

Tuesday, 11th July 2017

(10.00 am)

LADY SMITH: Good morning.

As I indicated last week we move today to closing statements at the end of this part of phase 1 of the public hearings. I'm going to begin by inviting Mr MacAulay, counsel for the Inquiry, to address me.

Mr MacAulay.

Closing statement by MR MacAULAY

MR MacAULAY: Good morning, my Lady.

Over the last six weeks, in this first part of the first phase of the Inquiry, the Inquiry has heard oral evidence from 29 witnesses. What I propose to do now is to provide an overview of that evidence and its sources and also to provide some indication as to what will happen next.

LADY SMITH: Thank you.

MR MacAULAY: By way of an overall summary there has been evidence on the prevalence of child abuse and also on societal attitudes to children over time.

There has also been evidence of the legal framework that is relevant to the care of children and about the nature, extent and development of the State's role in a responsibility for children in residential and foster care in Scotland.

1 Evidence has been led about the history and
2 governance of organisations providing and arranging
3 residential and foster care to children in Scotland over
4 the period from the early 1900s to date.

5 The Inquiry has also heard from care providers about
6 the extent of the current acknowledgement of abuse and
7 failures in systems to protect children from abuse.

8 The background to and reasons for --

9 LADY SMITH: You stress current acknowledgement on the basis
10 that it may be yet seen that on reflection there could
11 be further acknowledgement as people have the
12 opportunity to consider all the evidence that becomes
13 available.

14 MR MacAULAY: Indeed. I will be mentioning later, my Lady,
15 the intention to have two case studies --

16 LADY SMITH: Yes.

17 MR MacAULAY: -- towards the latter part of this year.

18 LADY SMITH: Thank you.

19 MR MacAULAY: The background to and reasons for the
20 establishment in more recent years of survivor groups
21 and the campaigning for this Inquiry are also areas that
22 have been explored.

23 My Lady, can I say that all that evidence I have
24 just summarised has raised the awareness of abuse and
25 has also started the process of providing survivors of

1 abuse with a voice.

2 Also the process of exploring what systems may or
3 may not have been in place to protect children; these
4 are all important themes for this Inquiry.

5 By way of background the first day of the hearings
6 was dedicated to opening remarks and allowed the parties
7 appearing the opportunity of making opening statements
8 before oral evidence began. It was left to parties
9 themselves to decide on what they wished to say in the
10 course of their opening statements. Many of the
11 organisations involved in the provision of residential
12 child care in Scotland over the relevant period took the
13 opportunity to acknowledge that abuse had taken place
14 and to offer an apology.

15 My Lady, can I then begin by focusing on the role
16 played by experts so far in this first phase and
17 starting with Professor Norrie.

18 He spoke about the legislative and regulative
19 framework for children in care from the late 19th
20 century up until 1968. He gave evidence to the effect
21 that in the early 20th century there was a developing
22 idea that the law needed to insulate children to protect
23 them from bad influences. Children were seen as the
24 products of their environment and the way to protect
25 vulnerable children was to protect them from that

1 environment, which meant removing them from their
2 families and placing them in care, often by boarding
3 children out.

4 Over the first three or four decades of the
5 20th century there was an increasing recognition that
6 where the State had taken over responsibility for the
7 accommodation of children, that that had to be
8 controlled, particularly by visitation and inspection.
9 As time went on, regulations made by the State became
10 more detailed. Reformatory schools and industrial
11 schools were subject to State inspection from as far
12 back as 1866.

13 Over the years came clear provisions for inspection
14 of what were industrial and reformatory schools and then
15 approved schools and also rules about records and
16 punishment books, including instructions on how
17 punishment was to be administered and recorded.

18 The voluntary homes regimes did not contain the same
19 level of detail. The inspection provisions were not
20 compulsory, but within the discretion of the Secretary
21 of State, and there were no provisions setting out how
22 discipline would be managed.

23 For boarding out, regulation was initially quite
24 limited in ensuring that people were fit people to have
25 children boarded out to their care, providing exclusions

1 only to preclude certain persons.

2 From the 1930s there required to be a degree of
3 supervision and visitations from medical officers and
4 inspections and monitoring by the education authority
5 where children were boarded out by the education
6 authority.

7 The 1940s saw the emergence of a clear State
8 preference for the use of foster carers and the
9 introduction of measures to make sure the right sort of
10 persons were used as foster carers.

11 A noticeable feature of the regulations of that
12 period generally was the lack of provision for contact
13 with parents.

14 LADY SMITH: I think you have also highlighted in that
15 summary, Mr MacAulay, the difference, from the child's
16 point of view, of the level of regulation, inspection,
17 rules about punishment books and so on, that would be
18 there for the child depending on whether the child
19 happened to go into a voluntary home or was in
20 a State-regulated home of some sort.

21 MR MacAULAY: Indeed, my Lady.

22 LADY SMITH: So there was not uniform provision from the
23 point of view of the child across the board.

24 MR MacAULAY: Yes, there was a lack of uniformity.

25 The Children (1948) Act introduced a sea change in

1 approach in the sense that the State had to be proactive
2 and act in the interests of the welfare of the child.
3 Local authority children's homes now had statutory
4 authority. The duty on local authorities was
5 significantly enhanced 15 years later when the Children
6 and Young Persons (1963) Act required local authorities
7 to take preventative action to try to avoid, where
8 possible, children being taken into residential and
9 foster care.

10 Can I say that in relation to independent boarding
11 schools, they were, from 1946, in principle, subject to
12 the same rules of inspection as to what we now call
13 State schools under the education acts.

14 My Lady, moving on to the issue of the prevalence
15 and nature of abuse. This was explored by
16 Professor Lorraine Radford and Dr Christine Barter and
17 they looked at this issue over the period from 1930 to
18 2014.

19 They provided the Inquiry with quite a number of
20 statistics, including the following: globally around 1
21 in 8 children and young people say they have experienced
22 sexual abuse; 1 in 5 say they have experienced physical
23 violence from a parent or carer; 1 in 3 say they have
24 experienced emotional abuse from a parent/caregiver; and
25 around 1 in 6 say they have experienced neglect. These

1 statistics, as I mentioned, are based on global studies.

2 Although in terms of focusing on children in care,
3 few studies compare abuse in care with the abuse of
4 children living in families, they were able to provide
5 evidence on a robust study of abuse of children in care
6 in the Netherlands, which found the risk of physical
7 abuse in care was three times higher for young people in
8 the general population with 1 in 4 of children in care
9 reporting experiences of abuse.

10 But what clearly emerged from their evidence is that
11 it is not possible to estimate with any accuracy the
12 prevalence of child abuse in the UK generally, and
13 Scotland in particular, in that period of 1930 to 2014
14 because of:

15 "How little importance was attached to this problem
16 and also the state of research knowledge."

17 We were told that the literature only started to
18 develop in about the 1970s and indeed it appears that
19 much of the research on institutional abuse emerged in
20 the 1990s and is still relatively sparse.

21 So, in short, there are no robust estimates on the
22 historical prevalence of abuse in care and, in terms of
23 knowledge gaps, the need for research specifically on
24 Scotland was identified. The importance and benefit of
25 retrospective self-report, the survey of adults

1 previously in care, was raised and how the State could
2 take responsibility for gathering information to provide
3 a basis for improving children's rights and experiences
4 while in care.

5 Societal attitudes to children over time will be
6 an important theme for the Inquiry and this was a matter
7 that Dr Susan Elsley was asked to look at and she spoke
8 to her report on that topic, looking at the period from
9 1900 to 2015.

10 During that period children in care, or the early
11 part of that period rather, were often stigmatised or
12 discriminated against. Many children had experience of
13 poverty. There were few opportunities to have their
14 voices heard and their views and experiences generally
15 were not recorded.

16 However, over the period covered by her review,
17 knowledge and understanding of children's lives and
18 childhood increased considerably. There came to be
19 a greater understanding of children's developmental
20 needs and a greater focus on child well-being by
21 policymakers and professionals with children becoming
22 recognised as rights holders.

23 Nevertheless, at the end of the period of her
24 review, children and young people with experience of
25 care still identified with the experience of stigma and

1 discrimination and did not feel that they were
2 consistently heard in all aspects of their lives.

3 I now propose, my Lady, to make some observations on
4 the evidence presented to the Inquiry on behalf of the
5 Scottish Government.

6 By way of background, the Inquiry asked the Scottish
7 Government to provide a high-level report on the legal
8 and administrative responsibilities of the Scottish
9 Government from 1930 to the present day. A copy of that
10 report is on the Inquiry's website. By "high level" is
11 meant a broad overview and by "Scottish Central
12 Government" is meant not only the present Scottish
13 Government but also previous governments going back to
14 1930, both in Scotland and in the UK, that had
15 responsibility for children in residential care in
16 Scotland.

17 Two lawyers give evidence on behalf of the Scottish
18 Government: one an advocate, who spoke about the legal
19 responsibilities, and the other a solicitor employed by
20 the Scottish Government's Civil Service who spoke about
21 the administrative responsibilities.

22 What is apparent, and I believe recognised by the
23 Scottish Government, is that the evidence disclosed the
24 need to explore further the various State inspection and
25 monitoring regimes that were in place from 1930 to the

1 present day, it not being clear as yet what inspections
2 were carried out, by whom, and for what purposes.

3 LADY SMITH: I don't want to get into this in detail today,
4 but am I right in thinking that the further informal
5 orders that the Inquiry has served requiring information
6 will enable the Scottish Government to give us anything
7 they have that shows what is particularly Scottish about
8 the systems that have been issued by governments over
9 the years and in particular whether there is
10 identifiable any shift post-devolution, so post-1998,
11 because it seems that will be helpful, but I suppose
12 that will be coming out in the second part of the
13 questionnaires; is that right?

14 MR MacAULAY: It should be, my Lady. My Lady will recall
15 that in the course of the evidence that witnesses were
16 asked to re-consider certain aspects of the position.

17 LADY SMITH: Yes.

18 MR MacAULAY: Clearly what your Ladyship has said is of real
19 importance to the work of the Inquiry.

20 LADY SMITH: Yes, thank you.

21 MR MacAULAY: In terms of legal responsibilities, although
22 the Scottish Government report covered the full period
23 of the Inquiry from the 1930s to the present day, oral
24 evidence at this stage largely covered the period up
25 until 1968, similar to what Professor Norrie had done.

1 In the main the Scottish Government agreed with
2 Professor Norrie's description of the legal and
3 regulatory framework up to 1968.

4 What the evidence presented on behalf of the
5 Scottish Government on this issue did highlight, as was
6 evident I think from Professor Norrie's work, was the
7 lack of consistent regulation of residential care
8 settings for children and we have touched upon this
9 already.

10 In some settings, for example, approved schools,
11 there were relatively detailed regulations. In others,
12 an example being voluntary homes, there was little
13 regulation, even although central government was in
14 a position to fully regulate such settings. That
15 evidence also focused on the absence of a legal
16 requirement in any setting to have a complaints
17 procedure for use by children in care.

18 The evidence given in relation to the administrative
19 systems of central government did provide the Inquiry
20 with a general understanding of how government works.
21 This evidence provided a background to help to identify
22 what systems existed for the formulation of policy on
23 children in residential care, for putting in place rules
24 and regulations affecting their care, and for ensuring
25 the implementation of these rules through systems of

1 supervision and inspection.

2 Can I say one point that did emerge was that there
3 were various departments within the Scottish Office with
4 responsibility for children in care in different
5 residential care settings, rather than one department
6 with overall responsibility.

7 Before hearing from a number of religious care
8 providers the Inquiry heard from the Conference of
9 Religious. That Conference was established in Scotland
10 in 1958 against a background of papal encouragement for
11 religious institutes to come together in conferences,
12 but without prejudice to the autonomy of the individual
13 institutes.

14 The purpose of the Conference is to give support to
15 people of like mind and also to have a relationship with
16 the Bishops' Conference. Importantly, insofar as its
17 members are concerned, the Conference enjoys persuasive
18 power rather than power of governance over religious
19 Orders.

20 Evidence was also provided on behalf of the
21 Bishops' Conference. That body is not a legislative
22 body, it is a pastoral body, so it does not perform
23 an executive function within the Catholic Church in
24 Scotland.

25 But the evidence provided did provide the Inquiry

1 with an insight into certain aspects of canon law, such
2 as autonomy, and also an insight into how allegations of
3 abuse may have been managed in the past.

4 There was also evidence on behalf of the
5 Bishops' Conference about the McLellan Commission, the
6 archbishop's apology, and the Independent Review Group
7 chaired by Baroness Liddell, which is in its early
8 stages.

9 The safeguarding coordinator of the Conference gave
10 evidence about safeguarding systems in place over time,
11 including procedures and practices for dealing with
12 allegations of abuse, with alleged abusers, and with
13 survivors of abuse.

14 Can I just make a quick mention of the issue of
15 autonomy because this was looked at particularly by
16 Monsignor Smith in his evidence and it was an issue
17 spoken to by the various Orders.

18 Largely it appears that, having obtained permission
19 to enter a diocese, the Orders operated in an autonomous
20 way. I will look shortly at the position adopted by the
21 Benedictines on that issue.

22 LADY SMITH: I think the Daughters of Charity -- was it they
23 who may have suggested they didn't actually think they
24 needed permission, but as a courtesy they would tell the
25 bishop if they were opening a house?

1 MR MacAULAY: I think, as we know from canon law, they are
2 required as a matter of law.

3 LADY SMITH: I think the canon law does require it, but it
4 was interesting to hear that the way they saw it was
5 a little different.

6 MR MacAULAY: A little different, yes.

7 Can I then now turn, my Lady, to the contribution so
8 far to the Inquiry by the different care providers who
9 appeared during this phase.

10 Perhaps just to remind all, it is the case that many
11 care provider organisations had been asked to provide
12 the Inquiry with detailed reports made up of four
13 different sections, A, B, C and D, and that's quite
14 apart from those who participated during this first
15 phase.

16 The purpose behind requesting such reports was to
17 obtain information from organisations about their
18 history, ethos, culture, the establishments they ran or
19 run, their systems, policies, practices and procedures,
20 and their knowledge of and response to the abuse of
21 children in care.

22 The responses by those who had leave to appear
23 during this part of phase 1 to parts A and B were
24 considered in the course of this part of the hearings.
25 It was part B in particular that provided organisations

1 with an opportunity at this stage in the Inquiry process
2 to acknowledge that children in their care were or may
3 have been abused and whether there were systemic
4 failures.

5 Turning then to the providers of care and focusing
6 for the moment on the Roman Catholic Sisters. The
7 Inquiry heard from the Daughters of Charity of
8 St Vincent de Paul, the Sisters of Nazareth and the Good
9 Shepherd Sisters. Each of these religious Orders were
10 responsible for residential establishments with care for
11 children in Scotland from around the late 19th/early
12 20th century to the 1980s. As is the position with
13 other Catholic Orders who gave evidence and provided
14 residential care to children, none of these Orders do so
15 today.

16 For the Daughters of Charity, evidence was provided
17 about five child care establishments run by that
18 organisation, including Smyllum Orphanage in Lanark and
19 Bellevue in Rutherglen. Between 1864 and 1999
20 approximately 20,000 children were accommodated by the
21 congregation. So they were a major provider.

22 For the Sisters of Nazareth, evidence was led about
23 the four Nazareth Houses in Aberdeen, Cardonald,
24 Kilmarnock and Lasswade, which between them housed
25 almost 15,000 children between 1862 and 1984.

1 The Good Shepherd Sisters gave evidence relating to
2 the establishments run by them including Dalbeth Girl's
3 School and St Euphrasia's Training Centre in Bishopton.
4 The Good Shepherd Sisters accommodated around 3,500
5 children between 1943 and 1988.

6 What is apparent, my Lady, from these numbers is
7 that together these Orders were major contributors to
8 the residential care of children in Scotland.

9 Turning then to the religious Brothers, evidence was
10 provided in turn on behalf of the De La Salle Brothers,
11 the Christian Brothers and the Marist Brothers. Each of
12 these Orders provided child care in residential
13 establishments in Scotland from the late 19th/mid 20th
14 century to the late 1980s or early 1990s.

15 The De La Salle Brothers in particular had
16 a significant presence in Scotland, having provided
17 residential child care at establishments like
18 St Joseph's in Tranent and St Ninian's in Gartmore.

19 Evidence was given on their behalf to supplement
20 their reports about these establishments. Approximately
21 9,000 children resided in these establishments between
22 1914 and 1992.

23 So far as the Christian Brothers were concerned,
24 they ran St Ninian's in Falkland, which accommodated
25 approximately 850 children between 1950 and 1983.

1 The Marist Brothers gave evidence covering two
2 establishments, St Joseph's College, Dumfries, and
3 St Columba's College, Largs, which also housed several
4 thousand children between 1930 and 1978.

