

Appointment

- 2.1 The Dublin Archdiocese Commission of Investigation was appointed by Instrument of the Minister for Justice, Equality and Law Reform on 28 March 2006, pursuant to the *Commissions of Investigation Act 2004*. Notice of the order of the Government setting up the Commission was published in *Iris Oifigiúil* on 7 April 2006.

Terms of reference

- 2.2 The terms of reference of the Commission were to:
- (a) select a representative sample of complaints or allegations of child sexual abuse made to the archdiocesan and other Catholic Church authorities and public and State authorities in the period 1 January 1975 to 1 May 2004 against Catholic clergy operating under the aegis of the Catholic archdiocese of Dublin;
 - (b) examine and report on the nature of the response to those sample complaints or allegations on the part of the authorities to which those sample complaints or allegations were reported, including whether there is any evidence of attempts on the part of those authorities to obstruct, prevent or interfere with the proper investigation of such complaints;
 - (c) in the case of complaints or allegations being examined, examine and report also on the nature of the response to any other complaints or allegations made by the complainant or against the person in respect of whom those complaints or allegations were made, including any such complaints or allegations made before 1 January 1975;
 - (d) select a representative sample of cases where the archdiocesan and other Catholic Church and public and State authorities had in the period 1 January 1975 to 1 May 2004 knowledge of or strong and clear suspicion of or reasonable concern regarding sexual abuse involving Catholic clergy operating under the aegis of the Catholic archdiocese of Dublin;

(e) establish the response of the archdiocesan and other Catholic Church and public and State authorities to those sample cases;

(f) establish the levels of communication that prevailed between the archdiocesan and other Catholic Church authorities and public and State authorities with regard to those sample complaints, allegations, knowledge, reasonable concern or strong and clear suspicion;

(g) examine, following a notification from the Minister for Health and Children that a Catholic diocese in the State may not have established the structures or may not be operating satisfactorily the procedures set out in the Report of the Irish Catholic Bishops' Advisory Committee on Child Sexual Abuse by Priests and Religious, Child Sexual Abuse: Framework for a Church Response (1996) and any subsequent similar document, the position in that diocese;

(h) examine, following a notification from the Minister for Health and Children that a Catholic diocese in the State may not be implementing satisfactorily the recommendations of the Ferns Report delivered to the Minister for Health and Children on 25 October, 2005, the position in that diocese; and make a report on these matters considered by the Government to be of significant public concern.

2.3 In January 2009, the Government amended the Commission's terms of reference pursuant to Section 6 of the *Commissions of Investigation Act 2004* to provide for an investigation into the diocese of Cloyne.

2.4 This report deals only with the Commission's investigation into the Archdiocese of Dublin.

Establishment

2.5 The Minister for Justice, Equality and Law Reform appointed Judge Yvonne Murphy, Judge of the Circuit Court as Chair of the Commission, and appointed Ms Ita Mangan, Barrister, and Mr Hugh O'Neill, Solicitor, to act as part-time Commissioners.

2.6 The Secretary General of the Department of Justice, Equality and Law Reform, Mr. Sean Aylward, procured office accommodation for the Commission at Fitzwilliam Square, Dublin and assigned five officers from the department to act as administrative staff to the Commission. The Commission appointed a full time solicitor, Ms Maeve Doherty; a Senior Counsel, Ms Deirdre Murphy SC; a Junior Counsel, Mr Donal McGuinness BL and three legal researchers to assist the investigation. A full list of the Commission's staff is in Appendix 6.

2.7 The premises at Fitzwilliam Square required complete renovation and this was overseen by Ms Nóra Ní Dhomhnaill, HEO of the Department of Justice, Equality and Law Reform. Having taken possession of the offices it was necessary for the Commission to seek expert advice and assistance in installing in its offices appropriate electronic and other security systems to protect the sensitive documentation and information which it was likely to receive in the course of its work. Suitable computer systems capable of processing large quantities of information were also procured and installed.

The Commission's interpretation of its terms of reference

2.8 Having considered its terms of reference as contained in the instrument creating it, the Commission took the view that its task was as follows:

- To ascertain the full extent of complaints or allegations of child sexual abuse made to the Archdiocesan and other Catholic Church authorities and public and State authorities in the period 1 January 1975 to 1 May 2004 against Catholic clergy operating under the aegis of the Catholic Archdiocese of Dublin.
- To ascertain all of the cases during the relevant period in which the Archdiocesan and other Church authorities and/or public and State authorities:
 - knew of sexual abuse involving Catholic clergy;
 - had strong and clear suspicion of sexual abuse; or
 - had reasonable concern.
- Ancillary to its primary tasks set out above, the Commission was mandated to establish the levels of communication that prevailed between all relevant authorities relating to the sample complaints or allegations of child sexual abuse, incidents of known abuse, incidents

of strong and clear suspicion of sexual abuse and incidents giving rise to reasonable concern that there may have been sexual abuse.

