

Independent Representative on Questions of Sexual Abuse of Children

Public Hearing

Berlin April, 2013

Address by Mr Justice Sean Ryan

Chair of Commission to Inquire into Child Abuse, Ireland

Introduction

The report of the Commission to Inquire into Child Abuse was published on the 20th May 2009. It was featured on all the leading TV and radio channels around the world. Similarly with newspapers; it was front page news in the Western world and in Asia, Australasia and the Arab world. In Ireland there was blanket coverage of the report. The Commission website was accessed from 179 countries.

The Commission's report is in five volumes, containing the results of a long investigation by a Confidential Committee and an Investigation Committee into the abuse children suffered in institutions in Ireland where children were cared for outside their families, which mainly included industrial schools, reformatories and orphanages.

More than 3,500 former residents applied to the two committees in the Commission but fewer than that actually participated: 1,090 applicants appeared before the Confidential Committee; 227 were witnesses at the Investigation Committee and 493 participated in that committee's work by interview. Over 300 of the participants also contributed to a survey on the long term effects of institutional abuse that was undertaken on the Commission's behalf.

Among the conclusions of the report are the following:

Physical and emotional abuse and neglect were features of the institutions. Sexual abuse occurred in many of them, particularly boys' institutions. Schools were run in a severe, regimented manner that imposed unreasonable and oppressive discipline on children and even on staff.

Large-scale institutionalisation was a response to a nineteenth century social problem but it was outdated and incapable of meeting the needs of individual children. The defects of the system were exacerbated by the way it was operated by the Congregations that owned and managed the schools. This failure led to the institutional abuse of children where their developmental, emotional and educational needs were not met.

The system of inspection by the Department of Education was fundamentally flawed and incapable of being effective.

A climate of fear, created by pervasive, excessive and arbitrary punishment, permeated most of the institutions and all those run for boys. Children lived with the daily terror of not knowing where the next beating was coming from.

Sexual abuse was endemic in boys' institutions. The situation in girls' institutions was different. Although girls were subjected to predatory sexual abuse by male employees or visitors or in outside placements, sexual abuse was not systemic in girls' schools.

It is impossible to determine the full extent of sexual abuse committed in boys' schools. The sexual abuse extended over a range from improper touching and fondling to rape with violence.

Perpetrators of abuse were able to operate undetected for long periods at the core of institutions.

Cases of sexual abuse were managed with a view to minimising the risk of public disclosure and consequent damage to the institution and the Congregation. This policy resulted in the protection of the perpetrator.

When confronted with evidence of sexual abuse, the response of the religious authorities was to transfer the offender to another location where, in many instances, he was free to abuse again. Permitting an offender to obtain dispensation from vows often enabled him to continue working as a lay teacher.

In exceptional circumstances where opportunities for disclosing abuse arose, the number of sexual abusers identified increased significantly.

When sexual abuse was recorded, the question arose whether that was a bad time for abuse or a good time for discovering abuse.

The level of sexual abuse in boys' institutions was much higher than was revealed by the records or could be discovered by this investigation. Authoritarian management systems prevented disclosures by staff and served to perpetuate abuse.

Although the public may have suspected that abuse had taken place and that it had not been fully revealed previously, they were shocked at the extent of the abuse, its systemic nature, its pervasiveness and the elaborate measures that were taken to cover it up. The Report gave details, often cited from the records of the congregations themselves, which meant that the congregations were aware of the abuse in their Institutions.

The fact that the abuse had been denied and that victims had been portrayed as guilty of gross exaggeration in their claims served to increase public indignation.

The recommendations to alleviate the effects of the abuse included the erection of a memorial with the words of the Taoiseach's apology on behalf of the State inscribed and that the lessons of the past should be learned by the State as to how these failures came about and by the Congregations examining how their ideals became debased by systemic abuse.

Among the recommendations to protect children and reduce the risk of abuse were that national guidelines for the protection of children should be uniformly and consistently implemented throughout the State in dealing with allegations of abuse, that childcare policy should be child-centred and reviewed on a regular basis and that the child's needs should be paramount, that independent inspections are essential and children in care should be able to communicate concerns without fear.