5 As I mentioned earlier, my Lady, the Inquiry also
6 heard from the English Benedictine Congregation in
7 relation to the Fort Augustus school and Carlekemp
8 Priory School.

9 In terms of autonomy in that Order, the position
10 presented was that the English Benedictine Congregation
11 did not have control over or responsibility for the
12 constitution, management or operation of Fort Augustus
13 Abbey or either of the schools.

14 The Inquiry was told that the abbot of Fort Augustus
15 was accountable with the Abbot President being
16 responsible for ensuring the abbot acted correctly. As
17 Dom Yeo put it, the Abbot President did not run the
18 monastery; he ensured that the monastery was properly
19 run. That was the way he put it. He, the
20 Abbot President, could issue an act of visitation which
21 he explained was a binding duty or precept. However,
22 ultimately, the Abbot President could go to the Holy See
23 and ask for the abbot of Fort Augustus to be dismissed
24 if necessary. It was accepted by Dom Yeo that the
25 Holy See had ultimate authority, although apparently not

1 accountability or responsibility.

2 My Lady, evidence was also given on behalf of the
3 Church of Scotland through Crossreach, described as the
4 church's social care arm. That evidence supplemented
5 reports provided to the Inquiry for three
6 establishments: Ballikinrain, Geilsland and the Lord and
7 Lady Polwarth Children's Home.

8 As is evident from the detailed reports provided on
9 behalf of the Church of Scotland, the church has been
10 a major provider of residential care for children since
11 around 1868 and, in contrast to the Catholic Church,
12 continues to provide residential services for children
13 today.

14 A realistic estimate of the numbers accommodated
15 over the years is difficult to arrive at but clearly
16 many thousands of children were cared for by the church
17 over the many years in which care has been provided.

18 In addition to these care providers there was also
19 evidence from three major voluntary providers of care in
20 Scotland: Quarriers, Barnardo's, and the
21 Aberlour Child Trust.

22 Quarriers gave evidence about the care provided in
23 their cottage model at Quarrier's Village during the
24 period when they cared for a large number of children,
25 at one point, in over 40 cottages.

1 Over the period of their existence they cared for in
2 excess of 30,000 children. Pre-war, pre-Second World
3 War, some 7,000 children were migrated to Canada, and
4 post-war approximately 100 children or so to Canada and
5 Australia.

6 Barnardo's gave evidence about the care provided in
7 seven of their children's homes in different parts of
8 Scotland. We heard in fact that none of these homes
9 remain operational today.

10 They started in Scotland in about the 1930s, late
11 1930s, and the best figure they can provide as to how
12 many children they accommodated over the period is
13 around 3,600 in the different homes.

14 The Aberlour Child Trust gave evidence about their
15 orphanage at Aberlour and their smaller homes at
16 Quarryhill, Keith and the Sycamore Cluster in Fife.

17 Like other major providers, Aberlour in recent
18 decades has moved to the provision of more specialised
19 care in smaller establishments such as the
20 Sycamore Cluster. Over the period of its existence
21 Aberlour cared for over 3,000 children.

22 LADY SMITH: They are still providing residential care for
23 these specialist needs.

24 MR MacAULAY: Indeed, yes.

25 My Lady, as I already mentioned, part B of the

1 responses looked at the question of the acknowledgement
2 of abuse and systemic failures. In the main the
3 providers of care, as well as the representatives of the
4 Catholic Church, acknowledged that children have been
5 abused whilst in care.

6 Two particular exceptions are the Daughters of
7 Charity and the Good Shepherd Sisters who acknowledge
8 only that allegations of abuse have been made, but not
9 that children in their homes were abused.

10 The Daughters of Charity accepted that if
11 allegations are proved, then it is axiomatic, as a quote
12 from them, that systems were not in place to ensure
13 a safe environment for children and the Daughters of
14 Charity will be the first case study that we will be
15 looking at later on this year.

16 In the main, from the perspective of the care
17 providers, awareness of abuse has come to light through
18 former residents coming forward as adults to report
19 abuse suffered in childhood while in care. However,
20 there was some evidence of children reporting abuse
21 around the time that the abuse occurred. It was
22 accepted by some witnesses that there were children who
23 were abused but have yet to come forward to tell what
24 happened to them.

25 Indeed, it is recognised that many may never come

1 forward. Some witnesses accepted that the systems of
2 their organisations and establishments failed to keep
3 children in their care safe. Others did accept that
4 there were systemic failures or others did not accept
5 there were systemic failures. However, there was
6 evidence of inadequate systems or the absence of
7 systems, such as systems for recruitment of care staff,
8 supervision of staff, record keeping and discipline as
9 well as an absence of suitable complaints procedures
10 whereby children's voices could have been heard.

11 In the final chapter of this part of phase 1 the
12 Inquiry heard evidence about the formation, purpose and
13 work of survivor groups and in particular INCAS and FBGA
14 and about campaigning for this Inquiry in particular.

15 That evidence came from Helen Holland, who is the
16 chairperson of INCAS, David Whelan, who is the
17 spokesperson for FBGA, and Chris Daly, who was a former
18 member of INCAS and a campaigner on behalf of survivors.

19 The written evidence of the late Frank Docherty on
20 the formation of INCAS and campaigning was read out at
21 the start of the hearings. Each of them spoke of the
22 experience of survivors, the impact of abuse on
23 survivors, and their many years of campaigning for
24 acknowledgement, accountability and justice.

25 My Lady, it is important to emphasise that the

1 evidence heard thus far forms part of the process of the
2 Inquiry's ongoing investigations. Even at this stage it
3 can be said that the evidence presented over the last
4 number of weeks is evidence which will greatly assist
5 the Inquiry, particularly in relation to important
6 themes such as the awareness of abuse, systems that were
7 or were not in place for the protection of children, and
8 indeed also the responses that have already been made to
9 whether or not abuse occurred.

10 Knowledge of these matters would greatly assist the
11 Inquiry in its ongoing work and investigations, and many
12 of the witnesses who have already given evidence have
13 agreed to provide further information to the Inquiry to
14 clarify or amplify their evidence.

15 Can I then mention, my Lady, what will happen next.
16 The second part of this first phase will be dealt with
17 in the autumn, starting towards the end of October.
18 That second part will include the second part of
19 Professor Norrie's evidence, which will bring his
20 analysis of the legal framework from 1968 up to date.

21 There will be a report and evidence by
22 Professor Andrew Kendrick, who will describe the
23 development of child care services in Scotland from 1900
24 to 2014 and the changing child care population over
25 time, changes in policies relating to the placement of

1 children in care, and changes in policies regarding
2 contact with family members, as well as the governance,
3 monitoring and inspection of child care services at all
4 levels.

5 He will seek to identify any systemic weaknesses in
6 care services over time against the backdrop of changes
7 to children's rights and practices of listening to
8 children and young people.

9 The Inquiry in those hearings will also hear further
10 from the Scottish Government and in particular the
11 Scottish Government will provide a chronological report
12 dealing with the State's knowledge of and response to
13 the existence of abuse of children in residential and
14 foster care in Scotland in the period from 1930 up to
15 2014.

16 LADY SMITH: Yes.

17 MR MacAULAY: I do want to emphasise, my Lady, that that
18 summary as to what is intended for the second part of
19 this phase should not be seen as a comprehensive
20 summary. The evidence already heard has identified some
21 issues that will be followed up and it may be that any
22 follow up can be included during that second part of
23 this phase.

24 The Inquiry's attention thereafter is then to move
25 on to the next phase of hearings. The present plan

1 being to begin that process in November this year. That
2 will consist of case studies into certain organisations
3 who provided care for children over the relevant period.

4 As previously announced the first case study will be
5 into the Daughters of Charity of St Vincent de Paul and
6 that case study would be followed by a case study into
7 the Sisters of Nazareth.

8 Finally, my Lady, can I say that these initial case
9 studies will serve a number of purposes and I will just
10 mention two of those at this stage. They will provide
11 the survivors, who say they suffered abuse at the
12 institutions run by these congregations, with a voice
13 and the opportunity to tell what happened to them. They
14 will also provide the congregations involved with the
15 opportunity to respond.

16 My Lady, that's all I propose to say at this stage.

17 LADY SMITH: Thank you very much Mr MacAulay, that's very
18 helpful.

19 I turn now to invite Mr John Scott for INCAS to make
20 any closing statement that he would wish to make at this
21 stage.

22 Closing statement by MR JOHN SCOTT

23 MR SCOTT: Thank you, my Lady.

24 On behalf of INCAS I wish to say only a few more
25 words at the close of this first chapter in the public

1 hearing of evidence. This chapter has been very much
2 introductory, although as Mr MacAulay has said, it has
3 been significant, not least in terms of the very public
4 opportunity afforded to churches and institutions to
5 offer a genuine acknowledgement of abuse, a crucial
6 matter about which we heard from survivors' groups last
7 week.

8 Sadly, it was an opportunity missed by some. In my
9 comments on the first day of this chapter, I pointed out
10 the disappointment of survivors at the terms of certain
11 written responses to the Inquiry.

12 I urged those responsible for shaping or making
13 further official responses of establishments and
14 organisations to consider all the evidence as soon as
15 possible and react appropriately by way of
16 acknowledgement and apology. I said that they should
17 have a care not to add any further to the suffering of
18 survivors in unjustified denial or unnecessary
19 non-acceptance.

20 Despite these warnings, the disappointment of some
21 survivors has been compounded by some of the oral
22 evidence heard here. Each survivor has their own unique
23 experience of abuse and each may respond differently to
24 evidence relevant to or even specific to their abuse.
25 Already in the context of evidence to this Inquiry

1 survivors' responses have varied tremendously, informed
2 to a significant extent by the reaction, official
3 responses and attitude of the different churches and
4 organisations which undoubtedly failed them as children.

5 Starting with the positive, there are some survivors
6 who have been overwhelmed by what has sometimes been the
7 first public acknowledgement of abuse related to their
8 care. For those the power of genuine acknowledgement
9 and sincere apology is apparent. Sadly for others the
10 belated, grudging and legalistic attitude of pseudo
11 apology offered by some organisations has had the effect
12 of causing further damage.

13 While lawyers will offer what they consider the best
14 advice from a legal perspective, that will often ignore
15 the sheer humanity of a situation and it appears that
16 some bodies have embraced the legal advice at the
17 expense of the impact on survivors of weasel words. In
18 the context of a public inquiry designed to get to the
19 truth, that is more than unfortunate.

20 For the avoidance of doubt: survivors feel much more
21 strongly than simply having been let down and
22 an apology, any apology, which is predicated on the word
23 "if" will never be good enough. Survivors are aware
24 that many of those actually involved in their abuse are
25 no longer around or involved with the churches and other

1 establishments. Instead, it falls to the successors of
2 their abusers to answer for the abuse in many cases.
3 Some responsibility does lie with their successors.

4 I accept, of course, that those who have offered
5 evidence do so without having any personal
6 responsibility. In effect, they have not chosen to come
7 here, but the same is true of the survivors as to their
8 reasons for attending or following the work of the
9 Inquiry. Each of them, whether from churches,
10 organisations or survivors, acts from a sense of duty,
11 whether to their organisation, to other survivors, to
12 children now or in the future, or even just to
13 themselves.

14 Survivors are painfully aware of the absence of
15 important records about their care, which may also
16 create difficulties for those now deciding what the
17 official response of the relevant body should be.
18 However, the absence of other witnesses, or supporting
19 documents does not and did not remove all choice from
20 the institutions. It was still open to them to consider
21 two general approaches: one where there was at least
22 acceptance, if not an admission; and the other where
23 there was only a qualified acknowledgement and
24 conditional apology.

25 For bodies with repentance and redemption at their

1 core the latter approach would have been better avoided,
2 although again, to emphasise some of the positive
3 evidence, we have heard of acknowledgement and apology
4 from individual priests and laypeople in churches which
5 should shame some others.

6 To try to meet this criticism, as my Lady said
7 earlier on, organisations should consider re-visiting
8 their approach as the Inquiry continues.

9 The overall aim of this Inquiry is to raise public
10 awareness of the abuse of children in care; perhaps
11 there should have been specific reference to raising
12 awareness within all churches and other organisations.
13 Survivors recognise that the various churches and
14 organisations have done much good over the years and
15 accept that the very bad should not over shadow all of
16 the good, but the greater risk thus far has been quite
17 the opposite. It seems that some organisations are so
18 blinded by their good work that they cannot accept the
19 fact of abuse, even where it is obvious.

20 The question of records was prominent in evidence
21 heard and will continue to be an issue in the work of
22 the Inquiry. In addition, much of the evidence last
23 week in particular acted as a reminder of the overriding
24 role of the State in all of this.

25 There are questions more carefully focused now for

1 the Scottish Government and the State more generally
2 regarding its responsibility and role in the abuse which
3 was allowed to happen. In addition, regarding the role
4 of the State, it seems that much obstruction and delay
5 preceded the misplaced and therefore partial apology
6 from the then First Minister in December 2004; but, more
7 alarmingly, it seems that even more obstruction and
8 delay followed between then and 2014 when this Inquiry
9 was announced. INCAS looks forward to detailed evidence
10 and explanations for these delays and obstructions.

11 Again emphasising the positive, the Inquiry heard
12 some evidence from survivors, albeit mainly about their
13 organisations and long quest for justice. Many present
14 last Tuesday have commented to me on the remarkable
15 evidence of Helen Holland, distinguished by her dignity
16 and composure, as well as her obvious command of detail,
17 especially given the fact that the subject matter of her
18 evidence derives entirely from her own lived experience
19 and her sense of duty to other survivors both alive and
20 dead.

21 In some of the evidence heard here in public session
22 there is much to condemn but also much to admire and
23 inspire. Encouraged by this good start, INCAS will
24 continue to contribute wherever possible to the
25 Inquiry's overall aim and purpose of raising public

1 awareness of the abuse of children in care and we trust
2 that others will also do more towards the same end.

3 LADY SMITH: Thank you very much and thank you for that
4 final indication of INCAS's preparedness to keep
5 assisting the Inquiry.

6 May I say, Mr Scott, your comments regarding
7 Helen Holland are particularly appropriate in the
8 circumstances. Thank you for that.

9 We now turn to Mr Stuart Gale for FBGA. Mr Gale,
10 I invite you to make any closing statement you would
11 wish to make at this stage.

12 Closing statement by MR GALE

13 MR GALE: Thank you, my Lady.

14 As my Lady recognised in her remarks at the end of
15 Thursday last week, the fact that evidence thus far
16 heard does require, in a many of instances, to be
17 expanded upon or additional evidence has to be heard
18 does restrict what can be said in this closing
19 statement.

20 There are, however, a number of discrete
21 observations relevant to the interests of Mr Whelan and
22 FBGA that I would wish it make at this stage. These can
23 be divided into four chapters. The first relates to the
24 evidence given by Professor Norrie on the statutory
25 regulation of the residential care of children in

1 Scotland in the period from 1932 to 1968.

2 Professor Norrie observed that the aim of part 3 of
3 the Children and Young Persons (Scotland) Act (1932) was
4 to bring under better State control, albeit still with
5 what he termed "a light touch", private institutions
6 that carried out public functions. This regulation
7 seems to have been largely formal, relating to the need
8 for registration of voluntary homes and renewal thereof,
9 but that, in contradistinction to approved schools,
10 remand homes and borstal institutions, there was
11 a discretionary power invested in the Secretary of State
12 to inspect such voluntary homes.

13 My learned friend Mr MacAulay emphasised this
14 morning the lack of uniformity between the two areas of
15 providers.

16 LADY SMITH: Yes.

17 MR GALE: Professor Norrie further observed that this power,
18 if not primarily designed as such, did offer
19 an opportunity to ensure the well-being of individual
20 children.

21 The Children Act of 1948, section 31, subsection 1,
22 empowered the Secretary of State to make regulations --
23 and I quote:

24 "... as to the conduct of voluntary homes and for
25 securing the welfare therein."

1 And section 54(3) imposed a duty on the local
2 authority to:

3 "From time to time cause children in voluntary homes
4 in their area to be visited in the interests of the
5 well-being of the children."

6 The power under section 31(1) was first used when
7 promulgating the Administration of Children's Homes
8 (Scotland) Regulations in 1959. Under those
9 regulations, as Professor Norrie points out, the
10 ultimate responsibility for the good running of
11 a voluntary home fell on the local authority.

12 It is to be noted that a child's records were to
13 include:

14 "A personal history of each child in the home."

15 That included the child's medical history and a note
16 of the circumstances in which the child was admitted to
17 the home. The well-being of the child was the immediate
18 focus. It is also to be noted that corporal punishment
19 was to be administered exceptionally, regulation 11, and
20 that punishments, which had to be recorded, normally
21 took the form of "a temporary loss of recreation or
22 privileges".

23 These regulations remained in place until the
24 1st June 1988. My Lady will see this in
25 Professor Norrie's report, 001.001.0124 to 001.001.0129.

