



***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

**INTERIM REPORT /
APPLICATION FOR EXTENSION OF TIME.**

1.0. Introduction

- 1.1.** The Commission of Investigation (Certain matters relative to a disability service in the South East and related matters) was established on 21st March 2017 pursuant to Statutory Instrument Number 96 of 2017.
- 1.2.** The Minister for Health is the minister responsible for overseeing administrative matters relating to the establishment of the Commission, for receiving its reports and for performing any other functions under the Commissions of Investigation Act 2004 ("the Act").
- 1.3.** The Minister for Health was authorised to set the terms of reference for the Commission and to appoint the member or members of the Commission.
- 1.4.** The terms of reference set by the Minister, and approved by the Government, were laid before the Oireachtas on 29th March 2017.
- 1.5.** The terms of reference are available to view at <http://health.gov.ie/wp-content/uploads/2017/03/Commission-of-Investigation-Terms-of-Reference-FINAL.pdf>.
- 1.6.** On 28th March 2017 the Minister appointed me to be the Sole Member of the Commission for the purpose of carrying out the first phase of the Commission's investigations as directed at Part I a) of the Commission's terms of reference. That appointment took effect on 7th April 2017. The terms of reference direct that the final report to be submitted by the Sole Member be accompanied by a statement setting out the further work the Commission will undertake in the public interest as set out at Part X of the Commission's terms of reference. The Minister will take a decision on the appointment of a Sole Member or Members of the Commission for the carrying out of the work on the second phase of the Commission's investigations thereafter.
- 1.7.** In accordance with Part II a) (i) of the terms of reference, the Commission submitted an interim report on the first phase (the matters set out in Parts III to IX) on the 15th November 2017 and the work of the Commission up to that date, is set out at Part 4 of that report.

1.8. Term of reference II a) (ii) provides that the Commission shall complete a final report or reports required in relation to its investigation no later than twelve months from the date of the commencement of its work. As the formal date of commencement of the work of the Commission was the 15th May 2017 the date upon which delivery of its final report would originally have been the 14th May 2018.

1.9. This interim report is made to the Minister for Health pursuant to section 33 (3) of the Act and in connection with a request that the timeframe for submitting the Commission's final report be revised as provided for in section 6 (6) of the Act.

2.0. Request for Extension of Time

2.1. The Commission's current deadline for the submission of its final report on the first phase of its investigations of the matters set out in Parts III to IX of its terms of reference is 14th May 2018. It is evident to the Commission, having regard to the enormous volume of documentation disclosed to it from a wide range of public bodies, organisations and individuals and following a review of the number of potential witnesses disclosed in this documentation that, such investigations could not be completed within the set twelve month period. This is so notwithstanding the very considerable work done to date on the investigations and the pace brought to bear upon the conduct of the Commission's investigations on the terms of reference forming the first phase of its work.

2.2. The Commission requests that the time frame for submitting its final report be revised under section 6 (6) of the Act and now submits this interim report to the Minister for this purpose.

2.3. The Commission believes that an extension of time by a further period of twelve months would be consistent with the objective of having the investigations for the first phase of the Commission's work conducted and the report submitted as expeditiously as a proper consideration of the matters referred to the Commission permits.

3.0. Report on progress from 15th March 2017 to date

- 3.1.** The Commission has carried out a substantial body of investigative work since the submission of the interim report on 15th November 2017
- 3.2.** As set out in the Commission's interim report 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 twenty year period.
- 3.3.** The scope of the areas of investigation from the Commission's terms of reference to be addressed in modules 1, 2, 3A and 3B of the Commission's work, together with the progress of work in those modules was reported at paragraphs 4.6.3 to 4.6.21 of the Commission's interim report. The Commission took the approach of dividing the issues at Parts VI to IX of its terms of reference into modules on a chronological basis. 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 a stand-alone module.
- 3.4.** Since the date of the interim report, the Commission has prepared three further modules. The designated scope of module 3C is set out in Appendix 1 attached. The Commission carried out the work of analysing and collating all documentation received from various bodies and persons, relevant to the scope of matters to be investigated in this module. Core documentation was isolated and a synopsis of documentary evidence prepared and witnesses identified preparatory to distribution of materials in readiness for the taking of evidence.
- 3.5.** The work designated by the Commission for investigation in the above modules, substantially covers the matters to be investigated by the

Commission with respect to the care and protection of Grace up to the end of December of 1996.