- Having ascertained the full extent of such complaints and allegations, knowledge, suspicions or concerns of child sexual abuse, to select a representative sample of same for the purpose of examining them in detail in order to report on the nature of the response to those complaints and allegations by the Archdiocese and other Church authorities and by public and State authorities.
- In examining the chosen sample, the Commission was specifically asked to ascertain whether there was any evidence of attempts on the part of the Archdiocese or other Church authorities or on the part of public or State authorities to obstruct, prevent or interfere with the proper investigation of such complaints. In choosing its representative sample the Commission has had specific regard to this requirement.

What is child sexual abuse?

2.9 The Commission adopted the definition of child sexual abuse which had already been adopted by the *Ferns Report*. The following is the relevant extract from that report:

“While definitions of child sexual abuse vary according to context, probably the most useful definition and broadest for the purposes of this Report was that which was adopted by the Law Reform Commission in 1990⁸ and later developed in Children First, National Guidelines for the Protection and Welfare of Children (Department of Health and Children, 1999) which state that ‘child sexual abuse occurs when a child is used by another person for his or her gratification or sexual arousal or that of others’. Examples of child sexual abuse include the following:

- *exposure of the sexual organs or any sexual act intentionally performed in the presence of a child;*
- *intentional touching or molesting of the body of a child whether by person or object for the purpose of sexual arousal or gratification;*

⁸ This definition was originally proposed by the Western Australia Task Force on Child Sexual Abuse, 1987 and is adopted by the Law Reform Commission (1990) *Report on Child Sexual Abuse*, p.8.

- *masturbation in the presence of the child or the involvement of the child in an act of masturbation;*
- *sexual intercourse with the child whether oral, vaginal or anal;*
- *sexual exploitation of a child which includes inciting, encouraging, propositioning, requiring or permitting a child to solicit for, or to engage in prostitution or other sexual acts. Sexual exploitation also occurs when a child is involved in exhibition, modelling or posing for the purpose of sexual arousal, gratification or sexual act, including its recording (on film, video tape, or other media) or the manipulation for those purposes of the image by computer or other means. It may also include showing sexually explicit material to children which is often a feature of the 'grooming' process by perpetrators of abuse."*

Preliminary inquiries

2.10 The Commission first sought to identify all potential sources of information and documentation necessary to the discharge of its remit. Bearing in mind the requirements of Section 10(2) of the *Commissions of Investigation Act 2004*, that a Commission seek the voluntary cooperation of persons whose evidence is desired, the Commission had numerous meetings and contacts with Church and State authorities, as well as with individuals whom it considered might have evidence relevant to its work. Inquiries were made of the Archbishop of Dublin, former bishops of the Dublin Archdiocese, a number of other diocesan authorities, 38 religious orders operating within the area of the Dublin Archdiocese, the Health Service Executive, an Garda Síochána, the Director of Public Prosecutions, Our Lady's Hospital for Sick Children, Crumlin, Children's University Hospital, Temple St., the Department of Education and Science, the Department of Health and Children and a number of individuals who the Commission considered might have information relevant to its work.

Complainants of child sexual abuse

2.11 In tandem with these preliminary inquiries, the Commission launched an advertising/information campaign to alert complainants of child sexual abuse and those with relevant information as to its existence and to invite contributions from those who wished to assist the Commission in its work.

This campaign covered the entire area of the Archdiocese of Dublin. Advertisements were placed in many local newspapers and a number of national newspapers together with many local radio stations and RTE Radio 1. Information was provided through churches, doctors' surgeries and information centres in order to encourage those who wished to be heard to come forward.

2.12 All of those who came forward who appeared to be within the Commission's remit were interviewed by the Commission's counsel and many gave formal evidence to the Commission. Some of those who were interviewed made complaints which were outside the terms of reference of the Commission, for example, because their complaint had not been made during the relevant period between 1975 and 2004, or because the cleric in respect of whom they made a complaint was not acting under the aegis of the Dublin Archdiocese. In such circumstances the Commission thought it appropriate to listen to the complaints made and where necessary to refer people to the available support services.

