

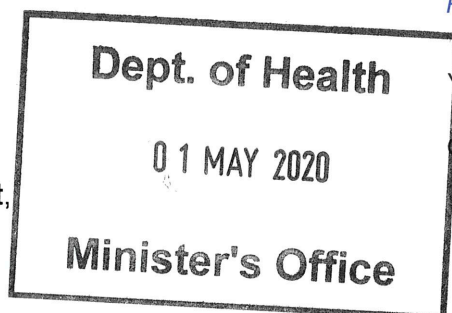


**Ms. Marjorie Farrelly, Senior Counsel**  
**Comhalta Aonair / Sole Member**

*Príobháideach agus Faoi Rún*

*Private and Confidential*

Mr. Simon Harris, T.D.,  
Minister for Health,  
Department of Health,  
Block 1, Miesian Plaza,  
50 – 58, Lower Baggot Street,  
Dublin 2  
D02 XW14



Your ref:

Commission ref:

30<sup>th</sup> April, 2020

**Re: Commission of Investigation (certain matters relative to a disability service in the South East and related matters) – Seventh Interim Report and Request for Extension of Time**

**Dear Minister,**

***Introduction and request for an extension of time***

I am writing to you by way of an interim report on the progress of the work of this Commission pursuant to section 33(3) of the Commissions of Investigation Act 2004 ("the Act"). I am also writing to request that the timeframe for submitting the Commission's final report on the phase 1 of its work be revised pursuant to section 6(6) of the Act.

I refer to earlier interim reports. I also refer to your letter of 13<sup>th</sup> May, 2019 in which you granted the Commission an extension of the time within which to complete its report in phase 1, extending that time to 15<sup>th</sup> May, 2020. You advised the Commission that you considered that extension as final. The Commission must however seek a further extension of time within which to complete its work and for delivery of a final report on the matters of inquiry set by the terms of reference.

The reasons why further time is required to complete the work of the Commission are set out below. These relate to matters arising in the course of the Commission's work, the wide impact of Covid-19 and matters arising from the emergency measures taken in the public interest in the current public health emergency. The Commission is concerned at the impact of the current Covid-19 restrictions on its work. Its analysis of the impact of these restrictions is set out later in this letter as it's the extent of its readiness to continue with its work.

The Commission would not now be seeking a further extension of time unless it considered that this was necessary and that the submission of a report without the benefit of an extension would result in an unsatisfactory and incomplete account of the issues under

investigation and give an insufficiently detailed account of the questions giving rise to the terms of reference.

Of equal importance is that the Commission is very concerned that the interests of fairness to parties participating in the investigation (many giving evidence on grave matters concerning their good name or conduct) would not be served without adequate time for them, or for the Commission, to consider their position in full. The provisions of sections 34 and 35 of the Commissions of Investigation Act 2004 are of central importance in this regard. Having regard to the scope of the terms of reference, the vulnerability of the citizen at the heart of the investigation and the personal or professional reputational interests of many of the individuals and organisations involved together with the legislative requirements set out above, the Commission's work will not be concluded by 15th May, 2020. Therefore the Commission must request the minister for an extension of time within which to complete its investigation and submit its report.

The Commission has given consideration to the possibilities of re-tailoring its processes to continue hearing evidence on outstanding issues - this is also described later in this letter. But while the Commission will endeavour to proceed as far as possible with a re-tailoring of its processes it cannot yet say with sufficient certainty that this alone will enable it complete this work.

In this uncertainty it is not easy to formulate the request to you for the period of time for which the time frame for submitting the Commission's final report should be extended. The Commission would wish to have a better understanding of the working out of current restrictions and, more importantly, public health risks before attempting to do so. However, it believes the course it should now take is to request that the time frame be extended by ten weeks so as to enable the Commission get a more realistic understanding of how hearings can continue and outstanding evidence be gathered. The Commission would continue its work over this time on the analysis, writing and chapter preparation currently fully occupying it as regards evidence already gathered and to explore and test the possibilities of utilising re-tailored processes to gather outstanding evidence.

The Commission anticipates that it will be in a position at that stage to set out the additional time necessary to bring its work to completion.

