

**What follows is a more comprehensive version of the Terms of Reference:**

Edited Version of the Terms of Reference for the Commission of Investigation  
(Certain matters relative to a disability service in the South east and related matters)

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;

**Overview.**

A: The Commission will, within a 12 month period 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), make recommendations as to what further work may be warranted in the public interest in relation to matters as set out in Part X of this document.

**Methodology.**

A: The Commission shall complete an interim report no later than 6 months after it starts and a final report(s) no later than 12 months after its commencement.

B: The Commission shall exercise discretion in relation to the scope and intensity of the investigation, it considers necessary and appropriate.

C: Commission may if deemed appropriate take account of previous investigations, including Conal Devine, resilience Ireland and Conor Dignam.

**Context.**

A: The Commission will establish the statutory requirements which were applicable during the period 1989 to 2009, in respect of care and protection of vulnerable children and 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: The Commission will establish the administrative and governance arrangements which applied in the South east during the period 1989 and 2009 in respect of care and protection of children and vulnerable adults in the care of the State. 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.

**Care and Decision-Making in respect of Grace from 1989 until before her 18th 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.

### **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 1996 that an alternative residential placement should be sought for Grace and the reasons why this decision was not implemented.

**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 these 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 v 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 9th August 1996 and by (ii) another party in a letter received by the Minister for Health on 26th August 1996, if so, whether such action was in accordance with the accepted custom and practice, whether the action taken constituted an intervention, and whether the action or intervention had any impact on any decision or decision making 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.

**Care and Decision-Making in respect of Grace from her 18th birthday in 1996 up to 17th 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 18th birthday in 1996 to 17th 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 the 22nd February 2001, including the recommendations from that meeting and the steps taken following that meeting to implement those recommendations.

C: the decisions 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, the reasons for the failure to act upon that advice for the period 1996-2009

G: the decision to move Grace on the 24th July 2009, the reasons for it, its merits and the decision making process and the merits of the decision having regard to the best interests of Grace

H: the decision to move Grace on the 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 decisions making process.

### **Other Matters**

A: Establish the facts relating to the SEHB/HSE's interactions with Grace's mother from her birth until 17th July, 2009 including the provision of relevant information to her in respect of her daughters 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 July 2009 to March 2016 (or such other period as the commission identifies as appropriate) 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.**

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 investigation at Parts iii and ix above, specify the scope of any further investigations which the commissions considers warranted 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 (29th August, 2016) and his recommendations regarding the areas to be examined by a commission of investigation contained in Chapter 4 of that report (including Care and decision Making in Respect of Others pages 306-307)