



***Coimisiún Imscrúdúcháin (Nithe Áirithe i dtaobh Seirbhís Míchumais
san Oirdheisceart agus Nithe Gaolmhara)***

***Commission of Investigation (Certain matters relative to a disability
service in the South East and related matters)***

Marjorie Farrelly S.C.

Sole Member

FOURTH INTERIM REPORT

Commission of Investigation (certain matters relative to a disability service in the South East and related matters).

1.0. Introduction

- 1.1. The Commission submits this Interim Report to the Minister for Health in accordance with the Minister's request dated 15th May 2018 to provide a report on the 15th January 2019 on the further progress of its investigations together with a summary of work yet to be undertaken.

2.0. Progress of the Commission's work

- 2.1. Progress of the Commission's work from commencement on 15th May 2017 to 14th September 2018 has been set out in the Commission's interim reports of 14th November 2017, 27th April 2018 and 14th September 2018.

3.0. Progress since 15th September 2018

3.1. *Preparations*

- 3.1.1. In its earlier interim reports the Commission has described the modularisation of its investigation, in the main, on a chronological basis. This method has continued since the presentation of the Commission's last report dated 14th September 2018 ("third interim report"). This remains effective having regard the length of time under review, the volume of information to be addressed and also the fact that certain matters under investigation lend themselves to joint consideration or to stand alone treatment.
- 3.1.2. A substantial body of further investigative work has been carried out by the Commission since submission of the third interim report.
- 3.1.3. Module 5 of the Commission's work was organised into two parts addressing the scope of the Commission's investigations into the care and protection of Grace by public authorities, as set out in its terms of reference, over the period from January 2007 to July 2009. 5A focuses on the period from

January 2007 to October 2008 and module 5B focuses on the period from October 2008 to July 2009.

- 3.1.4. Earlier interim reports have described the preparatory work for the taking of evidence with respect to the above time periods. Much of this work centred on the analysis of module relevant documentation sought out by the Commission and disclosed to it from multiple sources. This documentation has been particularly voluminous. The Commission's third interim report also described the preparation of a documentary narrative of matters disclosed in the documentation. This has assisted the Commission in the management of hearings and has helped those witnesses and bodies in attendance to engage with the evidence. This organisation of the core documentation has proved of very considerable benefit and has provided the basis for a thorough and forensic examination of witnesses.
- 3.1.5. The further progress of investigations in modules 5A and 5B are set out below.
- 3.2. *Module 5C*
 - 3.2.1. The Commission's investigative work and work preparatory to hearings concerning events between July 2009 and December 2009 with respect to issues relevant to the Commission's terms of reference has continued. The documentation pertaining to this period, disclosed from multiple sources and analysed by the Commission, is even more extensive than that disclosed for either period under investigation in modules 5A and 5B.
 - 3.2.2. The scope of the matters to be investigated with respect to the above will be dealt with in module 5C of the Commission's work.
 - 3.2.3. The Commission identified 36 witnesses whose evidence is required in 5C.
 - 3.2.4. The preparation of booklets of core documentation and its distribution to proposed witnesses in module 5C and relevant bodies has now been completed.
 - 3.2.5. The Commission will be in a position to schedule separate and group hearings in module 5C as appropriate to the circumstances of its investigations, when hearings scheduled in module 5B have concluded.

- 3.2.6. Having regard to the volume of relevant documentation and the number of witnesses, these hearings will be extensive.
- 3.3. *Module 7*
- 3.3.1. Further to the investigative work outlined in the Commission's third interim report, the Commission is at the stage of preparation of materials for distribution before the taking of evidence on the matters set out in the terms of reference for the period from January 2010 until 2016. Progress on scheduling witnesses whose evidence is required on matters of relevance can be attended to on completion of hearings in module 5B and 5C.
- 3.4. *Hearings – 14th September 2018 to 14th January 2019*
- 3.4.1. The Commission has held hearings on 46 days over the above period
- 3.4.2. Further evidence has been taken from 20 witnesses in module 5A.
- 3.4.3. Evidence has been taken from 17 witnesses in module 5B.
- 3.4.4. Evidence has also been taken from 13 other witnesses on matters under investigation across the full breadth of the Commission's terms of reference, designated module 6 in the Commission's working methodology.
- 3.4.5. The Commission has now heard from approximately 101 witnesses over 204 appearances before the Commission across modules 1 to 5 with respect to the matters to be investigated in phase 1 of the Commission's work.
- 3.4.6. The nature of the conduct of the Commission's hearings, as appropriate to the circumstances of its investigations, continue as set out at paragraph 3.8 below.
- 3.4.7. Having regard to the extent of evidence to be gathered from a significant number of witnesses on matters pertaining to the care and protection of Grace over the period under enquiry both in examination by the Commission and cross examination, the taking of evidence can be lengthy with many witnesses under examination over several days. The process is dynamic and estimations of the length of time likely to be required from witness to witness are necessarily only that.

