

COMMISSION TO INQUIRE INTO CHILD ABUSE ACT, 2000

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ON WEDNESDAY, 23RD JANUARY 2002

BEFORE A DIVISION OF THE INVESTIGATION COMMITTEE

(MS. JUSTICE LAFFOY AND PROFESSOR EDWARD TEMPANY)

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

PRESENT

For the Inquiry:	MR. FRANK CLARKE SC
For the Sisters of The Sacred Heart	MR. O'FLYNN
For Mr. Paddy Doyle	MR. M. O'CONNELL
From Lavelle Coleman, Solicitors	MS. H. BACIK MS. JACINTA MADDEN
CORK SOLICITOR	MR. EUGENE MURPHY
For Victor Boynan & Ors	MS. O. McCRANN BL
SPEAKERS FROM THE FLOOR	MR. MICHAEL O'BRIEN MR. TONY TRACEY MRS. BUCKLEY MR. SIMON LEE MR. JOHN KELLY

The Commission to Inquire into Child Abuse Act 2000
The Commission to Inquire into Child Abuse Act 2000
which was enacted on 26th April 2000 provided for
the establishment of the Commission to Inquire into
Child Abuse to perform the functions conferred on it
by or under the Act. The Commission itself was
established on 23rd May 2000.

In addition to the principal functions which are
conferred on the Commission by the Act, that is to

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say to provide a forum for hearing allegations of
and to conduct an inquiry into abuse of children in
institutions from 1940 to the present time and to
report on the inquiry, the Act empowers the
Government by Order to confer on the Commission and
its Committees such additional functions or powers
connected with their functions and powers for the
time being as may be considered appropriate.

By virtue of the Commission to Inquire into Child
Abuse Act 2000 (Additional Functions) Order 2001,
that is Statutory Instrument no. 280 of 2001,
additional functions in relation to certain vaccine

trials which involved children in institutions were conferred on the Commission.

The Background to the Making of the Order

Since the early 1990's three vaccine trials which were conducted in the State in the 1960's and 1970's have been the subject of media interest which has given rise to public debate. Of particular concern has been the fact that some of the children who participated in the trials were resident in children's homes or orphanages at the time of such participation and questions have been raised as to the ethical propriety of the trials.

In July 1997 the then Minister for Health gave a commitment to the Dail to make inquiries in relation

to the matter. The inquiries were conducted by the Chief Medical Officer of the Department of Health and Children, Dr. James Kiely, who prepared a report entitled "Report on three Clinical trials Involving Babies and Children in institutional settings in 1960/61, 1970 and 1973" which was laid before both Houses of the Oireachtas in November 2000.

It being the view of the Minister for Health and

Children that the matters dealt with in the report required further investigation the report was referred to the Commission on 13th November 2000 to conduct such investigation.

As is recited in the Order, that is to say in the Statutory Instrument, the Commission requested the Government to define the parameters of its investigation into the matters arising from the report. After consultation with the Commission the Order was made on 19th June 2001, that is to say the Statutory Instrument was made on 19th June 2001.

The functions conferred on the Commission by the Order: Vaccine Trials

By the Order, functions, which will be outlined later in this statement are conferred on the Commission in relation to any vaccine trial which falls within either of the two categories of vaccine trials referred to in the Order. The first category

comprises the three vaccine trials the subject of the report, that is to say the CMO's report, being the following trials:

Trial 1: This was a trial in which 58 infants resident in five children's homes in the State took part which sought to compare the poliomyelitis antibody response after vaccination with a quadruple vaccine (diphtheria, pertussis - that is whooping cough - and tetanus (DTP) and polio combined) with standard vaccines in use at the time which consisted of DTP and polio administered separately and at different sites. This trial was conducted between December 1960 and November 1961. The results of the trial were published in the British Medical Journal in 1962.

Trial 2: In one strand of this trial, 69 children resident in an orphanage in Dublin had blood taken. 12 were subsequently administered intranasal rubella - that is German measles - vaccine. In another strand of this trial, 23 children living at home in a rural area in the midlands were administered the same vaccine. The purpose of the trial was to investigate whether there was a propensity for intranasally administered vaccine to spread to susceptible contacts, for example pregnant women, and to estimate antibody levels and acceptability of the intranasal technique of

vaccination. The trial was conducted during 1970. The results of the trial were published in the Cambridge Journal of Hygiene in 1971.

Trial 3: In this trial 53 children, in "Mother and Baby" homes and children's homes in Dublin and 65 children living at home in Dublin were administered vaccine to compare the reactogenicity of the commercially available batches of Trivax vaccine (that is a proprietary name for Diphtheria Tetanus and Pertussis vaccine) and Trivax AD vaccine with a vaccine of equivalent efficacy but in relation to the pertussis or whooping cough component of lesser potency. This trial was apparently conducted in 1973. The outcome of this trial was not published.

The second category of trial referred to in the Statutory Instrument is specified in the following terms in the Statutory Instrument and I quote:

"...Any systematic trials of a vaccine or the mode of delivery thereof to test its efficacy or to ascertain its side effects on a person found by the Investigation Committee to have taken place during the period commencing on 1st January 1940 and ending on 31st December 1987 and to have been conducted in an institution following an allegation by a person that he or she as a child in the institution was a subject thereof..."

The background to the inclusion of this category in the Order is that the publicity surrounding the vaccine trials issue generated communications to the

Department of Health and Children by individuals who asserted that they had been in vaccine trials of the type being investigated within the Department, if not necessarily the three trials being investigated. At the request of the Minister for Health and Children the Commission indicated its willingness to investigate assertions of that type and to include in its inquiry any further trial if its investigations should lead to a finding that such trial had occurred and involved children in institutions.

In order to come within the second category a vaccine trial must fulfil all of the following requirements:

First it must be a systematic trial of either the vaccine or the mode of delivery of the vaccine the purpose of which is to test the efficacy of the vaccine or to ascertain its side effects on a person to whom it was intended to be administered.

Secondly, the trial must have taken place in the years 1940 to 1987 inclusive. Incidentally, 1987 is the year in which the Control of Clinical Trials Act 1987 was enacted.

Thirdly, the trial must have been conducted in an

institution. And that expression is defined in the Act of 2000 as including, and I quote:

"A school, an industrial school, a reformatory school, an orphanage, a

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hospital, a children's home and any other place where children are cared for other than as members of their families."

Fourthly, there must be a finding by the Investigation Committee that such trial took place and was conducted in an institution during the years 1940 to 1987 inclusive and such finding must follow on from an allegation by a person that he or she as a child participated in the trial in the institution. And the word "child" is defined in the Act of 2000 as: "A person who has not attained the age of 18 years."