1 In our opening statement, transcript pages 31 to 32,
2 we observed that the First Minister's apology in
3 December 2004 could not address the question of how, in
4 a regulated society, abuse of children in care was
5 allowed to happen over decades. We know from
6 Professor Norrie's authoritative evidence, which was
7 confirmed in its essentials by Ms Irvine, that
8 a framework did exist covering a large tract of that
9 period with which the Inquiry is considering, which
10 provided for inspection of voluntary homes and certainly
11 an emphasis, post 1959, on the well-being of the child.

12 What we do not have at this stage of the Inquiry is
13 any clear indication of how the bodies with both powers
14 and duties, whether those bodies be central government,
15 local authorities or in the case of the organisation in
16 which my clients have an interest, Quarrier's Homes,
17 implemented and discharged those powers and obligations.

18 We would respectfully observe that this is an area
19 which this Inquiry will wish to investigate further and
20 we express the hope that those bodies, both public and
21 Quarriers, will provide the necessary information to
22 inform this Inquiry.

23 My Lady, moving to the second chapter of my
24 observations.

25 LADY SMITH: You are picking up from the regulations,

1 certainly from 1959, as empowered by the 1948 Act, and
2 you focus on the child and the well-being on the child,
3 the empowering of Parliament to make laws that would
4 enforce that and then the empowering of local
5 authorities, whoever was responsible, to actually see
6 that the well-being of the child was attended to.

7 MR GALE: Precisely, my Lady. I think Professor Norrie put
8 it very succinctly, as I have mentioned it: the
9 well-being of the child was, as he put it, the immediate
10 focus. I don't have the precise reference, I apologise,
11 my Lady, but it is in the passage that I have referred
12 to.

13 LADY SMITH: I suppose you are, in effect, saying: well, it
14 was all there on paper --

15 MR GALE: Yes.

16 LADY SMITH: -- how is it that the words on paper didn't
17 become live and walk into each home?

18 MR GALE: My Lady puts it perfectly, thank you.

19 LADY SMITH: Thank you.

20 MR GALE: My Lady, the second observation I make is that
21 again in our opening statement we made some observations
22 based on the HIA report in Northern Ireland concerning
23 the judging of behaviour against the societal and legal
24 norms of the time.

25 This Inquiry has now heard relevant evidence from

1 Professor Radford and Doctors Barter and Elsley, which
2 will inform my Lady's consideration. Having heard that
3 evidence, we do not in any way depart from the view that
4 we expressed in the opening statement, transcript at
5 page 40, that within this Inquiry's time frame the
6 physical, emotional and sexual abuse of children has
7 always been wrong and we would add repugnant. It is
8 interesting to note that, in its response, Quarriers
9 makes reference to the letter from the then chairman to
10 fathers in charge of the boys' cottages dated
11 22nd September 1937 in which it is said that:

12 "Several cases of extreme corporal punishment meted
13 out to lads have been brought to our notice and that
14 some of those complaints have come from the RSSPCC and
15 [other external sources]."

16 The reference is 001.001.0175.

17 The almost apologetic tone in the last two
18 paragraphs of that letter gives rise to concern, I would
19 suggest. This should also be read with the passages
20 from The Quarriers Story, Ms Magnusson's book, at
21 pages 132 to 133, which are not included in the extracts
22 produced with the Quarriers response, but will be
23 available to my Lady, and also the evidence of
24 David Whelan at WIT.001.001.1621 to WIT.001.001.1622.

25 The third chapter of my observations, my Lady,

1 relates to the response from Quarriers, which has thus
2 far been disclosed. Within this general third chapter
3 there are four specific observations I would like to
4 make.

5 On both a superficial reading and a more detailed
6 and considered reading, the substance of the response
7 concentrates heavily on both the well-documented history
8 of Quarriers, largely borrowing from Ms Magnusson's
9 book, and its recent provision of services, with
10 remarkably little detail of the period within living
11 memory in which we know appalling abuse occurred.

12 The limited availability of policies and procedures
13 which were in place from 1930 to 2000 -- and I emphasise
14 that time frame -- which my Lady will find at
15 QAR.001.001. 0282; the fact that supervision and
16 monitoring of care staff across the sector and Quarriers
17 was largely undocumented, informal or absent before the
18 1990s, again that date is emphasised at
19 QAR.001.001.0283; and the availability of only one blank
20 logbook for a cottage or cottages and which apparently
21 would, if completed, have contained information relating
22 to punishment are all matters which we would say are of
23 deep concern.

24 We do not have as yet access to whatever records are
25 to be made available relating to individual children,

1 which may shed some light on the abuse which undoubtedly
2 took place.

3 The second observation I would make, my Lady, is
4 this. There was repeated emphasis in both Quarriers'
5 response and the evidence of Ms Harper to the autonomy
6 afforded to the individual house parents. We appreciate
7 that the Inquiry will no doubt re-visit this issue when
8 it comes to conduct a case study in relation to
9 Quarriers but it seems to us that investigation of its
10 detail and consequences should be at the forefront of
11 that consideration.

12 Given what we know of the scale and nature of the
13 abuse which went on in Quarriers, this should not be
14 seen as a localised eccentricity but as a matter of
15 concern that it may well have led to tolerance of
16 unacceptable behaviour and an ability to conceal it.

17 My Lady, in the past week I took the opportunity to
18 consider the report of the Independent Jersey Care
19 Inquiry, chaired by Frances Oldham QC, which reported on
20 3rd July.

21 LADY SMITH: Yes I am aware of the report, Mr Gale.

22 MR GALE: I am sure my Lady is.

23 An issue in that Inquiry is what was termed "the
24 Jersey way", which, as was said at paragraph 13.18, at
25 page 60 of the executive summary, was:

1 "An expression which was, on occasions, used with
2 pride to describe a strong culture of community and
3 voluntary involvement, but was more often used to
4 describe a perceived system whereby serious issues were
5 swept under the carpet and people avoid being held to
6 account for abuses that have been perpetrated."

7 My Lady, there are obvious differences between the
8 prevailing approach in a small Crown dependency and the
9 approach taken in an institution such as Quarriers, but
10 it did occur to me that there might be certain parallels
11 in that the evidence thus far heard might seem to point
12 to the existence of a "Quarriers' way". There is no
13 doubt but that Quarriers had a proud tradition, but on
14 the evidence thus far seen it appears to have been
15 operated during the period when abuse took place with
16 deficiencies in its internal regulation, particularly
17 regarding supervision of staff and where the autonomy of
18 the house parents was emphasised over the scrutiny which
19 an organisation caring for vulnerable children should
20 have exercised in relation to what went on within the
21 individual cottages.

22 The third point within this general observation, my
23 Lady, is, as would have been apparent from the questions
24 that were asked of Ms Harper, there is a concern that
25 Quarriers have and continue to underplay the extent of

1 the abuse that occurred within the institution and the
2 attendant failures of their systems to prevent abuse.

3 The repeated emphasis on the seven convictions and
4 the vague allusion to the material placed before the
5 "Time to be Heard" pilot review and the lack of and
6 I quote "sufficiently reliable information", which is at
7 QAR.001.001.286, taken with the repeated references to
8 "the practices of the time" indicates at best, in our
9 submission, a failure to appreciate the scale of what
10 occurred.

11 Finally, my Lady, under this topic, there is further
12 criticism of the assertion made by Quarriers that it
13 does not consider that there have been any failures
14 and/or deficiencies in its response to abuse and
15 allegations of abuse of children cared for at
16 Quarrier's Village from 2000 onwards. That's at
17 QAR.001.001.0285.

18 We cannot understate the further harm caused to
19 survivors by the intimidation of witnesses in the
20 criminal trials and the tactics deployed on behalf of
21 Quarriers in the civil litigations, which were designed
22 to doubt the evidence of those whose abusers had been
23 convicted.

24 Reference should also be made to the terms of the
25 apology given by Mr Robinson, mention of which is made

1 at QAR.001.001.0288, but the full terms of which can be
2 seen in The Quarriers Story, page 195. While one can no
3 doubt debate the semantics of what was said, the wording
4 that:

5 "Quarriers' position is that if any individual
6 suffered abuse at Quarriers then we apologise."

7 Again tends to indicate a grudging extraction of
8 an apology, with an underlying and continuing
9 scepticism.

10 One should also recall the evidence of David Whelan
11 when, having observed that the First Minister's apology
12 was what he termed "a political apology", he emphasised
13 that he has never received a direct personal apology
14 from Quarriers, notwithstanding the datum of the
15 conviction of his abuser.

16 My Lady, the final chapter that I would like to deal
17 with, and therefore the fourth, is to make a few
18 observations concerning the evidence which we understand
19 to be largely complete and that relates to the
20 establishment of the survivors' organisations and the
21 campaigning efforts of INCAS, FBGA, and Chris Daly.

22 The evidence of Helen Holland, David Whelan and
23 Chris Daly reflected their own absolute determination to
24 right an appalling wrong committed against them and many
25 others while in the care of the State.

1 I hesitate, my Lady, to remind my Lady that you and
2 I joined this profession 37 years ago today, but I would
3 venture to suggest that in our respective careers we can
4 rarely have heard evidence which was delivered with such
5 fluency and dignity, all against a background of
6 childhood abuse, the nature of which was barely hinted
7 at.

8 For those who remain sceptical of the extent and
9 nature of the abuse which was endemic in certain
10 institutions within living memory, and the absolute
11 justification of the need for this Inquiry, the
12 transcripts of the evidence of Helen, David and Chris
13 should be required reading.

14 The three witnesses have given full accounts of
15 their pursuit of justice on behalf of many others. In
16 brief, what is apparent from their evidence is that in
17 the period up to the announcement of this Inquiry they
18 experienced reactions from those in authority which
19 ranged from that born of a failure to appreciate the
20 scale of the issue, to the dismissive, "You are not
21 getting an inquiry" -- that's the evidence of Helen at
22 transcript 4th July, pages 43 to 44 -- to the confusing
23 late change in the scope of the "Time to be Heard"
24 pilot -- again the evidence of Helen, pages 74 to 82 and
25 David Whelan at 62 to 65 -- and most worryingly to the

1 contemptuous, "The nutters in the room", the evidence of
2 Helen in the transcript at 126 to 128.

3 What was apparent from the evidence of each of those
4 witnesses is that they, and Frank Docherty, and at this
5 stage unnamed others, campaigned from the outset of
6 their respective involvements for a public inquiry. It
7 is to be hoped that at some stage in this Inquiry the
8 material that underpinned Jack McConnell's decision to
9 make a public apology on 1 December 2004 will be
10 disclosed.

11 At this stage, and we accept that this is
12 an assumption, it may be thought that at that time the
13 executive had sufficient information to conclude that it
14 was dealing with a matter of national concern. It is
15 unfortunate that it did not take the step at that time
16 to announce and establish the public inquiry which this
17 matter so obviously needed.

18 The incremental progress to this Inquiry has, with
19 respect, failed to provide what survivors have
20 repeatedly asked for and that is acknowledgement and
21 accountability.

22 Yet with each step in that incremental journey false
23 expectations have been raised and to participate in the
24 processes many survivors have been forced to re-live
25 their experiences. As both Helen and David made clear,

1 what is of particular regret is that until this Inquiry
2 the infirm and elderly were not prioritised and for many
3 this process comes too late.

4 It is our submission that the evidence thus far
5 heard would entitle this Inquiry to conclude that
6 a public inquiry with a requisite level of independence
7 and powers to compel the production of evidence should
8 have been ordered at the same time as the
9 First Minister's apology or in its immediate aftermath.
10 As my Lady observed of the evidence of Chris Daly: what
11 he set out in his first petition foreshadowed what has
12 become the terms of reference of this Inquiry.

13 My Lady, that is all I have to say at this stage.

14 I'm grateful. Thank you.

15 LADY SMITH: Thank you for that, Mr Gale.

16 May I add that one cannot help but agree with your
17 observations regarding the evidence that came from
18 Helen Holland, that came from David Whelan, and came
19 from Chris Daly. In relation to Mr Whelan, who you
20 represent, I could not help but be very grateful for the
21 calm, controlled and clear manner in which he was able
22 to assist this Inquiry against a background of
23 considerable difficult personal experience. That is not
24 lost on me. Thank you for that.

25 MR GALE: Thank you, my Lady.

1 LADY SMITH: I turn now to Mr Gregor Rolfe, who represents
2 the Daughters of Charity, to make any closing statement
3 he would like to make today.

4 Closing statement by MR ROLFE

5 MR ROLFE: I'm obliged, my Lady.

6 To begin with, my Lady, the Daughters of Charity
7 have asked me to make the following apology:

8 "As Daughters of Charity, our values are totally
9 against any form of abuse and thus we offer our most
10 sincere and heartfelt apology to anyone who suffered any
11 form of abuse whilst in our care.

12 "We also wish to express our deep sorrow that
13 Frank Docherty died before seeing the result of his
14 years of work coming to fruition in this Inquiry.

15 "Finally, we give our assurance that we will work
16 with the Inquiry to bring a successful resolution to its
17 work."

18 Thereafter, my Lady, I propose to deal with a number
19 of matters on which further investigation was required.

20 There were, my Lady, a number of matters raised
21 during the evidence of Sister Eileen Glancy that she
22 advised could be answered more fully and reported back
23 to the Inquiry. I propose to address each of those in
24 turn at this stage.

25 LADY SMITH: Thank you.

1 MR ROLFE: First of all, my Lady, the admissions register.

2 My Lady asked Sister Eileen what details were kept
3 on the admissions register; that was at 10.30 on
4 13th June and page 23 of the transcript of
5 Sister Eileen's evidence.

6 The Smyllum admissions registers have been examined
7 and the details provided for each child are as follows:
8 they contain the surname, first name, date of birth,
9 date of admission, date of baptism, date of first holy
10 communion, some records have the date of discharge, some
11 records have the name of the mother and father; however
12 no other details are recorded such as the home address.

13 The second matter raised during Sister Eileen's
14 evidence, my Lady, was in response to a request put by
15 Mr MacAulay at 10.51 on 13th June 2017, found at page 38
16 of the transcript.

17 Mr MacAulay asked for the date of the quote from the
18 Catholic Observer that featured on page 18 of the
19 Order's part A response dealing with section 1.5(a)(vi)
20 under the heading of the ethos of the organisation. The
21 Catholic Observer article has now been provided to the
22 Inquiry's legal team and the article itself was dated
23 28th March 1969.

24 The next matter I propose to deal with, my Lady,
25 relates to the written account that was provided on

1 page 19 of the part A response. Mr MacAulay asked
2 whether we could provide a date of that account.
3 Unfortunately, my Lady, the archivist is away at present
4 but the Order will endeavour to locate that statement
5 and provide a response on the archivist's return.

6 The next matter I propose to deal with, my Lady,
7 relates to a question put to Sister Eileen by
8 Mr MacAulay at 11.05 on 13th June, found at page 48 of
9 the transcript. That was in relation to whether a child
10 was ever moved from one establishment to another.

11 Sister Eileen advised that she could think of only
12 one occasion when a child was moved from one
13 establishment to another and she was asked approximately
14 when that occurred. The relevant family's information
15 has now been provided to the Inquiry's solicitor. The
16 relevant family's children were moved from Smyllum to
17 Newcastle: two brothers were moved in 1970 and the
18 sister was moved in September 1971.

19 LADY SMITH: Was that to another home run by the Daughters
20 of Charity?

21 MR ROLFE: It was, my Lady.

22 LADY SMITH: Thank you.

23 MR ROLFE: The next point, my Lady, relates to a question to
24 Sister Eileen from Mr MacAulay at 11.18 on 13th June
25 found at page 58 of the transcript.

1 This question related to the part A response for the
2 Order at page 0028 and in particular in relation to the
3 support offered to children when they came to leave
4 Smyllum Park.

5 A small hostel was referred to in the response and
6 Sister Eileen advised she could not recall when it had
7 closed. The hostel closed in 1991, my Lady. At some
8 time in the 1980s it closed for refurbishment and
9 reopened under the control of the Archdiocese of
10 Glasgow, although the Daughters of Charity continued to
11 work there until the hostel's closure in 1991.

12 The next matter my Lady related to a question from
13 Mr MacAulay regarding external oversight. This question
14 was put at 11.45 on 13th June and Mr MacAulay asked
15 about visits by the doctor to Smyllum Park. Mr MacAulay
16 asked when those visits began approximately. The
17 precognition of the relevant doctor has been sourced and
18 that advises he attended Smyllum Park from around 1953
19 until its closure.

20 My Lady, 1953 was when he took up his post in
21 Lanark, assisting another GP partner whose practice had
22 been engaged by the Order to act as a medical officer to
23 Smyllum Park.

24 So although the date of 1953 is provided, I cannot
25 provide the Inquiry with the precise date when doctors

1 attended.