- 3.4.8. Further, the matters which the Commission must take into account with respect to witnesses as set out in earlier reports continue to apply. The Commission has been required to reschedule hearings on a number of occasions over the above period to accommodate issues of ill health, frailty and particularly grave personal circumstances. The Commission continues to manage these witness issues as they arise and reorders the schedule of witnesses as is feasible and appropriate to the investigation in order to progress matters as expeditiously as possible at every stage.
- 3.4.9. The Commission appreciates the cooperation it has received from witnesses to date. This has been of considerable assistance to the Commission in its investigative work.
- 3.4.10. The hearings in module 5B which were expected to run to late November 2018 will now continue into February 2019.
- 3.4.11. The Commission has continued to conduct hearings both in the South East and in Dublin.
- 3.4.12. The number of transcripts of evidence has increased to 132 and the work of analysing evidence received continues.
- 3.4.13. The Commission has now conducted 132 days of hearings of evidence since its establishment. This includes 46 days of hearing since the date of the Third Interim report.
- 3.4.14. The Commission has gathered a considerable amount of valuable additional evidence on the matters being investigated under its terms of reference.
- 3.5. *Upcoming hearings*
- 3.5.1. The Commission is currently engaged in private group hearings with a number of witnesses in module 5B. This set of hearings during which evidence will be taken from approximately 20 witnesses is scheduled to continue into February 2019. The nature of such group hearings is in accordance with the methodology adopted by the Commission referred to at paragraph 3.8 below.
- 3.5.2. Arrangements are now being made for the taking of outstanding evidence in module 2, deferred for witness considerations.

3.5.3. The Commission intends to commence the hearing of evidence in module 5C by March 2019 subject to the hearings in module 5B having concluded.

3.5.4. Having regard to the variety of factors that necessarily affect the likely length of these hearings as outlined above and in previous reports, it is not feasible to estimate a date for commencement of the taking of such evidence as remains to be taken on the matters under consideration in module 7 of the Commission's work.

3.6. *Submissions on the evidence*

3.6.1. The Commission has received limited submissions from a number of parties on foot of its invitation to do so with respect to evidence taken in certain modules as set out in the third interim report. Most parties have declined to make submissions on the evidence. All submissions received will be considered.

3.7. *Witnesses*

3.7.1. The extent to which considerations pertaining to witnesses, set out in earlier reports, require to be managed, are outlined above.

3.8. *Hearings generally*

While the following has already been set out in the Commission's third interim report, it is repeated here for ease of reference:-

3.8.1. The Commission takes evidence from certain witnesses individually and in private, where the Commission considers it appropriate to the conduct of its investigations to do so.

3.8.2. The Commission continues where appropriate, to take evidence at private hearings involving a number of witnesses directed to give evidence and permitted to be present during the taking of certain evidence from other witnesses.

3.8.3. The Commission has further directed that certain other persons or bodies may be in attendance and legally represented during some private hearings where appropriate, and in accordance with the provisions of the Commissions of Investigation Act 2004 ("the Act).