The Commission by public advertisement published in newspapers with circulation within the State and amongst members of the Irish community in the United Kingdom has invited any person who alleges that as a child in an institution, for example in a children's home or in an orphanage, between 1940 and 1987 he or she was the subject of a vaccine trial to contact the Commission before 15th February 2002. That is

15th February next. The advertisement will be repeated shortly. Every contact, whether as a result of the advertisement or otherwise, will be investigated and any vaccine trial which fulfils the requirements stipulated in the Order, that is to say in the Statutory Instrument, will be inquired into.

It is possible that in the course of investigations

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being carried out into vaccine trials, the existence of a trial which fulfils the requirements necessary to fall within the second category save that it has come to the attention of the Commission from a source other than the source stipulated in the Order may emerge. And the source stipulated in the Order is an allegation by a person that he or she as a child in the institution was the subject of the trial.

In that event, if such further trial emerges in the course of our inquiries, in that event the Commission will give careful consideration to seeking from the Government an Order under the Act empowering the Commission to inquire into such trial.

The Additional Functions

In relation to each vaccine trial which falls within either category provided for in the Order the Commission has a twofold function, namely to conduct an inquiry and to publish a report.

The Inquiry

The Order stipulates the nature of the inquiry to be carried out. It is an inquiry into the circumstances, legality, conduct, ethical propriety and effects on the subjects thereof of each vaccine trial which falls within either category provided

for in the Order. It is the Division's view that as such it gives the Commission a broad, not a narrow remit. In particular, it is the understanding of the Division that:

The work "circumstances" comprehends all aspects of the trial whether specifically alluded to or not, including the background to its inception, its purpose and its outcome;

The word "legality" connotes compliance or noncompliance with the regulatory regime, whether

statutory, for example under the Therapeutic Substances Act 1932, or whether created by secondary legislation which was in force at the relevant time;

The "conduct" of a trial means all aspects of the implementation of the trial, including the devising of the protocol or plan in accordance with which the trial was to be carried out, the practical day-to-day implementation of the trial and the recording of the outcome of the trial;

The expression "ethical propriety" connotes adherence or non-adherence to ethical norms and guidelines prevalent at the relevant time both nationally and internationally in relation to clinical research and trials involving human beings and in particular involving children;

The reference to "effects" on the subjects of a trial envisages both benign consequences and adverse reactions and consequences.

The foregoing analysis of the terminology of the Order which stipulates the nature of the inquiry is not intended to be exhaustive of all relevant

factors but merely illustrative of the Division's understanding of the parameters of the inquiry defined by the Order.

In the case of each trial the relevant factors will have to be considered where appropriate by reference to the acts and omissions of all persons and bodies promoting, funding, conducting licencing or otherwise authorising and facilitating the trial and all persons and bodies charged with responsibility for the person, health and well-being of each child who participated in the trial. By way of illustration, in the case of the three trials the subject of the Chief Medical Officer's report it is envisaged that the Division will be concerned with:

The conduct of the manufacturer of the vaccine.
The conduct of the research body or institution and the personnel involved in the conduct of the trial.
The conduct of the statutory and/or other regulator charged with responsibility for the regulatory

regime in force at the relevant time.

The conduct of any health, local or other public authority involved directly or indirectly with the

trial.

The conduct of the manager of the institution or other person with de facto responsibility for a child who, while in the institution, was a subject of the trial.

And the conduct of each Department of State charged with responsibility for the health and well-being of such child.

The Report

It is specifically provided in the Order that the inquiry mandated by the Order is to be carried out through the Investigation Committee, which is a Committee of the Commission provided for in the Act. The reporting function of the Commission under the Order is coextensive with the reporting function of the Investigation Committee under the Order.

The scheme of the Order is that the Investigation Committee is required to prepare a report in writing of the results of the inquiry, specifying in the report the determinations or findings it has made in the conduct of the inquiry and to furnish it to the Commission. The Commission's function is to prepare and publish to the general public a report in writing specifying the determinations made by the

Investigation Committee in its report.

In other words, the division of the Investigation Committee conducting the inquiry into vaccine trials reports to the Commission as a whole. The Commission then publishes its report, but in so doing the Commission is limited to reporting determinations or findings made by the Investigation Committee.

The personnel conducting the Inquiry
As has been stated, it is provided in the Order that the investigative remit of the Commission in relation to vaccine trials shall be carried out through the Investigation Committee. Under the Act the Investigation Committee is empowered to act in divisions. When the Order was made the composition of the Investigation Committee comprised the Chairperson and two ordinary members.

Because the two ordinary members were precluded on the grounds of conflict of interest from participating in the inquiry mandated by the Order the Commission asked the Government to appoint an additional member to the Commission who would be assigned to the Investigation Committee to participate in the vaccine trials inquiry. On 13th November 2001 the Government appointed Prof. Edward Tempany, a retired consultant pediatrician, as a

member of the Commission.

Prof. Tempany has been assigned to the Investigation Committee, a division of the Investigation Committee consisting of the Chairperson, that is myself, I am Mary Laffoy, I am a Judge of the High Court, and Prof. Tempany, who is sitting with me today, will conduct the inquiry and prepare the report thereon in accordance with the provisions of the Statutory Instrument and the provisions of the Act.

Conflict of interest

All members of the Commission, including the members of this division, are bound by a protocol on conflict of interest which also binds the other statutory officers of the Commission, the inquiry officers provided for in the Act and the Commission's legal advisors. It is intended that any other advisors or consultants retained in connection with the vaccine trials inquiry will be bound by similar rules for identifying potential conflicts of interest and ensuring that an advisor does not become involved in any matter where such involvement would give rise to a conflict of interest. All members of the staff of the

Commission are bound by similar rules.

The protocol and rules on conflicts of interest are strictly enforced. The invitation already issued

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publicly by the Commission to all persons who are affected by its work is extended to persons affected by the work of this division, namely to bring to the attention of the division any situation which it is believed may give rise to a conflict of interest.

However, the division wishes to reiterate the view already expressed publicly at a public sitting by the Commission that such matter, in other words a suggestion of a potential conflict of interest, should be raised in writing with the Secretary of the Commission, Mr. Finbar Kelly, by the person who believes the conflict affects him or her or his or her legal representative, who should clearly indicate the reasons why he believes there is a conflict. The Commission cannot act on media reports, second or thirdhand information, rumour or innuendo.

Evidence

The same approach will be adopted by the Division in the conduct of the vaccine trials inquiry as is adopted by the Investigation Committee in relation to the performance of its other functions. All witnesses who give evidence shall be required to give evidence on oath as is permitted by the Act. In making its determinations or findings the Division will:

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Apply the standard of proof applicable in civil proceedings in a court, that is to say, proof on the balance of probabilities.

The determination, in other words the findings, will be based only on evidence which would be admissible in a court, so that for instance in making findings of fact this Division will not rely on hearsay.

