



***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)***

Ms. Marjorie Farrelly S.C.

Sole Member

INTERIM REPORT

Table of Contents

1.0.	Introduction	1
2.0.	Setting up of the Commission	2
3.0.	Meeting with Grace	2
4.0.	Work of the Commission to date:	3
4.1.	Rules and Procedures	3
4.2.	The Commission's terms of reference	5
4.3.	Analysis of the terms of reference	7
4.4.	Disclosure	8
4.5.	Statements and Questionnaires	12
4.6.	The Commission's progress in specific areas of investigation:	12
	Module 1	13
	Module 2	14
	Module 3	15
5.0.	Correspondence	19
6.0.	Report Writing Stage	19
7.0.	Summary	19

Interim Report

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 Ms. Marjorie Farrelly S.C. 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 decide 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. Part II a) (i) of the terms of reference require that the Commission complete an interim report on the first phase (the matters set out in Parts III to IX) no later than 6 months from the date of the commencement of its work on this phase.

1.8. This interim report is submitted pursuant to section 33 of the Act.

1.9. This interim report is a report to the Minister for Health on the overall progress of the Commission's work to date.

2.0. Setting up of the Commission

2.1. Following the establishment of the Commission and the appointment of Ms. Marjorie Farrelly S.C. as Sole Member, the Department of Health and the Office of Public Works sourced suitable office accommodation in which the Commission could be staffed and facilitated.

2.2. The Distiller's Building, Smithfield, Dublin 7 was sourced by the Department of Health and the Office of Public Works and legal issues identified by the Office of the Chief State Solicitor regarding the lease were attended to.

2.3. Fit out of the premises and the provision of I.T. resources were attended to in liaison between the Department of Health and the I.T. Manager for the Distiller's Building.

2.4. The premises and facilities enabling the Commission to formally commence its work were made available on 12th May 2017.

2.5. On the basis of the above, the Commission formally commenced its work on 15th May 2017.

3.0. Meeting with Grace

3.1. The Commission was of the view that it was important to meet Grace. In September 2017 arrangements were made for the Sole Member and a member of the Commission's legal team to travel to the South East to meet with Grace at her residence.

- 3.2. The purpose of the visit was to meet the person behind the voluminous documentation and reports received by the Commission pertaining to her care and protection over an extended period.
- 3.3. The meeting was successful and provided an opportunity to see Grace's current residence and the care being provided to her.

4.0. Work of the Commission to date

4.1. Rules and Procedures

- 4.1.1. Notwithstanding that the Commission was unable to formally commence before 15th May 2017, substantial preparatory work was carried out by it during April and May 2017 in devising Rules and Procedures pursuant to section 15 of the Act, in order to ensure that it would be able to communicate with various public bodies, service providers and other persons immediately following its commencement. The Commission formally adopted these Rules and Procedures on the 15th May 2017 in accordance with the above section and they were in place before the substantive work of the Commission commenced.
- 4.1.2. In accordance with section 23 of the Act, guidelines concerning the payment to witnesses of legal costs necessarily incurred by them in connection with the Commission's investigation were devised by the Department of Health and the Department of Public Expenditure and Reform (DPER) in consultation with the Commission.
- 4.1.3. The Rules and Procedures set out the guiding principles which the Commission will observe in the performance of its functions and conduct of its investigations in the first phase of its work in establishing the facts relating to the matters to be investigated in Part I a) of its terms of reference. These guiding principles are in line with the provisions of the Act and provide as follows:-

"3. Guiding principles

Independence

The Commission is independent in the performance of

its functions.¹ The Commission will conduct its investigation in the manner that it considers appropriate having regard to the provisions of the Act, the matters set out in I a) and I c) of the terms of reference of the Commission and in accordance with these Rules and Procedures.²

Confidentiality

The Commission will respect the confidence of all documents and evidence communicated to it, save to the extent that it is required by any of the provisions of the Act to disclose or report any such matter.

Voluntary co-operation

The Commission will, to the greatest extent possible consistent with its duties under the Act, conduct its investigation by seeking and facilitating the voluntary co-operation of any person from whom evidence may be required.³

The Act provides that subsection 10(2) is not to be taken to limit in any way the powers given by sections 16, 17 and 28 to a commission or a member of a commission.

Fair procedures

The Commission will at all times, respect the right to fair procedures of any person who gives evidence to the Commission, or is affected by the conduct of its investigation.