The current status of the Commission's work in terms of evidence yet to be take, chapters to be written and readiness to continue its work during the current public health emergency is set out below.

### ***Hearings in module 5C and module 7***

The Commission is inquiring into all issues set out in its terms of reference in a manner that focuses on providing clear answers to the questions of fact at the heart at the significant public concern which was raised over the care and welfare of Grace giving rise to the



establishment of this Commission of Investigation. The evidence that still remains to be taken at hearings can best be described by reference to module 5C and module 7.

### *Module 5C*

Other than for certain Garda evidence most of the evidence required in module 5C has been taken. This includes evidence concerning the wardship application with respect to Grace, up to 31st December, 2009.<sup>1</sup> However some evidence still remains to be taken from non Garda witnesses, including one witness central to the module who was not in a position to complete his evidence for reasons outside of the control of the Commission. There are a number of other witnesses who need to be called or recalled to clarify some issues that have arisen in evidence.

The Commission substantially completed the taking of evidence on the involvement of An Garda Síochána by March 2020. The reason this evidence could not have been completed before this date related to serious health concerns of witnesses (all former or retired members) and was outside the control of the Commission. The evidence of a small number of Garda witnesses remains outstanding and will be gathered as soon as possible.

The outstanding issues represent a minor component of the overall module 5C hearing in terms of time and planning, but, obviously, not in terms of the intrinsic importance of the issues to the Commission or to participants.

### *Module 7 - The wardship component*

The Commission scheduled module 7 hearings on wardship matters for the start of December, 2019. These were to deal with the history of the wardship application with respect to Grace over the period from 1st January, 2010 to 5<sup>th</sup> March, 2010. Before these hearings commenced the Commission was advised that two critical witnesses would be unavailable. The first of these witnesses, a witness central to the investigation, was medically certified as unwell. The second witness had a serious family illness preventing her from attending. Both witnesses were critical to the issue under investigation and had at all times been cooperative with the investigation. In the circumstances the Commission had to postpone the scheduled hearings.

The Commission endeavoured to rearrange the hearings according as to how the circumstances of the two witnesses developed. Hearings were rescheduled to commence on Wednesday 18<sup>th</sup> March, 2020. However, by that stage concerns over the spread of Covid-19 made it impossible to proceed with the hearings and they were cancelled on 13<sup>th</sup> March, 2020.

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<sup>1</sup> Evidence on the history of wardship issues from 1<sup>st</sup> January, 2010 to 5<sup>th</sup> March, 2010 fall within the scope of Module 7.

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### *Module 7 - Grace's personal appearance – medical evidence component*

This component of module 7 deals with Grace's personal presentation and will assist the Commission in establishing the facts on matters relevant to her care from 1989 to 2009 in accordance with the particular questions raised in the terms of reference. This care aspect is the subject matter of an extensive care chapter referred to later in this letter.

The Commission held hearings in January 2020 with medical witnesses. The evidence taken related specifically to Grace's presentation between 2010 and 2016 and was for the purposes of determining, on the medical evidence, the cause of any concerning presentation.

The evidence of one medical witness was not completed. An issue of a claim of privilege with respect to a number of documents has arisen and requires to be resolved. This evidence will require to be completed and will take, approximately, one day. Other than that, this aspect of Module 7 has been completed.

### *Module 7 - Freedom of information component*

Much of the evidence in this component has been taken already in module 5A in so far as it came within the chronological scope of that module. However, the issue straddles module 5A and 7 and the Commission has yet to take the evidence of witnesses on the module 7 element. When this occurs it is not expected that this will be an unduly lengthy process.

### *Module 7 - Suppression of information component*

The Commission is able to narrow down the scope and intensity of its investigation of this matter in module 7 on the basis of evidence already taken. Voluminous documentation has been reduced to the material the Commission considers most relevant to be focused upon. The Commission remains cognisant, however, of the possibility that evidence yet to be taken on the Freedom of Information component may necessitate a re-evaluation of this view. The matter will be much clearer to the Commission when the remaining evidence on the Freedom of Information component has been taken.