Public hearings

The Act provides that a hearing of the Investigation Committee at which evidence relating to particular instances of alleged abuse of children is being given shall be held otherwise than in public. Other hearings may, if the Committee considers it appropriate having regard to the desirability of holding such meetings in public, be held otherwise

than in public.

At this juncture the Division does not foresee that any circumstances are likely to arise in which it would be appropriate to hold the hearings of this Division in camera. Accordingly, the intention is that all hearings of the Division will be held in public. However, if any unforeseen factors emerge, the appropriateness of hearing particular evidence in public having regard to such factors will be addressed.

Legal Representation and Costs

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It is recognised that every person or body whose conduct is impugned in the course of the inquiry or who may be materially adversely affected by a determination of the Division is entitled to legal representation in the process. It is also recognised that there are other interests to which it may be considered appropriate to grant legal representation having regard to the nature of the inquiry, for example the public or a section of the public which is the focus of the inquiry.

Applications for legal representation will be taken following the close of Mr. Clarke's opening statement, but they will only be taken in relation to the three trials which have been identified in the Chief Medical Officer's report, because of course we do not know what other trials will be investigated into.

However, when all of the contacts and communications from the public in relation to the possible existence of other trials which come within the Commission's remit have been investigated a further preliminary sitting will be convened to apprise the public of the results of such investigations and the course the Division proposes to adopt in consequence. At that stage the issue of legal representation in relation to any other trials which are thrown up will be re-addressed if necessary.

Currently the payment of expenses, including legal expenses, of parties appearing before the Investigation Committee is governed by Section 20 of the Act. That section empowers the Minister for Education and Science to make a scheme providing for the payment by the Commission of expenses incurred

in relation to attendance before the Investigation Committee. A scheme is in place for payment of the expenses of lay witnesses.

Moreover, a scheme made by the Minister for Education and Science on 9th May 2001 is in place for payment of legal costs and expenses incurred in respect of legal representation at the first phase of the proceedings of the Investigation Committee, which hearings are held in camera. At present there is no scheme in place under Section 20 providing for the costs and expenses of legal representation at proceedings of this Division which it is intended will follow in broad terms a Tribunal model of process.

However, by letter dated 21st January 2002 the Department of Education and Science has advised the Commission as follows, and I am quoting from the letter:

"In order to clarify matters I would like to inform the Commission that as a matter of policy it is proposed that all reasonable legal costs incurred by

a person and arising from inquiries made by the Investigation Committee will be made from public funds. The Minister will propose the appropriate

amendments."

By which I understand to mean amendments to our Act of 2000.

"At report stage of the Residential Institutions Redress Bill 2001."

That bill is going through the Dail at present and what we have been told is that the Minister will propose the appropriate amendments to the Act of 2000 at report stage of the Residential Institutions Redress Bill 2001.

It is the Commission's understanding that the amendment will provide for taxed costs in the ordinary sense in which that expression is used in inter partes matters. The Commission has been informed that the report stage of the bill in the Dail is scheduled for 20th February 2002. That is 20th February next.

Inquiry into Vaccine Trials, not Vaccines generally This is something I want to stress. It is important that the public should appreciate that the functions of the Division relate to vaccine trials, the three vaccine trials the subject of the Chief Medical Officer's report and any other trials which fall within the second category provided for in the

Order. The common feature of the trials which the Division is empowered to investigate is that they were conducted on children and they were conducted on children who were in institutions.

It is no function of the Division to investigate vaccines generally or the administration of vaccines to children in the past in any circumstances other than in the course of a trial conducted wholly or partly in an institution.

Inquisitorial process

In conclusion, the Division wishes to emphasise the inquisitorial nature of this process. It is a fact finding process, not a process which is capable of giving rise to a determination of criminal responsibility or civil liability. However, it is a process which must be and will be conducted in a manner consistent with constitutional and natural justice.

The modus operandi which will be adopted for this distinct module of the Commission's work for gathering evidence, determining its relevance and presenting relevant sworn testimony to the Division will ensure that every person or body whose conduct is impugned or is likely to be the subject of an adverse finding is afforded reasonable means of

defending himself or herself in the manner laid down

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by the Supreme Court in *In Re Haughey*, which is a case dating from 1971.

I will now call on Mr. Clarke to outline how the legal team intend to advance the process.

MR. CLARKE: Thank you, Madam
Chairperson, Members of
the Division. As you pointed out, the Commission to Inquire into Child Abuse was conferred with additional functions by virtue of Standing Order 280 of 2001 which requests and empowers it through the Investigation Committee and through that this Division to inquire firstly into the three vaccine trials that are known to have occurred during the 1960's and 1970's.

And secondly into any other systematic vaccine trial which the Committee finds took place in an institution between 1940 and 1987 following an allegation by a person that he or she as a child in the institution was the subject of such a trial. The legislation under which the Investigation Committee operates, that is the Commission to Inquire into Child Abuse Act 2000, is in many

respects similar to that under which Tribunals of Inquiry operate.

In broad terms the nature of the inquiry to be pursued in relation to vaccine trials is such as

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lends itself to the model adopted by Tribunals of Inquiry and it is, broadly speaking, the intention of the legal team to pursue this aspect of the Investigation Committee's work by means of what one might describe as the "Tribunal model". That is perhaps to distinguish it from the procedures being adopted by other aspects of the Investigation Committee's work.

Therefore, the inquiry by the Investigation Committee would involve the following stages:

1. A preliminary investigation of the evidence available.
2. The determination by the Investigation Committee of what it considers to be evidence relevant to the matters into which it is obliged to inquire.
3. The service of such evidence on persons likely to be affected by it.
4. The public hearing of witnesses in regard to such

evidence, the cross-examination of such witnesses by or on behalf of persons affected thereby.

5. The preparation of a report and the making of determinations and recommendations based on the facts established at such public hearing.

I should perhaps say that while that is the sequence intended it may be that for practical reasons there may be an overlapping of some of those in relation to particular issues depending on how much advanced

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the inquiry may be in certain respects. Subsequent to the conferring of the additional functions on the Commission, that is to say to deal with the vaccine trials inquiry, the Investigation Committee's legal team has begun the process of assembling and examining the available evidence relating to the issues raised in the additional terms of reference.

In commencing its task of gathering that evidence the legal team did not start with what is sometimes called the blank sheet of paper, as prior to the conferring of additional functions on the Commission, as you yourself pointed out, Madam Chairperson, the three vaccine trials known to have occurred were the subject of the inquiry by the

Chief Medical Officer of the Department.

And the legal team has available to it the document entitled "Report on Three Clinical Trials Involving Babies and Children in Institutional Settings 1960/61, 1970 and 1973" prepared for the Minister and published to the Dail on 9th November 2000, together with documentation generated and located by the Chief Medical Officer in the course of his inquiry. So that was our starting point.

