

Commission to Inquire into Child Abuse

Interim Report

May 2001

Published by:

Commission to Inquire into Child Abuse,

Second Floor,

St. Stephen's Green House,

Earlsfort Terrace,

Dublin 2.

Tel.: (01) 662 4444

Callsave: 1850 20 11 20 (Rep. Of Ireland)

Lo-Call: 0845 3098 139 (N.I. and U.K.)

Website: www.childabusecommission.ie

Contents

	<i>Page</i>
1. Introduction	1
2. The Commission	1
3. General Approach to Interim Report	2
4. Opening Statement at First Public Sitting on 29 June, 2001	3
5. Second Public Sitting on 20 July, 2000	3
6. Resumption of Second Public Sitting on 26 September, 2000	5
7. Obstacles to Progress of Commission's Work	8
8. Substantive Work of Commission	14
9. Work of the Confidential Committee	15
10. Work of the Investigation Committee	17
11. Administration	19
12. The Commission's Legal Team	19
13. Meetings of the Commission	20
14. Working Towards Making Recommendations	20
15. Vaccine Trials Inquiry	21
16. Support Services for Survivors	22
17. Witness Support	22
18. The Future.	23
 Appendix	
A. Membership of the Commission	25
B. Confidential Committee Statistics	26
C. Investigation Committee Statistics	28

1. Introduction

This is the first interim report of the Commission to Inquire into Child Abuse, which was established by the Government pursuant to the Commission to Inquire into Child Abuse Act, 2000 (the Act), which became law on 26 April, 2000.

It is published by the Commission to the general public in compliance with its statutory obligation.

2. The Commission

The Commission, the membership of which is set out in Appendix A, was established on 23 May, 2000 pursuant to the Act.¹

The principal functions of the Commission as set out in the Act² are to:

- listen to persons who have suffered abuse in childhood in institutions telling of the abuse and making submissions;
- conduct an inquiry into abuse of children in institutions since 1940 or earlier and, where satisfied that abuse occurred, find out why it occurred and who was responsible for it; and
- report directly to the public on the results of the inquiry and make recommendations, including recommendations on the steps which should be taken now to deal with the continuing effects of abuse and to protect children in institutions, as defined in the Act³, from abuse now and in the future.

The Act provides that the hearing and investigative remits of the Commission are to be carried out through its two Committees, the Confidential Committee⁴ and the Investigation Committee⁵ and that its reporting remit should have regard to reports to it from the two Committees.⁶

The Commission is required under the Act⁷ to prepare an interim report on such matters relating to the inquiry or otherwise relating to its functions as it may determine not more than one year after its establishment and to publish the interim report to the general public during the year after its establishment. This interim report has been prepared and is published in compliance with that requirement. In preparing it, the Commission has had

¹ Section 3.

² Section 4.

³ Section 1(1) and (2).

⁴ Section 15.

⁵ Section 12.

⁶ Section 5(1).

⁷ Section 5(6) and (7).

regard to the interim reports furnished to it by the Confidential Committee and the Investigation Committee, as required by the Act.⁸

The preparation of this report was completed by the Commission on 15 May, 2001 and it records matters in relation to the performance of the Commission's functions up to and including that day.

3. General Approach to Interim Report

It is the Commission's view that it would not be appropriate to publish any determinations or findings made during the course of the inquiry into abuse of children in institutions on a piecemeal basis because to do so might give an inaccurate, incomplete or distorted picture of the prevalence of abuse, why it occurred and who was responsible for it. Therefore, to avoid such a possibility, and any unfairness and injustice which might ensue, the Commission does not intend to make public any determinations or findings until after the inquiry or, in the case of the inquiry being conducted by the Investigation Committee, the first phase of the inquiry, has been completed. The Commission appreciates that persons who have already participated, or will participate in the near future, in the work of the Commission may find this approach disappointing and having to wait for a future report frustrating. However, as it is necessary in order to protect the integrity of the Commission's work, the Commission must ask them to be patient.

In reporting on an interim basis, the Commission will inform the public of the work it has carried out and of any difficulties it has encountered during the period to which the report relates. It will also endeavour to predict the future course of its work.

In relation to the policy matters on which the Commission is empowered to make recommendations, if it considers that a matter needs to be urgently addressed and that it is in a position to formulate a policy recommendation, it may make such recommendation in a periodic interim report or in an interim report prepared and published specifically to deal with that issue.

The Commission welcomes the opportunity of reporting to the general public at regular intervals and as the need arises. Because of the difficulties it has encountered, which will be outlined later, it regrets, however, that it is not in a position to report more progress in this its first interim report in relation to a major element of its work, the inquiry being carried out by the Investigation Committee.

⁸ Section 16(4) and 13(4).

4. Opening Statement at First Public Sitting on 29 June, 2000

The first tasks the Commission set itself, following its establishment on 23 May, 2000, were to prepare a statement to explain to the public and, in particular, to survivors of institutional child abuse and other persons affected by its work, its understanding of its functions and powers under the Act and how it proposed to fulfil those functions and to convene a public sitting of the Commission at which the statement would be delivered to open up the work of the Commission to the public. The first public sitting was held on 29 June, 2000. It was attended by at least 300 members of the public. The Commission's statement (the Opening Statement), which is available on the Commission's website,⁹ was delivered at that sitting. The Commission announced that a second public sitting would be held three weeks later, on 20 July, 2000, and persons affected by the work of the Commission were invited to make submissions in relation to issues arising from the Opening Statement in the interim.

Subsequently approximately 1,000 copies of the Opening Statement were distributed on request by the Commission to persons affected by the Commission's work and members of the public. In addition, approximately 8,000 information leaflets were distributed.

5. Second Public Sitting on 20 July, 2000

The second public sitting to deal with legal and procedural issues arising out of the Opening Statement was held on 20 July, 2000. In the intervening period the Commission had received submissions from individuals, representative groups and organisations, and firms of solicitors interested in the work of the Commission. Broadly speaking, the submissions which addressed legal and procedural issues arising out of the Opening Statement came from:

- groups and organisations representing survivors of institutional child abuse,
- a firm of solicitors representing a number of firms of solicitors acting for survivors of institutional child abuse, and
- firms of solicitors acting on behalf of the proprietors or managers of institutions who anticipated that their clients might be involved in the Commission's inquiry.

At the public sitting, in so far as it was possible to do so, the submissions were responded to and, where appropriate, determinations made.

Two issues which were not resolved and which have subsequently significantly impacted on the ability of the Investigation Committee to fulfill its statutory remit need to be highlighted, namely:

⁹ www.childabusecommission.ie.

- (A) legal representation at the proceedings of the Investigation Committee and the making of a scheme providing for payment out of monies provided by the Oireachtas of the cost of such representation, and
- (B) an issue raised by a firm of solicitors on behalf of a number of solicitors acting for certain survivors of institutional child abuse in relation to the establishment by the State of a compensation scheme for such survivors.

