

# Commission of Investigation (Certain matters relative to a disability service in the South East and related matters) UPDATED

## Terms of Reference

The Commission is directed to investigate and to make a report to the Minister for Health in accordance with the provisions of Section 32 of the Commissions of Investigation Act 2004 (No. 23 of 2004) on the following matters:

### I. Overview

- a) The Commission will, within a period of twelve months following the commencement of its work establish the facts regarding the role of public authorities in the care and protection of a service user, Grace (*pseudonym*), who resided with a former foster family (Family X) in the South East of Ireland between 1989 and 2009 as set out in Parts III to IX of this document and
- b) should, in general and as the Commission considers appropriate, take account of and where appropriate adopt relevant information and findings from previous investigations, in particular those investigations already undertaken in the completion of the Reports identified at Part II (d) 1 to 4 of this document.
- c) Following the completion of its work under paragraph a) which comprises the first phase of the work of the Commission, the Commission will set out for Government the further work the Commission will undertake in the public interest in relation to matters as set out in Part X of this document.

### II. Commission's Working Methodology

- a) The Commission shall complete:
  - i. 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;
  - ii. a final report or reports required in relation to the first phase of its investigation no later than 12 months from the date of the commencement of its work, together with the report required at Part I(c).
  - iii. an interim report on the second phase (the matters set out in Part X) no later than 6 months from the date of the commencement of its work on this phase, and
  - iv. a final report or reports required in relation to the second phase of its investigation no later than 12 months from the date of the commencement of its work.
- b) The Commission shall adopt and implement an appropriate working methodology or framework to ensure that any report required in accordance with the Act is completed within the periods specified in (a).
- c) The Commission shall exercise discretion in relation to the scope and intensity of the investigation it considers necessary and appropriate, having regard to the general objectives of the investigation, including the need for the investigation to be prompt and thorough in accordance with the State's obligations under international human rights law.

- d) In performing its functions the Commission should tailor the processes and methodologies to the individual components of its investigations so as to achieve effective investigations in the most timely and cost effective manner possible.
- 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 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).

### III. Context

In the context of an examination of the role of public authorities in the care and protection of Grace:

- a) Establish the statutory requirements which were applicable during the period 1989 to 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.
- b) Establish 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.

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

Establish the facts relating to:

- a) how Family X came to be used as foster parents by the SEHB for Grace and whether this 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.

If any required statutory checks were not carried out, why not.

- b) the monitoring and review by the SEHB/HSE of the care provided by Family X to Grace, including any monitoring and review required by law, during the period 1989 to 2009 and the details of that monitoring and review.

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

- c) the decisions taken by the SEHB/HSE, including all relevant professionals, managers and administrators in respect of Grace during the period she was resident with Family X (in

particular, but not exclusively, those decisions made in 1995, 1996 and 2001 instanced below at V(d), VI, VII, VIII(c)) and the decision-making processes leading to those decisions.

- d) the treatment and investigation by the SEHB, any other Health Board or the HSE of any allegations made in respect of Family X and communicated to any Health Board or the HSE 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 to 2009.
- f) Establish the legal basis upon which the SEHB any other Health Board and the HSE made decisions in respect of Grace's care and/or treatment from 1989 to 2009.

## V. Care and Decision-Making in respect of Grace from 1989 until before her 18<sup>th</sup> birthday in 1996

Establish the facts relating to:

- a) the care received by Grace, in particular whether, and the extent to which, Grace suffered any abuse whatsoever, during the years 1989 to 1996 before Grace reached the age of 18. The facts relating to abuse should be established regardless of whether the alleged abuse occurred within the family home, or in another location, and whether the alleged abuser(s) was/were a member of Family X or any other person(s).
- b) the knowledge of the various parties including, but not limited to, the SEHB 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 SEHB/HSE considered terminating the use of the placement as a foster or respite placement, and in particular:
  - i. whether the SEHB/HSE 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.
- d) the decision to refer Grace to Day Service Provider A in September 1995 and in particular why she was referred to that day service; and:
  - i. The identification, treatment, assessment, or investigation of any concerns that may have arisen, or should have arisen, at that day service in 1995 or at any time thereafter.
  - ii. The persons or bodies to whom any such concerns should have been reported.

## 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 or recommendations. In the case that it was not 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.
- 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 18<sup>th</sup> birthday in 1996 up to 17<sup>th</sup> July 2009

Establish the facts relating to:

- a) the care received by Grace, in particular whether, and the extent to which, Grace suffered any abuse whatsoever, from the date of her 18<sup>th</sup> birthday in 1996 to 17<sup>th</sup> July 2009 inclusive.

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

- b) the meeting convened in respect of Grace's care on 22nd February 2001, including the recommendations from that meeting and the steps taken following that meeting to implement those recommendations.
- c) the decision made, in March 2001, that there would be a gradual, planned phased move of Grace to a residential placement and the reason why that planned phased move did not take place.
- d) the decision in late 2004/early 2005 to remove Grace from the waiting list for a residential placement with the relevant service provider, including the reasons for same and the merits of the decision having regard to the best interests of Grace.
- e) the decision not to make an application for Wardship in respect of Grace in the period 1996 – 2009.
- f) the obtaining by the SEHB/HSE of legal advice in respect of options to protect Grace, the extent to which this advice was acted upon, and if not acted upon, the reasons for the failure to act upon that advice for the period 1996 to 2009.
- g) the decision to move Grace on the 24th July, 2009, the reasons for it, its merits and the decision-making processes and the merits of the decision having regard to the best interests of Grace.
- h) the decision to move Grace on 17th July, 2009 in circumstances where the move had been planned to occur on the 24th July, 2009, the reasons for it, its merits having regard to the best interests of Grace and the decision-making processes.