2 LADY SMITH: So the point you make is he joined a practice
3 which appears already to have been providing a service
4 for Smyllum?

5 MR ROLFE: Precisely, my Lady.

6 LADY SMITH: Thank you.

7 MR ROLFE: Finally, my Lady, if I can turn to the signed
8 statements which we have obtained from the surviving
9 Sisters, their contact details, and the provision of
10 that to the Inquiry team.

11 My Lady, the Inquiry's solicitor wrote to the
12 Order's solicitor on 27th June with a request that the
13 Order's solicitor provide the signed statements of the
14 surviving Sisters and the names and the contact details
15 of the surviving Sisters, including the elderly Sister.

16 As at the date of that email's receipt the Order's
17 solicitor held signed statements from five of the ten
18 surviving Sisters. Four statements were out for
19 revision and signature and indeed those four statements
20 were received only yesterday, my Lady.

21 One meeting with one of the Sisters requires to be
22 re-convened because the relevant Sister had to leave the
23 meeting to attend a funeral.

24 We anticipate being in a position to release the
25 signed statements, nine at least, by 14th July as the

1 Inquiry team have requested.

2 LADY SMITH: Thank you, that's very helpful.

3 MR ROLFE: The contact details for those surviving Sisters
4 have already been provided to the Inquiry's solicitor
5 and, unless I can be of any further assistance at this
6 stage, my Lady, that concludes the closing submission on
7 behalf of the Daughters of Charity.

8 LADY SMITH: That's all?

9 MR ROLFE: I'm obliged.

10 LADY SMITH: Thank you, Mr Rolfe.

11 Can I turn now to Mr Mark Lindsay who represents the
12 Sisters of Nazareth to invite him to make any closing
13 statement he wishes to do at this stage.

14 Closing statement by MR LINDSAY

15 MR LINDSAY: Thank you, my Lady.

16 On behalf of the Sisters of Nazareth I would wish to
17 address two main issues in my closing statement.

18 Firstly, to reiterate the apology that has already been
19 given on their behalf and to deal with one or two
20 related matters that put that apology into its proper
21 context.

22 Secondly, to emphasise the congregation's full
23 support for the Inquiry, its objectives and aims, and to
24 update the Inquiry on the progress that's being made
25 with the requests for further information and further

1 details that have been made on behalf of the Inquiry.

2 Dealing firstly with the apology, it is accepted by
3 the congregation that there were occasions when the care
4 provided to children did not meet the level and standard
5 that it should have done and for that the congregation
6 unreservedly apologises.

7 With the benefit of hindsight, the congregation
8 understands that the problems flowed from staffing
9 ratios being too low, that care was provided by Sisters
10 who had little training and were often still young and
11 inexperienced, and also that there was a lack of
12 oversight of the Sisters and the care that they were
13 providing --

14 LADY SMITH: And I think there was an observation that it
15 was probably the case in some of them that, training
16 apart, they didn't have the attitude for this sort of
17 work.

18 MR LINDSAY: That is correct, my Lady: perhaps some of the
19 Sisters didn't have a natural aptitude or empathy for
20 working with children and might have preferred to work
21 with the elderly or other vulnerable groups.

22 With that recognition that the care fell short on
23 occasion of the required standards, the apology is made
24 unreservedly.

25 In addition, one of the Sisters was convicted in

1 2000 of offences against four children and clearly
2 there's no doubt that what the Sister was convicted of
3 did occur and again an unreserved apology is made on
4 behalf of the congregation for all of that.

5 Dealing with some matters which are related to the
6 apology, which hopefully will put it in its proper
7 context. Firstly, a lack of financial resources.
8 I think the evidence from Sister Anne-Josephine showed
9 that many of the problems were caused by a lack of
10 financial resources, combined with the congregation's
11 belief that no child in need should be turned away.

12 So many of these problems arose out of the noblest
13 of intentions to help every child that was in need and
14 the congregation didn't want for any child to be left
15 destitute, uncared for or at risk.

16 Therefore, they strove to accept that every such
17 child, wherever possible, was accepted into their care
18 and again, with the benefit of hindsight, looking back,
19 it is clear that a lot of the difficulties, the problems
20 with staffing ratios and lack of oversight, derived from
21 insufficient financial resources to deal with all of the
22 children who were accepted into the care of the Sisters.

23 But again I would emphasise that that difficulty did
24 arise out of good intentions: to make sure that no child
25 in need was left without care.

1 Another related matter relates to the positive
2 experiences of many children who were cared for by the
3 Sisters. It is correct for this Inquiry to focus on the
4 difficulties and the problems which arose, but equally
5 one must not lose sight of the fact that many children
6 had very happy and positive experiences, who had been
7 cared for by the Sisters and it had a transformative
8 effect on their lives.

9 LADY SMITH: That, of course, was acknowledged by

10 Helen Holland but she made what, I think, is a very
11 valid point that one must be careful not to adopt
12 an algebraic approach and say, that's fine it cancels
13 out the negative ones, because it doesn't.

14 MR LINDSAY: Yes, that is correct, my Lady. I'm much
15 obliged to Mr Scott in his closing submissions for also
16 recognising that good care was provided and that there
17 were positive experiences as well and it is accepted it
18 is not an algebraic or mathematical approach where
19 positives can cancel out negatives, but equally it is
20 important for the Inquiry to look at the care in the
21 round.

22 LADY SMITH: Indeed. It also raises a question for me that
23 assuming there is evidence in a particular institution
24 of good experiences and good care, if they could do it,
25 why wasn't it done for every child? That is something

1 I will be wanting to look at.

2 MR LINDSAY: Yes, my Lady. I think that is a very important
3 issue to consider. I think certainly the evidence to
4 date would suggest that a combination of lack of
5 financial resources and perhaps a lack of any structured
6 oversight perhaps will explain why good practice in one
7 home at one particular point in time perhaps wasn't
8 always replicated at other points in time or in other
9 homes.

10 The next factor which puts the apology into its
11 correct context is the historical context of all of this
12 and right at the start it is accepted that many of the
13 allegations relate to conduct which has always been
14 wrong, always been reprehensible, and in many instances
15 always been criminal.

16 However, some of the other evidence relating to
17 practices, which today might seem rather austere or
18 harsh, simply reflect the prevailing views of society at
19 the time and the prevailing views of the educational
20 establishment. What I have in mind was the separation
21 of boys and girls into same-sex dormitories and, within
22 same-sex dormitories, into age groups. I would submit
23 that that simply reflects prevailing views within
24 society on how children should be cared for and
25 educated.

1 Of course those policies had the very unfortunate
2 side effect of possibly separating siblings, if they
3 were of different sexes and didn't fall within the same
4 age group if they were of of the same gender. However
5 that was not the aim of the policy. The policy wasn't
6 to separate siblings. The separation of siblings was
7 a very unfortunate side effect of the policy of having
8 the two genders in different dormitories within the same
9 age groups. Of course, that didn't start to change
10 until the family group structure was adopted by the
11 Sisters from the late 1950s/early 1960s onwards. Of
12 course, it wasn't always possible to accommodate
13 siblings within the same family groupings.

14 But the historical context is important and of
15 course society's views on how to discipline and chastise
16 children have changed completely as well.

17 Finally, lessons learned. Although the Sisters no
18 longer provide care for children, they are still
19 actively involved in providing care for the elderly and
20 they are very anxious that lessons learned from the
21 problems which were encountered in caring for children
22 are applied to what they continue to do today.

23 All lay staff and all Sisters have DBS or PVG
24 certificates, which are renewed every three years.
25 Safeguarding training is provided for all lay staff and

1 for Sisters, and safeguarding is something that's very
2 much highlighted as part of the management of the care
3 homes for the elderly and as part of the oversight of
4 those care homes.

5 Moving on to the second topic I would wish to say
6 a little about. That's just to emphasise the Sisters'
7 full support for the Inquiry and they are fully
8 committed to assisting the Inquiry in any way that they
9 can.

10 There are certain difficulties which flow from the
11 lack of records and from the fact that many of the
12 Sisters who were involved in the care of children have
13 now died and the lack of records doesn't reflect
14 anything sinister; it just recognises that in the 1950s,
15 1960s, 1970s there was less of a culture of record
16 keeping and, given the passage of time, what records
17 there were in some instances may have been lost or
18 misplaced or may have been destroyed in certain
19 circumstances.

20 Also the first complaints and allegations were made
21 many, many years after the Sisters had ceased to care
22 for children and so the difficulties with records
23 shouldn't in any way be interpreted as a lack of
24 commitment on the part of the Sisters. They are fully
25 committed to assisting this Inquiry in any way they can

1 and will make any information and records which they
2 still have available to the Inquiry, if the Inquiry
3 considers it necessary.

4 Some additional documentation and information has
5 been requested on behalf of the Inquiry by email. The
6 archive which contains all of the Sisters' records was
7 in the process of moving to a new permanent home. The
8 archivist was on sick leave and so the requested
9 information of additional records hasn't yet fully been
10 retrieved. However, the archive is now in its new
11 permanent home and it should be possible to obtain the
12 additional documentation and the details of the
13 surviving Sisters within the requested time frame. If
14 any difficulties emerge over the next few days then my
15 instructing solicitors will be in contact with the
16 Inquiry to make them aware of the difficulties, the
17 reasons why difficulties have been encountered, and what
18 the timetable might be for their production.

19 But at the present time it is anticipated that all
20 of the information and all of the records will be able
21 to be provided within the specified deadlines.

22 LADY SMITH: I do hope so. I am sure I don't need to remind
23 you that the Sisters of Nazareth are one of the two case
24 studies that are going to be explored in the autumn and
25 we really do need this information sooner rather than

1 later.

2 MR LINDSAY: Absolutely, my Lady. That's very much
3 recognised by the Sisters and by their legal advisers
4 and I just wish to thank the Inquiry for this
5 opportunity of making a closing statement. I have
6 nothing further to add at this stage unless
7 your Ladyship has any further questions for me.

8 LADY SMITH: Thank you very much, Mr Lindsay. That's very
9 helpful.

10 It is 11.30 am so we will have a break now for
11 15 minutes and start again at 11.45 am please.

12 (11.33 am)

13 (A short break)

14 (11.45 am)

15 LADY SMITH: I'm going to turn now to the institutions and
16 organisations that are not the case studies that we are
17 taking in the autumn. That means that I will start with
18 the Quarriers representation and that's Ms Dowdalls.

19 Ms Dowdalls, is there anything that you would like
20 to say.

21 Closing statement by MS DOWDALLS

22 MS DOWDALLS: Thank you.

23 Quarriers has welcomed the opportunity during this
24 phase of the Inquiry to provide evidence to assist the
25 work of the Inquiry and to hear from those survivors who

1 have given evidence.

2 Quarriers wishes to take this opportunity to
3 reassure the Inquiry that extensive work has been
4 carried out and continues to be carried out in order to
5 assist the Inquiry in its work.

6 The evidence given on behalf of Quarriers by its
7 current CEO, Mrs Harper, helped highlight some areas
8 where further investigation and clarification would be
9 of assistance to the Inquiry.

10 The day after she finished giving evidence, she and
11 members of the Quarriers management team met and
12 formulated a further plan of action for identification,
13 collation and review of records and other documents that
14 may contain information of assistance to the Inquiry.

15 The plan includes the expansion of a dedicated team
16 within the organisation to search for, identify and
17 collate relevant records and other documents. In
18 addition, the organisation intends to recruit
19 an independent person with relevant expertise to assist
20 in reviewing the extensive archive material and
21 historical records that it holds including those
22 contained within individual children's files.

23 The purpose of the exercise is to identify past
24 policies, procedures and practices insofar as not
25 already apparent; to identify whether complaints about

1 staff members have been recorded within individual
2 children's files or elsewhere; and if so what steps were
3 taken to investigate any such complaints; and to assess
4 the extent to which the care of children was supervised,
5 overseen or monitored internally by the organisation
6 itself or externally by other bodies.

7 As a priority Quarriers will collate and review the
8 records of three particular groups of children. Those
9 are: firstly, those who were cared for at
10 Quarrier's Village between 1955 and 1981, which are the
11 dates between which it is known that offences were
12 committed; secondly, those who as adults have made
13 complaints about abuse that did not result in
14 conviction; and, thirdly, those who were migrated to
15 Canada and Australia by the organisation.

16 I can assure the Inquiry that work has already begun
17 on that exercise.

18 Thereafter, other records will be reviewed and
19 material collated as soon as possible and, in any event,
20 before the next phase of this Inquiry.

21 Since Mrs Harper gave evidence, certain further
22 information has been identified that is relevant to the
23 matters addressed in part D of the response by Quarriers
24 to the Section 21 Notice.

25 That information will be provided as quickly as

1 possible to the Inquiry. Quarriers wishes to assure the
2 Inquiry that it is committed to carrying out a thorough
3 search of its archive and its historic records with
4 a view to filling the gaps in information identified
5 during this phase in the Inquiry. Where it does not
6 prove possible however to fill those gaps, Quarriers
7 will use its very best endeavours to provide
8 an explanation to the Inquiry for the absence of the
9 material that is missing.

10 Unless there is anything further that I can assist
11 with, at this stage, my Lady, I have nothing to add.

12 LADY SMITH: That's very helpful. Thank you very much
13 Ms Dowdalls.

14 I would like to turn now to the Good Shepherd
15 Sisters as represented by Mr Anderson.

16 Closing statement by MR DAVID ANDERSON on behalf of Good
17 Shepherd Sisters

18 MR DAVID ANDERSON: Yes. Thank you, my Lady.

19 My Lady, the Good Shepherd Sisters thank you for the
20 opportunity to make this closing statement. I shall
21 endeavour to be brief and I am mindful of
22 your Ladyship's guidance issued at the end of the
23 evidence last week.

24 First of all, my Lady, on behalf of the Congregation
25 of Our Lady of Charity of the Good Shepherd I would like

1 to pay tribute to the survivors who gave evidence last
2 week. All three of the witnesses last week spoke
3 admirably in the most trying of circumstances. All of
4 them were well spoken, erudite, intelligent and
5 determined people.

6 The Good Shepherd Sisters have expressed a feeling
7 of profound sadness at the suffering which they and so
8 many others have endured and also for the consequences
9 for their whole lives and the lives of their families.

10 Their perseverance over so many years and against
11 all the odds to be a voice for survivors has been
12 remarkable and the Sisters wish to pay tribute to their
13 courage and dignity.

14 Next, my Lady, I turn to the substantive statement
15 for the Good Shepherd Sisters. In their opening
16 statement the Good Shepherd Sisters indicated that they
17 were grateful for the opportunity to participate in this
18 Inquiry and indicated they would seek to assist the
19 Inquiry in any way they could.

20 In the evidence on behalf of the Good Shepherd
21 Sisters the Inquiry heard from Sister Rosemary Kean and
22 Sister Anne-Josephine Carr. In my submission, my Lady,
23 both Sisters gave their evidence in the spirit of
24 openness and assistance which they referred to in their
25 opening statement.

1 Sister Anne-Josephine Carr was the first of the
2 Sisters to give evidence. She gave detailed and careful
3 evidence, my Lady, of the Sisters working in
4 establishments in Scotland. Sister Anne-Josephine had
5 recently been appointed the province archivist. She
6 explained the province's records are kept in Manchester
7 and she had spent most of her time in 2017 looking for
8 answers for this Inquiry. She explained that although
9 the records were generally well maintained in relation
10 to the Scottish institutions what is kept are admission
11 records and certain other reports kept apparently on
12 an ad hoc basis.

13 My Lady, although from the evidence we have heard
14 this does not appear to be an unusual position, it is
15 nevertheless unfortunate. It is unfortunate, my Lady,
16 but it is, in my submission, understandable in the
17 context of an organisation which ceased working in
18 schools a significant period of time ago.

19 Sister Anne-Josephine had also sought out and spoken
20 to elderly Sisters who had worked in the Scottish
21 institutions with which the congregation was involved.
22 Again, my Lady, due to the passage of time,
23 opportunities to do this must have been limited but
24 doing this, as far as is humanly possible, again, in my
25 submission, my Lady, demonstrates the Sisters have done

1 all they can to assist this Inquiry and will continue to
2 do so.

3 Your Ladyship obtained clarification from Sister
4 Anne-Josephine as to whether the Sisters were ever in
5 local parentis. Sister Anne-Josephine agreed with
6 your Ladyship that the Sisters were responsible for the
7 girls' welfare on a daily basis. She stated that
8 although the Sisters did not have the right to decide
9 what would happen to the children, they were looking
10 after them 24 hours a day, 7 days a week.

11 Sister Anne-Josephine confirmed to your Ladyship
12 that no attempt was made to dilute that responsibility.
13 Returning later in her evidence to the question of
14 records, Sister Anne-Josephine confirmed that the
15 admission books for all of the establishments are kept
16 and gave some detail as to their contents. These and
17 all other records referred to are available to the
18 Inquiry should it wish to see these.