At the public sitting the Commission dealt with the two issues as follows:

(A) Legal Representation/Expenses scheme

On the issue of legal representation of persons involved in the proceedings of the Investigation Committee and provision for the costs of such representation, the Commission stated its position having had regard to submissions it had received. In doing so, it took account of the proposed phased structure of the proceedings of the Investigation Committee, which had been outlined in the Opening Statement.¹⁰ It stated as follows:

- (a) that it proposed to grant to each person who comes before the Investigation Committee to make an allegation or allegations of abuse legal representation by a solicitor and one counsel of his or her choice at the hearing of the Investigation Committee dealing with such allegation or allegations, that is to say, during the first phase of the work of the Investigation Committee;
- (b) that it proposed to grant to each person and/or body against whom an allegation of abuse is made legal representation by a solicitor and one counsel of his/her/its choice at the first phase hearing;
- (c) that it recognised the entitlement to legal representation of every person or body materially affected by an issue raised in the course of a hearing during the second phase of the work of the Investigation Committee, at which issues relating to the causes, nature, circumstances and extent of abuse and where responsibility for abuse lies, would be dealt with, although it was not possible to address the detail of such representation at that time; and
- (d) that the expense of legal representation would be defrayed in accordance with a scheme made by the Minister for Education and Science (the Minister) under the Act.¹¹

The Commission also stated that it would ask the Minister to finalise the scheme as soon as possible.

¹⁰ Page 14 *et seq.*

¹¹ Section 20.

(B) Compensation Scheme

The issue in relation to compensation was raised in a submission dated 18 July, 2000 (the survivors' solicitors' submission) by a firm of solicitors, on behalf of a number of solicitors throughout the country who represent the interests of many, but not all, survivors of institutional child abuse. In the survivors' solicitors' submission it was contended 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 the Department. It was also contended that the Commission as constituted could not lead to finality of the issues for an individual survivor, which the Commission understood to mean 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 kernel of the submission was a request that the Commission make an interim report "calling for the provision of an appropriate scheme of compensation to survivors in respect of their losses". The acceptance by the Government of such a recommendation, it was contended, would meet "the personal difficulties occasioned by the present requirement of multiplicity of hearings, and the legal difficulty created by the conflict of interest". Critically, it was stated that, until such time as the issue of such a scheme of compensation was satisfactorily addressed, it would be difficult for individual solicitors to advise their clients as to whether participation in the work of the Commission was in their personal or legal interest.

The Commission acknowledged that the survivors' solicitors' submission raised a significant issue that required careful consideration. It, therefore, adjourned the sitting to a date to be announced, so that the submission could be considered and the views expressed in it conveyed to the Government, the hope being expressed that the public sitting could be resumed before the end of August, 2000.

6. Resumption of Second Public Sitting on 26 September, 2000

In early September, 2000, when it had become apparent that a resolution of the outstanding issues was not imminent, the Commission advertised the resumption of the adjourned public sitting on 26 September, 2000, so that persons affected by the work of the Commission could be brought up to date. At that sitting the Commission outlined to the public what had transpired since 20 July, 2000 on the two major issues which had been left outstanding on the adjournment, namely, the making of the scheme for payment of legal expenses and the compensation issue raised in the survivors'

solicitors' submission. Unfortunately, as the following outline, which was given to the public on 26 September, 2000, illustrates, the Commission was unable to report progress on either issue.

(A) Legal Expenses Scheme

In relation to the making of the scheme for payment of legal expenses, by letter dated 21 July, 2000 the Commission had formally advised the Minister of the rulings it had made in relation to legal representation. It had pointed out that its members had no expertise in the area of the costs of legal representation and left it to the Department of Education and Science (the Department) to work out the details of the scheme. By 26 September, 2000 the scheme had not been made and a draft of a workable scheme had not been submitted to the Commission under the consultation process provided for in the Act.¹²

(B) Compensation Scheme

Following the public sitting of 20 July, 2000, the Commission gave immediate consideration to the survivors' solicitors' submission. The Commission concluded that the establishment of a scheme of compensation for survivors of institutional child abuse was a policy issue for the Government, albeit a policy issue on which the Commission was empowered to make recommendations under the Act¹³ and which in the Opening Statement¹⁴ it had identified as a topic it intended to consider in that context. However, it also concluded that it could not publish an interim report on the lines sought in the submission 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 (the apology given by the Taoiseach, on behalf of the State, to victims of child abuse and the package of measures announced by the Government to redress the wrongs they had suffered, including the establishment of the Commission, on 11 May, 1999) 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. In that event, the Commission would only be concerned with making recommendations as to how the body might be established and operate.

In the light of those conclusions, the Commission wrote to the Minister on 26 July, 2000 in relation to the survivors' solicitors' submission. While it was made clear that the Commission was expressing no view, either positive or negative, on the merits of the arguments put forward in the submission, it was stated that the matters raised in it represented potentially a significant

¹² Section 20(1).

¹³ Section 5(2).

¹⁴ Page 25.

barrier to the effective conduct of the business of the Commission. It was further 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 should hear 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 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 considered needed to be addressed in the formation of any such policy decision were outlined as—

- 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, and
- 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.

By 26 September 2000, apart from a holding response dated 14 August, 2000 from the Department, the only response which the Commission had received was a letter of 21 September, 2000 from the Department stating that it was intended by the end of October, 2000 that a report would be submitted by the Department to the Cabinet Committee on child abuse "with a view to a Government decision on the issue of a compensation awarding body for victims of abuse in childhood".

At the resumed public sitting the Commission informed the public that the resolution of the two outstanding issues which were impeding the effective conduct of the work of the Commission rested with the Department. For its part it was determined, notwithstanding the obstacles it had encountered, that every person who wished to testify to the Commission would get a hearing before the Committee of his or her choice as soon as reasonably practicable. Since then, although the Commission has been able to hear the testimony of persons who have chosen the Confidential Committee, the Commission regrets and is concerned that no hearing before the Investigation Committee has taken place to date.

Further delay in resolving the outstanding issues has continued to impede the progress of the work of the Commission.

7. Obstacles to Progress of the Commission's Work

(A) Legal Expenses Scheme

While not the only factor which has impeded the work of the Investigation Committee, delay in responding to the Commission's requests that a viable scheme for payment of legal expenses be made has been the most significant obstacle. In the Commission's view, the delay was unnecessary and potentially damaging to the credibility and independence of the Commission. At last, almost a year after the establishment of the Commission, the obstacle has been partially removed to the extent that a scheme providing for the costs of legal representation at the first phase hearings of the Investigation Committee, which the Commission welcomes and considers is workable, was made on 9 May, 2001. The Commission has been advised by letter dated 14 May, 2001 from the Department that "a further scheme will provide for the second phase".

