



***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***

**THIRD 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 15<sup>th</sup> May 2018 to provide a report on the 15<sup>th</sup> September 2018 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 15<sup>th</sup> May 2017 to 27<sup>th</sup> April 2018 has been set out in the Commission's interim reports of 14<sup>th</sup> November 2017 and 27<sup>th</sup> April 2018.

**3.0. 28<sup>th</sup> April 2018 to 15<sup>th</sup> September 2018**

3.1. *Preparations*

3.1.1. The Commission has carried out substantial further investigative work since the submission of its last interim report on 27<sup>th</sup> April 2018.

3.1.2. The approach taken by the Commission, in the main, of dividing the issues to be investigated at Part VI to IX of its terms of reference into modules on a chronological basis has been set out in the Commission's earlier reports. This division into modules was necessitated by 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.

3.1.3. The matters under investigation by the Commission span, at the outer limits, almost 40 years, with the majority of the investigations focusing on the time period 1989 – 2009. While the terms of reference are grouped under eight broad headings, the specific areas of investigation for the Commission are set out in 35 separate paragraphs. In carrying out the task of devising a working methodology the Commission had further to have regard to the fact that a substantial number of those 35 paragraphs contain within them a requirement

for multiple sub-investigations, some individually requiring examination of issues as they developed over a 20 year period.

- 3.1.4. The scope of the areas of investigation from the Commission's terms of reference to be addressed in Modules 1, 2, 3A, 3B, 3C, 4 and 5 of the Commission's work, together with the progress of work in those modules up to 27<sup>th</sup> April 2018 has been set out in the earlier interim reports.
- 3.1.5. The Commission had carried out substantial preparatory work by April 2018 with respect to matters concerning the role of public authorities in the care and protection of Grace from January 2007 to July 2009, the focus of investigations in Module 5 of the Commission's work.
- 3.1.6. Investigative and other work preparatory to the taking of evidence in module 5 continued through May and June 2018. Documentation for examination in this module disclosed from multiple sources has been particularly voluminous.
- 3.1.7. To assist in the taking of evidence with respect to the matters arising from the above documentation, the Commission prepared a documentary narrative rather than a synopsis from the documentation disclosed. Considerable work was undertaken by the Commission's team over a number of months on this task. The purpose of the documentary narrative was to guide the Commission in the management of hearings and to assist witnesses and bodies in attendance in engaging with the evidence.
- 3.1.8. Module 5 was organised into two parts for the purpose of taking evidence with 5A focussing on the scope of the Commission's investigations into the care and protection of Grace by public authorities set in its terms of reference from January 2007 to October 2008. Module 5B focuses on the period from October 2008 to July 2009.
- 3.1.9. Approximately 35 witnesses from whom evidence is sought by the Commission with respect to the above timeframe, were identified.

### 3.2. *Hearings*

- 3.2.1. In July 2018, the Commission took additional evidence from six witnesses in Module 3B who were recalled to assist with matters that arose in this module since their evidence was originally taken.

- 3.2.2. In May and June 2018, the Commission took evidence from 17 witnesses over 12 days with respect to matters within the scope of its investigations in Module 4.
- 3.2.3. With the exception of some discreet areas, the Commission has gathered in the relevant evidence on the matters to be investigated as set out in the terms of reference, for the years up to the end of 2006.
- 3.2.4. In June, July and August 2018, the Commission conducted hearings and took evidence from 18 witnesses over 25 days on matters within the scope of Module 5A.
- 3.2.5. The Commission has now heard from approximately 70 witnesses over 140 appearances before the Commission across the above modules with respect to the matters to be investigated in phase 1. These hearings have enabled the Commission to gather valuable evidence on the facts to be established in this investigation.
- 3.2.6. Hearings have been conducted in Dublin and in the South East. Some witnesses have given extensive evidence to the Commission over several days. A significant number of witnesses have given evidence to the Commission with respect to matters under investigation in two or more modules.
- 3.2.7. The Commission appreciates the co-operation it has received from witnesses to date. This has been of considerable assistance to the Commission in its investigative work.
- 3.3. *Upcoming hearings*
- 3.3.1. On 11th September 2018 the Commission commenced hearings to take evidence from six further witnesses with respect to matters under investigation in Module 5A
- 3.3.2. In late September 2018, the Commission will take further evidence from approximately 14 witnesses who may have knowledge of matters relevant to the investigation. These hearings are designated as Module 6 in the Commission's working methodology.