Expedition

The Commission will conduct its investigation in respect of the matters set out in Part I a) of the terms of reference as expeditiously as a proper consideration of the matters referred to permit at all times bearing in mind terms II c) d) and e) thereof.⁴

4.1.4. In devising the Rules and Procedures the Commission had regard to the provisions of sections 11 to 14 of the Act and to the need to observe fair procedures for receiving and recording evidence and receiving submissions.

4.1.5. The Act provides at section 11 that a Commission conduct its investigation in private save for certain circumstances set out in the Act.

¹ Commissions of Investigation Act 2004, s. 9

² Ibid., s. 10

³ Ibid., s. 11

⁴ Ibid., s. 10(4)

- 4.1.6. In accordance with the Commission's mandate, and the provisions of section 10 of the Act, the Commission may conduct its investigation in a manner that it considers appropriate in the circumstances of the case.
- 4.1.7. In the above regard the Commission's focus is on obtaining the voluntary cooperation of all persons whose evidence is desired by it, in the public interest so that all of the relevant facts with respect to the matters under investigation can be made known.
- 4.1.8. The investigation being carried out by the Commission is inquisitorial in nature and its purpose is to establish the facts as sought by the terms of reference.
- 4.1.9. The Rules and Procedures provide for the manner in which the Commission may receive evidence and information in any form it considers appropriate to the circumstances, including oral evidence, affidavits or statements. This includes the adoption, where appropriate, of affidavits, statements and interviews given in the course of previous investigations in particular those investigations referred to in the Commission's terms of reference.
- 4.1.10. The Rules and Procedures provide that the Commission may also receive evidence by way of response to questionnaires as directed by the Commission, evidence and information furnished by way of submission, electronic and paper documents, live video links, video and sound recordings or any other mode of transmission.

4.2. The Commission's terms of reference

4.2.1. Part II e) of the Commission's terms of reference provide that:-

"e) *In prioritising those issues which should be most urgently addressed in its investigations, the Commission should, in general and as it considers appropriate, take account of relevant information and findings from previous investigations, in particular those investigations already undertaken in the completion of the following Reports:*

1. *Report of Conal Devine & Associates Inquiry into Protected Disclosures, SU1 (2012)*
2. *Report of Resilience Ireland Ltd. Disability Foster Care Report HSE South East (2015)*

3. *The Reports prepared by Resilience Ireland on behalf of the HSE, and referenced on page 186 of the Dignam report (Report of Conor Dignam SC Review of Certain Matters relating to a Disability Service in the South East (2016)).*
 - i. *Report on the HSE Response on receiving the Conal Devine Report in 2012;*
 - ii. *Report on the HSE and Garda engagement in all of these matters, and;*
 - iii. *Report on the Appeal by Foster Family X on the proposed transfer of the service user places [sic] long term in this placement to residential care.*
4. *Report of Conor Dignam SC Review of Certain Matters relating to a Disability Service in the South East (2016)".*

4.2.2. Investigations were also previously carried out by An Garda Síochána into matters directly relevant to issues to be addressed in the Commission's investigations, with particular regard to Parts V a) and VII a) of the said terms.

4.2.3. The Commission took steps to secure encryption keys and un-redacted versions of the reports in order that they might be available to the Commission on its commencement. In most cases there were no decoded versions of the reports available and it was necessary for the Commission to read each report using an encryption key. This was a time consuming but necessary process for the Commission at the commencement of its work.

4.2.4. The Commission embarked upon the task of collating as much information as possible set out in the particular reports referred to above. These documents were a valuable starting point for the Commission's investigations and enabled the development of an overall understanding of some of the issues under investigation. This task assisted the Commission in compiling an initial list of bodies and persons on behalf of whom and from whom evidence might be desired by it in relation to matters within the terms of reference.

4.2.5. The setting of the terms of reference by the Minister for Health was predated by a review commissioned by the Minister for Social Affairs on 18th September 2015. The said review (Review of Certain matters relating to a

Disability Service in the South East. Mr. Conor Dignam S.C. 29th August 2016) was:-

"... charged with examining the processes which were applied by the HSE in procuring the services of those firms, the adequacy and appropriateness of the approach adopted and of the reviews contained in the Reports, whether the time it took to complete those Inquiries was appropriate, whether the reasons for those Reports not being published by the HSE are well-grounded, and whether, having regard to a number of factors, the Reports can be published".