And as indicated, those three vaccine trials are known to have taken place and were carried out in the 1960's and the 1970's. Briefly to indicate them

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again, the first took place in 1961/1962 in five mother and baby homes throughout the State. The only homes so far identified as having been involved in the trial is Bessborough. The purpose of the trial in general terms was to measure the effectiveness of the four-in-one vaccine, details of which you have already outlined. The general practice at the time was to give a three-in-one vaccine against the first three diseases and give polio separately.

The second known trial took place in 1970, it was carried out in an as yet unidentified children's home in Dublin, though some details are known, and also involved children in the midlands who were living at home. In general terms the purpose of the trial was to assess the effectiveness of a rubella vaccine when administered nasally rather than by injection.

The third trial that will be undoubtedly investigated took place in 1973. The subjects of that trial were living at home in Dublin as well as children residing in the following institutions: St. Patrick's Home, Navan Road; Madonna House; Cottage Home for Little Children, Dun Laoghaire; Birdsnest Home Dun Laoghaire and in and Bohrin Na Bearna.

In general terms the purpose of this trial was to compare the reactions of children who were given commercially available batches of three-in-one vaccines to the reactions of children who were given a modified vaccine of equivalent efficacy but of lesser potency. So they are the three identified

trials.

As part of the process of evidence gathering the Investigation Committee has already advertised with a view to ascertaining whether other persons unknown to it may be in a position either to provide it with evidence or to indicate the sources of evidence that might be followed up. That advertisement has requested responses not later than 15th February 2002, so there is still some time to go before the completion of that time span within which response was sought.

The process of receiving, considering and acting upon communications received in response to that advertisement is obviously ongoing and, equally obviously, is likely to continue for some time and at this stage it is impossible to give any realistic estimation of how long that process will take. But I would at this stage, Madam Chairperson, like to set out in broad terms the process which the legal team would intend to pursue so that any interested parties would at least in those general terms have a

broad understanding of what is likely to occur and

the way that we would intend to proceed.

This Division of the Investigation Committee will conduct its hearings in relation to vaccine trials as a separate part of its remit. It is largely a stand-alone function of the Investigation Committee and it will conduct its affairs separate from the other business of the Commission and the Investigation Committee.

As you pointed out in the course of interpreting the terms of reference, the Division has been requested not only to investigate the three identified trials but also to see whether there were other trials within the definition which you have explained and if so to investigate those. Accordingly there are two broad strands to the evidence gathering process:

The first is to assemble all relevant evidence in relation to the three known trials. The second is to make all appropriate inquiries to ascertain whether there were other trials that ought to be the subject of investigation. And clearly, if such investigation reveals that there were other trials, then to investigate them as well. I will deal with them separately.

In relation to the three known trials it is the

intention of the Investigation Committee's legal team to pursue in private initially all lines of inquiry identified to them for the purposes of assembling all material evidence. When that process has been completed the relevant evidence will be made available to legitimately interested parties in advance of public hearings.

It is the intention to propose formal procedures at a subsequent preliminary hearing for the consideration of the Investigation Committee and interested parties. And it is hoped, therefore, that procedures in the light of that proposal and any submissions that might be received in relation to it will have been fixed before the commencement of the taking of evidence in public at public hearings, though it is likely that any such procedures will contain a caveat that they may be necessary of amendment in the light of proceedings as they develop.

It would be the intention of the legal team to invite this Division, where appropriate, to exercise its powers under Section 14 of the Act, which entitles the Investigation Committee to direct the attendance of witnesses, the production of documents, the swearing of affidavits of discovery,

if necessary the taking of evidence on Commission both to enable it to pursue its private inquiries

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and to enable it to assemble material evidence that will be necessary to put before the Division at its public hearings.

That is the first broad strand of the consideration and the inquiry. In relation to the second matter, being the possibility of other trials being uncovered, the legal team will attempt, again in private initially, to ascertain, especially from persons who may respond to the advertisement already published, whether there may have been other trials as defined in accordance with the terms of reference and also noting the comment made by you, Madam Chairperson, to the effect that if a trial emerges from a source other than a Complainant and therefore would not technically come within the terms of reference but there seems to be evidence that there was such a trial the Investigation Committee would give serious consideration to the possibility of inviting the Government to expand the terms of reference to include such a trial.

Clearly, should the legal team come across

significant evidence from a source other than a Complainant to the effect that there may have been other trials it would be processed in accordance with those indications.

The initial test which the legal team would propose

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applying is whether there is reasonable evidence available of the existence of such other trials as defined, in which case it would put that evidence to the Investigation Committee with a recommendation that that trial might at least first be considered as to whether it was a trial and subsequently if found to be a trial, be investigated.

Clearly, if such evidence is found and the Investigation Committee is satisfied that it constitutes another trial the legal team will engage in a similar exercise in relation to any such other trials as it has already commenced in relation to the three known trials.

I would like to emphasise, Madam Chairperson, that the Division's legal team would welcome the opportunity to discuss at any material time and

certainly well in advance of any public hearings, to discuss with any relevant likely witnesses, parties or their advisors the evidence that those witnesses may be in a position to give.

It clearly has the advantage of focusing the public hearings both to the advantage in terms of efficiency of the Commission and to the advantage of all parties in the exclusion of irrelevant material if the legal team are as aware as possible in advance of the evidence that it is likely to be in a

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position to present.

I should also point out that two junior counsel have to date been retained to assist the legal team with the initial investigation and to process inquiries. Those they are referred to as Inquiry Officers I should point out from a legal point of view that it is not currently envisaged that they will be engaged in the carrying out of the statutory functions assigned to Inquiry Officers under Section 23 of the Act, because as presently considered the nature of the investigation into vaccine trials does not lend itself to such a mode of inquiry.

It is not possible at this stage to give an estimate of precisely how long the evidence gathering phase will take. It is the current intention of the legal team to invite the Investigation Committee to commence its public hearings as soon as it feels that it has gathered all material evidence in relation to the three known trials.

Inquiries into other trials, if any, found to have occurred will continue in parallel with the public hearings into the three known trials and will, if evidence of them comes into existence, be the subject of further public sittings whenever all material evidence in relation to such further trials has been assembled. Whether that would occur

immediately after the conclusion of the inquiry into the three known trials or after a gap would depend on the logistics of the situation.

It should also be noted at this stage that it is the intention of the legal team to propose that, in common with Tribunals of Inquiry, all evidence will be led by the Commission's legal team irrespective of the party against or in whose favour such

evidence might lie. That is obviously subject to appropriate questioning by other parties. The legal team would like to emphasise that it would welcome informal discussion with the representatives of any interested parties with a view to resolving any procedural difficulties at as early a stage as possible.

Finally, there have been inquiries from some individuals and solicitors as to legal representation on behalf of those who were or may have been the subject of a vaccine trial. Clearly, those who are found to have been or who are concerned that they might have been the subject of vaccine trials have an interest in the work of this Division of the Investigation Committee.