19 I seek to assure your Ladyship that the Sisters
20 continue to search for materials which may be of
21 assistance to your Ladyship's Inquiry.

22 Sister Rosemary Kean, my Lady, gave evidence on the
23 governance of the organisation and also on part B of the
24 questionnaire response. She had a history of working in
25 child care before joining the congregation.

1 She had direct evidence of working in one
2 establishment run by the Sisters and was impressed by
3 what she described as a child-centred regime, where each
4 child had a voice. She stated that they were not
5 punished or chastised for difficult or disturbed
6 behaviour but instead they were listened to.

7 Sister Rosemary also spoke to the Sisters' practical
8 rules. These were used long prior to the availability
9 of policies and guidelines. Sister Rosemary spoke to
10 the terms of these rules and that all Sisters were
11 instructed in these rules and were expected to adhere to
12 them.

13 In my submission, my Lady, this document, which is
14 dated to 1943, displays the kind of modern thinking
15 which must have been years ahead of its time and which
16 has become commonplace only recently.

17 Again, my Lady, Sister Rosemary was asked a number
18 of questions about records. Like Sister Anne-Josephine,
19 she advised there was little beyond admission books
20 held.

21 In response to certain questions from my learned
22 friend Mr MacAulay she indicated she would check certain
23 matters out and today the Sisters reiterate their
24 commitment to doing so.

25 Sister Rosemary has confirmed that, as far as they

1 are aware, the children's files were returned to the
2 referring authorities and she has further confirmed that
3 at the closure of the Ladymary School in Colinton the
4 children's files were sent to the Sick Children's
5 Hospital in Edinburgh.

6 My Lady, sister Rosemary was asked as to whether she
7 was able to give any retrospective --

8 LADY SMITH: Sorry, you may not be able to answer this at
9 this stage, but why the Sick Children's Hospital?

10 MR DAVID ANDERSON: I think your Ladyship is correct, I'm
11 not able to answer that at this stage, but I can
12 certainly find that out and respond in due course, my
13 Lady.

14 LADY SMITH: There may be some explanation for that but it
15 doesn't automatically appear as a likely destination for
16 children's files from a residential home.

17 MR DAVID ANDERSON: I have a suspicion as to why that may
18 have been the case, my Lady, but I probably ought not to
19 speculate at the moment.

20 LADY SMITH: No doubt we will find out in due course.

21 MR DAVID ANDERSON: Yes, my Lady.

22 LADY SMITH: Thank you.

23 MR DAVID ANDERSON: So, yes, my Lady, Sister Rosemary was
24 asked as to whether she was able to give any
25 retrospective acknowledgement of abuse; this was touched

1 upon by my learned friend Mr MacAulay. For the reasons
2 that Sister Rosemary explained, she did not do so.

3 In my submission --

4 LADY SMITH: Does that remain the position of the Good
5 Shepherd Sisters?

6 MR DAVID ANDERSON: It does, my Lady.

7 LADY SMITH: Despite the conviction of somebody who was
8 working at the Ladymary School on 29th June this year in
9 relation to child abuse offences committed in 1974?

10 MR DAVID ANDERSON: That is the position, my Lady.

11 LADY SMITH: Have you been given no instructions in the
12 light of that conviction?

13 MR DAVID ANDERSON: It is not something which has been
14 brought to my notice, my Lady, and it may be something
15 which I have to discuss with those instructing me.

16 LADY SMITH: It was a conviction in Edinburgh High Court
17 following a trial that lasted from 21st to 29th June
18 before Lord Armstrong.

19 MR DAVID ANDERSON: Yes, my Lady. Perhaps it is something
20 which I can seek an instruction on.

21 LADY SMITH: I think you had better. I extend this
22 invitation to the Order to re-visit in particular their
23 answers to question 3 in part B of the questionnaire
24 that was sent out under the original Section 21 order.
25 It does seem they need to look at that again.

1 MR DAVID ANDERSON: Yes, my lady, it does.

2 LADY SMITH: Thank you.

3 MR DAVID ANDERSON: I had a submission to make in respect of
4 Sister Rosemary's evidence in that respect but
5 I obviously won't make that submission now.

6 What I was going to go on to say, my Lady, is that
7 the Sisters, when presented with other information, will
8 consider it carefully and respectfully and that's
9 obviously what they must do now.

10 The Sisters have the greatest of sympathies for
11 persons who have suffered from abuse and indeed for all
12 those who feel let down by the care system.

13 My Lady, I'm conscious that this isn't a legal
14 submission in the strict sense and I'm not asking
15 your Ladyship to make findings in fact, I would however
16 make a submission as to what might be said to be the
17 themes of the evidence given on behalf of the Good
18 Shepherd Sisters.

19 My Lady, in my submission, both witnesses were good,
20 honest and well-meaning people doing their best to
21 assist the Inquiry and they will continue to do so.

22 I conclude, my Lady, by reiterating the Sisters'
23 appreciation for the opportunity to participate in this
24 Inquiry and their hope and desire that it will go
25 towards providing the survivors with the closure that

1 they seek.

2 Unless I can assist your Ladyship further I have
3 nothing further to add in this statement.

4 LADY SMITH: Thank you very much, Mr Anderson.

5 MR DAVID ANDERSON: My Lady --

6 LADY SMITH: I would like to turn now to the De La Salle
7 Brothers and again you represent them; if there's
8 anything you would like to say, please do.

9 Closing statement by MR DAVID ANDERSON on behalf of the De
10 La Salle Brothers

11 MR DAVID ANDERSON: Yes, my Lady.

12 The De La Salle Brothers, who are also known as the
13 Brothers of the Christian Schools, are grateful for the
14 opportunity to make this closing statement.

15 With reference to your Ladyship's guidance at the
16 end of last week, there are a few short points I would
17 like to make on behalf of the De La Salle Brothers.

18 First, my Lady, the Brothers would like to join with
19 others in paying tribute to the survivors who gave
20 evidence last week. The Brothers commend their bravery
21 and determination.

22 One theme, my Lady, emerging from the survivors'
23 evidence was just how daunting the Parliamentary and
24 legal processes can be for laypersons. For those of us
25 who are legally qualified or experienced in these

1 processes this is something which is easy to
2 underestimate. It is testament, my Lady, to the will,
3 intelligence and character of the speakers that they
4 over came these obstacles and brought about
5 your Ladyship's inquiry.

6 LADY SMITH: Well, thank you for that Mr Anderson. These
7 points are well made and one only has to remember, for
8 instance, Mr Daly's evidence, the last evidence on this
9 matter, to reflect on the dignity and thoughtfulness
10 with which he had approached the task and had never
11 given up.

12 MR DAVID ANDERSON: Yes, my Lady. His evidence was
13 particularly striking in that regard.

14 In their opening statement, my Lady, the De La Salle
15 Brothers described how they were founded with the
16 purpose of providing education to children in need. The
17 Brothers gave an overview of their involvement in
18 establishments in Scotland and we heard the evidence of
19 Brother Laurence Hughes, the current Provincial, giving
20 detail on that.

21 In their opening statement, my Lady, the Brothers
22 made no attempt to defend mistreatment of children in
23 any form, nor those who have perpetrated it. The
24 Brothers offered an unreserved apology for any incidents
25 where a Brother was responsible for mistreatment of

1 a child or a young adult. That apology, my Lady, is
2 reiterated now. That apology, my Lady, is made without
3 condition, reservation or technicality. Where anyone
4 listening feels that the Brothers have let them down,
5 that apology is directed to you.

6 The Brothers also stated, my Lady, that they cannot
7 pretend to understand the hurt experienced by those who
8 have experienced abuse or cruelty. Without having that
9 experience, my Lady, none of us can truly imagine this.
10 What we must do, as your Ladyship is doing in this
11 Inquiry, is listen to the survivors in the hope that we
12 might gain some understanding.

13 This, my Lady, takes me to the evidence given by
14 Brother Laurence. Brother Laurence acknowledged abuse
15 committed at St Joseph's in Tranent. He acknowledged
16 that abuse might not be confined to those convictions
17 and explained the difficulties the passage of time
18 creates in assessing the circumstances of any such
19 allegations, are they to be forthcoming. Nonetheless,
20 my Lady, a failure of systems was acknowledged.

21 My Lady, what I would like principally to highlight
22 in Brother Laurence's evidence is the offer he made at
23 the end of his evidence. Brother Laurence explained his
24 concern in these matters being primarily for the
25 survivors. Brother Laurence has met with survivors in

1 Ireland and would be grateful for the opportunity to do
2 so with those in Scotland. Brother Laurence is clear
3 that he is willing to do this at the discretion of
4 survivors and on their terms and in his exact words
5 Brother Laurence said:

6 "For me to listen -- because the real issue here is
7 for me to actually listen and to believe what has taken
8 place."

9 LADY SMITH: I recall he offered to travel to wherever would
10 be convenient for anyone who wants to talk to him,
11 recognising how difficult it might be for them to cross
12 the doors of a De La Salle property.

13 MR DAVID ANDERSON: Yes, my Lady. I think Brother Laurence
14 was quite clear that this offer can't be
15 a one-size-fits-all approach and, as I say, he is
16 willing to do this at the discretion of survivors and on
17 their terms.

18 Brother Laurence, my Lady, and the De La Salle
19 Brothers wish to use this opportunity to reiterate this
20 offer: to those who feel they have suffered
21 ill-treatment for which the Brothers are responsible,
22 Brother Laurence will listen to you. The Brothers
23 understand that such direct engagement, and hopefully
24 reconciliation, may not be desirable to everybody. To
25 those who do not want to engage with the Brothers in

1 this way, the Brothers welcome any form of communication
2 from survivors and they will endeavour to assist in any
3 way they can.

4 There are just a few other short comments I might
5 make on Brother Laurence's evidence, my Lady. First of
6 all we heard that the Brothers are no longer involved in
7 schools in Scotland. For those who are looking for
8 assurances that mistakes cannot be repeated, perhaps
9 this might be of some assistance. Over the period when
10 the Brothers were working in establishments in Scotland,
11 we heard that there have been 9,300 students in those
12 establishments. We also heard that there were generally
13 25 Brothers, five per school, working in Scotland each
14 year over a significant number of years.

15 My Lady, in observing that the conviction of one
16 Brother and two lay employees not affiliated with the
17 Brothers represents a tiny fraction of the work done by
18 the Brothers in Scotland over the years, no attempt is
19 made to ignore or minimise the effect of the actions of
20 those convicted on those affected.

21 The Brothers agree that any abuse is too much but
22 simply ask that this is seen in the context of the
23 volume of work done by their organisation in this
24 country over the years.

25 My Lady, we heard the evidence of the Brothers'

1 roles as employees in schools for which governance was
2 the responsibility of the board of managers. My Lady,
3 the legal relationships and the division of
4 responsibility between the boards of managers, the
5 religious Orders, and the staff of the schools within
6 which they are involved has been dealt with in the Court
7 of Session and that includes the case of M v Hendron.
8 For the record that is reported in the 2005 Scots Law
9 Times, page 1102 and the 2007 Session cases where the
10 case was dealt with in the Inner House at page 556.

11 In my submission, my Lady, the evidence given by
12 Brother Laurence accords with the legal analysis of the
13 courts in these cases. After that evidence, my Lady, in
14 discussion with my learned friend Mr MacAulay,
15 Brother Laurence accepted that day-to-day responsibility
16 in the factual sense, at least for schools and pupils,
17 rested with the Brothers.

18 My Lady, I conclude this closing statement on behalf
19 of the De La Salle Brothers by seeking to assure
20 your Ladyship that the Brothers have complied with the
21 Section 21 Notices served on them to the best of their
22 ability and will continue to assist the Inquiry in any
23 way they can.

24 In the course of his evidence, Brother Laurence gave
25 certain commitments to look into matters, to speak to

1 another Brother who had been involved in a school and to
2 provide documents. I understand that these matters have
3 been advanced and indeed the Inquiry's legal team will
4 travel to England to meet with the other Brother in the
5 coming weeks so that his evidence can be taken directly.

6 My Lady, the Brothers reiterate the commitments made
7 by Brother Laurence to provide the materials discussed
8 so far as not already implemented.

9 The Brothers thank your Ladyship for the opportunity
10 to participate in this Inquiry and unless I can assist
11 your Ladyship further that would conclude this closing
12 statement.

13 LADY SMITH: Thank you very much.

14 I would like to turn now to the Christian Brothers
15 if I may, Mr Peter Anderson is here to represent them.

16 Mr Anderson.

17 Closing statement by MR PETER ANDERSON

18 MR ANDERSON: I'm very much obliged to your Ladyship.

19 Your Ladyship, the submissions and observations which
20 I would put before your Ladyship this morning can be
21 divided conveniently into seven brief chapters and
22 I undertake not to detain your Ladyship or the Inquiry
23 for any great length of time in dealing with them.

24 My first chapter simply comments upon or invites
25 your Ladyship to keep in mind the evidence that was

1 given on behalf of the congregation of
2 Christian Brothers by Mr Michael Madigan. I invite
3 your Ladyship to find that he was an impressive witness,
4 he was speaking to the results of considerable research
5 that he had undertaken, looking at the congregation's
6 archive material in considerable detail.

7 He had been largely the author of the earlier
8 written answers and, to the extent that his research
9 minimised work to be done by the Inquiry's team, it is
10 of assistance.

11 Insofar as his evidence is incomplete that's only
12 because he wasn't there at the time, nor was he in any
13 other relevant post within the body, but he had done all
14 of the research. There is no one else available with
15 more direct knowledge.

16 Your Ladyship will well recall that the congregation
17 operated St Ninian's, Falkland, from 1950 until 1983.
18 The school has been closed for a significant period of
19 time and there has been no operation within Scotland or
20 the UK since that date.

21 Your Ladyship, it may be of some worthwhile comment
22 to observe that what Mr Madigan did was to put into
23 context what is now known, and the general standards
24 which are imposed properly by law, by society, by public
25 and private attitudes to discipline and the care and

1 responsibility for children and young people.

2 It is recognised that your Ladyship will inevitably
3 look at the actings of all of those who are scrutinised
4 by this Inquiry with the benefit of all of the
5 information and intelligence and what I might describe
6 as laser-assisted vision of the 21st century but at the
7 same time with an awareness of differing practices,
8 particularly those that did exist without adverse
9 comments or criticism from society at large 30 to
10 60 years ago.

11 My Lady, nothing said by Mr Madigan, and
12 emphatically nothing in these submissions on behalf of
13 the congregation, is ever intended to try to excuse or
14 to explain criminal sexual conduct or, for that matter,
15 any other criminal conduct.that is always an outrage.

16 What however was not readily understood until much
17 more recent years was the extent of the continuing
18 psychological and psychiatric harm which these crimes
19 have created.

20 Without deviating into the field of psychological
21 and psychiatric evidence, what they may well be feeling
22 are enhanced feelings of rejection and misplacement for
23 those who are the victims of these crimes.

24 Your Ladyship has rightly focused on the serious
25 wrongs that were done and all I have to say about those

1 is to put them into the context as has been said by many
2 others, even in the course of this morning: that they
3 were unfortunately a small minority of incidents in
4 comparison with the number of child days and nights over
5 the period of approximately 35 years that the
6 Congregation of Christian Brothers operated their school
7 in Falkland and a very small proportion of the staff are
8 guilty of abuse.

9 The abuse was the criminal acts of very few and, in
10 my submission, should not be regarded as institutional.
11 My Lady, again, without I hope giving evidence, perhaps
12 that's the beginnings of an answer that your Ladyship
13 put earlier this morning about how people who largely do
14 good things can also allow bad things to happen. The
15 answer to that, I suspect, may be at least partly that
16 unfortunately there are bad people and what the
17 institutions perhaps failed to recognise sufficiently
18 early was that bad people could exist and there should
19 be procedures in place to limit or indeed entirely avoid
20 their opportunities to do the great harm that they did.

21 LADY SMITH: Well, as soon as one accepts that it may be
22 a question of systems and procedures, the question then
23 arises whether, broadly put, one can regard what
24 happened as institutional. I don't suggest that any
25 institution was intending in its set up to abuse

1 children, but the point is really a wider one. I might
2 quibble with you in due course, Mr Anderson, about
3 a statement as bald as saying there was nothing remotely
4 institutional about the harm that happened, but we can
5 leave that for another day.

6 MR ANDERSON: I am obliged to your Ladyship and I think
7 perhaps on reflection I might remove the word
8 "remotely", but at the same time saying that if you put
9 all of this into the context in which it existed,
10 perhaps the extent to which the institutions can be
11 criticised will be a matter of some discussion and
12 debate in the evidence.