- 4.2.6. The review sets out that Mr. Dignam was informed by letter dated 18th February 2016, that the Government had decided in principle to establish a statutory Commission of Investigation. Mr. Dignam was requested *"to make recommendations, arising from this review, as to what further measures, if any, are warranted in order to address public concerns"* and was asked to identify matters which would assist in framing the terms of reference for the Commission of Investigation intended to be established by the Government.
- 4.2.7. The terms of reference set by the Minister for Health for this Commission reflect almost entirely the recommendations made by that review of the matters directed to be inquired into by this Commission.
- 4.2.8. In reviewing the information and findings from previous investigations, the Commission is entirely mindful that it has been established and mandated to investigate and report on matters considered to be of significant public concern by the Government, notwithstanding the existence of the above reports. In this regard, the Commission has been directed to conduct investigations to establish the facts regarding the matters set out in the Commission's terms of reference with the statutory powers provided by the Act.
- 4.2.9. The Commission is required to be independent in the performance of its functions and is established to conduct its own investigations into the issues set out in its terms of reference.
- 4.3. Analysis of the terms of reference
- 4.3.1. An important starting point for the Commission was a detailed analysis of its terms of reference.

- 4.3.2. 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 regard to the fact that a substantial number of those 35 paragraphs contain within them a requirement for multiple sub-investigations, some individually requiring an examination of issues as they developed over a 20 year period.
- 4.3.3. The Commission has, in the main, taken 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.
- 4.3.4. The Commission carried out a preliminary analysis focused on the feasibility of bringing forward discrete areas of the terms of reference with a view to reporting on certain facts from individual terms of reference at the interim stage.
- 4.3.5. The Commission is aware that material may emerge from documentary sources or oral evidence during a module that may shed light on issues under investigation in earlier or in other modules. Having regard to the interrelationship between the Commission's terms of reference and the relevance of earlier events to later events, the Commission decided that reporting matters as established facts at an interim stage, was not the appropriate methodology to adopt at this time. The Commission will, however, keep this approach under review throughout the course of its investigations as particular information emerges.
- 4.3.6. The progress that the Commission has made on individual modules is addressed later in this report.

4.4. Disclosure

- 4.4.1. A substantial portion of the Commission's work has been the gathering of documentation relevant to the matters under investigation.

- 4.4.2. The Commission identified numerous bodies and persons that may have documentation relevant to the investigation.
- 4.4.3. Section 16 (1) (f) of the Act provides that the Commission may direct any person to provide it with a list, verified by affidavit, disclosing all documents in the person's possession or power relating to a matter under investigation. Section 16 (1) (g) provides for a power *"to direct in writing any person to send to the Commission any document that is in the person's possession or power and is specified in the direction"*.
- 4.4.4. In the period between the establishment of the Commission and its formal commencement, significant work was undertaken in preparing tailored directions on the form and content of requests for disclosure of documentation from bodies and persons who, in the Commission's view, might have had relevant documentation to assist it in its investigations. Such directions were tailored having regard to the nature, role and possible involvement of such bodies and persons in the matters under investigation taking into account the full ambit of each of the terms of reference.
- 4.4.5. The Commission took the view from the outset that due to the sensitive nature of much of the material under consideration, it was necessary and appropriate to issue directions under section 16 of the Act for the purposes of gathering documentation in the possession of various public authorities, bodies and a significant number of persons. The Commission also received requests to issue directions under section 16 when seeking documentation from certain parties for the disclosure of particular documentation, such directions where issued were appropriate in each case. The Commission has in certain instances requested and received the provision of documentation on a voluntary basis.
- 4.4.6. The Commission commenced issuing detailed directions for disclosure of documentation on 16th May 2017.
- 4.4.7. To date the Commission has issued 51 directions pursuant to section 16 of the Act for disclosure of documentation from bodies and individuals with respect to the matters under investigation in the Commission's terms of reference.