Notwithstanding that partial provision has now been made for payment of costs of legal representation, it is considered that it is in the interest of the credibility of the Commission to outline the lack of progress on this issue after the public sitting on 26 September, 2000, at which the Commission expressed disappointment that there had not been a more obvious willingness on the part of the State to speedily address issues which were then impeding the effective conduct of its statutory functions.

As has been stated earlier, on 20 July, 2000¹⁵, in so far as it was in a position to do so, the Commission indicated who would be entitled to legal representation at its proceedings (persons making allegations and persons against whom allegations are made before the Investigation Committee) and the nature of the representation (by a solicitor and counsel of choice). Devising a scheme for payment of the costs of such representation is the responsibility of the Minister under the Act.¹⁶ As has been stated, at the public sitting on 26 September, 2000 the Commission made it clear that, in the absence of a scheme making provision for payment of legal expenses, the work of the Investigation Committee would not be able to proceed.

On numerous occasions following that sitting and on a consistent basis the Commission conveyed its concerns to the Department in relation to the lack of progress in making the scheme and the consequence of delay in putting it in place. As early as 17 October, 2000, having reiterated that the absence

¹⁵ Page 4.

¹⁶ Section 20.

of the scheme would hinder the Commission in the performance of its statutory functions, the Commission informed the Department that, while the optimum situation from its point of view would be that the solicitors for parties affected by the work of the Commission would signify their satisfaction with the scheme in its final form, if this could not be achieved, the approach should be to produce a final scheme which would not be susceptible to successful legal challenge by any party affected by the work of the Commission and which, on objective appraisal, could not reasonably be rejected by the legal representatives of parties who would be remunerated under it.

It was not until 16 January, 2001 that a fresh draft scheme was produced by the Department. That draft was given immediate consideration by the Commission, which concluded that the proposed scheme was inappropriate for implementation by a body the members of which have no expertise in the quantification of costs of legal representation. The Commission also concluded that it would be cumbersome, costly to implement and unworkable.

In the belief that it would be the most appropriate way of conveying the Commission's views to the Department and of speeding up the consultation process, the Commission immediately instructed its leading counsel to act on its behalf in the consultation process. Despite many meetings and contacts, another three months elapsed before a further draft scheme was produced to the Commission. That draft, which was eventually received on 18 April, 2001, was, as the Commission immediately signified, considered to be workable and capable of being carried into effect in relation to costs associated with the first phase of the work of the Investigation Committee.

In the intervening three month period since 16 January, 2001 the Commission had been left in the position of not knowing if, how or when the matter of provision for the costs of legal representation would be resolved. Moreover, it was left in the invidious position of not being able to respond adequately to inquiries from persons affected by the work of the Commission on the issue of the costs of legal representation.

Effect of Delay

The delay in making a scheme for the payment of legal expenses or other provision for enabling a party who is granted legal representation to recoup the cost of such representation from monies provided by the Oireachtas has impacted adversely on the progress of the work of the Investigation Committee. This has been manifested as follows:

- (a) Of the seven hundred and fourteen (714) requests to testify to the Investigation Committee in respect of which preliminary inquiries were being carried out by inquiry officers under the Act¹⁷ at 30

¹⁷ Section 23.

April, 2001, solicitors acting on behalf of persons making allegations of abuse (Complainants) in two hundred and twenty eight (228) cases (i.e. 32 % of cases) were not prepared to submit statements of the Complainants because of the absence of a scheme. Solicitors who have adopted this approach are also citing the absence of a scheme for payment of compensation as a reason for not actively participating. While, under its administrative procedures, the Investigation Committee imposes time limits for complying with requests, it was felt that, in the absence of proper provision for payment of the costs incurred in legal representation of Complainants, it would not be appropriate, and would serve no useful purpose, to endeavour to enforce the time limits and invoke default procedures. However, now that a scheme has been made providing for the costs of legal representation at the first phase hearings, the Investigation Committee will not desist from enforcing time limits in relation to that phase.

- (b) As regards requests from Complainants who do not have legal representation and those whose solicitors are actively participating in the work of the Investigation Committee, believing it might be counter-productive to do so in the absence of a scheme for payment of legal expenses and mistakenly believing that finalisation of such a scheme was imminent, the Commission delayed issuing requests for statements to persons against whom allegations of abuse had been made and persons and bodies responsible for managing and regulating the institutions in which the abuse was alleged to have occurred (Respondents). At the end of February, 2001, the Commission concluded that the scheme was not imminent and decided that such requests should be issued. However, it did not endeavour to enforce the time limits provided for in its administrative procedures for compliance with such requests because it considered it would be inappropriate to do so in the absence of provision for payment of the legal expenses of the Respondents to whom such requests had been sent and it was apprehended that any attempt to do so would be resisted by their legal representatives. It is intended that time limits in relation to the first phase of the work of the Investigation Committee will be enforced henceforth.
- (c) The Commission has been unable until now to impose a time limit for accepting a request to have an allegation of abuse investigated. However, the Commission has recently decided to impose a time limit of 31 July, 2001 for receipt of requests to give evidence to the Commission.

Throughout the period from September, 2000 to April, 2001 the Commission's primary concern has been the potential adverse effect on persons affected by the work of the Investigation Committee of the delay in bringing individual allegations of abuse to hearing. It has also been concerned about

the impact of delay on its ability to fulfill its statutory functions and the increase in the duration of its work with consequential increases in the cost of the Commission to the State. The Commission's concerns were repeatedly conveyed to the Department.

Now that it is in a position to do so, the Investigation Committee intends to continue its preliminary inquiries and to move on to scheduling hearings in the first phase of its work as expeditiously as possible consistent with justice and fair procedures. It is hoped that the parties who have complained about delay in the past will co-operate with the Commission in its efforts to bring closure, for all parties affected by the Commission's work, to what is a difficult and traumatic element of our collective confrontation with the past.

Irrespective of the stage reached for the implementation of Government decisions on a compensation scheme, now that provision is in place for payment of the cost of legal representation for persons participating in the first phase of the work of the Investigation Committee, the Commission must vigorously press ahead with its inquiry. The Commission is determined to complete the tasks given to it by the Oireachtas as soon as possible, believing that to be in the best interest of persons affected by its work.

(B) Compensation Scheme

On 3 October, 2000 the Minister announced¹⁸ that the Government had agreed in principle

- (i) to establish a body to compensate people who as children were victims of abuse while in the care of institutions in which they were resident and in respect of which State bodies had regulatory or supervisory functions,
- (ii) that "abuse" for the purpose of such compensation would be defined as in the Act, and
- (iii) that compensation would be paid on an ex-gratia basis without the need to establish liability on the part of State bodies but subject to the claimant establishing to the satisfaction of the body that he or she had suffered abuse and resulting damage.

Issues concerning the establishment, funding and operation of a compensation body would be the subject of further consideration and decision in the near future.