At a general level, it was important that a culture of respecting and implementing rules and regulations and of observing codes of conduct should be developed, that rules and regulations be enforced, breaches be reported and sanctions applied.

The failures that occurred in all the schools could not be explained by the absence of rules or any difficulty in interpreting what they meant. The problem lay in the implementation of the regulatory framework. The rules were ignored and treated as though they set some aspirational and unachievable standard that had no application to the particular circumstances of running the institution. Not only did the individual carers disregard the rules and precepts about punishment, but their

superiors did not enforce the rules or impose any disciplinary measures for breaches. Neither did the Department of Education.

Background

Institutional abuse came to the attention of the Irish State as an issue it would have to deal with because of legal cases taken against it because of the involvement of the Department of Education. There was also an increase in the number of Freedom of Information requests coming into the Department from former residents seeking access to their records. Radio and television programmes also contributed to knowledge. There was a general acceptance that industrial and reformatory schools were very harsh places. There had been a 1970 report on reformatory and industrial schools, there were meetings with former residents and research in the Department's files, all of which tended to confirm the understanding.

At the beginning the focus was on sexual abuse but it widened to cover other forms of abuse. On 10th May 1999, the Government agreed a series of measures:

- Establish a Commission to Inquire into Child Abuse.
- Legislate to amend the Statute of Limitations for victims who, because of child sexual abuse, were unable to bring claims within the normal limitation period.
- refer limitation periods for non-sexual childhood abuse to the Law Reform Commission.
- Establish a dedicated professional counselling service.
- Prepare and publish as soon as possible a White Paper on mandatory reporting of sexual abuse of children.
- Prepare the legislation for a sex offenders' register
- Apologise to victims of childhood abuse.

The Government did not want a flood of lengthy legal cases and decided to engage with the problem in a more proactive way, in the interests of the survivors of abuse and also in the interest of Irish society as a whole.

On 11th May 1999, the Taoiseach, Mr Ahern, in the course of a special statement that he made on behalf of the State and all citizens of the State, he expressed

“a sincere and long overdue apology to the victims of childhood abuse for our collective failure to intervene, to detect their pain, to come to their rescue,”

The senior official in the Department who dealt with this matter, Mr Boland, explained the factors that led to the establishment of the Commission:

First of all, I think of primary concern for the sub committee would always have been the victims themselves. The objective of a Commission would be that it would provide a place where they could tell the account of their lives to a sympathetic panel. That element of having a sympathetic panel was always very important in the whole process of the Commission. The hope was that in this way victims of abuse could be reassured that the abuse they suffered was wrong and was utterly condemned by Irish society. There was a very strong demand for that kind of listening forum from the victims themselves.

In addition then it was felt that a Commission could begin a process for victims of abuse whereby they would feel more able to approach the institutions that were there for professional help so that they could work through their pain and trauma.

For Irish society the idea was – and this is rather like a truth Commission – that it would establish for Irish society precisely what happened and establish as complete a picture as possible of the causes, nature and extent of childhood abuse including why it happened and also who was responsible. It was very much an important factor that the Commission would establish at least at an institutional level what institutions were responsible for what happened. It was also felt that this kind of process would help Irish society to come to terms with a very negative, very black period in our history. And it would also give to those who were involved in running the institutions, primarily the religious congregations, an opportunity to put their side of the case and show that in some cases, and maybe even in many cases – that is a judgment for the Commission – that in fact they did good service for the State too.

Perhaps this might have been a bit naive, but nevertheless it was an opportunity for perpetrators of abuse, particularly those who felt appalled by what they had done, to come forward and to give them an opportunity to relieve themselves of their burden. Very, very

importantly then a Commission would make recommendations for the future as to how to prevent this happening again and what to do for victims of abuse going on into the future.

The Government subsequently decided to set up a compensation scheme independent of the Commission, contrary to the original thinking, because lawyers were advising their clients not to cooperate with the Commission until compensation was dealt with. My own involvement in this area began when I chaired an expert advisory group on the compensation scheme.