3.6. Work on further modules is set out below.

4.0. Module 4

4.1. The Commission has carried out substantial preparatory work for what it has designated to be the focus of investigation during module 4 of its work. The scope of this module is set out in Appendix 2 attached.

4.2. The documentation disclosed to the Commission from multiple sources has been analysed with relevant documentation identified, collated and the work of preparing various core booklets of documentation and a working synopsis has now been completed.

4.3. Dates for hearing of evidence in module 4 have been set and witnesses have been notified. The hearings will take place in May 2018.

4.4. At the conclusion of module 4, with the exception of some discrete areas still to be investigated, the Commission will have heard the relevant evidence on the matters set out in the terms of reference for the years up to the end of 2006.

5.0. Module 5

5.1. The Commission has carried out substantial preparatory work for what it has designated to be the focus of investigation during module 5 of its work. The scope of this module is set out in Appendix 3 attached.

5.2. The documentation disclosed to the Commission from multiple sources has been analysed with relevant documentation identified, collated and the work of preparing various booklets of documentation and a working synopsis is in progress. Documentation for examination in this module is particularly voluminous. A large number of witnesses from whom evidence is desired by the Commission, have been identified.

5.3. Work is ongoing on preparations for the hearing of evidence from such witnesses with a view to hearings of the issues involved in this module in June and July 2018.

5.4. Following the Commission's work on module 5, the Commission will address such outstanding areas of the terms of reference that require investigation in the first phase of the Commission's work.

6.0. Hearings to date

6.1. Since 15th November 2017 the Commission has heard oral evidence at hearings conducted within the scope of modules 1, 2, 3A, 3B and 3C of the Commission's investigations. 42 witnesses have now given evidence to the Commission over 75 appearances across these modules. Some witnesses have given evidence over several days. A number of witnesses have given evidence to the Commission with respect to matters under investigation in two or more modules.

6.2. Twenty four days of hearings have been conducted in Dublin and sixteen days of hearings have been conducted in the South East. The Commission has taken evidence from certain witnesses individually and in private, where the Commission considers it appropriate to the conduct of its investigations to do so. The Commission has further where appropriate, taken evidence at private hearings with a number of witnesses directed to give evidence and permitted to be present during the taking of certain evidence from other witnesses.

6.3. The Commission has further directed that certain other persons or bodies may be in attendance and legally represented during some hearings where appropriate, and in accordance with the provisions of the Act.

6.4. Some evidence remains to be taken from a small number of witnesses with respect to the matters to be investigated in the earlier modules. The Commission also considers that certain witnesses may need to be recalled to assist with matters arising since their evidence was originally taken.

6.5. Given the extent of the terms of reference and the involvement of a number of important witnesses in the care and protection of Grace over a considerable

period of time the prospect of recall of witnesses must be kept under review throughout the gathering of evidence.

6.6. All evidence has been taken on oath and has been transcribed into written form by the Commission's stenographers. Transcripts of evidence or extracts from same have been distributed to certain persons where the Commission considered this to be appropriate.

6.7. The Commission is currently analysing approximately 59 volumes of transcripts of evidence produced to date. This is an intensive and time consuming process.

7.0. Hearings in the Course of Preparation.

7.1. The Commission will commence taking evidence from approximately 26 witnesses with respect to matters under investigation in module 4, commencing on 8th May 2018. The Commission will take evidence from certain witnesses and on particular issues, individually. The Commission will also conduct a number of hearings with groups of witnesses, as appropriate to the conduct of the Commission's investigations. Hearings will take place both in the South East and in Dublin.

7.2. The Commission anticipates that it will be ready to schedule the taking of evidence from witnesses relevant to module 5 in June and July 2018 and preparations are in progress.

8.0. Ongoing Receipt of Disclosure

8.1. The scope and depth of the matters to be investigated during the first phase of the Commission's investigations have been highlighted in the Commission's interim report dated 15th November 2017. The volume of documentation disclosed to the Commission since its establishment underline the broad ambit of the Commission's investigative tasks.

8.2. Since 15th November 2017, the Commission has received approximately 18,000 pages of additional documentation from a number of bodies and

persons. In most cases the bulk of this documentation was provided as additional disclosure pursuant to the Commission's original disclosure directions and requests made at the commencement of its work.

