



THE FERNS REPORT

Presented to the Minister for Health and Children

October 2005

Chairman: Mr Justice Francis D. Murphy

**Members: Dr Helen Buckley
Dr Laraine Joyce**

Executive Summary

The Ferns Inquiry identified over 100 allegations of child sexual abuse made between 1962 and 2002 against 21 priests operating under the aegis of the Diocese of Ferns¹. Six of the priests had died before any allegations of abuse were made against them. Three more died subsequent to the allegations.

The nature of the response by the Church authorities in the Diocese of Ferns to allegations of child sexual abuse by priests operating under the aegis of that diocese has varied over the past forty years. These variations reflect in part the growing understanding by the medical professions and society generally of the nature and the consequences of child sexual abuse and in part the different personalities and management styles of successive Bishops.

Between 1960 and 1980 it would appear that Bishop Herlihy treated child sexual abuse by priests of his diocese exclusively as a moral problem. He penalised the priest in respect of whom the allegation was made by transferring him to a different post or a different diocese for a period of time but then returned him to his former position. By 1980, Bishop Herlihy recognised that there was a psychological or medical dimension to the issue of child sexual abuse.

His decision in 1980 to send priests in respect of whom allegations of abuse were made to a psychologist was appropriate and broadly in accordance with the understanding then evolving. What was wholly inappropriate and totally inexplicable was the decision of Bishop Herlihy to appoint to curacies priests against whom allegations had been made and in respect of whom a respected clerical psychologist had expressed his concerns in unambiguous terms as to their suitability to interact with young people.

Equally inappropriate was Bishop Herlihy's decision to ordain clearly unsuitable men into the priesthood when he knew or ought to have known that they had a propensity to abuse children.

It is the view of the Ferns Inquiry, as it was the view of Roderick Murphy SC (now Mr Justice Roderick Murphy) as expressed in his Report on Child Sexual Abuse in Swimming (1998), that where a credible allegation of child sexual abuse is made against an employee (or other person acting under authority) it is the responsibility of the employer or superior to require the employee to step aside promptly from any post or position in which he has access to children. Bishop Comiskey accepted that this principle was equally applicable to the exercise by a bishop of his authority under Canon Law in relation to priests of his diocese. Furthermore it was recognised that in the case of diocesan clergy "stepping aside" from a position in which there is unsupervised access to children necessarily entailed stepping aside from the active ministry entirely pending the investigation of the allegations.

The annexed Report sets out in detail the difficulties experienced by Bishop Comiskey in securing the removal of diocesan clergy under his aegis from particular posts held by them. In almost every case significant periods elapsed before the Bishop could persuade the priest in question to vacate his position and undergo the assessment and treatment suggested by the Bishop. In no case did the Bishop persuade or compel the priest concerned to stand aside from his priestly ministry. The Inquiry

¹ This figure does not include those priests included in the Appendix annexed hereto.

does not underestimate the difficulties encountered by the Bishop but does expressly criticise his failure to stand aside from the ministry those priests against whom allegations had been made and in respect of whom information was or should have been available to the Bishop.

Subsequent to the appointment of Bishop Walsh as Apostolic Administrator of the Diocese of Ferns in April 2002, more effective steps were taken to ensure the protection of children. In particular all outstanding allegations of child sexual abuse were reviewed by the Administrator in conjunction with a new Advisory Panel. In addition the Bishop appealed widely to members of the public to come forward to the Diocese, the Gardai and the Health Board with information in relation to any allegation or suspicion of child sexual abuse not previously made known or which had been disclosed and had not been satisfactorily investigated or dealt with. There was a very significant response to that appeal.

In April 2002, eleven priests against whom allegations of child sexual abuse had been made were living. Three have been excluded from the priesthood by direction of The Holy See and seven have stood aside from the active ministry at the request of Bishop Eamonn Walsh. The eighth priest is advanced in years and is in retirement. The Gardai Siochana and the Health Board are advised from time to time as to the whereabouts of the priests who have stood aside and the circumstances in which they live. The Gardai and the Health Board are satisfied that the arrangements made in respect of those priests provide an appropriate measure of child protection.