- 3.8.4. Given the extent of the terms of reference and the involvement of a number of witnesses in the care and protection of Grace over a considerable period of time, the prospect of recalling certain witnesses remains under review.
- 3.8.5. Analysis, organisation, preparation and distribution of substantial packages of materials preparatory to the Commission's hearings are time and resource consuming tasks. The Commission has developed efficient methodologies for the carrying out of this work throughout the course of its investigations.
- 3.9. *On-going receipt of Disclosure material and claims of privilege*
- 3.9.1. The analysis of documentation disclosed to the Commission continues to remain an onerous task but a very revealing one. Since the date of submission of the Commission's last interim report, it has received approximately 6,000 additional pages of disclosure.
- 3.9.2. The Commission is awaiting compliance with a direction issued for issued for information arising out of recently discovered relevant facts.
- 3.9.3. Documents disclosed to the Commission are a primary source of information on the facts under investigation and in the identification of witnesses to be tracked, contacted and interviewed. They are also a primary source of information on which to prepare examination of witnesses.
- 3.9.4. The Commission has dealt with claims of privilege over documentation it requires to assist its investigations and continues to engage with such claims.
- 3.9.5. The Commission has, in earlier interim reports, described the tasks involved for its legal team in analysing documents disclosed for it.
- 3.10. *Correspondence*
- 3.10.1. Correspondence continues to be a necessary and continuous task associated with the Commission's work. Some correspondence can be of a very technical nature and requires detailed consideration by the Commission and its legal team. The task requires application of time and resources on a continuous basis. The Commission continues to be in active correspondence with a large number of individuals and firms of solicitors.

4.0. Conclusion

- 4.1. Significant investigative work has been undertaken and is continuing. The Commission expects that this will lead to a position where it will have sufficient evidence on which it can report meaningfully on all the questions raised in its terms of reference.
- 4.2. In particular, the Commission has gathered (and is continuing to gather) significant and valuable evidence in a substantial number of areas directed to be investigated in phase 1 of its terms of reference. These include:-
- (i) The situation concerning family X as foster parents
 - (ii) The handling of the fostering process in the case of Grace and family X
 - (iii) The care of Grace while living with family X
 - (iv) Grace's social and community interactions
 - (v) Allegations of abuse and whether Grace suffered abuse over the time under investigation
 - (vi) The monitoring and supervision of the care of Grace by the SEHB / HSE
 - (vii) Decision making within the SEHB / HSE, including as regards statutory responsibilities and the operation of statutory processes
 - (viii) Matters concerning representation made to the Minister of Health by and on behalf of family X
 - (ix) The circumstances in which Grace continued to live with family X until July 2009
 - (x) The implication of Grace attaining her majority while living with family X
 - (xi) The role of SEHB / HSE personnel in the discharge of their duties towards Grace and family X. This includes evidence on SEHB / HSE interactions with all relevant persons including the interaction of

relevant SEHB / HSE care professionals, administrators and managers between themselves and the dynamics of decision making within the SEHB / HSE

- (xii) The management function within relevant SEHB / HSE professional and decision making grades
- (xiii) The taking of legal advice by the SEHB / HSE at different stages, consideration of such advice, the taking of action on foot of such advice and the understanding of the application of the law in several care areas, including with respect to the wardship process and legal processes relevant to vulnerable adults
- (xiv) The decision not to proceed to make an application for wardship in respect of Grace over the period from 1996 to 2000
- (xv) Record and file keeping by the SEHB and HSE with particular reference to the functions under investigation. This includes issues as to availability of records at relevant times to support decision making and later availability for review of the manner in which the role of the SEHB / HSE was executed
- (xvi) The role and performance of An Garda Síochána over the time frames examined
- (xvii) Communication of information relevant to issues pertaining to the care and protection of Grace within and across public authorities at critical times.

4.3. The work to be undertaken, following the conclusion of all of the Commission's hearings and before submission of a final report to the Minister on phase 1, has been set out in the Commission's earlier reports and is as follows:

4.3.1. Analysis of the totality of evidence received by the Commission and consideration of any submissions received on the evidence from parties invited to make such submissions.

4.3.2. Preparation of the Commission's draft final report across the 35 areas of investigation in the first phase.

- 4.3.3. Circulation of the draft report or relevant part of the draft report to any person who may be identified or may be identifiable from the draft report in accordance with section 34 of the Act.
- 4.3.4. Consideration of any submissions made to the Commission or requests of the Commission pursuant to section 35 (1) (a) or 36 (1) of the Act.
- 4.3.5. Consideration of applications for directions with respect to costs.
- 4.3.6. Completion and delivery of the final report.
- 4.4. In accordance with the terms of reference set, term X must be considered once the Commission establishes the facts with respect to its investigations at Part III to IX.
- 4.5. The Commission continues to make significant progress and remains focussed on progressing its investigations as expeditiously as a proper consideration of the matters referred to the Commission in phase 1 permits.

Dated 10th January 2019

Marjorie Farrelly S.C.

Sole Member