### *Module 7 - Destruction of files component*

Similar to the circumstances in the Freedom of Information component, much of this evidence has been taken already in module 5C. The Commission does not believe that further evidence is required, other than as may arise from evidence given in the other module 7 components.



## *Module 7 - Threats to funding component*

The situation here is similar to that stated for the destruction of files component.

### ***Progress in the drafting of the Commission's report***

A considerable amount of work has been undertaken in connection with the analysis of evidence taken at hearings, consideration of any submissions received and on the writing of draft chapters setting out the facts established, for inclusion in the draft final report.

Notwithstanding that there are further areas of inquiry under the terms of reference the Commission has advanced preparations of draft chapters in a number of key areas of investigation. Given the scope of areas of inquiry and the nature and extent of evidence given to the Commission each chapter is necessarily an extensive document.

The Commission has distributed draft chapters or draft chapter material to parties entitled to receive these for four of its chapters – chapter for module 1, chapters for module 2 (two chapters) and chapter for module 3C. Some submissions in response to this distribution have been received. In other cases submissions are still awaited. In advance of distribution of this material the Commission obtained written acknowledgements of confidentiality from each of the intended recipients.

The Commission had anticipated that chapters including the Commission's draft findings with respect to all aspects of the terms of reference investigated in modules 3A and 3B would be completed and ready for distribution by the end of April. However this has not been possible. The chapter reporting upon module 3B is lengthy with multiple interlinking parts. The body of evidence received in module 3B, covering a critical year in the management of Grace's case, was extensive. Final steps in its preparation prior to circulation are time-consuming, however the Commission is satisfied that these are now at final stage. A draft chapter for module 3A will be distributed in accordance with the requirements of section contemporaneously with chapter for module 3B because their subject matters are linked and important issues arising for several participants need to be considered by them together. The Commission's findings on the treatment of representations made in Grace's case to the then Minister for Health and separately to the South Eastern Health Board are reported upon in these chapters.

In advance of distribution of chapter and chapter material for module 3A and 3B, the Commission has identified the parties who will be entitled to receive this material. It has sought written acknowledgements of confidentiality from each of them.

A draft chapter addressing the matters enquired into in module 4 is also significantly advanced. It is intended that the writing of this chapter will be completed and a draft distributed after the distribution of the draft chapters on module 3A and module 3B.

A chapter of the Commission's report will address the facts established on the role of An Garda Síochána in Grace's case. A considerable amount of work has been completed on the drafting of this chapter. The issue of some outstanding evidence referred to above remains to be addressed.

### ***Contents of chapters***

The following is an overview of the contents of draft chapters already distributed and those in preparation for distribution. This overview is provided on a basis of not identifying parties (other than as revealed in the terms of reference), or indicating the evidence taken or the draft conclusions reached.

The chapter on module 1 reports on how Mr. and Mrs. X came to be used as foster parents for Grace by the SEHB. It reports on whether that arrangement was subject to any statutory checks and, if so, the extent to which these were applied. It also reports on the general care responsibilities of the health board towards Grace.

The chapter also contains a detailed description of the backgrounds of both Grace and of Mr. and Mrs. X in order to set a context for Grace's placement in the South East. This includes the result of the Commission's examination of the available records relative to Grace's life from birth in 1978 to her placement with Mr. and Mrs. X in February, 1989. It includes relevant background information on Mr. and Mrs. X, with a particular emphasis on their introduction to minding and fostering children in Ireland.

The chapter on module 2 (Grace) reports on the period of Grace's life from May, 1989 to May, 1995 and is mainly concerned with decisions taken by the health board in respect of Grace (and the legal basis for same), the health board's monitoring and review of the care provided to Grace by Family X, and the sharing of information pertaining to Grace among health board staff over that time.

The chapter on module 2 (another child) reports on an investigation carried out by the South Eastern Health Board in early 1993 into allegations made in relation to another child who had stayed with Mr. and Mrs. X. The Commission reports on whether and how these were communicated to the health board and investigates how the health board treated and investigated the complaints, and whether it had regard to Grace's position in that investigation.