- 4.4.8. In general parties were given 21 days to comply with a direction for disclosure. A number of recipients of such directions sought one or more extensions of time within which to comply with them. The Commission considered and granted extensions for such period or periods as was considered necessary or appropriate and in some cases on the basis of the provision of disclosure on a phased basis.
- 4.4.9. Having regard to the dynamic nature of the investigative process, it has been the case that upon receipt of a tranche of disclosure from bodies and individuals, other avenues of investigation and potential bodies or persons who may have relevant documentation have been revealed. Further directions pursuant to section 16 of the Act continue to be issued, where appropriate. It is clear that this is a process which will necessarily continue module by module, throughout the course of the Commission's work.
- 4.4.10. The disclosure process, while time and resource consuming, is fundamental to the investigative work being carried out by the Commission and an effective investigation could not take place without this preparatory work.
- 4.4.11. The Commission has received an enormous volume of documentation on foot of the above directions and requests. At the date of submission of this Interim Report, the Commission has received approximately 270,000 pages of documentation, which has been received over dates between 13th June 2017 and 14th November 2017, with approximately 10,000 pages received in the last week.
- 4.4.12. The task of disclosure is ongoing and while it appears that the majority of documentation required for its investigative work, confined to the first phase, has been received, the Commission continues to receive volumes of additional documentation from parties, all of which must be processed and analysed in light of the body of information already considered.
- 4.4.13. When issuing section 16 directions the Commission utilised section 16 (1) (f) of the Act and specified the manner in which documentation should be provided however, this has been met with varying degrees of compliance.
- 4.4.14. The Commission is appreciative of the work and effort generally undertaken in providing it with documentation. However, due to the divergence in the format in which the documentation has been received, it has been necessary

in many cases for the Commission to expend considerable time reorganising, inputting, categorizing and checking the documentation received. This is a matter to which the Commission may return in its final report.

- 4.4.15. The Commission created a panel of documentary counsel to assist it in dealing with documentation. The availability of a number of documentary counsel has allowed the Commission to ensure that incoming documentation is processed as efficiently as possible.
- 4.4.16. Once a tranche of documentation is received it is assigned to a member of the documentary counsel team for initial review. As part of this review, documentary counsel either creates a spreadsheet in a specific uniform format or amends the spreadsheet provided to the Commission by the relevant discloser in line with those already created by the Commission, to ensure uniformity.
- 4.4.17. The spreadsheets are sorted into chronological order to allow counsel dealing with particular terms of reference to find documents relevant to a specific period of time in an efficient manner.
- 4.4.18. Documentary counsel systematically review each document and carry out a preliminary assessment of its potential relevance to the Commission's investigation in line with the terms of reference. This assessment is reviewed by the Commission and its legal team.
- 4.4.19. If the disclosed documentation has only arrived in paper form, each document must be individually scanned by administrative staff and a hyperlink created on the database. The actual scanning of documentation received in paper form is a labour intensive and ongoing task for administrative staff. The Commission requires the appropriate level of staff to support this work into the future.
- 4.4.20. One of the most time consuming tasks for documentary counsel has been the duplication of documents. While some degree of duplication is inevitable, for example where the Commission receives a document both from the sender and the recipient, the level experienced by the Commission has been significant and challenging.

4.4.21. Duplication is time costly because every document must be read and logged even if it is a duplicate and has been received several times before. While a duplicate may not be scanned or given a detailed description it still must be identified as a duplicate on the system in order to maintain the integrity of the process. Some documents which appear to be duplicates contain marginalia which may be of relevance to the Commission and when this arises the document must be separately logged.

4.4.22. The Commission is making significant progress in analysing and identifying core documentation relevant to modules under current investigation, as further set out below.

4.5. Statements and Questionnaires

4.5.1. The Commission has devised detailed and focused questionnaires for the purposes of obtaining additional information and clarification to narrow areas of disputed facts in certain areas of its investigative work. The Commission has found this to be a valuable investigative tool and will continue to deploy same where appropriate.

4.5.2. The Commission has also received information in response to specific requests made by it for additional information or clarification regarding particular matters under investigation.

4.6. The Commission's progress in specific areas of investigation

4.6.1. It is a feature of the background to the matters under investigation that some persons whose evidence the Commission would have desired to take are deceased.

4.6.2. Further, some important witnesses whose evidence is desired by the Commission are elderly, frail or suffer from serious ill health. These are not insignificant challenges for the progressing of the investigation and they have already impacted on the scheduling of hearings. For this reason the working methodology and prioritization of modules must be kept under constant review.

Module 1

- 4.6.3. Module 1 of the Commission's work involves the investigation of Part III a) and b) and Part IV a) of its terms of reference.
- 4.6.4. In the context of its examination of the role of public authorities into the care and protection of Grace, Part III a) of the terms of reference require the Commission to conduct a context exercise around the statutory requirements applicable during the period 1989 – 2009 in respect of the care and protection of children and vulnerable adults who were in the care of the State, including those in foster care, together with any applicable non-statutory guidelines, protocols, procedures or practices which applied in the South East.
- 4.6.5. As part of the context exercise the Commission is also directed to establish, under Part III b) of its terms of reference, the administrative and governance arrangements which applied in the South East during the period 1989 and 2009 in respect of the care and protection of children and vulnerable adults in the care of the State.
- 4.6.6. The Commission has now completed a significant amount of work on this aspect of the terms of reference.
- 4.6.7. Most paper based work that can be completed on this aspect of the investigation is complete. The Commission, in due course, will hear evidence from relevant persons as to the implementation and operation of the matters identified above.
- 4.6.8. The second aspect of Module 1 concerns matters set out in Part IV a) of the terms of reference in relation to how the foster family came to be used by the South Eastern Health Board as foster parents for Grace and whether the arrangement was subject to any statutory checks which were applicable at that time, along with any general duty of care responsibilities which should reasonably have been applied and if statutory checks were not carried out, why not. Significant progress has been made in respect of Module 1. A comprehensive examination of documentation dating from Grace's birth has been completed in relation to this Module.