It cannot, however, be said that any of them is subject, on the basis of information currently available, to any adverse finding against them which

would make it necessary for them to be individually represented throughout the public hearings.

Bearing in mind the understandable mistrust that many of those who have been in institutional care

have for the State and its various institutions the legal team would propose that at least consideration be given by this Division to the following arrangement in the interests of ensuring firstly that the interests of those affected are protected and, secondly, that the inquiry is conducted in an orderly and efficient manner.

We propose that consideration be given to the appointment of an independent legal team by a neutral body to represent the interests of all those who were or who may have been the subject of a vaccine trial during the relevant period. The firm appointed would be contractually precluded from acting on behalf of any individual whose interests they represent before the inquiry in any other capacity.

The purpose of this provision would be to ensure that the entire focus of the team appointed would be on representing the interests in the inquiry of all those persons affected or potentially affected by vaccine trials. This provision will also ensure that any existing lawyer/client relationships which

affected persons may have would not be interfered with.

A distinct advantage of proceeding in this manner in the opinion of the Division's legal team is that one legal team which has a full understanding of all the issues will best represent the interests of those affected. It is also envisaged that such a team would retain its own experts to advise it and, if they thought it appropriate, suggest that such experts would give evidence to this Division of the Investigation Committee on behalf of the persons affected.

It is also reflective of the fact that at present, and I emphasise at present, there is no apparent difference of interest as and between various affected parties. It may be, though it is difficult to envisage at this stage how it might become so, but it might be that at some subsequent stage some difference of interest might become apparent. But as presently informed, there does not appear to be any difference of interest between the various parties who might be involved.

Furthermore, if such a proposal were to meet with the favour of the Division of the Investigation Committee it would be necessary to put in place a transparent and acceptable process for the selection

of such a team and also to provide for an appropriate involvement on the part of such persons who are so affected who would wish to be involved in that process.

I might also add two things: Firstly, that is the position as currently obtains. When a clearer picture of the identity of the persons in respect of whom there may be evidence that they were in fact affected persons, if I can just use that term loosely, has emerged it is possible that there might be identified a grouping or body or some such which would be broadly representative of all of such persons.

I do not think it could be proposed that the Commission would impose representation that was against the wishes of such a broadly based body. But until such time as the precise parameters of those who may be affected have been identified it isn't immediately clear that there is any such body, though there were known to be groups of persons who have been affected who have expressed an interest.

I suppose, Madam Chairperson, the real point is this: If there is no difference of interest between

those affected then it is difficult to see how there is any necessary public interest in a multiplicity of representation of the general interest of those

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affected. Unless and until there emerged a clear agreement between such persons as to who they might be represented by it does not seem to the legal team to be in the public interest or indeed in the interests of the Commission or indeed even the interests of such persons that there be a multiplicity of representation.

And unless and until such a position emerges it would be the proposal of the legal team that something along the lines that I have just indicated might be adopted.

The second qualification perhaps that I should give to that, Madam Chairperson, is that it is clearly subject to an overriding requirement that any affected person who is actually required to give evidence to the Division would necessarily be entitled to appropriate representation by a solicitor and counsel of their own choosing. Clearly, there would be no intention to depart in any way from that general rule.

And that would mean representation while they were giving evidence or in relation to any other matters that specifically impacted upon them. For example, if at a subsequent stage there was a dispute about whether there was a trial and there was conflicting evidence in relation to that then clearly those who

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were involved in that conflict would be entitled to a much wider range of representation.

If in the course of its inquiry it becomes clear, for reasons which cannot be identified at this stage, that any particular individual or group of individuals might require more extensive representation then the Commission will of course at that point give consideration to granting such further representation.

And finally, given that the legal team is itself I suppose the first port of call for the assembly and consideration of evidence I too would like to emphasise the point, Madam Chairperson, that you made to the effect that the ambit of this inquiry is into trials, not into vaccines.

Much as there may be public interest in the effect of vaccines and public debate about that issue and important as that debate might be, it is not for this forum, it is for other fora and we would ask that we not be sent information that does not relate to trials. Because necessarily that will simply involve us in additional and unproductive work in dealing with the submission of information that we cannot legally deal with.

We are confined in our inquiries and in the evidence

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that we will seek to put before you and the Division to evidence that relates to trials as defined. They are the only comments I would wish to make at this stage, Madam Chairperson.

CHAIRPERSON: Thank you, Mr. Clarke. I will now take any applications for legal representation.

MR. O'FLYNN: I appear on behalf of the Sisters of The Sacred Heart and that is an Order which is anxious to furnish whatever assistance it can to the inquiry. The Order had "mother and baby" homes rather than orphanages in the relevant period, including the

mother and baby home that was referred to by
Mr. Clarke at Bessborough in Cork.

As to legal representation I noted that the words
used by yourself, Madam Chairman, when addressing
the issue of legal representation were "whether or
not interests were adversely affected or impugned".
At this stage I do not apprehend or hope that the
interests of the Order will be adversely affected or
impugned, but it is undoubtedly the case that we
would have information that may be of assistance to
the inquiry and we would be anxious that that
information be furnished to the inquiry.

And for that purpose I would be applying for limited
representation at this stage insofar as there is any

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interest of the Order touched upon. And naturally
if at any later stage it became clear that a wider
representation were necessary then I would be making
that application. But at this stage I am simply
making an application for limited representation in
order to allow that process of assistance to take
place.

CHAIRPERSON:

Mr. Clarke?

information to the inquiry rather than -- it may be that once that information is in the hands of the inquiry there is no need for any wider representation. So when I expressed it as limited, it is limited to that procedure at the moment and that is the only application that I am making.

CHAIRPERSON: I would have thought that if evidence is sought you are under a statutory obligation to produce it under the terms of the Act of 2000. I would not have envisaged granting legal representation in relation to the evidence gathering process. I am maybe taking too stringent a view on that and I will hear what Mr. Clarke has to say.

MR. CLARKE: I think, Madam Chairperson, I would respectfully agree with the comment that you have just made. Clearly, any costs incurred by parties in complying with the requirements of the Investigation Committee in the evidence gathering phase are allowable in in any event I think without the granting of representation. I think it is important to keep representation down to those who will be actively involved with the public hearings.

But we will of course communicate with Mr. O'Flynn's solicitors in relation to any matters that would properly arise in the investigation stage and the costs of such would clearly be entitled to be recovered by them.

MR. O'FLYNN: I am happy with that course.

CHAIRPERSON: Very well, then your client's position is noted. Perhaps it may be of some comfort to you to note that even in the Act of 2000 as it is there is provision for taxed costs of complying without direction for discovery.

MR. O'CONNELL: Madam Chairperson, my name is Mark O'Connell and I am representing Mr. Paddy Doyle who is unable to attend here this morning due to ill health. However, he has asked me to apply for legal representation on his behalf limited to the second category of the inquiry which you outlined earlier.