Practice, procedures and protocols

2.13 In order to facilitate formal hearings as well as the gathering of evidence generally, the Commission developed procedures and protocols, for example, relating to the taking of evidence and the rights of witnesses giving evidence before the Commission. A formal book of procedures was compiled to comply with the terms of the *Commission of Investigations Act 2004*. Given the sensitive and confidential nature of much of the information being furnished to it, the Commission devised a Memorandum on Confidentiality for parties involved in the Commission's work as well as protocols on confidentiality and conflicts of interest for its own staff.

Formal hearings

2.14 Following its preliminary inquiries, it became clear to the Commission that it needed to hear oral evidence in relation to administrative structures of Church, public and State authorities within its remit during the relevant period. The focus of these hearings was on how complaints, allegations or suspicions of child sexual abuse were handled generally by the various authorities throughout the relevant period. The purpose of these hearings was:

- (a) to inform the Commission of the way in which specific complaints were handled and
- (b) to identify potential sources of evidence, within each body, documentary and otherwise as well as the places where such evidence might be located.

2.15 During this phase, the Commission also heard evidence from an expert on canon law, so as to understand the Catholic Church's perspective on what it considered its duties and obligations.

2.16 In all, between the preliminary phase and the hearings into the individual cases, 145 formal hearings took place at the Commission's offices and a stenographer recorded all hearings. In addition to the formal hearings a significant number of informal hearings took place.

Discovery of documents

2.17 The Commission issued formal Orders of Discovery against the Dublin Archdiocese, the Health Service Executive (HSE), an Garda Síochána, the Director of Public Prosecutions (DPP), a number of religious orders whose priests worked under the aegis of the Catholic Archdiocese of Dublin and a number of other organisations. This should not be taken as an indication of a lack of co-operation on the part of those to whom the orders were directed. The reasons for issuing formal Orders of Discovery were, first, that the Commission had to be satisfied that it had received all relevant information and, secondly, to protect those who were furnishing to the Commission confidential information on third parties. The Commission considered that it would be unreasonable to expect people to furnish such confidential information without giving them the statutory protection afforded by Section 16 of the *Commissions of Investigation Act 2004*. Without information obtained through discovery, the Commission could not have effectively discharged its remit.

2.18 The discovery process was protracted by a number of factors. In the case of the Dublin Archdiocese, the sheer volume of material to be discovered - over 70,000 documents - was hugely time consuming. The Commission was fortunate in that the Archdiocese had assembled a good deal of its documentation in connection with a Garda investigation that took

place subsequent to the Prime Time programme *Cardinal Secrets* which was broadcast in 2002 (see Chapter 5). The Archdiocese had transferred that information onto a computer program much of which was transferred to the Commission.

HSE discovery

2.19 In the case of the HSE, it transpired from early hearings that it had, in effect, insuperable difficulties in identifying relevant information in its files. The Commission was told that, because the HSE files were filed by reference to the name of the abused and were not in any way cross-referenced to the alleged abuser, it would have to examine individually up to 180,000 files in order to ascertain whether an alleged abuser was a priest in the Dublin Archdiocese. On the basis of this, the Commission calculated that it could take up to ten years to carry out such an exercise. In the light of this information, and bearing in mind the time allotted to its investigation, the Commission decided to take a pragmatic approach to the problem. The Commission asked the HSE to contact all relevant current and former staff including directors of community care, senior social workers and childcare managers, who had been employed in the area of the Dublin Archdiocese during the relevant period, to ascertain their knowledge of complaints of child sexual abuse by clerics. It heard evidence from senior social workers, childcare managers and senior managers. Subsequently, an affidavit of discovery was filed by the HSE. This was unfortunately incomplete as the Commission continued to receive material from the HSE after it sent parts of the draft report to the HSE for its consideration.

Garda discovery

2.20 The Garda Síochaná gave what documentation they had. This documentation was quite extensive for the period after 1995. They were unable to supply files in relation to some of their activities in the 1960s, 1970s, or 1980s as these had been destroyed or mislaid. Members of the force who had been involved in cases about which the Commission had queries and for which the files were missing or destroyed gave evidence of their recollections of those cases.

2.21 The Commission agreed with the main parties that documents generated up to 31 March 2006 would be covered by the Orders for

Discovery. In practice, as the investigation got under way, later documents were provided by the Archdiocese, the religious orders and the Gardaí. This happened both at the instigation of the parties and on request from the Commission. The Commission is grateful for this flexibility as it allowed a number of the individual cases to be completed.