13 My Lady, my second chapter can be very brief indeed.
14 I simply make reference to the impact of the Social Work
15 (Scotland) Act (1968) which was notable and that has
16 been already and will be the subject of other evidence
17 and to observe, as your Ladyship heard, that the
18 congregation of Brothers did respond to the radical and
19 improved standards which the 1968 Act made clear:

20 To remind your Ladyship of the evidence that showed
21 a social worker was appointed exclusively for
22 St Ninian's to liaise particularly with the parents of
23 the boys and the local care officers. To remind your
24 Ladyship of the observation that relations between
25 residents and staff within St Ninian's appear to have

1 been, in general, very good.

2 At this point your Ladyship I should perhaps to try
3 to clarify what was a rather unnecessary confusion that
4 I think did arise because the ratio reference was hardly
5 of much real importance, but Mr Madigan may have created
6 some confusion about that and so, for the sake of
7 clarification only, the number of boys resident at
8 St Ninian's at any one time varied between about 40 to
9 48. The teaching staff usually comprised four or at
10 most five Brothers and three lay teachers. The other
11 staff were a matron, the seamstress, the gardener, two
12 kitchen assistants, usually and in fact probably
13 invariably female. So the total number of staff was 12
14 or 13 for anything up to 48 boys.

15 Mr Mad fan's evidence about a 4:1 ratio is
16 approximate as a broad generality but is perhaps not
17 something that is of any great assistance to
18 your Ladyship in looking at the overall practice.

19 LADY SMITH: I think it was pretty plain that the staff
20 mentioned would not all have been present all the time
21 and certainly not all overnight with the boys. That's
22 when the ratio would drop particularly.

23 MR ANDERSON: Yes, your Ladyship is entirely right about
24 that. It is particularly the late evenings which are
25 the key and critical period so far as the criminal

1 activity is concerned.

2 Your Ladyship, I turn from that to my third chapter,
3 which is in relation to a general description of the
4 care regime and culture. I make submissions on this
5 only because counsel to your Ladyship's Inquiry,
6 Mr MacAulay QC, did put some specific questions to
7 Mr Madigan about the constitutions of the congregation
8 with reference then in particular to the section on
9 chastity and the purpose of this being a breach of the
10 sixth and ninth commandments from the Book of Exodus.

11 My Lady, I venture into this territory with the
12 greatest of hesitation since Biblical exegesis is not
13 a major part of my training or background. However,
14 with the benefit of a little additional information from
15 my clients and the development of the Commandments in
16 the catechism of the Catholic Church, I have made
17 reference -- I make reference to the sixth Commandment
18 being the well-known instruction not to commit adultery
19 and, as the catechism develops this, it is further
20 explained by Christ in his teachings that everyone who
21 looks at another person lustfully has already committed
22 adultery in his heart. So this is a direction, quite
23 clearly, towards lustful activity, not even within the
24 strict confines of marriage, although that may have
25 applied in relation to the offenders.

1 The ninth Commandment is about covetousness and in
2 particular instruction against coveting a neighbour's
3 property and/or person. The ninth Commandment in
4 particular is about personal relationships rather than
5 property, which is taken up by the tenth Commandment.
6 Again the catechism makes it clear that the covetousness
7 related to lust is forbidden.

8 However my understanding on this guidance from the
9 Christian Brothers is that it was seen and written in
10 the context of guidance and even instruction to
11 a Brother about avoiding being alone with a pupil and
12 that in the context of the vow of chastity. For the
13 Brothers this particular vow of chastity was to be
14 interpreted primarily in a positive sense, which is that
15 by taking the vow the Brother freed himself from other
16 responsibilities and distractions and, for that matter,
17 temptations so as to be at the service of others in a
18 Christlike manner. Therefore contact with other people,
19 whether male or female, young or adult, which put the
20 Brother's commitment to chastity at risk, were
21 discouraged.

22 LADY SMITH: Of course that was a reference to an explicit
23 direction that was written into their constitution in
24 1946 and, if I remember rightly, I was told was, well,
25 probably as a result of bitter experience.

1 MR ANDERSON: Yes, my Lady. I think it would be true to say
2 that certainly Mr Madigan's evidence was that there had
3 been an awareness that Brothers could stray and they
4 should be reminded. But as it has been explained to me
5 subsequently, the primary purpose of this was to be
6 an encouragement rather than a prohibition. However, we
7 may be now arguing about semantics and exegesis rather
8 than substance.

9 My Lady, again to restate something that's beyond
10 doubt, sexual abuse of a child would always be seen as
11 a most serious moral failure or sin, breaching the
12 Commandments and also as a major breach of the vow of
13 chastity, as well as showing a grievously bad example to
14 the young person, but the particular continuing
15 long-term psychological and even psychiatric impact of
16 sexual abuse on children was not, it would seem,
17 properly understood until the 1990s.

18 My Lady, without minimising the seriousness of those
19 elements, I do want simply to do as has been done by
20 others and to draw attention to the qualities of
21 education and care that were provided during the
22 relevant period, enjoyable and helpful social and
23 relaxation activities, and that there was evidence to
24 support that from the fact that boys did return to visit
25 and they were happy to stay overnight when they did so.

1 So that even if they were coming back to renew
2 acquaintanceships with other local lads, they were not
3 unhappy at the prospect of being invited to stay over in
4 St Ninian's.

5 To that extent therefore I would also like to
6 express my appreciation of what was said by my friend
7 Mr Scott in his submissions about the positive
8 experiences of children and adopt what was said by my
9 learned friend Mr Lindsay on that theme as well. As
10 your Ladyship will recall there were visitations and
11 reports which were generally very positive.

12 It is true to say that insofar as boys did abscond
13 this was treated as a disciplinary matter, but that was
14 in keeping with general social and educational standards
15 of the time. Reasons for absconding were not
16 investigated or certainly not in any detail. The point
17 which was being made in evidence from Mr Madigan was
18 that absconding was being treated as a matter of
19 discipline, without the greater understanding that would
20 certainly now be appropriate and would have been for
21 perhaps the last 20 years or more.

22 LADY SMITH: Did I hear any evidence about the reasons for
23 the absconding being looked into at all?

24 MR ANDERSON: I don't think so, my Lady.

25 LADY SMITH: So it is not just a question of them not being

1 looked at in detail.

2 MR ANDERSON: We are handicapped, of course, by not having
3 records which would illustrate what conversations might
4 have taken place. It would seem a little unlikely to my
5 commentary that a returning boy would have simply been
6 punished in some way for being absent without there
7 being questions asked as to: where did you go, why did
8 you go there. Those sort of things would seem obvious
9 and so it was for those reasons I have couched my
10 submission in the way that I have.

11 What I certainly would accept, and the congregation
12 accept, is that there wasn't a deeper effort to
13 understand what might have been the underlying reasons
14 that would have led a young person to leave without
15 permission.

16 My Lady, my fourth chapter was in relation to
17 funding. There was some mention to a £10,000 deficit in
18 the 1950s as having possibly limited the congregation in
19 its care for children and preventing the employment of
20 additional staff.

21 My Lady, I think all I can do is to say that there
22 is no evidence to say that there was any gap or failure
23 and ultimately the staffing levels spoken to by
24 Mr Madigan would, in my submission, indicate that there
25 was a strong degree -- a high level of support given the

1 numbers of those who were resident.

2 My Lady, turning from that to the fifth chapter,
3 which is the discussion of criminal conduct, which, to
4 its great shame and regret, the congregation knows has
5 happened. Again the congregation expresses its profound
6 and bitter regret that these acts happened at all. It
7 is apparent there was one Brother who may have committed
8 criminal offences in 1961 to 1962, although there's no
9 evidence about the nature of what he may have done. The
10 method of dealing with him was wrong in the sense that
11 there was no attempt to involve the police and to
12 investigate what may or may not have been crimes.

13 But there is a measure of hindsight attached to the
14 criticism that now, no doubt, will attach to that method
15 because in the period this was seen as being
16 appropriately dealt with by removing the individual from
17 the site where they were potentially doing harm.

18 LADY SMITH: Yes, this relates to the evidence we were
19 provided with regarding a letter written by the
20 Provincial to the Superior General in Rome about having
21 to remove a Brother or move a Brother because he could
22 not be trusted with children, in the plural.

23 MR ANDERSON: Yes, that's so, my Lady. Again it is in
24 a context where perhaps these matters were not responded
25 to as they should have been and for that matter,

1 although I'm not sure whether your Ladyship is going to
2 hear evidence from Police Scotland or the Crown Office
3 as to the way in which criminal prosecutions were
4 considered and investigated, perhaps that was something
5 which would also have been understood across society at
6 large.

7 Whatever may be the context, my Lady, the methods
8 and procedure are acknowledged as being wrong and
9 regretted by the congregation. They are not excused,
10 but the standards of the time perhaps indicate some
11 explanation as to why things were done in the way in
12 which they were done.

13 My Lady, the other criminal acts took place during
14 the period 1979 to 1983. All that can be said for the
15 congregation is that they were not aware of them at the
16 time and no complaints were made. Neither of the
17 complaints that came to the notice of the Brothers in
18 1998 led to criminal charges. The earlier of the
19 complaints hasn't been renewed. The later emerged in
20 about 2010 with an occasional contact from the
21 complainer but no reference to criminal proceedings.

22 The complaints which led to the criminal
23 prosecutions in the High Court in Glasgow in July last
24 year were first presented to the congregation in 2002.
25 Only one of the two people convicted in July 2016 was

1 named at the time of those complaints.

2 The allegations against the former Brother who
3 became a priest in Scotland weren't known to the
4 congregation until they were becoming the subject of a
5 criminal complaint in 2013.

6 So far as the congregation are concerned, my Lady,
7 there were not more than six complainers. Your Ladyship
8 did put a direct question to Mr Madigan on that
9 appreciation and the only evidence that he can give is
10 the answer he gave, which is that if there are other
11 complainers in relation to the activities of these two
12 convicted criminals, then those complaints haven't been
13 made known to the congregation.

14 My Lady, the congregation acknowledge and do much
15 regret what I accept can be described as a systemic
16 failure about records and the written responses deal
17 with that at pages 47 and 48.

18 My Lady, turning to chapter six and missing records.
19 There is one missing logbook. It does seem at least
20 possible that this was handed over by the English
21 province to what was then, I think, Fife Constabulary.
22 It does respectfully appear that Police Scotland and the
23 Crown Office, and for that matter the defence
24 solicitors, would have all wished to recover records at
25 least for the period 1979 to 1983 in relation to last

1 year's criminal trial. It may be that your Ladyship's
2 Inquiry could put questions to them as to what
3 documentation they may have and in particular any
4 missing logbook and it may indeed, your Ladyship, be
5 a matter for Police Scotland and the Crown Office to
6 explain what cross referencing they may have done over
7 many years in relation to complaints of abuse across
8 Scotland or not. It is really a matter for
9 your Ladyship and the Inquiry team.

10 My Lady, as Mr Madigan explained, there is reference
11 in the 1978 visitation report to the keeping of a day
12 book as a legal requirement. So this clearly indicates
13 that the Superior from the mid to late 1970s knew that
14 a logbook should be kept and it seems highly likely that
15 one did exist, but unfortunately the congregation have
16 no record of what may have happened to it.

17 Your Ladyship, my final chapter is in relation to
18 the taking of complaints. Your Ladyship put some quite
19 clearly pointed and sharp questions to Mr Madigan about
20 this and it perhaps also echoes what my learned friend
21 Mr Scott said earlier about weasel words.

22 My Lady, in no sense is any of the apology tendered
23 by the congregation, both now and previously, something
24 which is hollow or without significance and meaning. In
25 just the same way that the response that Mr Madigan

1 outlined to your Ladyship's questions, which would seem
2 to be in my submission should be accepted as such,
3 should be something which was meant, which was sincere,
4 and which was an effort by the congregation to do the
5 best they can in circumstances where clearly everyone
6 finds this very difficult.

7 In my submission, it is important to distinguish
8 between the support, psychological and otherwise, which
9 can be provided, and the advice in relation to rights to
10 pursue criminal or civil remedies.

11 The congregation, through the safeguarding office at
12 Marino in Dublin, does respond and has done for many
13 years to those who make claims of abuse firstly by
14 advising them of their right to make a report to the
15 relevant police force or to take advice from solicitors
16 in relation to any civil claims. They are told that any
17 records held by the congregation will be provided to the
18 police and that the records would also be made available
19 following court order in civil cases.

20 If the person making enquiry doesn't wish to pursue
21 either of the criminal or civil remedies, then they are
22 given information and advice about the psychological and
23 other support services available for them. The
24 congregation do inform all of the relevant authorities
25 of allegations of abuse.

1 My Lady, I'm very grateful for the indulgence of
2 being allowed for the opportunity to make these
3 submissions and, as with all other parties, the
4 congregation greatly approves of your Ladyship's Inquiry
5 and will do all in its power to assist and respond to
6 any questions put.

7 Thank you very much.

8 LADY SMITH: Thank you Mr Anderson.

9 Could I now please turn to the Benedictines.

10 Mr Graeme Watson for the Benedictines, if there's
11 anything you would like to say.

12 Closing statement by MR WATSON on behalf of the Benedictines

13 MR WATSON: Your Ladyship may recall that Dom Richard Yeo,
14 the Abbot President of the congregation, gave evidence
15 to the Inquiry on 23rd June 2017. There are two points
16 on which Dom Yeo would seek to correct that evidence.

17 He has prepared a short statement which was
18 submitted to the Inquiry team; has your Ladyship been
19 passed a copy of that?

20 LADY SMITH: I received that yesterday afternoon, thank you.

21 MR WATSON: Thank you.

22 My Lady I don't intend to rehearse the contents of
23 that statement, but your Ladyship will see the issues
24 that are outlined there.

25 The first issue concerns what happens if a monk were

1 to report concerns about abuse by another monk in the
2 course of a visitation. You will see that in his
3 statement Dom Yeo sets out the procedure to be followed
4 which, in short, is that the matter should be reported
5 as soon as possible to the police if the child is in
6 immediate risk of harm or to the safeguarding
7 authorities in other cases.

8 He also makes the point that the monk would be duty
9 bound to report the concerns immediately, not wait for
10 the next visitation, which could be up to four years
11 thence.

12 LADY SMITH: Am I to take it that he is telling me that that
13 is the procedure that has been in place since 2013?

14 MR WATSON: Yes, my Lady.

15 LADY SMITH: Thank you.

16 MR WATSON: The second issue concerns the funds gifted to
17 the English Benedictine Congregation following the
18 winding-up of the St Benedict Abbey Trust, the body
19 which held the property for Fort Augustus Abbey.

20 Your Ladyship asked Dom Yeo about the value of that
21 gift and he gave your Ladyship an answer from memory.
22 He has now provided the most recent figures for that
23 fund and that's included within his statement.

24 LADY SMITH: Yes. I see that's rather more substantial than
25 his memory was serving him, once one adds its

1 investments. He helps me with a total of something like
2 1.3 million; is that right?

3 MR WATSON: Dom Yeo had in mind the land and what he
4 indicated was he thought it was around 600,000. In fact
5 at the time it was 650,000, but its value has
6 substantially reduced since then.

7 LADY SMITH: How is that?

8 MR WATSON: It is to do with whether the land is developable
9 for residential housing and its value therefore depends
10 on the on-sale value.

11 LADY SMITH: So its value depends whether at any time there
12 is planning permission available?

13 MR WATSON: Whether there's planning permission or whether
14 there's anticipated to be a hope value from the
15 expectation of planning permission. As your Ladyship
16 says, there is then in addition to that funds aside from
17 the value of the land itself.

18 LADY SMITH: Right. So we have got the investments of just
19 over 1.3 million and whatever at any time the land is
20 valued at and that will depend on the view that's taken
21 of its development potential?

22 MR WATSON: Yes, my Lady.

23 LADY SMITH: Thank you.

24 MR WATSON: There is a third matter, my Lady, which is not
25 correcting evidence from Dom Yeo, but adding information

1 on what is currently happening in order to achieve
2 settlement of claims for compensation which have been
3 received relating to abuse which occurred at
4 Fort Augustus Abbey School and at Carlekemp Priory
5 School.

6 Again your Ladyship will see that Dom Yeo has set
7 out the current position there which involves their
8 liaising with the Charity Commissioners in England and
9 Wales in respect of use of funds. Dom Yeo has also set
10 out his dissatisfaction with the limitations of that
11 process and would encourage your Ladyship, within the
12 scope of this Inquiry, to consider alternatives to civil
13 litigation and the scope for achieving compensation
14 without adversarial process.

15 LADY SMITH: Yes. Can I just rewind because I'm reading
16 from the earlier part of the section that's headed "The
17 English Benedictine Congregation's responsibility".
18 I note that he states here that he understands that
19 legal responsibility is not the same as moral
20 responsibility and states that:

21 "The congregation greatly regrets any abuse that
22 occurred at Fort Augustus Abbey School and Carlekemp
23 Priory School."