The views of the Commission were not sought on the issue of a compensation scheme in the period between the Commission's letter of 26 July, 2000 and the announcement of the Government decision on 3 October, 2000. The Government decision did not envisage the Commission's having a role

¹⁸ Press release of 3rd October, 2000.

in advising on the modalities of a compensation scheme, as had been suggested in the Commission's letter of 26 July, 2000.

On 27 February, 2001 the Minister made a public announcement¹⁹ that the Government had agreed to his proposals for a compensation scheme for survivors of institutional child abuse. It was also announced that the Government had agreed to the drafting of the legislation which will provide compensation to people who as children suffered abuse in reformatory and industrial schools, orphanages, children's homes and hospitals; that the Bill will be given priority with a view to having it in place by the summer recess; and that this will be followed by the immediate establishment of the compensation body. The announcement set out the following as the main elements of the compensation scheme:

- It will be a stand alone scheme for *ex-gratia* payments to survivors of abuse.
- Claims will be accepted from people who allege abuse while they were, as children, resident in an institution in respect of which State bodies had regulatory or supervisory functions.
- The compensation scheme will accept claims for a period of three years from the establishment date.
- The compensation awarding body will have as a chairperson a retired or serving senior member of the Judiciary and other members as required.
- Validation of claims by claimants to the compensation body will be conducted in a non-adversarial way, with inquiries confined to establishing essential facts combined with medical/psychiatric assessment of a claimant.
- Compensation will be paid for current and continuing damage caused by abuse, and also for past damage, from which the claimant has now recovered.
- The legislation will provide detailed criteria for awards, including amount of awards for different kinds of abuse and its affects. An independent expert group will be appointed to determine the criteria.

Under the Government proposals there will be no direct interface between the proposed compensation scheme and the work of the Commission

It is the Commission's understanding that the Government decisions have effectively rendered redundant any recommendations in relation to the modalities of a compensation scheme, which the Commission might have made in an interim report at the end of the first phase of the work of the

¹⁹ Press release of 27 February, 2001.

Investigation Committee, at any rate, in relation to residential institutions
The Commission regrets the lost opportunity.

Impact of Government Decisions on Compensation on Work of the Commission

It is impossible to assess what impact the Government decisions have had to date on the work of the Commission. Some solicitors acting for persons who have indicated a wish to testify to the Investigation Committee have made co-operation with the Investigation Committee and participation in its work conditional, not only on the making of provision for payment of the costs of legal representation, but also on the putting in place of a statutory scheme for compensation. There is evidence that some persons who have withdrawn requests to testify to the Confidential Committee have done so on the advice of their solicitors pending the putting in place of a compensation scheme. Others have been advised by their solicitors to make participation in the work of the Confidential Committee conditional on the putting in place of a compensation scheme.

As to the future impact of the implementation of the Government decisions on the work of the Commission, the Commission is, and for some time has been, concerned about public confusion in relation to the respective roles of the Commission and the proposed compensation body. Notwithstanding that in the announcement made on 27 February, 2001 the Minister, at the Commission's request, stated that "the Commission is and will continue to be a separate and independent forum carrying out vitally important work", the Commission believes that public confusion continues.

All persons entitled to pursue a claim for compensation under the scheme envisaged in the Government decisions will also come within the remit of the Commission's inquiry. While the concern expressed in the solicitors' survivors' submission about the potential detriment to persons of having to give evidence of childhood abuse on multiple occasions is noted by the Commission, it is hoped that the value of an inquiry into the prevalence of abuse, why it occurred and who was responsible for it will be recognised by all concerned and will encourage those who can assist the inquiry to come forward. It is the Commission's view that it would be regrettable if valuable evidence was lost by reason of persons pursuing a claim for compensation deciding not to participate in the work of the Commission.

On the other hand, a scheme implemented in accordance with the Government decisions will not provide for payment of compensation to all persons who come within the remit of the Commission's inquiry. It is the Commission's view that it would be regrettable if those excluded were discouraged from participating in the work of the Commission, particularly as, in the twenty-first century, treatment of children outside the family home in

non residential settings and in foster care is as relevant as treatment of children in residential settings.

As the Commission has stated at its public sittings, the ultimate success of its work will depend on the volume of evidence which it collects, which, in turn, will depend on the willingness of persons who have suffered childhood abuse in institutions, including non-residential institutions and foster care, to come forward and testify as to the abuse. The Commission's hearings provide survivors of institutional child abuse with a unique opportunity to tell of their experiences in the past and, in doing so, to contribute to the betterment of child care and the protection and welfare of children in the future.

8. Substantive Work of the Commission

Immediately following the first public sitting on 29 June, 2000 the Commission, through an intensive advertising campaign in the State and in the United Kingdom, invited persons to come forward to participate in the Commission's inquiry. Information on the Commission has also been disseminated through the work of groups representing survivors of institutional child abuse and professionals, such as social workers and counsellors, involved with victims of institutional child abuse.

While the initial response to the Commission's invitation was slower than had been anticipated, the overall response up to 30 April, 2001 is regarded as satisfactory. If the majority of those who have indicated a wish to give evidence to the Committees remain willing and able to do so, and persons referred to later whom the Commission believes wish to give evidence, but have not yet registered the wish, come forward, the Commission will have a substantial body of evidence on which to base its findings. This should not deter persons who feel they can contribute to the inquiry, but have not yet decided to do so, from coming forward. Everybody who comes within the Commission's statutory remit, and who submits a request to be heard before 31 July, 2001 will be given a hearing.

Details of the volume of requests received by each Committee are set out in the sections on the Confidential Committee²⁰ and the Investigation Committee²¹ which follow. At 30 April, 2001 requests to give evidence to both Committees, which had proceeded to a hearing or were being processed for a hearing, aggregated one thousand, two hundred and thirty-eight (1,238).

A very small number of requests have not been proceeded with by the Commission because they did not disclose any evidence of abuse within the statutory remit of the Commission. For example, some requests have not been

²⁰ Page 15.

²¹ Page 17.

proceeded with because they related to abuse alleged to have occurred in institutions outside the State.

Since the beginning of the year 2001 the Commission has continued to receive requests to give evidence to the Committees of the Commission. Recently there has been a small number of withdrawals from the process, some of which are linked to the announcement of the Government decisions in relation to a compensation scheme. On the other hand, the Commission believes that a considerable number of requests to give evidence to the Investigation Committee have not been forthcoming because of the attitude adopted by some solicitors acting for prospective complainants who share the views expressed in the survivors' solicitors' submission referred to earlier. There is evidence to suggest that some at least of these prospective complainants are anxious to participate in the Commission's work.