2.22 The discovery process has to date yielded almost 100,000 documents, the bulk of which have been supplied by the Dublin Archdiocese. By far the largest proportion of the Commission's time over its first year was spent in reading, collating and analysing this large volume of documentation.

Documents held by Rome

2.23 The Commission wrote to the Congregation for the Doctrine of the Faith (CDF) in Rome in September 2006 asking for information on the promulgation of the document *Crimen Sollicitationis* (see Chapter 4) as well as information on reports of clerical child sexual abuse which had been conveyed to the Congregation by the Archdiocese of Dublin in the period covered by the Commission. The CDF did not reply. However, it did contact the Department of Foreign Affairs stating that the Commission had not gone through appropriate diplomatic channels. The Commission is a body independent of government and does not consider it appropriate for it to use diplomatic channels.

2.24 The Commission wrote to the Papal Nuncio in February 2007 requesting that he forward to the Commission all documents in his possession relevant to the Commission's terms of reference, "*which documents have not already been produced or will not be produced by Archbishop Martin*". The letter further requested the Papal Nuncio, if he had no such documentation, to confirm this. No reply was received. The Commission does not have the power to compel the production of documents by the Papal Nuncio or the Congregation for the Doctrine of the Faith. The Commission again wrote to the Papal Nuncio in 2009 enclosing extracts from the draft report which referred to him and his office as it was required to do. Again, no reply was received.

Legal privilege

2.25 Of the 100,000 documents received from all parties, there were approximately 5,000 over which the Archdiocese initially claimed legal privilege. Generally speaking, a document is legally privileged if it either seeks or contains legal advice and people cannot be compelled to show such documents to any legal forum. The *Commissions of Investigation Act 2004* provides a mechanism for determining whether a document is legally privileged which involves an examination of the document by the Commission. In an attempt to expedite the discovery process and mindful of the sensitivities and concerns of the Archdiocese in respect of documents which might transpire to be legally privileged and equally mindful of the fact that it should make every effort to conduct its affairs by agreement as set out in Section 10 of the *Commission of Investigation Act 2004* the Commission's legal team engaged in discussions with lawyers for the Archdiocese to settle the question of how it might be determined whether specific documents were or were not legally privileged in a fair, fast and efficient manner. The Commission's legal team proposed to the Archdiocese that all of the documents over which legal privilege was claimed would be examined by an eminent third party (a former Supreme Court Judge) for his opinion as to whether or not the documents were legally privileged. The Commission proposed to act on his opinion and to read only those documents which he, in his expert opinion, considered not to be legally privileged. The Archdiocese, on the other hand, would not be bound by his opinion and was free to challenge, both before the Commission and if it had deemed it necessary before the High Court, any conclusion that a document was not legally privileged. That proposal was formally made to the Archdiocese on 7 September 2007.

2.26 As this proposal did not derive from the statutory investigation scheme laid down in the *Commission of Investigations Act 2004*, it could be implemented only with the consent of the parties and not otherwise. On 22 October 2007, the Archdiocese approached the Commission with a suggestion about how to resolve the matter. The essence of this suggestion from the Archdiocese was:

- That the current Archbishop, having regard to the public importance of the Commission's work and the value which he placed on the Commission having the broadest possible

base of information in which to situate the facets of the archdiocesan response, wished to give the Commission access to legal advice which was made available to the Archdiocese at different times in relation to complaints of child sexual abuse.

- That in Archbishop Martin's view there were other parties who had an interest in the privilege attaching to the legal advice in question and that it was his intention to explore with them whether releases would be forthcoming.
- That privilege would not be waived in respect of the legal advices touching directly on liability and quantum⁹ in specific or prospective cases.
- It was Archbishop Martin's hope that, to a very great extent, the task that had been envisaged for the eminent third party would in fact be obviated by this mechanism which he hoped, having consulted with others, to be in a position to propose. A strong indication was given that the Commission would be made a firm proposal within a week or so of that October date.

2.27 This proposal was volunteered by Archbishop Martin and was not imposed by any order of the Commission.

2.28 No progress was made but the proposal was again put at a meeting of the Commission on 8 November 2007. It was, of course, subject to the original caveat of obtaining the consent of certain third parties of whom Cardinal Connell was one.