The compensation mechanism as implemented was entirely separate from the Commission and operated independently and confidentially. Some survivors of abuse were satisfied to proceed through the compensation process alone so there was a fall off of applicants to the Commission.

The Commission

The Commission came into existence on the 23 May 2000. It was established as an independent statutory body whose broad functions were to enable victims of abuse in childhood to recount their experiences, to investigate such abuse in institutions in the State, to report on the investigations and to make recommendations. The Commission comprised two distinct Committees which were required to report separately to the Commission as a whole.

The Act envisaged a function for the Confidential Committee of listening to victims of abuse recounting their experiences in very private and sympathetic conditions where they were not challenged or cross-examined. A more forensic investigation of abuse was to be carried out by the Investigation Committee along the lines of a traditional form of public inquiry but the function of providing an opportunity for victims of abuse to recount their stories was also listed as a primary function of that Committee.

The mandate of the Commission was an investigation into **what abuse took place, how it was committed or caused, how much and why**. In the various categories, there was a distinction between system failures and person failures i.e. were the systems deficient? Or did people fail to operate the systems? Or was there a combination of both?

The Commission's remit applied to childhood victims of abuse in institutions, a term that was defined to include "a school, an industrial school, a reformatory school, an orphanage, a hospital, children's home and any other place where children are cared for other than as members of their families".

The 'relevant period' of the inquiry was from 1936 to 1999 for the Investigation Committee and for the Confidential Committee 1914 to 2000, the earliest date of admission and latest date of discharge of applicants to that Committee.

During the period from May 2000 to September 2003, the Investigation Committee wrestled with a number of different issues which culminated with the resignation of Ms Justice Laffoy as Chairperson, namely:

- compensation for victims of abuse
- getting statements from complainants;
- the search for a procedure
- challenges to its procedures in the courts
- discovery battle with the Department;
- successive reviews

The Investigation Committee

I took over as chairperson in early 2004. The work of the Investigation Committee had been suspended from September 2003 until March 2004. Judgment was awaited in a High Court action brought by the Christian Brothers. This case sought judicial determination of the constitutionality of the Investigation Committee's approach to making findings of abuse against elderly or deceased Brothers or those who it was argued could not properly answer the allegations.

A previous court intervention in the committee's operation in a decision of October, 2002 outlawed an attempt to limit the number of people in the hearing room when a victim was giving evidence. The consequence was that in a typical enough hearing there could be over 20 people in the room in addition to the complainant witness. That was an unsympathetic arrangement for somebody talking about painful and sensitive issues of abuse but we were constrained by the court's judgment. We did try to mitigate the effect by re-arranging the room so as to be less confrontational.

The work of the Confidential Committee continued throughout this time.

Before resuming the investigative work, the Investigation Committee decided after public consultation that it would not name perpetrators of abuse and that it would select appropriate numbers of applicant witnesses to give evidence, rather than calling everybody who wished to testify.

The Amendment Act of 2005 provided that perpetrators of abuse would not be named unless convicted in court; removed the obligation to hear all complainants, gave discretion as to which witnesses should be called and allowed the Commission to inquire into the role of courts in placing children in institutions.

The investigation recommenced in June 2004 in public. The function of these Emergence hearings was:

- to re-commence the work of the Investigation Committee,
- to place the work of the Investigation Committee in historical context,
- to understand the reasoning behind the Government's public apology,
- to understand the Government's decision to institute a Scheme of Redress,
- to understand the reason why the Religious Congregations came to contribute to the Redress Scheme, and why some of them had also issued public apologies,
- to understand the reasons why support/survivor groups were set up, and how they were organised.

A former resident chose to give evidence to one of the committees –The Confidential Committee provided a forum for victims to recount their experiences on a confidential basis. There was no challenge to the veracity of statements. The hearings were conducted in an informal manner, in private. The committee's report did not identify witnesses or abusers or even the institutions in which they were detained.