The Inquiry is satisfied that the current practice of the Diocese of Ferns operates to a very high level of child protection. The regret is that this satisfactory position was not achieved at an earlier stage. Hopefully the procedures created and operated in the Diocese of Ferns will provide a model not merely for other dioceses but for other organisations facing allegations of child sexual abuse by their members.

Formal complaints of child sexual abuse were made against eight priests to An Garda Siochana. The Garda Authorities' handling of one of those complaints was wholly inadequate. In the opinion of the Inquiry, the remaining formal complaints were generally investigated by the Gardai in an effective, professional and sensitive manner. In some cases the work of the Gardai was expressly commended to the Inquiry by the victims. The Director of Public Prosecutions directed the institution of criminal proceedings in only three of the six cases in which recommendations in that behalf were made by the Gardai. In two of the criminal proceedings, convictions were obtained. In the third case, the prosecution was withdrawn after the accused priest committed suicide.

Evidence was given to the Inquiry of some complaints that had been made to different members of the Gardai prior to 1988 which do not appear to have being recorded in any Garda file and which were not investigated or pursued in an appropriate manner. This unsatisfactory approach may have been due to the unwillingness of the complainant to pursue his or her complaint or reluctance on the part of members of An Garda Siochana to investigate allegations of wrongdoing by members of the Catholic clergy. The evidence available in respect of the period prior to 1988 is insufficient to enable the Inquiry to express any firm view on this issue.

The Inquiry is fully satisfied that subsequent to 1990 the members of An Garda Síochána were not deterred or inhibited in any way from carrying out a full and professional investigation of complaints made to them of child sexual abuse by members of the Roman Catholic Clergy.

The South Eastern Health Board was notified directly or indirectly of many of the allegations of child sexual abuse. The Board was in a position to provide and did in many cases provide, counselling or support for the alleged victims. All Health Boards have wide ranging statutory obligations to promote the welfare of children in their functional area but there are few, if any, express statutory powers enabling them to achieve those objectives where the welfare of the child is endangered by abuse perpetrated by persons outside the family circle. In the absence of requisite statutory powers there was no significant response available to the Board to the allegations of abuse made known to it. The Inquiry was concerned that the South Eastern Health Board and other authorities appeared to be unaware of the very limited nature of the statutory powers available to them to intervene for the protection of children in the circumstances under investigation by the Inquiry.

With the benefit of hindsight it is possible to see that the Church authorities, the medical profession and society generally failed to appreciate the horrendous damage which the sexual abuse of children can and does cause. The Inquiry was struck by the hurt still borne by mature and fair minded victims who gave evidence before it. The Oireachtas has fixed a maximum penalty of life imprisonment for the more serious offences involving child sexual abuse. The Inquiry is of the view that the severity of that penalty is fully justified.

No allegation was made and no evidence was placed before the Inquiry suggesting the operation or the organisation of a paedophile ring in the Diocese of Ferns or any clerical institution within that diocese.

The Inquiry wishes to express its admiration for the courage and integrity of all those witnesses who helped it in its work.

The Ferns Inquiry has sought to provide an honest and objective description of the events that led to its establishment. In Chapter 8 (g) of this Report, the Inquiry has suggested remedies to some of those problems that have not yet been addressed by Church or State authorities. These include a public education programme and regulatory and legislative changes that would provide protection to children abused by third parties.

The members of the Inquiry would express the hope that should the type of abuse chronicled in this Report ever occur again, there will be mechanisms and procedures in place which will enable victims promptly to report the abuse in the confidence that they would be believed and the certainty that appropriate action would be taken to terminate the wrongdoing.