2.29 Almost six weeks passed and, although a small number of documents were received, there was no indication that all the documents would be forthcoming in accordance with the archdiocesan proposal within any reasonable timeframe. Whereas the Commission fully accepted Archbishop Martin's *bona fides* in making his proposal of 22 October 2007, the fact is that in reality it resulted in further delays in furnishing the documents over which legal privilege was claimed because he was unable to deliver the

⁹ Liability for damages and the amount of such damages.

consents of third parties, in particular Cardinal Connell's consent which he considered a necessary requirement.

2.30 In the circumstances the Commission had no option but to have recourse to its statutory powers under Section 21 of the *Commissions of Investigation Act 2004* to determine whether or not those documents over which legal privilege had been claimed were, in the determination of the Commission, so privileged.

2.31 As a result of issuing an order to produce under Section 21 of the Act the Archdiocese furnished the Commission with all privileged documents. They consisted of approximately 5000 documents some of which were over 100 pages in length. In early January 2008 the Commission members together with its legal advisors set about reading each and every document as was required by the Act in order to give a preliminary view on whether the documents were privileged or not.

2.32 This process was fully explained to Cardinal Connell's legal representatives and submissions from them were heard in early January.

Legal challenge

2.33 As soon as the Commission members commenced to read the privileged documents Cardinal Connell's legal team sought and were granted injunctive relief in the High Court against the Commission's work. Under the circumstances, the Commission gave an undertaking not to proceed with its plans to read the privileged material. The Cardinal was also granted leave to apply for judicial review. Though the Cardinal later withdrew his action and agreed that the Commission should have its costs, his conduct of the case was gravely disruptive of the Commission's work.

2.34 It is important to note that the issue in the case was legal professional privilege. The documents in issue were those in which the Archdiocese had sought legal advice and documents containing legal advice to the Archdiocese. The issue did not concern the confidentiality of disclosures made by either complainants or priests.

2.35 Even though the case was eventually withdrawn by Cardinal Connell, it cost the Commission valuable working time estimated at about four months. The Commission members themselves, as already stated, then had to read all the documents over which privilege was claimed before it could pronounce on the validity of the privilege claim asserted. The Archdiocese waived privilege over a substantial number of documents. The Commission is satisfied that it had access to all documents over which privilege was claimed for the purpose of compiling its report.

Religious orders discovery

2.36 A number of the priests in the representative sample are there because, although they belong to a religious order or society, they worked in the Dublin Archdiocese. Orders for discovery were issued to the relevant religious orders and a significant volume of documentation was received. Documents over which privilege and/or confidentiality were claimed were provided to the Commission and were read by the Commission members. A number of religious orders made no claim of privilege; others waived privilege over the documents identified by the Commission as being necessary for the completion of its report. As with the Archdiocese, the Commission is satisfied that it had access to all documents over which privilege was claimed by religious orders and societies for the purpose of compiling its report.

Investigating the representative sample

2.37 The process by which the representative sample was chosen is described in Chapter 11. The Commission conducted its investigation by means of oral evidence and in-depth analysis of the documentation supplied by all parties. Where gaps in the evidence were apparent, the Commission filled them, where appropriate and possible, with questionnaires and follow-up interviews. Follow-up was not always possible because a number of the significant participants had either died or were too ill to be interviewed.

Research

2.38 In addition to the foregoing, the Commission carried out research into canon law, the law relating to child abuse and the law relating to discovery, confidentiality and other relevant legal topics.

2.39 The Commission has also considered a range of reports of similar investigations from Ireland, the UK and the USA.

The report

2.40 The report was drafted mainly in the later part of 2008 and the early part of 2009. As required by the *Commissions of Investigation Act*, relevant parts of the report were sent to people who are identified or identifiable and who could be contacted. A large number of submissions were received from the relevant parties. These were considered by the Commission and amendments were made as the Commission considered appropriate. A second draft was then sent to the parties who had made submissions and to others affected by any amendments made. All relevant parties were then invited to provide any further information or make any further submissions which they considered appropriate. The final draft was completed in July 2009.

Acknowledgements

2.41 The Commission would like to acknowledge the considerable assistance it has received from Mr Justice Francis D Murphy and his team who produced the *Ferns Report* and Mr Justice Sean Ryan and his team of the Commission to Inquire into Child Abuse.

Costs to date

2.42 The total cost of the Commission's work to 30 April 2009 was €3.6 million. This does not include third party costs. Guidelines on legal costs have been prepared in accordance with Section 23 of the *Commissions of Investigation Act 2004* and given to the relevant parties.

Additional information

In June and July 2009, just as this report was being finalised, the Commission became aware of additional information which may require further investigation and, if necessary, the preparation of a further report.