24 What I wasn't clear about was whether I should take
25 from this that Dom Yeo was wishing to re-visit the

1 Benedictines' position as currently stated in their
2 answers to question 3 of part B of the original
3 Section 21 order. It may be that he was not thinking in
4 terms of that, but in terms of the Inquiry structure, it
5 would be helpful to me to know whether the answers are
6 to be amended.

7 MR WATSON: It is not a question of seeking to amend the
8 answers, my Lady, but rather not to become -- not for
9 Dom Yeo to be overly focused on a question of whether
10 there is a legal or a civil responsibility -- a civil
11 liability aside from whether there is a moral
12 responsibility. It is in that latter sense that he
13 makes this statement.

14 LADY SMITH: Well, I think I still remain a little unclear.
15 I do have a clear recollection of a picture gained from
16 Dom Yeo that the Benedictines, the English Benedictines,
17 sought to distance themselves from having any
18 responsibility for the Fort Augustus School and their
19 attitude being, well, it is closed and everything has
20 gone and there's no responsibility still lying anywhere
21 with anyone.

22 MR WATSON: That remains the position, my Lady.

23 LADY SMITH: That remains his position?

24 MR WATSON: Yes.

25 LADY SMITH: Is he saying that the congregation understands

1 that they had a moral responsibility for the children at
2 Fort Augustus School or not?

3 MR WATSON: What he is saying, my Lady, is that in this
4 current position, where there is no extant Fort Augustus
5 Abbey, still less the schools, which can answer to this,
6 the English Benedictine Congregation wants to express
7 their views and their apology, as Dom Yeo did in respect
8 of the abuse which undoubtedly occurred. It was not the
9 role of the English Benedictine Congregation to be
10 involved in the organisation, management or running of
11 either school and indeed even the visitations which were
12 carried out were visitations of Fort Augustus Abbey, not
13 of Carlekemp Priory, still less of either school. It is
14 within that context that this is said, my Lady.

15 LADY SMITH: I see.

16 I'm sorry, I interrupted you. I think you dealt
17 with paragraph 13. And 14? I'm not quite sure what I'm
18 to take from this. Dom Yeo finds civil litigation
19 unsatisfactory and he regrets he is unable to have
20 contact with individuals complaining of abuse; what's
21 preventing him doing so?

22 MR WATSON: My Lady, these are claims which have been made
23 against the congregation in England and, on the advice
24 of his English solicitors, he has been told not to
25 contact those who are making those claims. He in fact

1 has drafted letters that he wanted to be passed to those
2 individuals and his English solicitors were not
3 agreeable to using the contact information they had to
4 pass those on. He finds that regrettable because he
5 would like to be able to be in contact with those
6 individuals in order to express the regret that he would
7 like to do.

8 LADY SMITH: Well, this is something no doubt we can look at
9 in more detail, if necessary, at a later stage. It
10 remains a puzzling paragraph in some ways.

11 But thank you for that. Mr Watson. Thank you.

12 MR WATSON: I am obliged, my Lady.

13 LADY SMITH: Does that complete everything you have to say
14 on behalf of the of the Benedictines at this point?

15 MR WATSON: It does, yes.

16 LADY SMITH: Thank you.

17 Could I turn now please to the Marist Brothers and
18 Mr Euan Scott who speaks for the Marists.

19 Closing statement by MR EUAN SCOTT

20 MR EUAN SCOTT: Thank you, my Lady.

21 I noted your Ladyship's comments with regards to the
22 purpose of these closing submissions and I will
23 therefore endeavour to be brief.

24 The Inquiry has heard evidence as to the history and
25 governance of the Marist Brothers during the course of

1 the evidence given by Brother Brendan Geary. It was
2 acknowledged that there have been instances of abuse
3 whilst children were in the Order's care and that there
4 was a failure in the systems in place at the time.

5 The Order has made an unreserved and sincere apology
6 to those individuals who were abused whilst in their
7 care and that apology is reiterated again today.

8 I would, however, like to take this opportunity to
9 highlight that during the preparation of part C and D of
10 the response form that is to be submitted to the Inquiry
11 later this month it was noted that one matter contained
12 in the evidence provided by Brother Geary on
13 21 June 2017 requires to be corrected.

14 Towards the end of his evidence at page 170 of the
15 transcript for that day clarification was sought by
16 Mr MacAulay with regards to the nature of the
17 allegations that had been made against the Order.

18 The answer indicated that the majority of the
19 allegations concerned sexual and emotional abuse but
20 that there was a recognition that some allegations
21 concerned physical abuse.

22 At this stage your Ladyship asked a follow-up
23 question which can be found at line 22 of that page.
24 The question asked was:

25 "Question: Have these been handed onto the police?"

1 "Answer: All of them."

2 Regrettably it has transpired that the answer given
3 was incorrect. During the preparation of parts C and D
4 of the response form it was noted that there was no
5 record of two of the 30 known allegations being reported
6 to the police.

7 The first allegation concerned abuse from the 1940s
8 at St Joseph's College. The allegation was reported to
9 the Order's safeguarding officer in 2002. The
10 complainer was offered counselling and an offer to
11 report the matter to the police on the complainer's
12 behalf was made. The complainer declined both of those
13 offers.

14 The other allegation concerned abuse between 1956
15 and 1961 at St Joseph's College. This was reported to
16 the Order's safeguarding officer in 2002. The
17 complainer provided no detail as to the nature of the
18 abuse and declined to name the perpetrator. The
19 safeguarding officer offered to meet the individual in
20 question and to report matters to the police on the
21 complainer's behalf; both offers were again declined by
22 the complainer.

23 Brother Geary wishes to apologise for this
24 inaccuracy. As at the time of answering the question
25 Brother Geary was confident that all allegations had

1 been reported. This belief was on the basis of the
2 information he had obtained during his involvement in
3 the Scottish Catholic Safeguarding Commission's mandated
4 audit that considered allegations of abuse made against
5 the Marist Brothers in Scotland.

6 There was no intention to mislead or to provide
7 inaccurate information to the Inquiry and he is grateful
8 for the opportunity to provide this correction.

9 Further details in relation to the specifics of
10 these two allegations will be contained within parts C
11 and D of the response form. If the Inquiry requires any
12 further information or clarification in relation to
13 these two specific allegations, then the order will do
14 whatever it can to assist.

15 The Order recognises that the Inquiry has much work
16 still to do. The Marist Brothers will continue to
17 contribute in whatever way that it can in order to
18 assist the Inquiry with its investigations.

19 Unless there's anything further I can add, that
20 would conclude my closing submissions.

21 LADY SMITH: That is very helpful and thank you for that
22 correction; it is noted.

23 Could I turn now to the Conference of Religious and
24 that takes me back to Mr David Anderson I think.

25

1 Closing statement by MR DAVID ANDERSON on behalf of the
2 Conference of Religious

3 MR DAVID ANDERSON: Thank you, my Lady.

4 My Lady, the Conference of Religious in Scotland is
5 grateful for the opportunity to participate in this
6 Inquiry, including by way of providing this closing
7 statement.

8 As referred to in the opening statement, the
9 Conference is a voluntary organisation of religious
10 institutes. The Inquiry heard the evidence of father
11 James Crampsey and Sister Eileen Mearns on behalf of the
12 Conference.

13 The Inquiry heard from Father Crampsey how the
14 religious Orders who are working within a diocese are
15 independent from it.

16 The Inquiry also heard how the Conference of
17 Religious has no jurisdiction over the individual
18 Orders. The Conference, in my submission, my Lady, is
19 in effect a discussion forum with spirituality as its
20 currency.

21 We also heard some evidence, my Lady, as to how the
22 numbers of religious in Scotland continue to fall.

23 The Inquiry heard, my Lady, from Sister Eileen how
24 the Conference was not involved in any facilities in
25 Scotland. We also heard, my Lady, that the Conference

1 has set up a safeguarding commission working with the
2 Catholic Hierarchy's National Safeguarding Coordinator,
3 but before this was set up, the Conference had no
4 involvement in the reporting, investigating or otherwise
5 handling of allegations of abuse.

6 We did hear some evidence about the Conference's
7 involvement in the safeguarding audit system. My Lady,
8 as shown by the evidence, the Conference is committed to
9 doing what it can to ensure that abuse by members of
10 religious institutes will not happen again and that, if
11 it does, it is dealt with properly and in accordance
12 with modern standards.

13 It may be, my Lady, that after this stage there is
14 little more that the Conference can do to assist
15 your Ladyship in this work but if there is, the
16 Conference will do all that it can to help.

17 The Conference would like to make clear its respect
18 and admiration of the survivors who spoke so well last
19 week and, unless I can assist your Ladyship further,
20 that concludes this closing statement.

21 LADY SMITH: Thank you very much. I have no questions for
22 the Conference of Religious.

23 Could I turn now to the Bishops' Conference for whom
24 you also act I think Mr Anderson?
25

1 Closing statement by MR DAVID ANDERSON on behalf of the
2 Bishops' Conference of Scotland

3 MR DAVID ANDERSON: Yes, my Lady.

4 Again, my Lady, the Bishops' Conference of Scotland
5 is grateful for the opportunity to make this closing
6 statement.

7 Firstly, may I again mark respect and admiration for
8 the survivor representatives who spoke last week. The
9 Bishops' Conference welcomes your Ladyship's Inquiry and
10 without the hard work and determination of those
11 survivors, with Mr Docherty and others, it appears from
12 their evidence that this Inquiry would not have been
13 brought about.

14 My Lady, at the commencement of your Inquiry, Canon
15 Thomas Boyle gave the opening statement for the Bishops'
16 Conference of Scotland. To put forward a priest to
17 undertake this work was done at the Conference's own
18 insistence. It was not done, my Lady, on the suggestion
19 of their advisers or as a PR stunt. The Bishops'
20 Conference chose to present its opening statement in
21 this way for one reason and that was to show that it is
22 serious about engaging with your Ladyship's Inquiry.

23 In my submission, my Lady, that's what the opening
24 statement demonstrated, and this was further borne out
25 by the manner in which the Bishops' Conference's

1 witnesses gave their evidence.

2 In the opening statement, my Lady, Father Boyle
3 referred to and reiterated the apology offered by
4 Archbishop Tartaglia. The Conference's opening
5 submission also referenced a series of earlier apologies
6 going back to 2002. My Lady, Archbishop Tartaglia's
7 apology addressed all those who have suffered in any way
8 as a result of actions by anyone in the Catholic Church.

9 As we have seen in the course of evidence, my Lady,
10 an apology which is acceptable to one person is
11 unacceptable to another. In this closing statement, my
12 Lady, may I make clear that the apology by the Bishops'
13 Conference of Scotland is given fully, frankly and
14 without reservation. If there is a person who feels
15 that the apology does not address them or somehow
16 excludes them or is otherwise given conditionally, the
17 Conference invites them to make this known so that their
18 needs may be addressed.

19 My Lady, there may be those who say that apologies
20 cannot ever right the wrongs previously committed. To
21 those, the Bishops' Conference would say this: the
22 Bishops' Conference knows this. This was touched upon
23 by the Conference witnesses in their evidence. The
24 Bishops' Conference understands that apologies are not
25 an end to matters but rather the start of a process.

1 The Bishops' Conference continues to be committed to
2 that process, whether that is within the existing
3 structures or pursuant to any new system created by
4 reference to any recommendations which your Ladyship
5 might make.

6 There may also, my Lady, be those who say that
7 apologies are meaningless. That's not the position
8 represented in the submissions in evidence but it may be
9 a view held by others. Those with that view, my Lady,
10 are entitled to it. My submission in this respect, my
11 Lady, is that in this context apologies are not
12 meaningless. In this context the apology is given on
13 the basis of an acknowledgement that abuse went on in
14 the Catholic Church in Scotland and an acceptance of
15 responsibility for that.

16 My Lady, in my submission, the apologies offered are
17 not meaningless because it says to the survivors: the
18 Church believes you.

19 Turning briefly, my Lady, to the evidence given on
20 behalf of the Bishops' Conference. We heard from
21 Monsignor Peter Smith, Father Frank Dougan, Canon Thomas
22 Boyle and Mrs Tina Campbell. There are a few points
23 I would like to highlight from their evidence.

24 LADY SMITH: Certainly.

25 MR DAVID ANDERSON: Monsignor Smith gave evidence first. He

1 is an expert in the structures and procedures of the
2 Catholic Church and in the canon law. He gave detailed
3 evidence in this regard.

4 In his evidence Monsignor Smith volunteered that the
5 opinion of the Catholic Church that therapy was the
6 appropriate way of dealing with offences was, and
7 I quote, "completely erroneous". He described this as
8 a dreadful misunderstanding. Monsignor Smith gave
9 evidence as to the instruction promulgated by John Paul
10 Pope II, which is how the church must now deal with
11 allegations of abuse.

12 My Lady, under this instruction allegations which
13 have a semblance of truth must be investigated, since
14 the church in Scotland have a policy of mandatory
15 reporting to the police of all allegations of abuse of
16 minors and vulnerable adults, any investigation by the
17 diocesan bishop happens after the police have completed
18 their enquiries and have either decided to press
19 criminal charges or not to do so.

20 After subsequent investigation, if the bishop
21 believes that a semblance of truth remains he is
22 required to refer the case to the Congregation for the
23 Doctrine of the Faith and await their instruction on how
24 to proceed.

25 Throughout the handling of the case, particularly in

1 regard to the necessary care of all involved in it, the
2 bishop seeks the advice of his canonical and
3 safeguarding advisers. Those are the diocesan
4 safeguarding advisers and diocesan risk assessment
5 management team and, where necessary, the National
6 Safeguarding Adviser.

7 Monsignor Smith, my Lady, advised that the
8 Cora Foundation, which assists the Bishops' Conference,
9 had two full-time employees to search for records for
10 your Ladyship's Inquiry. Father Smith described that as
11 "a major hunt" for records and I advise your Ladyship
12 that this goes on.

13 LADY SMITH: Good.

14 MR DAVID ANDERSON: This includes looking for the
15 inspectorate report within the Scottish Catholic
16 Archives, as was described with Father Frank Dougan.

17 Monsignor Smith undertook, at the end of his
18 evidence, to look into an instruction of the law in 1922
19 and I can advise that those instructing me have that
20 with them and it will be submitted to your Ladyship's
21 Inquiry later today.

22 LADY SMITH: Thank you for that.

23 MR DAVID ANDERSON: The third person, my Lady, to give
24 evidence on behalf of the Bishops' Conference was Canon
25 Thomas Boyle. On behalf of the Catholic Church in

1 Scotland, Canon Boyle accepted that children in care
2 were abused by persons for whom the church bears
3 responsibility. A systemic failure to understand abuse
4 was accepted.

5 Canon Boyle acknowledged that survivors had been let
6 down in the past. Canon Boyle said he could not
7 overstate how sorry the Catholic Church feels.
8 Canon Boyle spoke of the learning curve which the
9 Catholic Church has been on. In discussion on that
10 point with your Ladyship Canon Boyle agreed that there
11 had been a failure to look at things through the eyes of
12 the child. I think in the context of the evidence
13 your Ladyship has heard as a whole we have seen that
14 that failure goes far beyond the confines of the
15 Catholic Church.

16 My Lady, Canon Boyle spoke of the historical audit,
17 which it was noted the Inquiry was interested in, and it
18 stated that this would be published soon. We also heard
19 about the Independent Review Group to be chaired by
20 Baroness Liddell and this is yet to be finalised.

21 A new safeguarding handbook is expected at the end
22 of this year. A group to liaise with survivors has been
23 formed.

24 My Lady, in my submission, all these are positive
25 steps taken with the view to ensuring that the errors of

1 the past cannot be repeated.

2 The final witness, my Lady, who spoke for the
3 Bishops' Conference was Mrs Tina Campbell. She had been
4 the National Safeguarding Coordinator for the Bishops'
5 Conference of Scotland since 2013. She is a layperson
6 responsible for policy development and training in
7 relation to safeguarding.

8 My Lady, in my submission, Mrs Campbell came across
9 as a serious professional with skills and education
10 necessary for her role. She meets with each diocese
11 quarterly to advise them. Mrs Campbell's evidence,
12 my Lady, described an ongoing professionalisation of the
13 safeguarding procedures of the Bishops' Conference.

14 Mrs Campbell spoke frankly and openly as to the
15 development of these procedures within the church. She
16 was open to criticism of her own organisation, my Lady,
17 which in my submission speaks to the standards which she
18 seeks to set.

19 Without going over her evidence in detail, my Lady,
20 in my submission, the following proposition can be taken
21 from it: there is much that has been done which is
22 commendable, for example mandatory reporting and
23 information sharing, but there remains work to be done.