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INTRODUCTION

In August 2002 Mr George Birmingham SC presented a preliminary report on child sexual abuse involving Roman Catholic priests in the Diocese of Ferns to the Minister for Health and Children. Mr Birmingham had been asked by the Minister to investigate the background to allegations of child sexual abuse in the Diocese with a view to recommending an appropriate form and Terms of Reference for an Inquiry to inquire into the issue.

As recommended by Mr Birmingham, the Minister for Health and Children established a non-statutory private inquiry to investigate allegations or complaints of child sexual abuse which were made against clergy operating under the aegis of the Diocese of Ferns.

The Ferns Inquiry was established as a three-person team under the chairmanship of Mr Justice Francis D Murphy, formerly of the Supreme Court. The two other members of the Inquiry are: Dr Helen Buckley, senior lecturer in the Department of Social Studies, Trinity College, Dublin; and Dr Laraine Joyce, deputy director of the Office for Health Management.

The Inquiry was formally established by the Minister for Health and Children on 28 March 2003.

Counsel to the Inquiry was Mr Sean Ryan SC and Mr Declan Doyle SC. Mr Ryan was nominated as a Judge of the High Court in September 2003 and was succeeded by Mr Finbarr Fox SC.

The Secretary to the Inquiry was Mrs Marian Shanley BCL Solicitor.

Solicitor to the Inquiry was Mr Joseph O'Malley BCL LLM Solicitor, of Hayes Solicitors, Lavery House, Earlsfort Terrace, Dublin 2.

The Inquiry was assisted in its work by the following people:

Stephen O'Brien BA, Administrative Officer of the Department of Health and Children;

David Begley, Clerical Officer of the Department of Health and Children.

Gemma Normile B. Corp. Law, LLB, LLM, legal researcher;

Laura Dunne BCL, legal researcher;

Joe Jeffers BCL, LLM (Cantab), legal researcher;

The Inquiry acknowledges with gratitude the assistance of Shirley Hastings and Susan Cummins who provided secretarial and administrative support.

TERMS OF REFERENCE

A To identify what complaints or allegations have been made against clergy operating under the aegis of the Diocese of Ferns in relation to alleged events that transpired prior to 10 April 2002, and to report on the nature of the response to the identified complaints or allegations on the part of the Church authorities and any public authorities to which complaints or allegations were reported.

B To consider whether the response was adequate or appropriate, judged in the context of the time when the complaint or allegation was made, and if the response to the complaint or allegation appears inadequate or inappropriate when judged by those standards, to identify if possible the reason or reasons for this, and report thereon.

C To consider the response of diocesan and other Church authorities and the State authorities to cases where they had knowledge or strong and clear suspicion of sexual abuse involving priests of the Diocese of Ferns, and to consider whether that response was adequate or appropriate judged in the context of the time when the knowledge was acquired or the suspicion formed.

D Insofar as responses are seen to be inadequate or inappropriate, and insofar as it may be possible to identify explanations for that inadequate or inappropriate response, to consider whether those factors remain applicable and to what extent they have been subsequently addressed.

E To examine and report on the levels of communication that prevailed between diocesan and State authorities, to consider whether more appropriate norms or improved communication between the diocesan authorities and the State authorities are now desirable or practical.

F To identify and report on any lessons which might usefully be learned from how complaints or allegations were handled in the past, which will result in improved child protection.

G To identify and report on any difficulties or shortcomings in current laws and regulations and to make recommendations as to legislative or regulatory change that would remedy these.

H In the event of the withholding or withdrawal of full cooperation from the Inquiry by Church authorities or any State authorities, or any suggestion that cooperation is being withheld, to report that fact immediately to the Minister for Health and Children. In the event of the Minister for Health and Children receiving such a report she will then grant the Inquiry statutory powers.

I At the conclusion of their inquiries, to deliver a full and final report to the Minister for Health and Children who will lay it before the houses of the Oireachtas and publish the report in full, subject to legal advice.

J In the event of the Inquiry not producing a final report within 12 months of the date of appointment by the Minister, the Inquiry will publish an interim report and indicate a date for the Inquiry's final report.