

Terms of Reference for the Commission of Investigation into the Handling of Child Sexual Abuse in Schools

Interpretation of Terms

For the purposes of the within Terms of Reference, the following terms mean as follows:

Child sexual abuse means interaction with a child for sexual gratification.

Handling in the context of reasonable concerns of child sexual abuse, means actions taken or not taken in response to those allegations or reasonable concerns.

School means a school as defined at Section 2(1) of the Education Act 1998.

Concerns of child sexual abuse means concerns which arose where a person witnessed actions or behaviours that were inappropriate and gave rise or should have given rise to a reasonable suspicion or belief that child sexual abuse had occurred;
or
became aware of any allegation or information that gave rise or should have given rise to a reasonable suspicion or belief that child sexual abuse had occurred.

PART 1 – Investigation

1. The Commission is directed to investigate and to make a report to the Minister for Education and Youth, in accordance with the provisions of the Commissions of Investigations Act 2004, on the following matters of public interest:
 - (a) The handling by Schools, and persons and entities responsible for and associated with Schools, of concerns of child sexual abuse, and in particular:
 - (i) the identification of failures to treat such concerns in a manner which adequately protected children;
 - (ii) the causes of and responsibility for such failures; and

- (b) The handling by An Garda Síochána, the Health Service Executive (or its relevant successor and predecessor organisations) and the Department of Education of concerns of child sexual abuse reported to them.
- 2. The Commission is also directed to report to the Minister for Education and Youth on (a) the impact of sexual abuse upon survivors and (b) learnings for the future in relation to child protection.

PART 2 - Commission's Scope and Approach

- 3. A failure to adequately treat a concern of child sexual abuse will include circumstances where actions taken, or not taken, resulted in:
 - (a) a failure to prevent harm to children;
 - (b) the non-reporting of such concerns, whether to appropriate School staff, An Garda Síochána, the Health Service Executive (or its successor and predecessor organisations) or the Department of Education.
 - (c) the concealment of child sexual abuse.
- 4. The Commission, in examining whether handling was adequate, shall have regard to:
 - (a) whether applicable laws and guidelines were followed;
 - (b) the use of disciplinary procedures;
 - (c) changes of duties or responsibilities, or additional supervision of persons suspected of child sexual abuse;
 - (d) the references provided to subsequent employers of persons suspected of child sexual abuse;
 - (e) subsequent employment, or movement of persons suspected of child sexual abuse to other Schools or institutions, in Ireland or elsewhere;
 - (f) whether the parents or guardians of a child concerned were informed;
 - (g) the approach taken towards any criminal prosecutions, civil litigation or threatened litigation, including the commissioning of any reports or investigations into such matters;

- (h) whether there were any co-ordinated actions with regard to child sexual abuse in Schools by any perpetrators.

PART 3 - Commission's Working Methodology

5. The Commission is directed to submit its final report to the Minister for Education and Youth not later than 5 years after its establishment.
6. In performing its functions the Commission should tailor its processes and methodologies so as to achieve effective investigation and reporting in the most timely and cost effective manner possible.
7. Recognising that it would be impossible to investigate the handling of every allegation of child sexual abuse that may be reported to the Commission and in order to meet the timeline directed, the Commission shall adopt a sampling approach as set out in these Terms of Reference and shall exercise its discretion in relation to the extent of the evidence that it considers in order to draw conclusions and make findings as required by these Terms of Reference.
8. For its investigation, the Commission shall select samples where concerns of child sexual abuse arise. It shall use a purposive sampling approach to select cases where it appears that there will be sufficient witness and documentary evidence available to allow it to fulfil its functions under these Terms of Reference. It shall:
 - (a) conduct an initial survey to identify the potential number of survivors and their experiences in relation to concerns of child sexual abuse;
 - (b) determine, from analysis of this survey, where sufficient evidence is likely to be available to allow the Commission to investigate the matters required by these Terms of Reference;
 - (c) select samples for detailed investigation that it considers to be representative of particular contexts, such as category of School, particular time period, type of School patron and geographic location.
9. The Commission shall also take the following matters into consideration in its selection of samples:

- (a) the extent of concerns of child sexual abuse established by previous investigations including the Scoping Inquiry into Historical Sexual Abuse in Day and Boarding Schools Run by Religious Orders;
 - (b) the extent of criminal convictions of a specific individual or related to a specific School;
 - (c) the extent of evidence which is needed to make findings and recommendations and the likely availability of such evidence;
 - (d) the need to complete its work and report to the Minister for Education and Youth no later than 5 years after its establishment.
10. The Commission of Investigation may consider child sexual abuse that occurred between 1927 and 2013 in its report, but shall recognise that the longer ago matters took place, the greater the realistic limitation on the ability of the Commission to conduct a meaningful investigation into those matters. Thus, the Commission shall have the discretion to reduce the time period under investigation in respect of all or any component part of its investigation or in respect of any School, religious order, person or body as it considers appropriate. Where the abuse or any matter relating to the abuse in question is the subject of ongoing proceedings or statutory processes, the Commission, in exercising its discretion, will have regard to such proceedings and processes in deciding whether to investigate such matters or the manner of such investigation.

PART 4 – Survivor Engagement

11. The Commission shall strive to be as survivor-centred as possible, consistent with fair procedures, and shall promote:
- (a) clear communication and transparency, allowing survivors to make informed choices as to whether to engage with the Commission;
 - (b) support for survivors at key stages of the process, including emotional and psychological support, and support for those with additional needs to facilitate an accessible and inclusive process wherever possible;
 - (c) a trauma-informed approach to working with those who have experienced child sexual abuse;

- (d) practical steps to mitigate risks of retraumatisation, in consultation with survivors and relevant expert advice.
12. The Commission shall establish a Survivor Engagement Programme to operate under the auspices of the Commission. It shall hear accounts from survivors of the impact of their experiences of having been sexually abused in Schools, and any documenting of these shall be on an anonymised basis. The Survivor Engagement Programme is directed to:
- (a) provide a non-adversarial setting for survivors of child sexual abuse to recount the impact of their experiences and for a family member of deceased or incapacitated survivors to recount the impact of sexual abuse upon their relative. It shall not hold formal hearings or conduct a formal legal process, nor act as a public inquiry, and it shall not cross-examine those who choose to participate;
 - (b) engage in relevant research and analysis based on survivors' accounts;
 - (c) produce and submit a summary report to the Chair of the Commission in relation to the impact of survivors' experiences, which is anonymised and does not make findings of fact against any person or organisation.
 - (d) shall design its procedures so as to guard the identity of individuals giving accounts to the Survivor Engagement Programme and endeavour to ensure that any person or institution referenced in the accounts provided and in any report made available shall not be identified.

PART 5 - Reporting

13. The Commission may make such findings and further recommendations arising out of its investigation relating to the handling of concerns of child sexual abuse, and child protection as it sees fit. In its recommendations, the Commission may also have regard to the work of the Survivor Engagement Programme.
14. On or before the second anniversary of the establishment of the Commission, the Chair shall write to the Minister for Education and Youth to either (a) confirm his or her belief that the Commission shall be in a position to report within five years of its establishment or (b) to propose any modifications to the Terms of Reference of the Commission that will facilitate the achievement of that objective.