- 8.3. The receipt of relevant additional disclosure is, of course, helpful to the investigation, but a delayed or untimely disclosure at this stage of the Commission's work presents challenges. Not least of these challenges is that the resources of the Commission must be diverted to the analysis of these additional documents and the impact of these documents on evidence already heard by the Commission or on the organisation of modules currently under way.
- 8.4. The tasks for the Commission team working on disclosure have already been described in the interim report of November 2017. The work continues to absorb a significant amount of the Commission's resources.
- 8.5. The Commission has devoted considerable time and resources to the review of such additional disclosures.
- 8.6. There are also instances where, arising out of its investigative work and evidence received, the Commission has directed the production of further documentation. In some cases, it is still awaiting receipt of the material sought.
- 8.7. The Commission continues to raise questionnaires where considered appropriate in the course of its work and certain replies are awaited.

9.0. Witnesses

- 9.1. The ill health, frailty or age of some important witnesses whose evidence is desired by the Commission continues to present significant challenges to the progress of the Commission's investigation. Many of the persons the Commission believes would have had important evidence were dead before the Commission of Investigation was established. A number of hearings have been adjourned by virtue of ill health, frailty and age of witnesses.
- 9.2. Evidence from certain witnesses has had to be taken in appropriate settings and at particular times having regard to some of these factors. One important

witness assisting the Commission passed away before being in a position to complete the giving of evidence.

9.3. The Commission is focused on obtaining the evidence of aged or unwell witnesses in as timely and appropriate a manner as practicable. The manner in which certain witnesses may give evidence to the Commission, remains under review. Establishing contact with some persons from whom evidence is desired has been challenging and time consuming. These are all factors that must be managed by the Commission when scheduling the taking of evidence.

9.4. In addition to the work currently underway in gathering evidence and hearing witnesses the Commission requires the appropriate time to complete the following:-

- Consideration of written submissions from any party from whom submissions are invited by the Commission. Completion of the taking of evidence in particular modules is awaited before these submissions can be sought.
- Analysis of the totality of evidence received by the Commission and of submissions received.
- Preparation of the Commission's draft final report across the 35 areas of investigation in the first phase.
- 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 2004 Act.
- 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.
- Consideration of applications for directions with respect to costs.
- Completion and delivery of the final report.

10.1. In accordance with the terms of reference, term X cannot be considered until the Commission establishes the facts with respect to its investigations at Part III to IX.

This report is submitted to assist the Minister in dealing with the Commission's request for an extension of time and in giving consideration to some of the complexities of the investigations directed to be conducted, together with the progress of the Commission's work to date.

Dated this 27th day of April 2018.



Marjorie Farrelly SC
Sole Member

APPENDIX 1

Module 3(C): Relevant Terms of Reference

V. Care and decision-making in respect of Grace from 1989 until before her 18th birthday in 1996

Establish the facts relating to:

d) The decision to refer Grace to Day Service Provider A in September 1995 and in particular why she was referred to that day service; and:

i. The identification, treatment, assessment, or investigation of any concerns that may have arisen, or should have arisen, at that day service in 1995 or at any time thereafter.

ii. The persons or bodies to whom any such concerns should have been reported.

Note: Insofar as V(d)(i) states that the Commission is required to examine the facts "in 1995 or at any time thereafter" the Commission will, for the purposes of this module of its work, narrow its chronological focus to the end of the year 1996. The requirement to examine the above "at any time thereafter" will be deferred to a later module.

APPENDIX 2

Module 4 - Scope

IV. Monitoring and Review of the Care Provided by Family X to Grace

Establish the facts relating to:

b) The monitoring and review by the SEHB/HSE of the care provided by Family X to Grace, including any monitoring and review required by law, during the period 1997 to 2006 and the details of that monitoring and review.

If such monitoring and review was not carried out, why not?

c) The decisions taken by the SEHB/HSE, including all relevant professionals, managers and administrators in respect of Grace during the period she was resident with Family X (in particular, but not exclusively, those decisions made in 2001 and the decision making processes leading to that decision.

e) Establish the extent to which relevant information pertaining to Grace was shared among the various professionals and other relevant employees of public authorities with a duty of care to ensure her care and protection, including members of An Garda Síochána in contact with her from 1997 to 2006.

f) Establish the legal basis upon which the South Eastern Health Board or any other Health Board made decisions in respect of Grace's care and/or treatment over the period covered by the Synopsis of Evidence pertaining to this Module.