## IX. Other matters

- a) Establish the facts relating to the SEHB/HSE's interactions with Grace's mother from her birth until 17<sup>th</sup> July 2009, including the provision of relevant information to her in respect of her daughter's care. This should include the facts surrounding the processing of and response by the HSE to Grace's mother's request for documentation under the Freedom of Information Act and in particular the reasons why documents on foot of that request were not provided to Grace's mother for a period of two years.
- b) Establish the facts relating to whether there was any deliberate suppression or attempted suppression of information during the period 1996 to 2016 (subject to the judgement of the Commission as to which period or periods are most relevant, and with particular reference to the period July 2009 – March 2016) in relation to Grace's case, including, but not limited to, an alleged danger of deliberate destruction of files or alleged threats by the HSE to the funding of the Agency whose staff made Protected Disclosures.

## X. Report on Review of Certain Matters Relating to a Disability Service in the South East by Conor Dignam SC

Having regard to the facts established through the investigations at Parts III to IX above, specify the scope of the further investigations (phase two) which the Commission will undertake in the public

interest having regard to the facts established and information in its possession including the report by Conor Dignam SC in his *Review of Certain Matters Relating to a Disability Service in the South East* (29<sup>th</sup> August 2016) and his recommendations regarding the areas to be examined by a Commission of Investigation contained in Chapter 4 of that report. For the avoidance of doubt, this includes recommendations of the Dignam report concerning Care and Decision Making in respect of Others, Actions of the HSE in terms of investigating/protecting others and Protected Disclosures including the HSE's treatment of "whistleblowers" contained on pages 306 to 308.

## XI. Interpretation

In this document, except where the circumstances otherwise requires-

"abuse" means any act, or failure to act, which results in a breach of a vulnerable person's human rights, civil liberties, physical and mental integrity, dignity or general well-being, whether intended or through negligence, including sexual relationships or financial transactions to which the person does not or cannot validly consent, or which are deliberately exploitative. Abuse may take a variety of forms.

"Day Service Provider A" means the service provider which commenced providing day services to Grace on 4th September 1995 and to which she was later moved on a residential basis on 17 July 2009.

"Devine Report" means the report of the inquiry which was chaired by Mr. Conal Devine of Conal Devine & Associates and which reported to the Health Service Executive on the 28th March, 2012

"Family X" means the family with which Grace resided from 1989 to 2009 on foot of Form of Contract for Child Boarded signed by Mrs. X with the South Eastern Health Board on 22 February 1989

"Foster care" means the care of a child by a person other than a relative of a child who is taking care of the child on behalf of a health board in accordance with the regulations applicable at that time.

"foster parent" means a person other than a relative of a child who is taking care of the child on behalf of a health board in accordance with the regulations applicable at that time.

"Grace" means the adult with a disability who, as a child, was the subject of a Form of Contract for Child Boarded out on 22 February 1989 signed by Mrs. X with the South Eastern Health Board and who resided with Mrs. X until she was removed from her care on 17th July 2009 by the South Eastern Health Board

"HSE" means the Health Service Executive established under the Health Act 2004

"Mrs X" means the female adult foster parent with whom Grace resided from 1989 to 2009 on foot of Form of Contract for Child Boarded signed by her with the South Eastern Health Board on 22 February 1989

"placement" means the institutional practice for the placement of children or adults other than with their natural parent(s) for the purposes of adoption, fostering, boarding out or other care arrangements;

"residential placement" means the institutional practice for the placement of children or adults other than with a natural parent(s) for the purposes of providing them with residential accommodation, food and care;

“Resilience report” means the report of the inquiry conducted under the stewardship of Resilience Ireland Limited, which reported to the Health Service Executive in March, 2015.

“Respite placement” means the institutional practice for the placement of children other than with a natural parent(s) for short period(s) of time, which traditionally has included at least one overnight stay.

“public authority” means:

- (a) a Department of State (other than, in relation to the Department of Defence, the Defence Forces) for which a Minister of the Government is responsible;
- (b) the Health Service Executive;
- (c) an Garda Síochána
- (d) a service provider
- (e) a person established—
  - (i) by any enactment (other than the Companies Acts),
  - (ii) by any scheme administered by a Minister of the Government.

“SEHB” means the South Eastern Health Board, established by the Minister for Health by Regulation 9 of S.I. No. 170/1970 - Health Boards Regulations, 1970, under Section 4 of the Health Act 1970

“service provider” means,

- (a) following the commencement of sections 38 and 39 of the Health Act 2004 a person who -
  - i. enters or entered into an arrangement under section 38 of the Health Act 2004 to provide a health or personal social service on behalf of the Executive, or is or was in receipt of assistance under section 39 of the Health Act 2004, or,
- (b) prior to the commencement of sections 38 and 39 of the Health Act 2004 a person who-
  - i. entered into an arrangement with a health board to provide services under section 26 of the Health Act, 1970, or,
  - ii. was in receipt of assistance under section 65 of the Health Act, 1953, or,
  - iii. entered into an arrangement for the provision of services under section 10 of the Health (Eastern Regional Health Authority) Act, 1999.

“South East” means the area specified in Regulation 9(2) S.I. No. 170/1970 - Health Boards Regulations, 1970 i.e. the county borough of Waterford and the administrative counties of Carlow, Kilkenny, Tipperary South Riding, Waterford and Wexford

“Vulnerable Adult” means an adult who may be restricted in capacity to guard himself / herself against harm or exploitation or to report such harm or exploitation. Restriction of capacity may arise as a result of physical or intellectual impairment. Vulnerability to abuse is influenced by both context and individual circumstances.