Mr. Doyle, just as a precis, attended St. Michael's Industrial School in Cappoquin, County Waterford in the 1950's and subsequently St. Vincent's Hospital then in St. Stephen's Green in Dublin and also the Mercy Hospital in Cork at various times in the 1960's. In all three institutions he claims he was subjected to clinical trials without his prior knowledge or consent and he wishes to be represented

at this phase of the inquiry to make his allegations and to have them investigated.

MR. CLARKE: I think there are two points to be made under this heading, the first is perhaps specific to the circumstances identified. This would appear to be a convention of other trials, that is trials other than the three identified in the Chief Medical Officer's report. As I indicated, the process in relation to that has to be that we first have to identify whether there is realistic evidence that such trials took place.

Clearly, if there is material available to suggest that, the evidence gathering job of the legal team would be greatly facilitated by that being made available to us. And if there be evidence, as I indicated in relation to Mr. O'Flynn, that any legal costs associated with complying with requests for that evidence would be met if such requests are made. So that is one point. I think it is premature at this stage unless and until we identify whether there is real evidence that there were other trials.

functions and made a useful submission some time ago. I am sorry to hear he is not in good health and I wish him a speedy recovery.

MR. O'CONNELL: I will pass that on to him.

MS. McCRAN: Madam Chairperson, my name is Una McCran and I am a barrister and I am instructed by Anne Marie

McCrystal, Solicitor who acts on behalf of a group of people led by Mr. Victor Boyhan, all of whom are individuals who were resident in children's homes and orphanages during the relevant periods envisaged to be investigated by your inquiry and all of whom will allege that they were or may have been the subject or subjected to clinical trials covered in both phase 1 and 2 of the terms of reference.

I had been instructed to seek legal representation on their behalf this morning, but in view of Mr. Clarke's comments in relation to the possible scheme that may be put in place or that is envisaged by the inquiry that will be put in place to cover representation of those persons I am merely asking you to note that I am reserving my position on

behalf of Ms. McCrystal's clients in relation to that aspect of the matter.

Obviously Ms. McCrystal will be in touch with the legal team to tease out the proposals that are envisaged by the legal team and obviously I will have to take instructions from my clients in relation to that. But this morning I am merely reserving my clients' positions and I would ask you to note that, Madam Chairperson.

CHAIRPERSON: Very well.

MR. CLARKE: I respectfully suggest that that is a very

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reasonable position to adopt and we will engage in such discussions as are indicated by Ms. McCran.

CHAIRPERSON: Very well, the position will be noted, Ms. McCran.

Any other applications for legal representation?

MS. BACIK: Madam Chairperson, my name is Melada Bacik and I am here from Lavelle Coleman Solicitors. I believe our involvement is already known to the Commission on other aspects of the Commission's remit.

CHAIRPERSON: Indeed.

MS. BACIK: Again having heard

Mr. Clarke's comments I would like to make a submission on similar lines as Una McCran. Our clients, some of whom were resident in identified homes and some of whom were resident in homes that may be identified during the course of this investigation, again I would ask that our application be noted and our position be reserved on similar lines.

CHAIRPERSON: Very well. I suppose it would be helpful,

Mr. Clarke, if both Ms. McCrystal and Lavelle Coleman gave the legal team a list of names?

MR. CLARKE: Yes, I was going to suggest that at the end.

Clearly we are assembling such information as we may be able to put our hands on which confirms the fact that people were the subject of inquiry so as to

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correlate that. It would be very helpful where persons do not represent an individual if a list could be sent to us.

CHAIRPERSON: Very well, any other applications?

MR. MURPHY: Madam Chairperson, if I could make an observation

and application to you in respect of a batch of clients who I represent.

CHAIRPERSON: You can remain seated, it is probably more convenient for you.

MR. MURPHY: There are a rather substantial number and you will also be aware of my representations made to the Commission already, my name is Eugene Murphy and I am a solicitor in Cork. I do not largely agree with the mode in which this is put upon us this morning insofar as, I will not use the word "ambush", but I am particularly surprised in relation to the exclusion which there appears to be de facto of the representative relationship that exists and very private relationship bearing in mind the nature of these matters that presently exists as between victims and their solicitors and their barristers.

We have a major difficulty, I certainly do, in handing over the baton to the very competent, because I am aware of Mr. Clarke for many years,

under his aegis and to explain to my clients that these extremely sensitive matters must now be handed over to another legal team.

A further logistical point arises insofar as I and a certain other number of solicitors throughout the country must now consider a large number of files, volumes of papers in each file and find out was there a trial or was it just an ordinary vaccine, what institution was it. We are doing so somewhat in the dark. I presume we will ultimately have sight of the three clinical trials which were already carried out and we can then marry that up with the large body of files which we have?

That creates enormous difficulties, but if that is the way it has to be, that will have to be done. I do feel that we should be afforded that opportunity and I am applying for full representation today on behalf of the clients that I represent who are already known to the Commission. Because I propose to represent those clients to the best of my ability, as does my nominated counsel.

And I repeat the difficulty that I have in breaching the confidentiality which I have created with my clients in respect of highly sensitive matters not to mind vaccination that a lot of these people do not even know that they had on a trial basis or on

Mr. O'Brien's part. There is no intention of foisting on individuals any legal representation. What we are talking about here is an interest, an interest that may or may not emerge. I would ask Mr. Clarke just to explain the suggestion again, but

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there is no question of the individual relationship between a client and his solicitor or his barrister being interfered with. So if Mr. Clarke would not mind explaining the suggestion again?

MR. CLARKE: Yes, Madam Chairperson.

I think there are three very separate things that have to be identified. The first I think that has to be said at this stage is that it is clear from a series of decisions of the Supreme Court that the only legal way in which an inquiry such as this can be conducted is if there is initially a private inquiry to see if there is evidence.

If people perceive that to be muzzling the prevention of evidence or stories being told at this stage then they obviously are entitled to their own view. But it wouldn't be consistent with the legal obligations of this Commission to permit any evidence to be tendered at this stage until such

time as there has been a private inquiry. And to be honest, if we tried to do it people would have a High Court Order stopping us doing it in the morning and they would be right. So that is the first point that has to be made, we are all bound by that law whether we like it or not.

The second point I think that does have to be made is that the suggestion that is put forward, and it

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is only a suggestion, it may find favour, it may be rejected, is not that insofar as the story of any individual has to be told that that person will not be entitled to have their own legal representation in that I made clear that the suggestion I was making had no bearing on that. If as the speaker from the back indicated...(INTERJECTION)

MR. O'BRIEN: Mr. Michael O'Brien.

CHAIRPERSON: Mr. Michael O'Brien.