4.6.9. The Commission has completed a substantial proportion of its investigative work in respect of this module. The Commission is due to hear evidence from a number of witnesses shortly.

Module 2

4.6.10. The scope of Module 2 encompasses a number of the terms of reference and is as follows :

“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 South Eastern Health Board of the care provided by Family X to Grace, including any monitoring and review required by law from 1989 – 1995 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 South Eastern Health Board, including all relevant professionals, managers and administrators in respect of Grace during her residence with Family X from 1989 - 1995 and the decision-making processes leading to those decisions.

d) the treatment and investigation by the South Eastern Health Board or any other Health Board of any allegations made in respect of Family X and communicated to any Health Board from 1989 - 1995 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 1989 - 1995.

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 from 1989 - 1995.

V. Care and Decision-Making in respect of Grace from 1989 - 1995

Establish the facts relating to:

a) the care received by Grace over from 1989 - 1995.

b) the knowledge of the various parties including, but not limited to, the South Eastern Health Board or other public

authorities and any relevant service provider agency in or around 1989/1990 in respect of concerns relating to the foster placement;

c) the steps taken, if any, on foot of such concerns including whether the South Eastern Health Board considered terminating the use of the placement as a foster or respite placement, and in particular:-

i. whether the South Eastern Health Board considered moving Grace at that time and,

ii. if it did consider terminating the use of the placement or moving Grace, the outcome of those considerations and the rationale for same and any actions taken on foot thereof."

4.6.11. The Commission has identified and collated a large volume of core material with respect to the matters under investigation in this Module.

4.6.12. Distribution of materials to witnesses for the hearing of evidence in respect of this Module has been completed and arrangements have been made to take evidence from such witnesses shortly.

Module 3

4.6.13. Module 3 of the Commission's investigations concerns the various terms of reference pursuant to which the Commission is directed to establish facts with respect to events occurring in the year of 1996.

4.6.14. The Commission has divided its investigations pertaining to all matters in 1996 into Modules 3A and 3B.

4.6.15. The scope of Module 3A encompasses the terms of reference as follows:

"VII. Representations by the Male Foster Carer (and another party) in 1996

Establish the facts relating to:

c) Whether the Minister for Health, Minister of State for Children at the Department of Health, or any official of the Department of Health took action in 1996 in response to representations made by (i) the male foster carer to the Minister for Health in his letter dated 9 August 1996 and by (ii) another party in a letter received by the Minister for Health on 26 August 1996, if so, whether such action was in accordance

with accepted custom and practice [and] whether the action taken constituted an intervention.

The following part of term of reference Part VII c) *"and whether the action or intervention had any impact on any decisions or decision-making process in respect of Grace"* will be considered as part of Module 3B."

4.6.16. The Commission collated all documentation received in the course of disclosure relevant the scope of the above module and received further information sought on foot of analysis of that documentation.

4.6.17. On the 25th July 2017, the Commission travelled to the South East to take evidence from a witness, relevant to matters within the scope of Module 3A.

4.6.18. On 17th and 18th October 2017, the Commission took evidence from a further 13 witnesses in relation to matters within the scope of Module 3A. The Commission does not, at this stage, anticipate taking further evidence on Module 3A.

4.6.19. The scope of Module 3B encompasses a number of the terms of reference and is as follows:

III. Context

In so far as Part III a) requires an examination of *"any applicable non-statutory guidelines, protocols, procedures or practices which applied in the South East"* this will be considered for 1996 in Module 3B.

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 South Eastern Health Board of the care provided by Family X to Grace, including any monitoring and review required by law, in 1996 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 South Eastern Health Board, including all relevant professionals, managers and administrators in respect of Grace during her residence with Family X in 1996 and the decision-making processes leading to those decisions.

d) the treatment and investigation by the South Eastern Health Board or any other Health Board of any allegations made in respect of Family X in 1996 and communicated to any Health Board 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 in 1996.