One of the disadvantages of the delay in addressing the issue of the costs of legal representation is that the Commission has been unable to set a time limit for initiating participation in its investigation. In consequence, it is not possible to predict, one year from its establishment, how long it will take to complete its inquiry. Now that a scheme for payment of legal expenses in relation to the first phase of the work of the Investigation Committee is in place, the Commission has decided to impose a final date for receipt of requests to participate in the Commission's inquiry. All such requests must be with the Commission by 31 July, 2001. Notification of this time limit will be given by public advertisement.

9. Work of the Confidential Committee

At 30 April, 2001 the number of requests to testify to the Confidential Committee which were being processed or had been heard was five hundred and twenty-four (524). A breakdown of the requests according to gender, age and current place of residence of the Complainant is set out in graphic form in Part 1 of Appendix B. An analysis of the requests reveals the following facts in relation to the Complainants:

- Almost 59% are men
- Almost 56% are over fifty years of age
- Approximately 30 % are currently resident outside the State

A significant majority of the Complainants have indicated that they wish to give evidence about their childhood experiences in residential care, predominantly while in care in industrial schools or reformatory schools. Some Complainants have indicated that they wish to give evidence in relation to their childhood experiences in more than one such institution.

The Confidential Committee commenced hearings in September, 2000. By 30 April, 2001 one hundred and twenty (120) hearings had been completed. A breakdown of the completed hearings according to gender, age and current place of residence of the Complainant is set out in graphic form in Part 2 of Appendix B.

Pursuant to the Act,²² hearings of the Confidential Committee are held in private, usually in the presence of a division of two members of the Committee. Each hearing is scheduled for 10 a.m. or 2 p.m. on a working day so as to ensure that the person testifying can recount his or her experiences in full and without any time pressure. He or she may be accompanied by a companion at the hearing or by a professional counsellor. A detailed information pack is sent to each person before attendance to help him or her fully prepare for the hearing. A witness support programme is in place to assist each person before and after the hearing. Travel and subsistence expenses of the person testifying and, if not accompanied by a professional counsellor, his or her companion or, if accompanied at the hearing by a professional counsellor, a fee and travel and subsistence expenses of the counsellor, are paid by the Commission in accordance with a scheme for payment of witnesses expenses made by the Minister under the Act.²³ In scheduling hearings the Confidential Committee has regard to the age and the state of health and any other relevant facts brought to its attention in relation to persons wishing to give evidence.

Of the hearings completed to date fourteen have been held outside the State, as permitted by the Act.²⁴ At each such hearing two members of the Confidential Committee have taken evidence from a person wishing to testify in the United Kingdom. Thirteen hearings have been held in Ireland at venues other than the Commission's headquarters in Dublin to facilitate persons unable to travel.

It is the belief of the Confidential Committee that the effect of the hearing and its attendant processes has been beneficial even for the many witnesses for whom recounting their experiences was difficult and painful. This has been borne out by the feedback from many persons who have given evidence. The members of the Confidential Committee wish to acknowledge the courage of persons who have come forward and to express their sincere gratitude to them for assisting the Commission .

Each member of the Confidential Committee has subscribed to a protocol on conflict of interest.

²² Section 11(2).

²³ Section 20. The text of the scheme is set out in Appendix E of the Opening Statement, and is available on the Commission's website.

²⁴ Section 10(7).

10. Work of the Investigation Committee

At 30 April, 2001 the number of extant requests to testify to the Investigation Committee was seven hundred and fourteen (714). A breakdown of the requests according to gender, age and current place of residence of the Complainant is set out in graphic form in Appendix C. An analysis of the requests reveals the following facts in relation to the Complainants:

- Almost 68% are men
- Almost 56 % are over fifty years of age
- Approximately 28 % are currently resident outside the State

A significant majority of the Complainants have indicated that they wish to give evidence about their childhood experiences in residential care. As in the case of the Confidential Committee, industrial schools and reformatory schools predominate in these requests and some complainants have indicated that they wish to testify about their childhood experiences in more than one such institution. An analysis of the requests indicates that in approximately one hundred (100) cases the Complainant wishes to testify about his or her experiences in a non-residential school.

The proposed Rules of Procedure of the Investigation Committee, which were appended to the Opening Statement,²⁵ were amended in response to submissions received by the Commission following the first public sitting. Copies of the Rules of Procedure are made available to all parties participating in the work of the Investigation Committee and are available on the Commission's website.

The Act²⁶ provides for the conduct of a preliminary inquiry into an allegation of childhood abuse in an institution which the Investigation Committee has been requested to investigate by an inquiry officer. Originally, as stated in the Opening Statement,²⁷ the Commission intended that civil servants on secondment from Departments of State, other than Departments which have or have had responsibility for children's institutions, would be appointed as inquiry officers. Because of the level of opposition to involvement of public servants in the work of the Commission evinced in the submissions received by the Commission, at the end of July, 2000 it was decided to retain practising barristers to carry out the functions of inquiry officers. The process of retaining the barristers took until the beginning of December, 2000. The inquiry officers commenced the preliminary inquiries on 11 December, 2000.

²⁵ Appendix D.

²⁶ Section 23.

²⁷ Page 4.

The work of the inquiry officers in carrying out preliminary inquiries has been impeded and delayed because of the obstacles to progress outlined earlier. At 30 April, 2001 no preliminary inquiry had been finalised in accordance with the Act.²⁸

The Act²⁹ confers wide powers of discovery and production of documents on the Investigation Committee. As was stated in the Opening Statement,³⁰ it is hoped that persons, including public bodies, who have documents which are relevant to the work of the Investigation Committee will, where requested, produce those documents voluntarily. The Commission takes this opportunity of reiterating that documents which it receives pursuant to a direction for discovery or production or which are voluntarily discovered or produced, without the necessity for a direction, may only be used by the Investigation Committee for the purposes of its work and not for any other purpose. This means, in effect, that such documents may only be made available in the course of the inquiry to persons involved in the inquiry, or a particular aspect of the inquiry, in accordance with the Rules of Procedure of the Investigation Committee.

Because of the high proportion of the work of the Investigation Committee which relates to former industrial schools and reformatory schools, the discovery process in relation to the records of such institutions impacts on the ability of the Investigation Committee to advance its work. The position in relation to discovery of documents and records in relation to such institutions held by the Department was alluded to in the Opening Statement.³¹ The up-to-date position is that the Department has made, and is in the course of making, voluntary discovery to the Investigation Committee in E-format of a very considerable body of data in relation to fifty-five former industrial and reformatory schools. It is anticipated that the process will be completed by the middle of June, 2001.

Completion of the voluntary discovery process in relation to an industrial school or a reformatory school is a necessary prerequisite to the scheduling of a hearing of the Investigation Committee in relation to any such school. While the process has taken longer than was anticipated by either the Department or the Commission, the Commission is satisfied that this is attributable to the enormity of the task involved in processing the Departmental files and records in relation to industrial schools and reformatory schools. The Commission is very appreciative of the co-operation it has received from personnel of the Department involved in that task.