MR. CLARKE: I am sorry, I didn't know
Mr. O'Brien, I am happy to refer to him by name. If Mr. O'Brien or anyone in his position has a story that needs to be told in evidence before the Commission then that person is entitled to their own legal representation. And I

hope I made that clear, if I did not then I apologise.

But there is a wiser question and that is the representation of the interests generally of those who may have been affected, some of whom may be here, some of whom may be members of organisations, some of whom may be not. And it is a suggestion as to how that interest may be properly represented that I was making. The Commission is constrained only to put before itself as a matter of law evidence that is relevant.

If there is relevant evidence to come forward and it

comes from those who are affected then they are entitled to their own legal representation in relation to that and there is no question about it. I want to make it absolutely clear that my suggestion does not in any way exclude that, it is relating to the necessary representation of the wide range of people who have been affected.

We believe that the number in the three identified trials is not far short of 300, certainly in the middle 200's. If further trials are identified then

clearly that number will grow larger. We have to have regard to the interests of all persons who are affected and my suggestion is in relation to a way in which that might be met. And it is not in any way inconsistent with full selection by the individuals concerned if there be a body or group which is largely representative of them.

But I do have to say I do not believe that it is appropriate that there be an excessive multiplicity of representation of people who have no different interest. And it is to that end that my suggestion is directed.

Finally I would say that there is certainly no suggestion that even if the proposal that I made were to find favour that the lawyers would be foisted by the State. I indicated that there would

need to be a transparent and acceptable selection process and did that in the context of expressing understanding of the fact that persons in the position of Mr. O'Brien have legitimate reasons why they might not be trusting of the State and it would therefore be necessary to explore an appropriate

means by which such a neutral team could be appointed.

CHAIRPERSON: Mr. Murphy, do you want to say something?

MR. MURPHY: Briefly if I may, Madam Chairperson, thank you.

Whilst what the legal team are saying is understandable from a legal point of view, from a practical and workable point of view I certainly cannot accept it. I know that the fear has been expressed concerning multiplicity of representation. You would be well aware that that is not the case and cannot possibly be the case, because you are well aware that there are a small few firms of solicitors in Ireland and their chosen counsel dealing with this matter.

It isn't the question that the three or four thousand people that are directly represented here are represented individually by separate solicitors. There are large bodies of common interest groups who are represented by the one firm and the multiplicity that counsel has expressed a fear of does not exist.

There is a common interest and those people deserve to be represented by that person they put their

faith in from day one and nobody else.

CHAIRPERSON: First of all, Mr. Murphy,
I just wonder is there an element of confusion here? What I am concerned with today are scientific trials and as I indicated at the outset I am taking applications for legal representation specifically in relation to the trials which have been identified by the Chief Medical Officer of the Department of Health.

Our other functions in relation to abuse in institutions are separate matters. This is a stand-alone module of the Commission's work and it is focused on actual scientific trials. It seems to me that some of your clients may be able to identify other trials, but the Commission does not expect you as a solicitor for an individual to take upon yourself the burden of investigating whether a trial existed.

All you have to do, and indeed Mr. O'Brien has done it already, he has written in to the Commission and he has indicated that he believes he may have had an involvement. The burden of investigating whether there was a trial in which somebody like Mr. O'Brien was involved will be taken on by the Commission, it does not have to be taken on by the individual

solicitors. That is the first point.

And until we identify further trials we do not know what interests are to be represented. I will note first of all your position that you may represent clients who have an interest in the affairs of this particular module of the Commission's work. I will note your objection to the suggestion made by the legal team.

No decision will be made today, the decision will be deferred until the issues which affect the grant of legal representation, whether there was a trial in which a client of yours was interested in the past, whether such a trial is going to be investigated, until those issues crystallise I will defer a decision on your application. But the position is noted and it will be noted on the transcript.

MR. MURPHY: I appreciate that. In relation to two of those institutions, as I have said, I have a large body of clients. Certainly in relation to two of those I have had persons go through those institutions. I do not know how many, I have to investigate that. Am I acting for this person or am I not is the issue that I make today in relation to this Division's work. It is a difficulty that all practitioners will have.

CHAIRPERSON:

I don't see that it is a

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difficulty, because it seems to me that you are assuming a burden which you should not assume, all you should do is write to us and tell us "I have" -- just for the sake of illustration I mentioned Bessborough and I hope no offence will be taken by Mr. O'Flynn, "I have three clients who were in Bessborough in 1960 and 1961". You can write and tell the Commission that.

MR. MURPHY:

I cannot, because I have not got my clients'

permission to divulge that information.

CHAIRPERSON:

Well, your clients can write and tell the

Commission. But the Commission has to gather the evidence in some way. It is not the function of the legal representatives of individuals to gather the evidence for the Commission, the Commission has a statutory mandate to gather the evidence itself. It needs the co-operation of members of the public who are affected by these issues, but it is the Commission's job to gather the evidence. I do not know whether I have explained this very well.

MR. MURPHY:

I think you have and I

fully understand where you are coming from. This is another form of institutional abuse, the responsibility for which rests with me for my clients to investigate and deal with in a full fashion. I hope to do that by investigating all aspects, including the aspect

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before this Division of the Commission.

CHAIRPERSON: Yes. But the other aspects of the functions of the Commission, if I may call it the general abuse inquiry is a separate issue. All we are doing here is inquiring into clinical trials, scientific trials.

MR. MURPHY: I will renew my application on another date.

CHAIRPERSON: Thank you, Mr. Murphy. And thank you, Mr. O'Brien, for your contribution. Are there any other applications specifically relating to the three trials which have been identified? I am talking about applications for legal representation.

MR. TRACEY: My Lord, my name is Tony Tracey and I represent the Right of Place Group in Cork. I too object to

counsel being foisted upon us. I am a survivor of institutional abuse and I agree with Michael O'Brien there. There are representatives of five or six different groups in these premises today and I feel that each group should be given their own legal representation on the basis that we have come in here with our hands tied behind our backs and our eyes blindfolded.

We do not know if we were vaccinated, if they

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performed trials on us, we do not know this, we are only going by what the Government is going to say to us. In the past few weeks I have had numerous people come in to me and assert that there was trials committed on those people. We feel, each group feels that they should be legally represented. There is only about six groups in the country and it won't cost all that much money and it won't cause all that much confusion either.

We feel in the interests of justice and for justice to be seen to be done that each group should get their own legal representation and be paid for by the Commission.

CHAIRPERSON:

Yes, Mrs. Buckley?

MRS. BUCKLEY:

You were asking for legal
representatives here. I

find it very painful, legal representatives were not
in care, we were. I also think that it would have
been fitting for Mr. Clarke, he does know all the
different representatives from the groups, it might
have been better had Mr. Clarke made an appointment
and met with us before he came here today to say
that this is what was planned, instead of people
going to their own solicitors or senior counsels.

