



Ms Sarah Cremin
Clerk
Committee of Public Accounts
Dáil Éireann
Leinster House

20 March 2023

RE: Tribunals of Inquiry and Commissions of Investigation

Dear Ms Cremin,

I refer to your letters dated 10 February 2023 and 6 March 2023 with regard to Tribunals of Inquiry and Commissions of Investigation, with particular reference to potential supplementary or alternative approaches to carrying out tribunals and commissions, and to international examples of best practice in respect of Tribunals of Inquiry.

As the Committee will be aware, Tribunals of Inquiry and Commissions of Investigation are set up with powers to investigate specific matters. Their function is to enquire into the facts identified in the terms of reference and to draw conclusions which are justified by the evidence. They may make an authoritative finding of facts. In the light of those findings, an inquiry may also make recommendations as to how the matters under investigation may be rendered less likely to occur in the future.

The Houses of the Oireachtas has the power to establish Tribunals of Inquiry under the Tribunals of Inquiry (Evidence) Act 1921, as amended, to inquire into definite matters of urgent public importance. A tribunal of inquiry is established by Statutory Instrument made by a Minister under the Tribunals of Inquiry (Evidence) Act 1921, following resolutions passed by both Houses of the Oireachtas.

The Commissions of Investigation Act 2004 introduced a form of statutory inquiry, the Commission of Investigation, which was expressed as an alternative to, or a precursor to, a Tribunal of Inquiry. A Commission of Investigation is a method of investigating matters of significant public concern. A Commission of Investigation can be set up based on a proposal by a Minister, with the approval of the Minister for Finance. A draft of the order establishing the commission, and a statement of the reasons for establishing the commission must be laid before each House and a resolution approving the draft must be passed by each House.

The historic origin of the Commissions of Investigation Act 2004 was in part the need to provide a means for investigation into child sex abuse scandals, as it was considered that the very public and sometimes adversarial nature of Tribunals of Inquiry does not lend itself to investigation of matters of such a sensitive and intensely personal nature. Dissatisfaction with the cost and length of Tribunals of Inquiry also led to calls for the introduction of a less expensive and speedier method of investigating matters of urgent public concern. The Act

sought to ensure more timely and cost effective investigations and the policy objective of Government at the time was that it would result in the less frequent establishment of Tribunals of Inquiry.

Some of the main reasons for the length and cost of public inquiries in Ireland is that they are required to follow a high standard of procedural fairness in order to protect the constitutional rights of witnesses. The Tribunals of Inquiry Bill 2005 proposed amendments to the existing legislation, containing provisions which sought to clarify the process for setting and amending the terms of reference of a tribunal, and in particular, to require a tribunal, within three months of its establishment, to produce a statement of estimated costs and duration. The Bill had significant regard to the Law Reform Commission's 2005 Report on Public Inquiries and Tribunals of Inquiry.

The Bill completed Dáil Committee Stage in 2009, but subsequently lapsed in 2016 and was not restored to the Order Paper. As a mode of inquiry, tribunals were also to a degree replaced by the Commissions of Investigation legislation and the alternative approach it enabled.

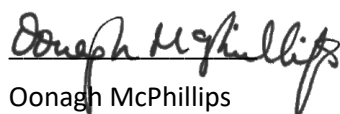
There are various alternatives to Tribunals of Inquiry and Commissions of Investigation including: an inquiry specified in legislation; a non-statutory inquiry; a regulatory inquiry; or a parliamentary inquiry. While these are sometimes used as alternatives, they can also be used as a pre-cursor to a tribunal or commission. There are also several bodies whose primary function is not to act as a public inquiry, but which may on occasion fulfil that role, for example: the Courts; coroner's inquest; investigative institutions (e.g. the Comptroller and Auditor-General); and the Ombudsman, Garda Síochána Ombudsman Commission and Ombudsman for Children.

While the law in this area is kept under ongoing review, there are currently no specific proposals being considered in this Department in relation to establishing any further supplementary or alternative approaches to carrying out tribunals or commissions.

The Department is not currently undertaking any research on international examples of best practice in respect of Tribunals of Inquiry. Undertaking international comparison is arguably of limited value due to the constitutional principles that need to be considered in the Irish context as mentioned above. There is, however, a certain amount of national academic literature on the subject which the Committee might wish to review, as well as the report of the Law Reform Commission referred to above.

I trust this information will be of assistance to the Committee.

Yours Sincerely



Oonagh McPhillips

Secretary General