Each member of the Investigation Committee and each inquiry officer has subscribed to a protocol on conflict of interest.

²⁸ Section 23(3).

²⁹ Section 14(1).

³⁰ Page 21.

³¹ Page 22.

11. Administration

Since the Commission was established it has employed personnel or seconded personnel for the duration of the Commission, in accordance with its powers under the Act,³² to provide administrative support to the Commission, the Confidential Committee and the Investigation Committee.

Mr Paul Doyle, who acted as secretary to the Commission since its establishment, ceased to act in that capacity on 24 April, 2001. The Commission wishes to record its appreciation of Mr Doyle's contribution to the Commission's work.

Two members of staff have been assigned on an exclusive basis to the Confidential Committee. The Commission is satisfied that in terms of deployment of personnel, administrative structures and the configuration of its IT systems, and security of documentary and computer generated data, every reasonable step has been taken to ensure no breach occurs of the hermetic seal of confidentiality which the Act³³ requires should surround the Confidential Committee and its work.

Systems have been put in place for case and document management for the Commission. The Commission wishes to acknowledge the very considerable assistance it has received, and continues to receive, from the Centre for Management and Organisation Development and its personnel in designing and developing the systems.

The Commission recognises that its support staff are occasionally required to work in difficult and stressful circumstances. Appropriate training has been provided and appropriate support and staff care mechanisms are in place.

Each Member of staff has subscribed to a protocol governing conflict of interest and confidentiality.

12. The Commission's Legal Team

Two senior counsel, Frank Clarke S.C. and Deirdre Murphy S.C., and two junior counsel, Isobel Kennedy B.L. and Bernard Condon B.L., have been nominated by the Commission for its legal team for the Investigation Committee. One junior counsel, Mary Ellen Ring B.L., has been nominated to advise the Confidential Committee.

³² Section 9.

³³ Section 27.

13. Meetings of the Commission

Since May, 2000 regular meetings of the Commission have been held. In addition to formulating policy in relation to the implementation of the statutory remit of the Commission and its Committees and the issues raised at the public sittings and dealing with administrative matters, the Commission has commenced consideration of some of the topics on which it proposes to make policy recommendations.

14. Working Towards Making Recommendations

Tracing Family

The policy matter to which the Commission has given priority during the first year of its work is the topic which it referred to as “tracing family” in the Opening Statement.³⁴ In this context, the Commission has concentrated on issues concerning persons who, as children, were separated from parents and other family members and were raised in residential institutions or in foster care. For many this has meant that, not only are they deprived of knowledge of their families of origin, but they are also deprived of access to personal information about their childhood. They need access to such information and they need to be able to trace and be united with their kin. In broad terms, the issues which have been considered include:

- The constitutional and legal framework within which such issues are currently resolved,
- Identifying the problems associated with—
 - Accessing personal information which may be of a sensitive nature
 - The tracing or searching process, and
 - Contact and reunion,
- Identifying measures which would facilitate tracing,
- Identifying measures which, subject to due regard being given to the interest of all parties involved, would facilitate reunion, and
- Identifying the measures necessary to give adequate protection to all parties affected by tracing and reunion.

It is the Commission’s view that because of the age, state of health, level of educational attainment, vulnerability and emotional needs of persons who would benefit from such measures, there is an urgent need to address these matters at national level. On the basis that its role in making policy recommendations as provided for in the Act³⁵ in relation to these issues is not

³⁴ Page 25.

³⁵ Section 5(2).

predicated on the making of findings of past occurrence of specific types of abuse, within the meaning of the Act, the Commission has felt free to address these matters in tandem with the carrying out of its inquiry, and because of the urgency, has given priority to them.

The Commission has consulted with a wide range of persons and bodies, including State agencies, on these issues and the consultative process is ongoing.

The Commission intends to issue a special report on these issues in early course.

Protection of Children in Institutions

The Commission has also commenced work on issues concerning the protection of children in institutions now and in the future, with particular reference to—

- recruitment, training, support and supervision of personnel,
- regulation and supervision of institutions,
- complaints procedures, and
- mechanisms for ensuring that the voice of the child is heard.

The Commission will shortly be embarking on a broad consultation process with a view to publishing recommendations on these issues at a future date.

15. Vaccine Trials Inquiry

In mid November, 2000 the Minister for Health and Children announced in the Dáil and Seanad that he was referring to the Commission a copy of a report of the Chief Medical Officer of the Department of Health entitled “Report on Three Clinical Trials Involving Babies and Children in Institutional Settings 1960/1961, 1970 and 1973” (the Vaccines Report). The Commission received the Vaccines Report on 13 November, 2000 and, being satisfied that the issues raised in it are matters which come within the investigative remit of the Commission, indicated its willingness to inquire into those issues in fulfilling its statutory functions. The Commission is awaiting a Government Order under the Act³⁶ defining the parameters of this function, and that of the Investigation Committee, which it is intended will conduct the inquiry in relation to vaccine trials.

The membership of the Commission will have to be expanded to deal with this aspect of the Commission’s work and the Commission awaits a Government decision to this effect.

³⁶ Section 4(4).

The Commission is eager to embark on the vaccine trials inquiry without further delay.

16. Support Services for Survivors

Since the Commission was established there has been an improvement in the support services for survivors of institutional child abuse, which is welcomed.

The National Counselling Service for adults who experienced childhood abuse has been established and is in operation in each Health Board area in the State. The Department of Health and Children is committed to providing funding for three years for Immigrant Counselling and Psychotherapy (ICAP) to enable it to provide a professional confidential counselling service for survivors resident in the United Kingdom. Quarterly meetings of the Commission and the Directors of Counselling for the Health Board areas and the Director of ICAP are held to discuss issues of mutual concern. The Commission wishes to express its appreciation of the assistance it has received from these services and, in particular, from the Directors.

The Department of Health and Children is also committed to providing funding for advice and information services in the United Kingdom. Two outreach workers are currently providing this service in the Greater London area, the South East and Wales and in the Midlands (Coventry, Birmingham, Leicester, Wolverhampton and surrounding areas).

The National Office for Victims of Abuse (NOVA) was established in February, 2001 to provide advice and assistance in an impartial and fair manner to victims of childhood abuse in institutions. The Commission staff maintain a liaison contact with the Manager of NOVA.

The Commission staff also maintain a liaison function with the voluntary groups which represent the interests of survivors of childhood institutional abuse. The purpose of this function is to provide a process whereby information can be disseminated and practical matters can be raised and dealt with.

