5)

²¹ Section 7(6)

persons, individuals and bodies, whom the information may suggest were implicated in wrongdoing or in conduct of which society disapproves who have not had an opportunity to refute the information, can be assured that steps will be taken to retain the records in a secure facility but only for such period as is reasonably necessary, Thereafter the records will be destroyed.

On a practical level, the Commission is putting procedures in place to ensure that the guarantee of confidentiality is honoured during the currency of the Commission, The Commission will have in place a protocol, which will bind every person who has access to information provided to the Confidential Committee, including staff members assigned to and to experts and advisers retained by the Confidential Committee. The protocol will be strictly enforced by the chairpersons of the Commission and the Confidential Committee. All documentary data furnished to or generated by the Confidential Committee will be stored in a secure place, to which only members of the Confidential Committee and staff members assigned to the Confidential Committee have access. Arrangements are being put in place to prevent any person other than members of the Confidential Committee and the staff members assigned to the Confidential Committee having access to the computer generated data of the Confidential Committee. Insofar as is reasonably practicable, the Commission will endeavour to assign staff to the Confidential Committee on an exclusive basis.

Apart from the importance of ensuring that the guarantee of confidentiality in relation to information furnished to the Confidential Committee is honoured in the interests of the persons giving such information and of persons who might be adversely affected

²² Section 27(5)

if it was divulged, the Commission and its members are conscious of the necessity of ensuring, in the interest of fairness and justice, that the deliberations and findings of the Investigation Committee are not in any way informed by evidence given to the Confidential Committee.

The Commission will conduct or commission research in relation to matters which bear on its inquiry and the policy matters on which it may make recommendations, as it is empowered to do by the Act ²³. Persons coming to the Confidential Committee will be asked if they wish to participate in this process. If they are willing to participate, any questionnaires will be administered by a member of the Confidential Committee or a staff member assigned or adviser to the Confidential Committee.

Information gathered will be released by the Confidential Committee for analysis only in such form as the identity of the witness participating in the research is not revealed and the witness is assured of absolute anonymity. It is hoped that the witnesses coming to the Confidential Committee will participate in any research programmes which they are invited to participate in, because the Commission believes that all information channelled to the Commission through the Confidential Committee, whether the subject of general findings made by the Confidential Committee or the results of other research, will help society to better understand the past circumstances of the survivors and their current circumstances.

10. **Investigation Committee**

Like the Confidential Committee, it is the task of the Investigation Committee to listen to persons who have suffered abuse in childhood in institutions telling of this

abuse and making submissions²⁴. The essential difference between the two committees is that the Investigation Committee will hear the evidence in accordance with due process as part of the inquiry into the abuse of children in institutions since 1940 or earlier, which is one of the main tasks of the Commission. The results of the Investigation Committee's inquiries will be reports, interim and final. It will be open to the Investigation Committee to reach conclusions, which will be recorded in its reports as findings, where it is appropriate to do so on the evidence, that abuse occurred in a particular institution during a particular period and to name the institution and the person who committed the abuse²⁵. Because of this, the Investigation Committee must give every person who, and every institution or other body which, may be the subject of a conclusion which would adversely reflect on him, her or it the opportunity to defend himself, herself or itself.

The inquiry which the Investigation Committee must conduct is required to **establish-**

- (i) whether abuse occurred, and
- (ii) if it **did**²⁶, what were the causes, nature, circumstances and extent of such abuse and what factors contributed to its **occurrence** and **the** extent to which the various factors contributed, looking, in particular, at the institutions themselves and the systems of management in, and the regulation of, the institutions in operation at the time of the abuse, and how the

²³ Section 24(2)

²⁴ Section 12

²⁵ Section 13

²⁶ ~~The~~ Commission interprets section 12(1)(c) of the Act on the basis that the duty thereby imposed applies where the prerequisite stipulated in section 4(1)(b)~~(“~~is complied with-“where it is satisfied that such abuse occurred”

persons and bodies responsible for the management and regulation of the institutions performed their duties.

Another difference between the Confidential Committee and the Investigation Committee is that, while the Investigation Committee must hold hearings at which evidence relating to instances of alleged abuse of children is being given in private, it is given a discretion to hold other hearings in public and it is reminded in the Act by the Oireachtas of the desirability of holding hearings of the Investigation Committee in public’.