VIII. Care and Decision-Making in Respect of Grace from 1st January 1997 up to 31st December 2006

Establish the facts relating to:

a) the care received by Grace, in particular whether, and the extent to which, Grace suffered any abuse whatsoever, from 1st January 1997 up to 31st December 2006 inclusive. The facts relating to abuse should be established regardless of whether the alleged abuse occurred within the family home, or in another location, and whether the alleged abuser(s) was/were a member of Family X or any other person(s).

b) the meeting convened in respect of Grace's care on 22nd February 2001, including the recommendations from that meeting and the steps taken following that meeting to implement those recommendations.

c) the decision made in March 2001, that there would be a gradual, planned phased move of Grace to a residential placement and the reason why that planned phased move did not take place.

d) the decision in late 2004/early 2005 to remove Grace from the waiting list for a residential placement with the relevant service provider, including the reasons for same and the merits of the decision having regard to the best interests of Grace.

e) the decision not to make an application for Wardship in respect of Grace in the period 1997 – 2006.

IX. Other Matters

a) Establish the facts relating to the SEHB/HSE's interactions with Grace's mother from 1st January 1997 until 31st December 2006, including the provision of relevant information to her in respect of her daughter's care.

APPENDIX 3.

MODULE 5 –SCOPE

IV. Monitoring and review of the care provided by Family X to Grace.

b) the monitoring and review by the Health Service Executive of the care provided by Family X to Grace, including any monitoring and review required by law, during the period from the 1st January, 2007 to the 31st December, 2009 and the details of that monitoring and review.

If such monitoring and review was not carried out, why not?

c) the decisions taken by the Health Service Executive, including all relevant professionals, managers and administrators in respect of Grace during the period from the 1st January, 2007 to the 17th July, 2009 when she was resident with Family X and the decision-making processes leading to those decisions.

d) the treatment and investigation by the Health Service Executive of any allegations made in respect of Family X and communicated to the Health Service Executive by any party whatsoever, as referred to in the Devine Report.

e) Establish the extent to which relevant information pertaining to Grace was shared among the various professionals and other relevant employees of public authorities with a duty of care to ensure her care and protection, including members of An Garda Síochána in contact with her from the 1st January, 2007 to the 31st December, 2009.

f) Establish the legal basis upon which the Health Service Executive made decisions in respect of Grace's care and/or treatment from the 1st January, 2007 to the 31st December, 2009.

VIII. Care and Decision-Making in respect of Grace from the 1st January, 2007 up to the 17th July, 2009.

Establish the facts relating to:

a) the care received by Grace, in particular whether, and the extent to which, Grace suffered any abuse whatsoever, from the 1st January, 2007 to the 17th July, 2009 inclusive.

The facts relating to abuse should be established regardless of whether the alleged abuse occurred within the family home, or in another location, and whether the alleged abuser(s) was/were a member of Family X or any other person(s).

e) the decision not to make an application for wardship in respect of Grace in the period from the 1st January, 2007 to the 31st December, 2009.

f) the obtaining by the Health Service Executive of legal advice in respect of options to protect Grace, the extent to which this advice was acted upon, and if not acted upon, the reasons for the failure to act upon that advice for the period from the 1st January, 2007 to the 31st December, 2009.

g) the decision to move Grace on the 24th July, 2009, the reasons for it, its merits and the decision-making processes and the merits of the decision having regard to the best interests of Grace.

h) the decision to move Grace on 17th July, 2009 in circumstances where the move had been planned to occur on the 24th July, 2009, the reasons for it, its merits having regard to the best interests of Grace and the decision-making processes.

IX. Other matters

a) Establish the facts relating to the Health Service Executive's interactions with Grace's mother from the 1st January, 2007 until the 17th July, 2009, including the provision of relevant information to her in respect of her daughter's care. This should include the facts surrounding the processing of and response by the Health Service Executive to Grace's mother's request for documentation under the Freedom of Information Act and in particular the reasons why documents on foot of that request were not provided to Grace's mother for a period of two years.

b) Establish the facts relating to whether there was any deliberate suppression or attempted suppression of information during the period from the 1st January, 2007 to end 2009 in relation to Grace's case, including, but not limited to, an alleged danger of deliberate destruction of files or alleged threats by the Health Service Executive to the funding of the Agency whose staff made Protected Disclosures.