The Investigation Committee heard evidence from former residents of institutions and from respondents – individuals, Religious Orders and others – at mostly private but some public hearings. The Committee could compel attendance and production of documents. All parties had legal representation and could cross-examine. The Committee's function was to determine the nature, causes, circumstances and extent of abuse, the extent to which the institutions themselves, the systems of management, administration, supervision and regulation contributed to the occurrence of abuse and the manner in which those functions (of management,

administration, supervision and regulation) were performed by the persons or bodies in whom they vested.

The work of investigation covered 20 industrial and reformatory schools in which the number of complainants ranged from 218 to 6. A further specific module was conducted into the career and activities of an abuser who was employed in a succession of schools in which his misdeeds came to the notice of different agencies which did not bring him to book.

In addition to these inquiries into institutions, areas examined included the role of the Department of Education, which is the subject of Part V and a range of other issues, which are considered elsewhere in the Report, relating to institutional care of children during the relevant period.

In the institutions where all available witnesses were not invited to full hearings, the Committee's legal team went through all the files of the complainants and tried to select as full a range as possible of all the periods covered by the complaints and the types of experience so that a full picture could be got of the institution. The selection was not made with any finality. It was always understood and expressed to be so that the Committee would feel free to call for more witnesses if it felt it needed to do so in order to come to a proper and full view of the institution it was investigating. That process could continue until every witness had been heard, if the Committee so required. It followed that the choices that were made as to which witnesses to pick were not necessarily the last word on the matter.

The investigation into most schools consisted of a Phase I public hearing, which allowed the Congregation involved to present their case as to how the institution was managed and to make any concessions or arguments that it thought relevant before the hearing of the evidence in private.

There was no cross-examination at the Phase I hearing. Counsel for the Investigation Committee took the Congregation witness through the evidence and invited responses, and the Congregation's own counsel was then able to examine the witness further to clarify any matters. Complainants and their legal representatives were present at these hearings, but they did not have a role in questioning the witnesses.

Phase II hearings, the private hearings into specific allegations of abuse in institutions, then commenced. When the private hearings were completed, the Phase III public hearings enabled the Congregations to respond to the evidence in general terms. At these hearings, legal teams that had

represented substantial numbers of complainants were engaged by the Investigation Committee to cross-examine relevant witnesses.

In early 2005, the Committee devised another means of participation in its work, namely, to invite complainants for interview by members of the legal team. The interviews had three purposes: First, to provide a better means of selecting appropriate witnesses than by reference to the documentary materials; second, to furnish a means of checking or cross-referencing to ensure that all relevant topics arising in an institution had been properly considered; finally, to give everyone who wished to do so a means of participating in the work of the Investigation Committee.

Experts

In something of an innovation in inquiries of this kind, the Investigation Committee and the Commission engaged experts to assist in a number of different areas as follows.

Name		Area of Work/Research
Prof. D Gwynn Morgan	UCC	Undertaking legal, historical & social research
Mazars	Financial Consultants	Finances of Institutions
Mr. Ciaran Fahy	Cons engineer	Institutional buildings
Prof. A Staines	DCU	Health records of children in care
Mr. R Rollinson		Childcare in England
Prof. D Ferriter	UCD	Historical context
Dr. Eoin O'Sullivan	Trinity College Dublin	Examining childcare from 1970 to today
Prof. Alan Carr	UCD	Long term impact of institutional abuse

This proved to be a practical and efficient method of exploring areas that did not require confrontational hearings. In particular instances, draft reports were submitted to respondent organisations that were affected so that they could respond with factual rebuttal and comment. The expert then took the new information and observations into account in a synthesised report. In some cases, the Report contains the expert's final version and the congregation's submission was available on the website.

Professor Alan Carr's research project surveyed a large cohort of 246 witnesses who had attended one or other committee, addressing the long term effects of child abuse and neglect has in turn given rise to further important academic work including PhD theses and articles in learned journals.

Challenges and difficulties

I have given some indication of the problems that arose in conducting this investigation. Indeed, the very fact that I became the chairperson of the Commission is a result of some of the difficulties that beset my colleague and predecessor, Ms Justice Laffoy of the High Court.