The Investigation Committee will conduct its inquiry in two phases. In the first phase, the Investigation Committee will investigate particular allegations of abuse. This phase will involve, in relation to each survivor’s allegation or allegations, a preliminary inquiry by an inquiry officer in accordance with the Act²⁷, followed by a hearing which will be held in private. 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 on to the second phase. There will be two components in this phase. One will involve investigating, in relation to each institution (or group of institutions under the same or connected ownership or management) the context in which the abuse occurred and why it occurred and the attribution of responsibility for it, whether institutional or regulatory. This

²⁷ Section 11(3)(b)

²⁸ Section 23

Appendix E

Scheme for the payment of expenses for persons attending the Commission to Inquire into Child Abuse or a Committee

1. Section 20 of the Commission to Inquire into Child Abuse Act, 2000 provides that the Minister for Education and Science may, with the consent of the Minister for Finance, and after consulting the Commission, make a scheme for the payment of expenses to a person who, as a result of a request or a direction of a Committee, attends before the Committee or who makes an oral submission to the Commission or a Committee either in person or through a legal representative. The Scheme set out in this document relates to the payment of travel, accommodation and subsistence costs of a person who attends before the Commission or a Committee of the Commission.

2. The Scheme provides for expenses to be paid to witnesses to the Commission on the basis of
 - (a) travel expenses

 - (b) accommodation and subsistence expenses,

3. Travel Expenses

3.1 This part of the Scheme is designed to meet the travel expenses of witnesses who are giving evidence to the Commission. It provides for witnesses travelling either by public transport or by private car and for witnesses who travel from abroad.

3.2 Public Transport

Witnesses travelling to the Commission by public transport should retain receipts for the expenditure incurred in so doing. The Commission will, on presentation of these receipts, provide for an immediate refund of the expenses, or where circumstances do not permit an immediate refund, the Commission will make such refund as speedily as possible.

3.3 Private Cars

The Commission will reimburse a witness for the expenses of the use of private cars in the following circumstances-

(a) there is no suitable public transport available, or

(b) where public transport is available only at equal or greater expense.

Where a private car is used to attend the Commission, the State will not accept liability for any loss or damage resulting from its use.

Witnesses attending the Commission should furnish the Commission with a statement of the miles travelled from their homes to attend the Commission, together with their home address. Payment in respect of this travel will be made at a rate of 50 pence per mile, and the Commission will make such payment as speedily as possible.

3.4 Witnesses travelling from abroad

Where witnesses who wish to give evidence before the Commission are currently living abroad the Commission will refund the reasonable travel costs incurred, calculated by reference to the cost of an economy/budget airline ticket fare, or a contribution of equal amount to a higher fare ticket.

As in the case with public transport, witnesses should provide receipts of expenditure incurred in travelling to the Commission, and the Commission will make such payment as speedily as possible.

4. Accommodation and Subsistence expenses

The Commission may 'arrange for the provision of accommodation for witnesses attending the Commission where they are satisfied that the person concerned is obliged to make an overnight stay for the purpose of giving evidence to the Commission.

In the event that the Commission does not provide such accommodation, the Commission will refund vouched expenses incurred by the witnesses.

The Commission will also refund the reasonable vouched cost of subsistence incurred by a witness attending the Commission for the purpose of giving evidence to the Commission.

The refunds by the Commission to witnesses in respect of aggregate vouched accommodation and subsistence expenses shall not exceed E75.00 for any twenty-hour period.

5. Provision for Travelling Companion

If the Commission is satisfied that the particular circumstances surrounding the attendance of a witness warrant him or her to be accompanied by a companion (such witness not being accompanied by a counsellor), the Commission may refund at its discretion the vouched expenses of the companion at the same rates as apply to the witness.

This provision will include such travel, accommodation, and subsistence expenses incurred by such companion and will be paid at the same rate as that for witnesses.

6. Provision for payment of expenses in advance of attendance for certain witnesses

In some instances, a witness of limited means who wishes to attend the Commission, may not be able to attend due to the costs which he/she would have to incur. In such circumstances, the Commission may, where it is

satisfied that it is necessary, make appropriate arrangements in regard to travel and subsistence for witnesses. These arrangements may include, in certain circumstances, advance payment in respect of such expenses as are necessary so as to allow the witness to attend. The total cost of the travel and subsistence arrangements under this provision shall not exceed the amounts indicated in paragraphs 3 and 4 above.

7. Counsellors

A witness may be accompanied by a professional Counsellor when giving evidence to the Commission. Where such Counsellor is not being paid from public funds (e.g. the relevant Health Board), the Commission will pay an amount not exceeding £155 in respect of the Counsellor's attendance. Travel and subsistence will also be payable to Counsellors attending at the rates stated above. Tax clearance arrangements in respect of payments to professionals will apply.