17. Witness Support

Experience to date has confirmed the difficult and stressful nature of giving evidence to the Commission. The Commission takes this opportunity of reminding those who will be participating in the Commission's work of measures which have been taken with a view to alleviating the difficulties and addressing any problems which may arise. These are:

- Provision of travel and subsistence expenses for a companion who accompanies a witness, who is not accompanied by a counsellor, in accordance with a scheme made under the Act.³⁷
- Provision of a fee and travel and subsistence expenses for a professional counsellor who accompanies a witness in accordance with the Scheme made under the Act.³⁸
- Availability of witness support officers to help witnesses in all practical aspects of their contact with the Commission.
- The availability of an emergency outreach counselling service provided by the National Counselling Service.
- The availability of an emergency general practice service at a medical centre close to the Commission's premises.

18. The Future

At the public sitting on 26 September 2000 the Commission expressed disappointment that up to then there had not been a more obvious willingness on the part of the State to speedily address issues which were impeding the effective conduct of the tasks which the Oireachtas had given to the Commission to do. Regrettably, the delay in putting in place a viable scheme for payment of legal expenses demonstrates that the situation has not fundamentally changed. The Commission's ability to fulfill its statutory functions is contingent on proper and prompt support being forthcoming. It is entitled to expect that this will happen.

The Commission repeats the pledge which it gave at its last public sitting on 26 September, 2000 that, notwithstanding the obstacles it has encountered, every person who wishes to give evidence to the Commission, subject to complying with the relevant administrative procedures, including the Rules of Procedure of the Investigation Committee, will get a hearing before the Committee of his or her choice. Subject to what is stated in the preceding paragraph, it is confident of its ability to fulfill the pledge.

In the view of the Commission the principal obstacle in the way of advancing the hearings of the Investigation Committee, the lack of a scheme for payment of legal expenses, has been removed as regards the first phase hearings of its work, which, as has been previously stated, will now be advanced vigorously. The Commission is determined that the Investigation Committee will not be deflected from pursuing its investigation by any action or inaction on the part of any persons or bodies affected by its work.

³⁷ Section 20. The text of the scheme is set out in Appendix E of the Opening Statement, and is available on the Commission's Website.

³⁸ Section 20. See footnote 37.

The work of the Confidential Committee will continue and persons who wish to tell of their experiences to the Confidential Committee will be heard, priority being given according to age, state of health and any other special circumstances .

The Commission will be mindful at all times of the potential therapeutic benefit to persons who have suffered institutional abuse in childhood of recounting their experiences. Every person who comes forward to testify to either Committee is assured that every effort will be made to ensure that he or she leaves the hearing with a sense of having been fully heard.

As has been previously stated, it is impossible to predict how long it will take to afford hearings to all persons who wish to be heard. What can be predicted with certainty is that the work of the Commission will not be completed within the two year time span envisaged by the Act.³⁹

A further interim report will be published not later than 30 November, 2001, by which time it is hoped that it will be possible to give some reasonable prediction as to when the various stages in the Commission's inquiries will be completed and to report further progress on the continuing work on formulation of policy recommendations.

Persons for whose benefit the Commission was established, and who are in a position to do so, will have to decide for themselves whether they want to assist the Commission in carrying out a full investigation into the events of the past. It is hoped that they will assist, not only in their own interest but so that the lessons to be learned from the past can benefit the children of the future.

As was stated in the Opening Statement,⁴⁰ the Commission is a unique investigative body. It has powers and privileges similar to those conferred on Tribunals of Inquiry to enable it to fulfill its investigative remit and ascertain the true facts. Its hearing processes are intended to be, and are capable of being, a source of healing for a person who gives evidence of abuse he or she has suffered. A person or body against whom an allegation is made is afforded the opportunity to defend his, her or its reputation. Failure to utilise those processes or obstruction of them would be a lost opportunity.

It is the Commission's belief that the processes of the Commission are likely to result in a more accurate, comprehensive and authoritative exposition of the prevalence of childhood abuse in institutions in the past, why it occurred and who was responsible for it, than any other process available in the State.

³⁹ Section 5(5).

⁴⁰ Page 3.

Appendix A

Membership of Commission

Chairperson

The Honourable Ms Justice Mary Laffoy, Judge of the High Court (Chairperson of the Investigation Committee).

Ordinary Members

Dr Patrick Deasy, Consultant Paediatrician (Confidential Committee).

Ms Norah Gibbons, Childcare Director (Chairperson of the Confidential Committee).

Mr Bob Lewis, CBE, retired Director of Social Services (Stockport, United Kingdom).¹ (Confidential Committee).

Mr Fred Lowe, Principal Clinical Psychologist (Investigation Committee).

Dr Kevin McCoy, retired Chief Inspector, Social Services Inspectorate, Northern Ireland.² (Confidential Committee).

Dr Imelda Ryan, Consultant Child and Adolescent Psychiatrist (Investigation Committee).

¹ Resigned 19th July, 2000.

