

1.1 Work Programme

The Ferns Inquiry commenced its work in March 2003. Its work comprised four distinct phases.

The first phase was an analysis of Mr George Birmingham's report to establish the parameters of the Inquiry.

The second phase consisted of research and consultation in areas of relevance to the Inquiry, in particular:

- a) Child Sexual Abuse.
- b) Paedophilia/Ephebophilia.
- c) Management structures of the Church, Health Board and An Garda Síochána.

The third phase involved establishing the factual background to the events that had occurred in the Diocese of Ferns¹. To commence this phase the Inquiry had to make secure and then peruse the documentation made available to it by the Church Authorities, the South Eastern Health Board and An Garda Síochána.

Most Reverend Eamonn Walsh, Apostolic Administrator to the Diocese of Ferns agreed to make available to the Ferns Inquiry all files and documents relating to the subject matter of the Inquiry including privileged material. Much of this privileged material contained confidential legal advice and reports obtained by the Diocese over the past 20 to 30 years. By making this privileged material available to the Ferns Inquiry, the Diocese of Ferns has made it possible for the Inquiry to form a more comprehensive and accurate picture of the events that occurred in Ferns and the response of the Diocese thereto than would otherwise have been possible. This level of co-operation went beyond anything the Inquiry could have required or which a court of law could have compelled.

The Apostolic Administrator and his solicitor, Arthur O'Hagan Solicitors, confirmed to the Inquiry that all relevant documentation has been furnished to it.

Advertisements were placed in three national and four regional newspapers in the weeks commencing 11 August and 29 September, 2003, seeking the assistance of the public.

The Inquiry set in place oral hearings commencing Monday 15 September 2003. The Inquiry was concerned that persons who wished to communicate with it should be able to do so in a manner most appropriate to them. It invited interested parties to communicate with it in any of the following ways:

¹ The Diocese of Ferns is not a legal entity and this Inquiry uses the term to refer to the office of Bishop or equivalent authority for the time being of the diocese.

- a) by writing out a statement and sending it to the Inquiry either by post or email;
- b) by speaking to a member of the Inquiry legal team either in person or by telephone; or
- c) by attending for an oral hearing of the Inquiry.

Most witnesses chose to attend for an oral hearing; many submitted a written statement in advance. An account of the testimony of those reporting abuse is set out in Chapter 4 of this Report.

Speaking about sexual abuse is a traumatic and emotional experience; coming into a formal Inquiry to speak about sexual abuse suffered as a child is particularly so. The Inquiry sought to offer a sensitive and supportive forum to all who appeared before it. However, because it was in everybody's interest to observe correct procedures, witnesses were guided through their testimony by Senior Counsel engaged by the Inquiry to ensure that information relevant to its Terms of Reference was obtained. A stenographer recorded proceedings and transcripts of all evidence heard were made available to the members of the Inquiry.

The Inquiry wishes to acknowledge its debt to the courageous people who spoke about experiences of abuse. Without exception the witnesses who attended the hearings impressed the Inquiry with their dignity and clarity. Many offered an invaluable insight into the nature and extent of the problem and the lasting trauma it can cause. It would not have been possible to produce this Report without their cooperation and help.

The Ferns Inquiry wishes to acknowledge the courtesy and assistance offered by Mr Colm O'Gorman and Ms Deirdre Fitzpatrick of the *One in Four* organisation. They provided encouragement and support to many of the witnesses who attended for oral hearing.

The hearing of evidence of abuse from witnesses and complainants was substantially completed by February 2004. By that time the Inquiry had conducted oral hearings in respect of over 90 witnesses and had taken statements in respect of a further 57 witnesses who had spoken about abuse suffered by them or about which they had information.

The Inquiry then heard from members of the Church authorities and in particular the Diocese of Ferns, from the South Eastern Health Board² and from An Garda Síochána. These witnesses were selected by the Inquiry from documentation and statements that had been made available to it. It was through the attendance of these witnesses that the Inquiry was able to inform itself as to how the authorities responded to complaints or allegations of child sexual abuse; whether their handling of these allegations was appropriate and how the various agencies interacted with each other.

² The Health Services Executive in the Wexford area was known as The South Eastern Health Board (SEHB) during the period which is the subject matter of this Inquiry and that is the title that is used throughout this Report.

The Inquiry spoke with over 100 witnesses during this phase of its work and all of the testimony was duly recorded. The detail of this evidence will be discussed in Chapters 5, 6 and 7 of this Report.

Having spoken with the complainants and the witnesses from the three relevant authorities, the Inquiry asked Bishop Brendan Comiskey to attend to address the issues focused on by the Inquiry. Bishop Comiskey attended the Inquiry for a total of 8 days of oral hearing from 19 to 30 July 2004, and for a further 2 days in September 2004. This evidence is referred to as it arises in the course of this Report but is dealt with in greater detail in the chapter headed "Church Response" at Chapter 5 below.