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 in 1996.

VI. Decisions Made Regarding Grace on Reaching Adulthood in 1996

Establish the facts relating to:

a) The decision not to remove Grace from the foster placement in 1996 on reaching the age of 18 including any reviews, assessments or deliberations which took place before the decision was taken, the date on which that decision was made and the reasons for that decision.

b) The circumstances leading to and relating to the decisions made at the Case Conference held on 24th October 1996, including the decision that Grace would not avail of a residential placement and that a Wardship application for Grace would be discussed with a named solicitor.

c) The actions taken on foot of the recommendations of the Case Conference held on 24th October 1996.

d) The purpose, role and level of decision-making authority of a Case Conference at that particular point in time, and whether it was authorised to make final decisions, the person(s) with such authority.

e) The decision taken in November 1996 that an alternative residential placement should be sought for Grace and the reasons why this decision was not implemented.

VII. Representations by the Male Foster Carer (and another party) in 1996

Establish the facts relating to:

a) *The hearing of representations made by the male foster carer in line with statutory provisions by two professionals assigned by the SEHB to hear and determine same on 17th May 1996, whether any recommendations were made by those two professionals and if not, the reasons why not.*

b) *The steps taken to address questions that required to be clarified following that meeting with the male foster carer on Friday, 17th May 1996.*

c) *Whether the Minister for Health, Minister of State for Children at the Department of Health, or any official of the Department of Health took action in 1996 in response to representations made by (i) the male foster carer to the Minister for Health in his letter dated 9 August 1996 and by (ii) another party in a letter received by the Minister for Health on 26 August 1996, if so, whether such action was in accordance with accepted custom and practice, whether the action taken constituted an intervention, **and whether the action or intervention had any impact on any decisions or decision-making process in respect of Grace.***

The Commission will consider the aspect highlighted in bold italics above as part of Module 3B, the remainder was considered as part of Module 3A.

d) *Whether, if the Minister for Health, Minister of State for Children at the Department of Health, or any official of the Department of Health did not intervene, the making of representations by the male foster carer or the second party had any impact on any decisions or decision-making process in respect of Grace.*

VIII. Care and Decision-Making in respect of Grace from her 18th birthday in 1996 up to 17th July 2009

Establish the facts relating to:

e) *The decision not to make an application for Wardship in respect of Grace in 1996.*

f) *The obtaining by the SEHB 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 in 1996."*

4.6.20. Considerable work has been completed on all aspects of preparation of Module 3B. This is now in an advanced state of readiness. The Commission

has identified and collated a substantial volume of core material relevant to the matters under consideration within the scope of this Module

4.6.21. The Commission anticipates arranging for the hearing of witnesses in this Module in early 2018.

4.6.22. The remaining modules of investigation will deal with other aspects of and time frames within the terms of reference. The Commission expects to be in a position to commence work on these modules in early 2018.

5.0. Correspondence

5.1. Correspondence is a necessary and continuous task associated with the Commission's work. Some of the correspondence is of a very technical nature and requires detailed consideration by the Commission and its legal team. This task is time consuming and resource intensive. At present there are 14 firms of solicitors with whom the Commission is in active correspondence.

6.0. Report Writing Stage

6.1. This is a process which, owing to the considerable amount of documentation, information and oral evidence that has been and is likely to be collected and analysed by the Commission, will be a complex and time consuming exercise. Part 5 of the Act provides for the process to be followed in compiling a final report.

7.0. Summary

7.1. The pace at which investigations can be conducted is dictated by factors including: the scope and extent of the terms of reference; the period of time covered by the terms of reference; the volume of documentation received and which continues to be disclosed to the Commission and; the number and availability of witnesses whose evidence is required by the Commission during its investigations.

- 7.2. The Commission has completed an extensive examination and analysis of the documents it has received in the disclosure process to date. It has commenced the process of hearing witnesses and has substantially completed the hearings on Module 3A. The hearings of Modules 1 and 2 are imminent. Further modules are being prepared for hearing and these are expected to take place in early 2018.
- 7.3. All of the resources of the Commission are focussed on completing the investigation as effectively as possible having regard to the requirements of the Act.

This Interim Report is submitted to the Minister for Health in accordance with section 33 of the Act and pursuant to the Commission's terms of reference.



MS. MARJORIE FARRELLY S.C.
SOLE MEMBER
14th November 2017