There are inevitable tensions between the interests of victims or persons who allege that they have suffered abuse and those of the alleged perpetrators and the institutions and congregations involved. Procedural disputes are the battleground. They are a constant feature of a public inquiry in the jurisdiction in which I operate as a judge. Whereas rules of procedure in a court are clear and defined, they remain a matter for debate in an inquiry.

In a document in November 2002, the Investigation Committee expressed a degree of frustration:

The review of procedures has taken into account the experience of the Committee to date in hearing allegations of complainants who submitted statements in response to requests under the Act before the end of March 2002. The experience has been that, in the main and with a few exceptions, the respondents have adopted an adversarial, defensive and legalistic approach in the process. The Committee has always recognised the right of a person or body which is brought into the process as a respondent to be afforded a reasonable means of defending himself or herself. Accordingly, it has striven, through its procedures, to ensure that such right is safeguarded and that its proceedings are conducted fairly and in accordance with the constitutional principles. While it is recognised that, in adopting the stance which has been adopted, respondents are not acting improperly, the factual position is that the majority of allegations are being contested or, alternatively, the strict proof of allegations is being called for. The inevitable consequence of this approach will be an increase in the amount of detailed evidence which would otherwise have to be heard. In so far as respondents contend that they are co-operating with the

Committee, in practice they are doing no more than complying with their statutory obligations and doing so reluctantly, in the case of some respondents, and under protest, in the case of others.

Having made these points, it is of course only fair to acknowledge the gravity of the allegations that respondents faced and the importance not only for persons accused of serious wrongdoing but also for the integrity of the inquiry of having the full panoply of rights in place, including procedural protections.

Discovery and Legal Privilege

These issues did not pose particular problems for the Commission in my time as chairperson but one of them had been the subject of considerable anxiety under my predecessor. It was not that parties challenged the entitlement of the Investigation Committee to make orders for discovery of relevant records and documents. The troubling issue was whether the Department of Education and Science had properly and fully complied with the directive. The Report details the tangled history of one particular file that dealt with a serious and recent episode of sexual abuse in an institution. There were tense relations between the Committee and the Department and somewhat fraught hearings exploring the failure to furnish the file. My experience following that occurrence was that the Department was extremely concerned to satisfy the Committee of its good intentions and its enthusiasm for full co-operation. The previous unhappy differences served to promote future good practice.

In regard to legal privilege, I am not aware of any issues that caused difficulty. I am of course pleased to consider any points that may be suggested by my colleague participants at this seminar.

Conclusions

By way of conclusion, may I make a few brief observations.

- My purpose is to describe the Irish experience of investigating child abuse in the hope that some of our experience may be relevant to you in embarking on your exploration; you may wish to adopt some things that we did and there will no doubt be others that you will want to avoid. Every investigation has its own challenges and there is no one solution.
- The elements of listening and acknowledgment are of great importance, in addition to the investigative function. There is an increasing consciousness generally in courts as well as in specific tribunals of the need to balance and accommodate these functions.

- There is no perfect method of inquiry; our Commission like every investigation and court trial represents a balance between the competing interests of the various interests, including those of the public in seeing that the process is brought to a conclusion in reasonable time and without excessive cost.
- Systems work. The question is not whether a system is or isn't working; it always is. The better question is what it is working to do. Whose interest is it serving? The institutions we investigated were supposed to be for benefit of children, not other way round. But was the system actually operating for the benefit of (a) children (b) institutions (c) congregations? At the beginning – in the late 19th and early to mid- 20th centuries, the Industrial Schools were seeking to answer a severe social need in accommodating impoverished, neglected children but for much of the latter part of the period of our inquiry, the bizarre situation was that children were being sought in order to meet the needs of the schools in an extraordinary inversion of function. Systems have a capacity for self preservation independent of the purpose they are intended to serve. In the absence of any mode of critical analysis, a system can continue to exist and operate and even be considered something of a success even though its purpose – its true effective purpose – has radically altered.
- The difficult journey of reconciliation should begin with acceptance of the findings in the report of the inquiry which is only the beginning and not the end as some may think.