I do not think it is acceptable. And finally, you
are talking about three trials, Madam Chairman.
That is three trials that you know about and that is

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fair enough. We all know now, but -- well, we
always knew, but the public did not know what we
went through for years and years. And I do not
think it is acceptable to just talk about three
trials. Because if you look at what we have got
back from the Freedom of Information regarding our
time in care it is appalling, the information is
scarce, the information is not there.

So if the information is not there regarding our

schooling, regarding our nutrition, regarding our general well-being, regarding our psychological well-being, regarding medication then I do not think there is any INAUDIBLE as regards trials that we had going back to the 30's and 40's and 50's. I think had we had the opportunity to meet with Mr. Clarke about this issue we could have expressed it that this is a big concern for us.

That is a much bigger concern than organising a group of solicitors to look meet with survivors who feel that they had trials. How would we know? I went into care at three weeks and I came out at 18, how could I have know what happened to me in baby homes and in this place. I am speaking not just for myself, I am speaking for a majority of people.

We have to be empowered here, we have been too long left on the side and I think it is terribly

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important that instead of asking for legal representatives you should have asked would any of the group representatives like to talk. Thank you.

MR. KELLY:

John Kelly. I was not going to speak here today,

but I have to say that I think Mr. Murphy raises some very, very serious points and I think maybe the solution to all of this is that we would meet with Mr. Clarke. I have received many phone calls, a substantial number over the last week and many victims perceive that this is simply dumping this lot into the Commission, they believe that it is to deny liability.

Because as you know, Madam Chairman, INAUDIBLE is like all the other aspect of your inquiry, all the information, evidence INAUDIBLE to obtain immunity. So we really need legal advice and I would take the opposite view from what Mrs. Buckley said, we really need legal advice, because lots of people were in institutions and these people are saying this: "I was injected with an unknown substance, I do not know what it was".

The only way we can find this out is we have to have a mini investigation by our own solicitor. He will have thousands of clients and this is only a small group, say of eight or nine big firms that will be dealing with this. But they need their own

solicitor, they built up a trust and they do not

trust the State. They trust their solicitor, he is the one that has dealt with them.

But my concern and lots of the calls that I am getting is that if they actually attend the Commission it is Catch 22. The only way they can actually find out, and this is what Mr. Clarke is saying, the only way they can find out whether there actually was test trials or clinical drug vaccine trials or whatever you would call them, the simple fact is that it is by going to the Commission. Therein lies the problem, because once you make discovery at the Commission you cannot use that evidence, documents, utterances or statements in any other form be it criminal, civil or compensation tribunal which has been set up.

You know that and I know that, Madam Chairman, that is what is in the Act. So I think that there was a very good suggestion that maybe each group should be represented by a solicitor initially and I think that solicitors should be paid to cover the investigation, even the solicitors are going to have to have a mini investigation prior to going to the Commission, it is as simple as that. I thank you for giving me this opportunity to speak, Madam Chairman.

CHAIRPERSON:

Thank you, Mr. Kelly.

general abuse allegations. Every person, every Complainant who is participating in the general

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abuse inquiry has their own legal representation by solicitor and counsel.

What we are talking about here is a totally separate issue. This is an inquiry into scientific trials, it is at a very, very preliminary stage. We have identified three trials because they have emerged as a result of the inquiry and the investigation carried out within the Department of Health and children. So far we have only identified today one representative with an involvement in the three trials, that was Mr. O'Flynn in relation to Bessborough -- I am wrong, I think Ms. McCran and Ms. Bacik are in the same situation.

I want to assure Mrs. Buckley that I wasn't asking for lawyers to stand up and make an application, I was making a general request for applications seeking legal representation in relation to the three identified trials. As I say, this is a separate and distinct module of the Commission's work, it is about clinical trials, about scientific

ten years of documentation in relation to inquiring about drug trials with the Commission and what I want to know is is that solicitor still representing me now in relation to the three trials that you are referring to here?

CHAIRPERSON: Yes. Is your solicitor Ms. McCrystal?

MR. LEE: It is, yes.

CHAIRPERSON: Ms. McCran is here representing your interests.

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MS. MCCRAN: Yes, Madam Chairperson, perhaps I can be helpful at this juncture. Unfortunately, Ms. McCrystal did not have an opportunity to meet with Mr. Lee before we came in, but I can assure you, Madam Chairperson, that Ms. McCrystal will be talking to all of her clients and explaining the situation. I certainly wouldn't want to be seen to be committing Ms. McCrystal to any of the proposals outlined by Mr. Clarke this morning.

I merely said that we would wish to consider those proposals and to see what in fact was being proposed

by the Commission and obviously to work with the inquiry and to see whether some arrangement can be made. If it cannot be made and if Ms. McCrystal's clients feel that the trust and confidence which they have built up with her cannot be satisfied in that way we are reserving our position. That is what I wanted to make clear.

CHAIRPERSON: Yes, I understood that to be the case. Mr. Lee, Ms. McCran is the barrister instructed by Ms. McCrystal and we have noted the position of your solicitor and your counsel. They are not committing themselves to anything, no decision whatsoever has been made. All they have said is that they are going to consider the proposal. So you are not jeopardised in any way or prejudiced in any way by

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anything that has happened here. Yes, Mr. O'Connell?

MR. O'CONNELL: Just to confirm my own position, I am instructed by McGuire McLaverty & Co and we are also in the same position as Ms. McCran, we are considering the position as outlined by Mr. Clarke.

CHAIRPERSON: Yes, that will be noted. There has been no decision

I would like for you to clarify whether or not if information becomes available after 15th will it be accepted or will we have to go back and tell our clients: "I am sorry, because you did not get this information before 15th you are outside of this aspect of the Commission"?

CHAIRPERSON: Well, I suppose that is really a matter of policy for the Commission.

MS. MADDEN: Well, I would like it to be noted so that...(INTERJECTION)

CHAIRPERSON: Yes, it will be noted and it will be considered and we will consider the submission that you have made, but I just want to make a number of points about what you have said. First of all I would have to accept that in relation to this particular part of the Commission's work the timeframe has been short. But that was done with a view to getting the inquiry completed as soon as ever possible because of the long time lag since the events we are looking into occurred. That is the first point, I accept that.

I do not at all accept your remarks in relation to the closing date for the general abuse inquiry. But in any event, the matter will be considered, your submission will be considered. But finally, again may I emphasise that solicitors do not have to take on the burden of the statutory functions given to the Commission by the Oireachtas.

It is for us to inquire into whether any other trials took place and we have the resources to do that. And as I say, all you have to do is give the basic information which has been sought in the advertisement to the Commission. When all of the information is in the legal team will then look at the matter and there will probably be a questionnaire going out so that we can investigate the matter further.

But as I say, don't do our job, the State is resourcing us to do that job and there is no need for you to do it. So on that basis I will adjourn this sitting. Thank you very much.

THE HEARING WAS ADJOURNED