The Inquiry wishes to acknowledge the high level of cooperation received from Bishop Comiskey throughout this process. Through his lawyers he responded with efficiency and courtesy to the requests made by the Inquiry.

The Inquiry informed itself from the documentation made available by the South Eastern Health Board as to those officers and employees of the Board who would be in a position to assist the Inquiry in identifying how allegations of child sexual abuse were handled by it. This is dealt with in Chapter 6 of this Report. The Ferns Inquiry would like to acknowledge the full cooperation it received from the South Eastern Health Board through their officer Ms Marie Kennedy, who made relevant documentation available to the Inquiry and attended personally on a number of occasions.

The South Eastern Health Board has confirmed to this Inquiry that it has made all relevant documentation available to it.

The Garda files in relation to any allegations of child sexual abuse in which Garda investigations had been completed were forwarded to the Inquiry. The details from these files and the Garda handling of the allegations are set out in Chapter 7 below. The Inquiry wishes to acknowledge the same high level of cooperation from the Garda authorities, particularly through Superintendent Kieran Kenny who attended the Inquiry on a number of occasions and liaised with it to clarify any matters that arose from the Garda files.

An Garda Síochána has confirmed to this Inquiry that it has made all relevant documentation available to it.

The Inquiry wishes to acknowledge the assistance of Mr James Hamilton the Director of Public Prosecutions (DPP), and his staff who met with members of the Inquiry team and discussed matters which arose from the Garda files regarding prosecution and the criminal trial.

The taking of evidence was substantially completed by February 2005 with the attendance of Bishop Eamonn Walsh, the Apostolic Administrator of the Diocese of Ferns.

In its fourth and final phase, the Inquiry prepared a draft Report. This draft Report, or extracts from it, was submitted where possible to any person mentioned therein or any person whose testimony was used in the final draft. As many interested parties as

possible were afforded an opportunity of responding to the draft document and amendments were made where appropriate. This was a lengthy process which occurred over an eight month period.

Because of the non-statutory nature of this Inquiry, all evidence received by it is unsworn. The Inquiry is satisfied that those who contacted it did so in good faith and out of a desire to be of assistance. However, the unsworn nature of the evidence available to the Inquiry must be emphasised.

The Inquiry has not used gender-neutral language in this Report as the alleged perpetrators of the abuse which was considered by the Inquiry were all male. Even when discussing general issues relating to child sexual abuse, the words “he” and “him” are used but the Inquiry does of course accept that child sexual abuse is committed by females as well as males.

The Inquiry interpreted the term “clergy operating under the Diocese of Ferns” as meaning diocesan priests who were ordained for the Diocese of Ferns. This precluded consideration of allegations against seminarians, priests belonging to religious orders and priests ordained for dioceses other than Ferns even when they were in ministry in the Diocese of Ferns.

Although the Terms of Reference did not specify child sexual abuse allegations, it was the clear understanding of all persons communicating with the Inquiry that this was the subject matter of the Inquiry and accordingly, allegations of physical abuse or abuse of adults were generally not considered by the Inquiry.

Within its Terms of Reference, the Inquiry identified over 100 complaints or allegations relating to child sexual abuse by 21 priests under the aegis of the Diocese of Ferns. Over forty of those complaints related to two priests only. Ten of the priests complained against are now deceased, three have been laicised and the remaining eight priests are no longer in active ministry³.

1.2 A Review of the Birmingham Report

The Birmingham Report had its origin in a documentary entitled *Suing the Pope* broadcast on 19 March 2002 by the BBC as part of its Correspondent series. The programme concerned allegations of clerical child abuse in the Roman Catholic Diocese of Ferns. Less than three weeks later, the Minister for Health and Children met with a group of contributors to that programme who called for a State sponsored Inquiry into the alleged abuse. At the Minister’s suggestion, it was agreed that there would be a preliminary investigation by a senior counsel who could identify the central issues for any Inquiry and make recommendations as to its form and structure. On 10 April 2002, the Minister appointed Mr George Birmingham SC to carry out this exercise.

Mr Birmingham’s Terms of Reference were:

- *To consult with the victims;*

³ These figures are subject to the Appendix annexed hereto.

- *To consult with the Catholic Church to ascertain the level of cooperation, if any, which might be forthcoming;*
- *To examine all relevant files within State agencies/authorities (e.g., Health Board files, Garda files, Commissioner's report), to assess whether the role of civil authorities required further inquiry;*
- *To have particular regard to the specific requirement of an inquiry into sex abuse (e.g., confidentiality);*
- *To consult with those involved in the Commission to Inquire into Child Abuse, chaired by Ms Justice Laffoy, to ascertain how that Commission or its experience, might be suitable or useful;*
- *To examine and address any legal issues surrounding such an Inquiry (constitutional issues regarding the Church etc);*
- *To examine whether an inquiry limited to the Diocese of Ferns is feasible, and whether and how the wider picture is to be examined;*
- *To recommend the form of inquiry appropriate and suggest terms of reference.*

George Birmingham met with a number of the persons who alleged child sexual abuse to ascertain their particular needs and to clarify their hopes for and expectations of an Inquiry. He identified the need of the victims for confidentiality and recommended that any Inquiry should minimise intrusion into their privacy.