- 3.3.3. The Commission will complete the taking of evidence in module 5A and take evidence from approximately 20 witnesses on matters within the scope of module 5B at hearings commencing in October 2018.
- 3.3.4. Having regard to the number of witnesses and the fact that many witnesses will be giving evidence to the Commission over a number of days, the hearings in respect of Module 5B are likely to run into late November 2018.
- 3.3.5. Analysis of relevant documentation disclosed and preparatory work has been carried out by the Commission in its investigations of the matters set out in the terms of reference for the period from July 2009 until 2016. Arrangements for the scheduling of hearings in respect of the period July 2009 to 2016 will be put in place when the hearings as scheduled above have concluded.

#### 3.4. *Submissions on the evidence*

- 3.4.1. The Commission has now invited submissions from witnesses and certain bodies on the evidence received by the Commission in Modules 2 (save for one part), 3A, 3B, 3C and 4.
- 3.4.2. The Commission has set time limits for the making of submissions and is awaiting receipt of submissions at this stage. Submissions received to date are being reviewed and considered.

#### 3.5. *Witnesses*

- 3.5.1. As previously reported, the ill health, frailty or age of some witnesses whose evidence is desired by the Commission continues to present significant challenges to the progress of the Commission's investigation. Further, many of the persons the Commission believes may have had important evidence to offer on matters within its terms of reference were deceased before the Commission of Investigation was established.
- 3.5.2. A number of hearings have had to be rescheduled on several occasions to accommodate issues of ill health, frailty and particularly grave personal circumstances.
- 3.5.3. Evidence from certain witnesses has had to be taken in appropriate settings and at particular times having regard to some of these factors. One witness

who was assisting the Commission has passed away. These factors impact on the gathering of evidence. The Commission continues to focus on obtaining the evidence of frail or unwell witnesses in as timely and appropriate a manner as practicable.

### 3.6. *Hearings generally*

3.6.1. 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.

3.6.2. 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.

3.6.3. 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).

3.6.4. 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.

3.6.5. 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.

3.6.6. 85 volumes of transcripts of evidence have been produced to date and the work of analysing evidence received continues.

### 3.7. *On-going receipt of Disclosure material*

3.7.1. Since 28<sup>th</sup> April 2018, the Commission has received approximately 3,800 pages of further additional documentation from a number of bodies and persons. Some significant documentation has been provided as additional disclosure although within the Commission's original disclosure directions and requests made by the Commission at the commencement of its work.

3.7.2. As noted in the Commission's last interim report the receipt of relevant additional disclosure can be helpful to the investigation, but a delayed or untimely disclosure at this advanced stage of the Commission's work presents challenges. Time and resources of the Commission continue to be applied to analysis of these additional documents, its impact on evidence already heard by the Commission or on the organisation of modules already under way.

3.7.3. The tasks for the Commission team working on disclosure have already been described in the interim report of November 2017. The work of reviewing documents in the context of hearings is an essential component of the Commission's work.

3.7.4. Arising out of its investigative work and evidence received, incidences arise where the Commission must direct the production of further documentation.

### 3.8. *Correspondence*

3.8.1. Correspondence is 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 is at present in active correspondence with a large number of individuals and firms of solicitors.

## 4.0. **Conclusion**

4.1. The work to be undertaken by the Commission, on completion of hearings and before submission of a final report to the Minister on phase 1, has been set out in the Commission's interim report of 27<sup>th</sup> April 2018 and is as follows:

4.1.1. 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.

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

- 4.1.3. 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.
- 4.1.4. 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.
- 4.1.5. Consideration of applications for directions with respect to costs.
- 4.1.6. Completion and delivery of the final report.
- 4.2. 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.
- 4.3. Substantial investigative work has been undertaken and is continuing and the Commission has gathered significant and valuable evidence to date.
- 4.4. The work of the Commission is significantly advanced and continues to be progressed as expeditiously as a proper consideration of the matters referred to the Commission in phase 1 permits.



Dated 14<sup>th</sup> September 2018

Marjorie Farrelly S.C.

Sole Member