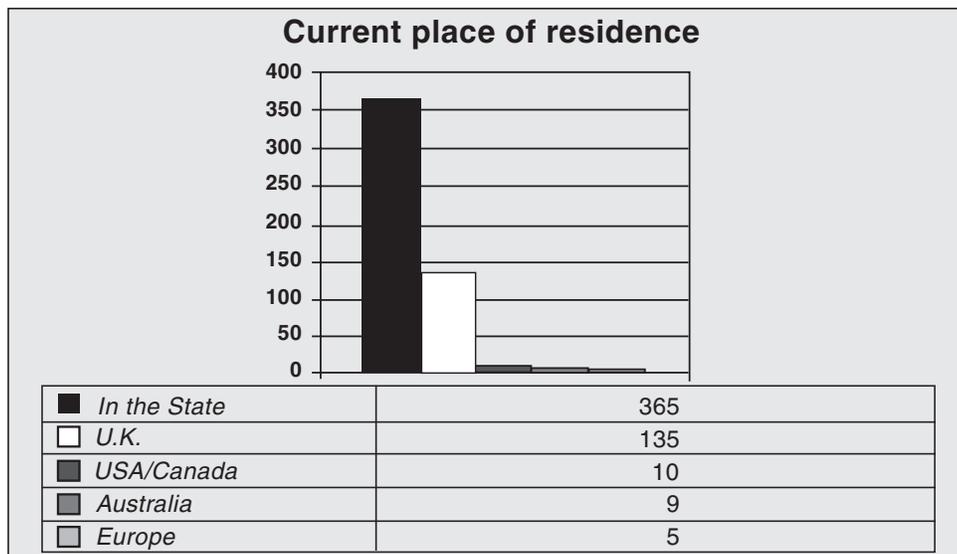
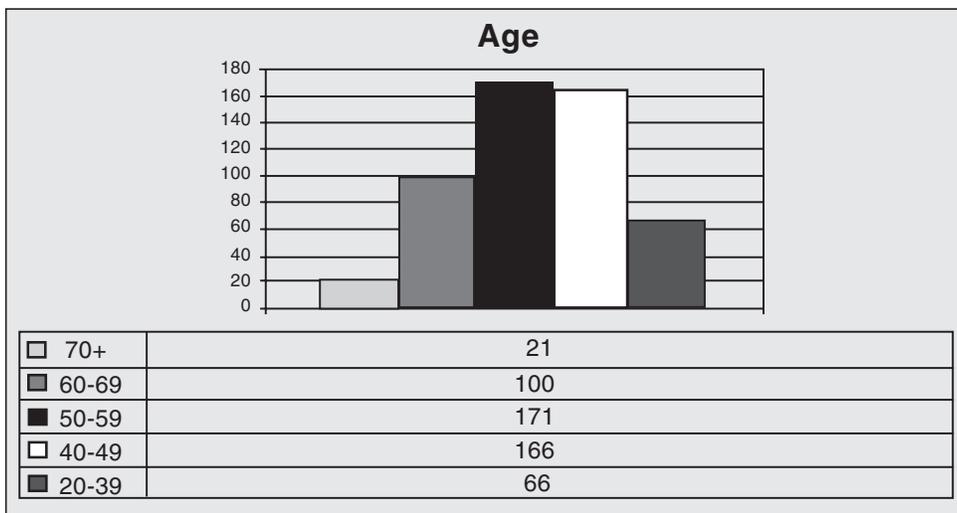
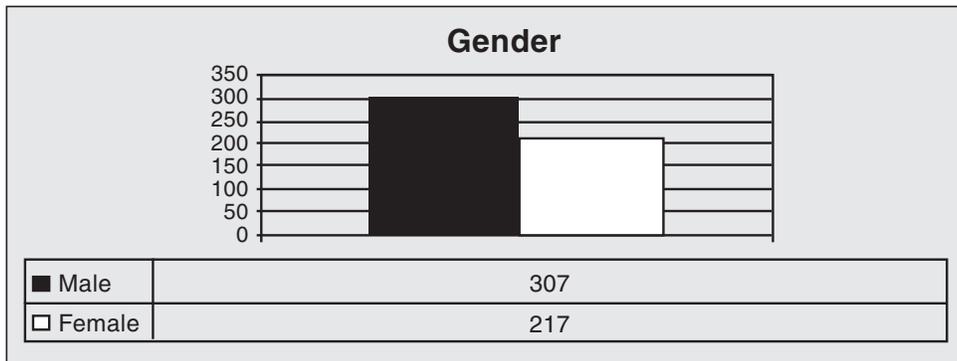
² Appointed 21st November, 2000.

Appendix B: Part 1

Confidential Committee Statistics

Total number of requests extant at 30 April 2001: **524**

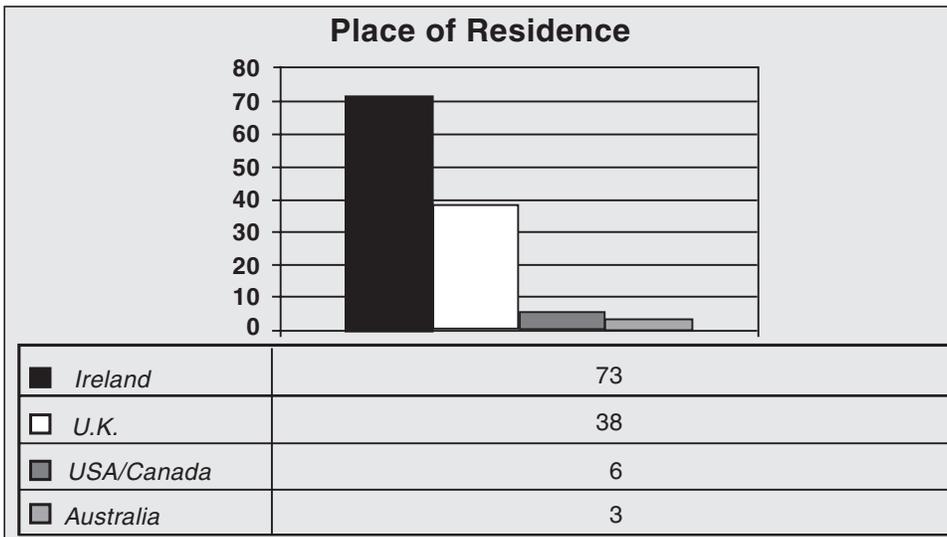
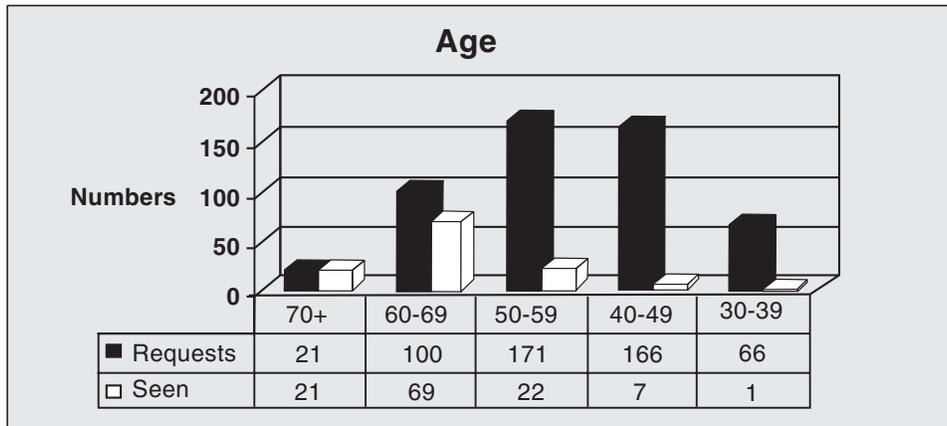
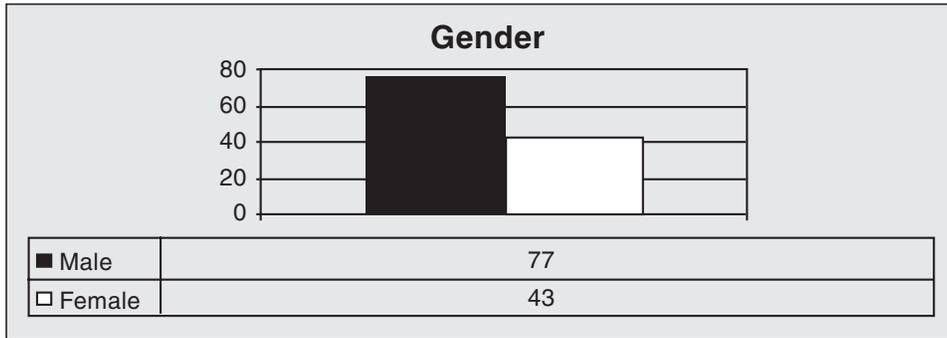
The breakdown is as follows:



Appendix B: Part 2

Confidential Committee Statistics

Total number of hearings completed at 30 April 2001: **120**



Appendix C

Investigation Committee Statistics

Total number of requests extant at 30 April 2001: **714**