Mr Birmingham was assured by Bishop Eamonn Walsh (who was appointed Apostolic Administrator of the Diocese of Ferns after Bishop Brendan Comiskey resigned in April 2002) and by Bishop Brendan Comiskey of cooperation in any Inquiry that might be set up. On his appointment, Bishop Walsh stated that he would *“fully co-operate with whatever instrument of Inquiry was deemed most appropriate”*.

George Birmingham operated on the basis that a child is a person under the age of 18 years. Abuse of persons over 18 was of significance to the Inquiry where the abuse had commenced during the victim's childhood or where it happened in the context of a perpetrator who had multiple victims known to the Inquiry, some of whom were under 18.

Mr Birmingham suggested that while it would be important for the Inquiry to place responses or lack of responses to allegations in the context of the time, there was also a real public interest in knowing how complaints of abuse would be handled today and whether changes have been effected since allegations first came to light. The Ferns Inquiry therefore brought within its remit allegations of abuse received by the Diocese of Ferns after April 2002 (the cut-off point identified in the Terms of Reference), where those allegations referred to a priest already identified to the Inquiry as an alleged child sex abuser, or where they referred to allegations of abuse that occurred prior to April 2002 even where they involved a priest previously not identified to the Inquiry. The Terms of Reference of the Inquiry were interpreted in this way to facilitate a proper understanding of the ways in which abuse allegations are handled by the Diocese of Ferns today. It must be noted that the diocesan authorities cooperated with the Inquiry in interpreting its Terms of Reference in this manner.

Mr Birmingham considered whether legal or constitutional issues constrained the Minister in determining what type of Inquiry ought to be established. He concluded that while undoubtedly an Inquiry would encroach on the Church's right to privacy and the right to privacy of individuals who played a role in various controversies, the importance of the issues to be enquired into would render the decision to establish a tribunal immune from challenge.

This raised the question as to whether the Roman Catholic Church could be regarded as no more than a private organisation, given the particular constitutional position which all religions enjoy under Article 44.1.5:

"Every religious denomination shall have the right to manage its own affairs, own, acquire and administer property, moveable and immoveable and maintain institutions for religious or charitable purposes."

Mr Birmingham was of the view that any challenge based on an argument that the Inquiry denied the Church the right to manage its own affairs would fail, because the purpose and effect of the Inquiry was not to interfere with the management of Church affairs, but to identify how those affairs are managed. Accordingly, in his judgement, the Minister was not constrained by any legal or constitutional issue from deciding what type of Inquiry was most appropriate. In conclusion, Mr Birmingham said,

"In my view the most effective form of Inquiry, and the one which is most flexible and most receptive to the various needs that must be addressed, is a non-statutory Inquiry, sitting in private, capable of designing its own procedures and tailoring those to the needs of those with whom it is dealing."

Mr Birmingham strongly recommended that the Inquiry should be limited in geographical area to the Ferns diocese and this has been an important and useful limitation.

The Inquiry would like to acknowledge the important contribution of Mr Birmingham to this process. His unpublished report was a valuable resource and his insightfulness in making the recommendations which he did and in drawing up the Terms of Reference were important factors in this Inquiry carrying out its work within a reasonable time frame.

Because of the non-statutory nature of the Inquiry, its Terms of Reference contained a condition that in the event of the withholding or withdrawal of full cooperation from the Inquiry by Church or State authorities, or any suggestion of such cooperation being withheld, such a fact should be reported immediately to the Minister for Health and Children who would then grant the Inquiry statutory powers.

The Ferns Inquiry is appreciative of the considerable assistance provided to it by the Diocese of Ferns and its solicitors. A number of documents which were of relevance to the Inquiry were not made available by the Diocese until shortly before the Inquiry completed its work. The Inquiry is satisfied following careful examination of the process by which diocesan discovery was made that this delayed delivery arose as a result of genuine errors of judgement.

The nature of that documentation and the material which it discloses has been summarised in the Appendix hereto. It would not be practicable to analyse or investigate this material in depth and incorporate any findings arising in the Report without unduly delaying the completion of the work of the Inquiry. In the circumstances, the Appendix hereto must be read as an addition to the principal Report. The Inquiry believes that whilst the material might call for alterations in the detail of the Report, it does not affect any matter of principle contained therein.