The chapter on module 3A reports on the history of the writing of two letters to the Minister of Health, the events and considerations giving rise to these letters and the processing of the letters on behalf of the minister and the minister of state. It describes the administrative procedures used within the department to respond to these letters and examines established practice and procedure within the department regarding letters of representation. It examines the roles of the ministers and the department's civil servants in responding to the representation, the responses given and the affect of the responses on Mr. and Mrs. X.



The chapter on module 3B reports on decision making in Grace's case in 1996. This was an important year as it was when a certain complaint was received by the health board and led to a decision to remove Grace from her placement with Mr. and Mrs. X. The history of this decision and its outcome are examined. The chapter also reports on the manner in which the health board dealt with the statutory representation process under the 1995 Regulations and its monitoring and review of Grace's placement in 1996. Communications at high levels of the SEHB are examined in the chapter as well as the impact of letters of representation sent to the Minister for Health on the decision making process in Grace's case. The report on the writing and the Department of Health's consideration of these letters is more fully contained in the chapter on module 3A.

The chapter on module 3C reports on how Grace came to be placed in a day care centre in the South East in 1995. It examines the circumstance and processes whereby this placement was arranged, its suitability for Grace and consideration of any attention given to alternate placements.

It reports on whether any concerns arose or should have arisen from Grace's introduction to the service in 1995 and 1996.

The chapter on module 4 will report on the Commission's investigation into Grace's life with Mr. and Mrs. X and her life in her day care placement between 1997 and 2006. Central to this chapter is an examination of the care provided to Grace by the SEHB with a particular emphasis on decisions made by them regarding an alternative long term residential placement.

The care chapter will encapsulate care related evidence taken over all modules. It is focused on questions as to whether or to the extent Grace suffered abuse of a physical, sexual, financial or neglect nature. The chapter is an in depth examination and analysis of all documentation received by the Commission and all evidence taken on these issues which spanned many years. The Commission has taken all evidence relating to these issues save for the evidence of one medical witness.

The chapter reporting on the role of An Garda Síochána will report the facts established regarding the extent to which relevant information about Grace was shared among the various professionals and other relevant employees of public authorities, including members of An Garda Síochána. The time frame under review is between 1989 and 2009. This chapter will specifically report on two incidents specifically involving Grace that occurred on 20th August, 2008 and on 27th March, 2009. Other allegations, arising in the period between 1989 and 2009 are also reviewed by the Commission in this chapter.

## ***Progress on the analysis and writing of the chapter on module 5***

The chapter on module 5 investigations will report on how Grace's case was managed by the appropriate authorities in the period from 2007 to the end of 2009, and the decision making processes involved in that management during that period. Particularly, this will include an examination of the basis and rationale for the decision by the HSE to remove Grace from her placement with Mr. and Mrs. X in July, 2009.

## ***Substantive interim reports***

The Commission has considered the question of the submission to the Minister of a substantive interim report on the matters examined in modules 1, 2, 3 and 4 and with respect to the role of An Garda Síochána in Grace's case. These modules deal with the period from shortly before Grace's placement with Family X in 1989 until 2007. In addition, some aspects of the evidence taken in those modules form part of a care chapter, referred to above. The Commission is of the opinion that because of the complexity of, and interrelation between the events and decisions during this period and those during the period from 2007 on, portions of the draft findings in the chapters reporting on modules 1 - 4 and on the role of An Garda Síochána may need to be reviewed consequent on the receipt of further submissions from the parties entitled to make such submissions. So as to ensure fair procedures are afforded to all parties involved with the Commission, it has taken the view that such a substantive interim report should not be submitted at this stage. This is a matter, however, that will be kept under review by the Commission.

## ***Covid-19 and business continuity***

### ***Impact on Commission's work***

The work of the Commission has been affected by the Covid-19 pandemic, in particular from mid March, 2020. The principal challenges have been:

- Cancellation of hearings scheduled to commence on 18<sup>th</sup> March, 2020;
- Inability to reschedule the cancelled or other hearings at this time,
- Inability to conduct group hearings because of requirements for social distancing, isolation and cocooning requirements,
- Inability to access the Commission's offices in Dublin and its paper files,
- Inability of Commission team to hold meetings,
- Health issues for witnesses, particularly for elderly and vulnerable witnesses,
- Travel issues for witnesses in coming to Dublin and for Commission personnel to travel to out of Dublin venues.

### ***Continuity arrangements***

The principal records of the Commission are electronic and are maintained on dedicated space on Department of Health servers. Department of Health protocols on data backup are maintained.



The Rules and Procedures of the Commission set out that the Commission's preference for written communication is by electronic means. The majority of the Commission's communications with parties is by email (probably in excess of 95% of both incoming and outgoing communication). Only in a handful of cases are witnesses unavailable by email and in those cases arrangements for communication by post are in place. (Communications by post accounts for a very small percentage of the Commission's work, but this means of communication is necessary in the case of a number of very important witnesses).

All Commission documents are available in electronic form, principally in Word, Excel and .pdf.

The experience of the Commission since the commencement of the current public health emergency is that all law firms representing witnesses are operating and are in contact with their clients and in a position to take instructions on Commission business. The Commission continues to have day-to-day communication with these firms on an uninterrupted basis but allowing for some delay due to some communication issues with clients.

The vast majority of witnesses use email and communicate using email. A small group of witnesses do not use email and most of these are elderly witnesses.

All Commission personnel are working from remote locations and all are working from computers. I am in contact with all members of the Commission's legal team on the work now being undertaken in this manner.

The Commission's solicitor, both members of the Commission's administrative support team and I have remote access (via Citrix) to the Commission's server and data. Members of the legal team without this access have sufficient data available on secure email to continue their work and can access (through the Commission's solicitor and administrative support) any other documentation they require.

All members of the legal team are in contact with me and with each other, as circumstances require, through the Commission's email system, Law Library secure email accounts, telephone, online messaging systems and WhatsApp and on audio visual platforms. All members have been assigned tasks and are engaged in completing these tasks.

The HEO and EO assigned as administrative team to the Commission are operating from remote locations on laptops provided by the department and are connected (via Citrix) to the Commission's server and data base and are in place to support the work of the Commission. All routine administrative interaction with the department continues without interruption.

### ***Re-tailoring of processes***

The Commission needs to re-tailor some of its key process for taking of outstanding evidence. This is necessary to comply with government policy on the measures needed to

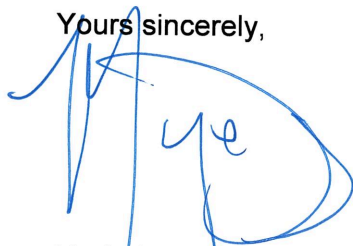
combat the Covid-19 pandemic and to provide confidence to witnesses and their legal representatives that their health and welfare will not be put at risk by avoidable exposure to Covid-19 infection.

In re-tailoring its processes the Commission will take into account all procedures that may be feasible in light of the current emergency measures. It is intended that re-tailoring of processes will address the problem of taking evidence by the use of video conferencing or audio conferencing. Arrangements for participation by witnesses, legal representatives, stenographers and by any other persons who may be permitted to "be present" will need to be considered in each case. Arrangements necessary for the administration of oaths or affirmations and for taking of transcripts will also need to be put in place. It is essential that any re-tailored processes will ensure fair procedures to all parties entitled to these.

The Commission had also considered it was necessary to travel to a venue in the South East to meet with certain witnesses for the purpose of taking their responses to draft chapter material by virtue of sections 35 and 36 of the Act. Each of the witnesses concerned is critical to the investigation. None are legally represented. One is elderly and very vulnerable in terms of health. Prior to the current public health emergency, it was planned that the first of such meetings would take place in May, 2020. This component of the Commission's work is essential to enable it complete its report. The Commission is now considering the feasibility of arranging audio conferences in lieu of travel.

I am pleased to provide any further information that I can appropriately give about the work of the Commission for the purpose of your consideration of this interim report and the Commission's request that the time frame for submitting its final report be revised.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'M. Farrelly', written over a horizontal line.

Marjorie Farrelly S.C.  
Sole Member