24 On behalf of the Bishops' Conference I can state
25 that what needs to be done will be done.

1 My Lady, I shan't say any more on the specific
2 evidence given by the witnesses on behalf of the
3 Bishops' Conference of Scotland. In my submission there
4 is a theme emanating from the evidence of the witnesses
5 which is one of acknowledgement of past mistakes and
6 a determination to get things right going forward.

7 In seeking to get things right there is a journey of
8 learning to go on. The experience of this Inquiry
9 provides much to learn from. The Bishops' Conference
10 welcomes any recommendations which your Ladyship might
11 make in this respect.

12 The Bishops' Conference welcomes advice in this
13 respect from all perspectives, particularly from
14 survivors and those representing them. In case it is
15 not already clear, the individual members of the
16 Bishops' Conference are grateful to any survivors who
17 wish to enter dialogue with them by any means. Any
18 person who wishes to do this should know they will be
19 heard in good faith and with respect.

20 My Lady, the Bishops' Conference is grateful for the
21 opportunity to participate in your Ladyship's Inquiry
22 and will endeavour to assist your Ladyship's work in any
23 way it can.

24 Unless I can assist your Ladyship further, that
25 concludes this closing statement.

1 LADY SMITH: Thank you very much, Mr Anderson. That's very
2 helpful.

3 Well it is just after 12.55 pm, so I'm going to rise
4 now for the lunch break, and we will sit again at
5 2 o'clock when, first of all, we will hear from
6 Crossreach, assuming they wish to make a closing
7 statement.

8 Thank you. We will rise now.

9 (1.00 pm)

10 (The luncheon adjournment)

11 (2.00 pm)

12 LADY SMITH: Good afternoon.

13 As I indicated before we broke for lunch I would
14 like to move next to Crossreach please and invite
15 Ms Mary MacLeod to make any closing statement that she
16 would like to make on their behalf.

17 Closing statement by MS MACLEOD

18 MS MACLEOD: Thank you.

19 In line with my Lady's direction at the end of last
20 week I intend to make only a brief statement at this
21 time concerning the provision of additional information.

22 In the course of the evidence given to the Inquiry
23 by Mrs Viv Dickenson sent, the chief executive officer
24 of Crossreach, it appeared that the Inquiry may benefit
25 from receiving additional information from Crossreach in

1 three areas. These are: (1) the time frame within which
2 Crossreach's residential children's services became more
3 closely influenced by insights arising from work in the
4 field of child developmental psychology; (2) additional
5 detail concerning staff numbers at Ballikinrain, one of
6 the residential schools operated by Crossreach; (3)
7 documentation about contact between children and their
8 families.

9 Whilst not wishing to add to its opening statement
10 Crossreach would also like to provide the Inquiry with
11 some brief further detail about the underlying
12 philosophy of its engagement with and approach to
13 residential child care.

14 All of this information is currently being collated
15 and it will be submitted in documentary form to the
16 Inquiry legal team by 28th July. Should there be any
17 additional information that the Inquiry would like at
18 any stage, Crossreach will of course be happy to assist
19 but for the moment I have nothing further to add.

20 LADY SMITH: Thank you very much.

21 Could I now turn to Barnardo's, please, to
22 Mr Graeme Watson.

23 Closing statement by MR WATSON on behalf of Barnardo's

24 MR WATSON: Yes, my Lady. Similarly, I would take this
25 opportunity to provide your Ladyship with a brief update

1 following the oral evidence from Sara Clarke and
2 Martin Crewe of Barnardo's.

3 In the course of her evidence, Mrs Clarke made
4 reference to documents held by Barnardo's which
5 your Ladyship requested be produced.

6 I will not rehearse the full list but it runs to
7 around 16 categories of documents. Particular elements
8 within that included the Barnardo's books and subsequent
9 policy manuals, Home Office circulars and Barnardo's
10 responses to those, evidence of children's reviews in
11 Scotland and, if not available, from English homes, and
12 finally current policies and procedures for safeguarding
13 and responses to allegations of abuse.

14 Since giving evidence Mrs Clarke has been liaising
15 with the Barnardo's archive manager. While some of the
16 material is straightforward, other aspects will require
17 more detailed review. The research and sourcing of the
18 documents is being undertaken by Mrs Clarke, the archive
19 manager and two members of the archive team.

20 I will liaise with the solicitors to the Inquiry to
21 provide those documents and to provide them with updates
22 on the timescale for finalising the production of all of
23 those documents.

24 In the meantime, I would simply reiterate Barnardo's
25 keenness to assist the Inquiry in any way that it can

1 and if, following the production of those documents,
2 there is other material which would be of assistance, or
3 indeed in response to evidence heard as the Inquiry
4 progresses, then Barnardo's will respond as fully and as
5 swiftly as they can.

6 Unless I can assist your Ladyship any further.

7 LADY SMITH: Thank you very much, Mr Watson. That's
8 helpful.

9 Can I now turn to Aberlour, please, and to anything
10 that Mr Macpherson would like to say on their behalf.

11 Closing statement by MR MACPHERSON

12 MR MACPHERSON: Thank you, my Lady.

13 Like my friends Ms MacLeod and Mr Watson, the
14 statement from Aberlour is restricted at this stage to
15 the question of further information that the Inquiry has
16 sought. In the course of her evidence, SallyAnn Kelly,
17 the chief executive of Aberlour, was asked for, or
18 volunteered certainly, additional pieces of information.
19 I think there are a list of six in particular that we
20 identify and I might just read what these are.

21 The first was the Inquiry asked for copies of
22 admission forms or other documents that might show the
23 handover from parents at the orphanage and the Inquiry
24 was also interested in documents arising from local
25 authority placements.

1 The second matter was the Inquiry was interested
2 whether there was any local authority review while the
3 children were at the orphanage. There was a suggestion
4 that a sampling exercise could be carried out from the
5 children's records.

6 Third, the Inquiry asked about any further
7 information in relation to the recruitment policy at
8 Aberlour -- at the orphanage rather.

9 The fourth matter was a question of fact, a minor
10 matter perhaps, as to whether the lady superintendent in
11 the orphanage lived in the girl's wing, but Ms Kelly
12 undertook to investigate that.

13 The fifth matter was the date of any fire at the
14 orphanage at which documents might have been destroyed;
15 again Ms Kelly undertook to look into that.

16 The sixth and final matter was in a discussion with
17 your Ladyship the question arose why contact was made in
18 relation to a particular complaint with the Home Office
19 rather than the Scottish Office and again Ms Kelly
20 undertook to make enquiries into that matter.

21 I can confirm my Lady that work is underway on all
22 of these matters. Ms Kelly has delegated the task to
23 an appropriately qualified individual and the archives
24 will be examined and documents produced to the Inquiry
25 as appropriate.

1 I'm advised that Aberlour believes it should be
2 possible to complete this exercise within a month and in
3 any event I undertake to update the Inquiry, through its
4 solicitors, of progress at that time. Any relevant
5 documents or information that are uncovered will be
6 produced.

7 Beyond that, my Lady, I would simply wish to stress
8 again Aberlour's commitment to the Inquiry and its
9 willingness to assist with any matters that might arise.

10 Unless your Ladyship has any questions, I have
11 nothing further to add.

12 LADY SMITH: I have no questions. Thank you very much
13 Mr Macpherson.

14 Then the Scottish Government are the last on my list
15 here. Ms O'Neill, is there anything you wish to say on
16 their behalf at this stage?

17 Closing statement by MS O'NEIL

18 MS O'NEILL: Thank you, my Lady.

19 As with other parties, the Scottish Government is
20 very conscious that the Inquiry remains at a relatively
21 early stage in its work in public hearings of evidence
22 and that evidence given in hearings has only begun to be
23 taken from parties with an interest in the Inquiry,
24 including the Scottish Government.

25 That being so, my Lady, and bearing in mind

1 your Ladyship's comments last week, this closing
2 statement on behalf of the Scottish Ministers is also
3 brief.

4 I do want to begin by recording that government has
5 listened carefully to all of the evidence that has been
6 given during part 1 of the phase 1 hearings. In
7 addition to the attendance of legal representatives and
8 policy colleagues at these hearings, the transcripts of
9 the hearings and the documents lodged with the Inquiry
10 have been reviewed on an ongoing basis by the Scottish
11 Government, both in its Inquiry Response Team and more
12 widely by colleagues in policy areas for whom the work
13 of the Inquiry is directly relevant.

14 As one would expect, my Lady, the Ministers have
15 been briefed regularly on the evidence that has been
16 given, on the issues that have been raised by witnesses,
17 and on the future input that may be needed from Scottish
18 Government.

19 The Scottish Government listened particularly
20 carefully to the evidence given by Helen Holland,
21 David Whelan and Chris Daly on their own behalf and on
22 behalf of and in relation to survivor groups, and to the
23 statement of Frank Docherty that was read at the outset
24 of the Inquiry.

25 As others have, my Lady, the government wishes to

1 acknowledge the eloquence and care with which those
2 witnesses spoke to the Inquiry and described their own
3 experiences and those of other survivors. The Scottish
4 Government also acknowledges the crucial role played by
5 those who have experienced abuse in bringing about
6 change over the years.

7 The government understands that views vary among
8 survivors about the usefulness and adequacy of steps
9 that have been taken in the past to provide both
10 acknowledgement and accountability to survivors, and
11 that includes the apology given by the then First
12 Minister, Mr McConnell, in 2004.

13 It is also aware of cases where survivors' dealings
14 with government have fallen far short of what those
15 survivors have been entitled to expect.

16 The Scottish Government is listening closely to and
17 acknowledges these views and criticisms and is committed
18 to engaging further with survivors to address all
19 outstanding issues.

20 The government can also, if it would be helpful,
21 provide this Inquiry with information about the steps
22 that have been taken to investigate and apologise for
23 failings by government in its dealings with survivors.

24 LADY SMITH: Yes, please. I certainly accept that
25 invitation.

1 MS O'NEILL: At the conclusion of the evidence of Ms Irvine
2 and Ms Beattie, I indicated on behalf of the Scottish
3 Government that it is keen to provide as much assistance
4 as it can to the Inquiry on the issues arising from
5 their evidence and on other matters.

6 In addition to their evidence, the response team
7 has, since the hearings began, provided inspection
8 reports and related documents held by Education Scotland
9 and its predecessors to the Inquiry in accordance with
10 and as required by the Section 21 Notices served by the
11 Inquiry.

12 The response team has also indicated that additional
13 relevant material is held by Education Scotland outside
14 the scope of the Section 21 Notices and the response
15 team has been liaising with the solicitor to the Inquiry
16 on whether and when it would be useful to provide that
17 information to the Inquiry.

18 The government's Inquiry Response Team has also, in
19 addition, written to the Inquiry to say that it would be
20 happy to discuss what the Inquiry requires further to
21 that information and to note that the Inquiry may want
22 to issue formal requests setting out specific
23 requirements to ensure that the Inquiry is provided with
24 all the information it requires.

25 The government is also continuing with its

1 preparation of two reports which have been requested by
2 the Inquiry, one on policy and guidance documentation
3 relating to looked after children, residential care and
4 secure units, and the other on the awareness of
5 government on the abuse of children in care and their
6 response to that awareness. Both reports concern the
7 period from 1930 to the present day.

8 Again, if the Inquiry would find it helpful, the
9 Scottish Government would be happy to give evidence in
10 more detail on the steps that have been taken and the
11 steps which are currently in the process of being taken
12 by the Scottish Government to support survivors and to
13 provide for acknowledgement and accountability.

14 Finally, my Lady, in the opening submission for the
15 Scottish Government, at the beginning of part 1 of this
16 phase, I anticipated a number of future developments
17 outside of the Inquiry. Since those submissions the
18 following developments have taken place; they have been
19 referred to but for the record as expected the Apology
20 (Scotland) Act (2016) came fully into force on 19 June
21 this year and the Limitation Childhood Abuse (Scotland)
22 Bill was passed by the Parliament on 22nd June 2017 and
23 awaits royal assent.

24 My Lady, I have nothing further to add at this
25 stage, unless your Ladyship has any questions.

1 LADY SMITH: I think the only thing that is in my mind is
2 whether the Scottish Government are going to take the
3 initiative in addressing issues raised through the
4 evidence of Helen Holland, David Whelan and Chris Daly
5 about how it was it took quite as long as it did from
6 the very first petition being presented by Mr Daly to
7 government accepting that the right way forward was to
8 establish this Inquiry.

9 You probably already have that on your list but it
10 is a particularly long period that we are looking for
11 an explanation for. We have it from their perspective,
12 but I'm conscious of the fact that they won't know
13 everything that might have been involved from the
14 government's perspective and I would like to hear what
15 I can about that.

16 MS O'NEILL: My Lady, I think it is well understood that
17 that will be of importance to the Inquiry. Again, I can
18 undertake to liaise with the Inquiry about the form in
19 which it would be most helpful to that information.

20 LADY SMITH: That would be very helpful. Thank you,
21 Ms O'Neill.

22 It has been indicated to me that you,
23 Mr David Anderson, may wish to say a little more on
24 behalf the Good Shepherd Sisters.

25 Further statement by MR DAVID ANDERSON on behalf of Good

1 Shepherd Sisters

2 MR DAVID ANDERSON: Yes, my Lady. I'm grateful for this
3 opportunity.

4 In the course of the principal statement for the
5 Good Shepherd Sisters your Ladyship raised with me
6 a recent conviction of a person involved in
7 an establishment within which the Sisters worked.

8 I had not had any prior notice of this conviction
9 and, having discussed this with them, nor did my agents.

10 In my research, albeit limited research over the
11 lunch break, I have not been able to identify any
12 reporting of this in the online media; however it may be
13 that this is reported elsewhere.

14 Those instructing me have discussed the matter with
15 Sister Rosemary Kean, who has confirmed that neither she
16 nor Sister Anne-Josephine -- and these are the two
17 witnesses who gave evidence for the Sisters -- neither
18 of them had been contacted in relation to the
19 prosecution or otherwise made aware of it.

20 They are not aware of any other member of the
21 congregation having been made so aware. Clearly this is
22 a matter that needs to be looked into my Lady.

23 My Lady, the Sisters are very concerned about this
24 development and they are saddened it might tarnish what
25 might otherwise have been seen to be their full and

1 frank engagement with your Ladyship's Inquiry.

2 As I mentioned in their principal statement, the
3 Sisters will consider this matter carefully and
4 respectfully. It may well be that, as your Ladyship
5 suggests the part B response requires to be updated.

6 I have already spoken with counsel to the Inquiry to
7 request any further information that they have in this
8 regard.

9 May I seek to assure your Ladyship this is a matter
10 of the highest priority and further representations will
11 be forthcoming as soon as possible.

12 Thank you, my Lady.

13 LADY SMITH: I'm grateful for that. I would have thought
14 that they would indeed want to know these details,
15 particularly since the complainer in the two charges, in
16 response to which there were unanimous guilty verdicts,
17 was at the Ladymary School at the same time as
18 Sister Rosemary Kean was there according to the dates
19 she gave us and the dates in the charges. So I would
20 have thought she in particular would want to know about
21 this. But thank you for that indication of assistance.
22 If you keep in touch with the solicitors to the Inquiry,
23 they will tell you what we can about it.

24 It may be, I'm not sure, that there was
25 an adjournment for sentence and it has not been in the

1 press because the accused has not yet been sentenced.

2 It is possible. Thank you.

3 MR DAVID ANDERSON: I'm grateful, my Lady.

4 Housekeeping

5 LADY SMITH: It remains only for me to say one or two things
6 about where we go next with public hearings.

7 As Mr MacAulay mentioned this morning the plan is to
8 begin public hearings again in the autumn, probably on
9 Tuesday, 31st October. The current plan is Tuesday 31st
10 October.

11 In the following few weeks the evidence will include
12 the further evidence from Professor Norrie, covering the
13 period from 1968 up to date, and the evidence from
14 Professor Andrew Kendrick that was briefly referred to
15 this morning and who you may remember, I think, was also
16 referred to in Ms Dickenson's evidence when she was
17 given evidence on behalf of Crossreach.

18 That will be the first few weeks. The plan then is
19 to move to the first case study, starting on
20 28th November, and that will be the Daughters of Charity
21 case study.

22 Moving on to the second case study, that will be
23 into Nazareth House and their provision of residential
24 care and the plan is to move to that early in 2018.

25 I hope by giving you those dates at this stage that

1 will assist everybody with diary noting and giving them
2 an idea of what preparation they individually will need
3 to do and also I hope understanding that if we put
4 pressure on anyone for documents or information, it is
5 because those are the dates that we are working to to
6 try and use the time available to us as efficiently as
7 possible.

8 Otherwise, can I thank everybody for their
9 contributions today. I found that very helpful and
10 I hope that each of you yourselves has found it a useful
11 exercise to address at this stage in the Inquiry.

12 I propose now to rise for today. As I say, we will
13 sit again in the autumn at the end of October.

14 (2.20 pm)

15 (The Inquiry adjourned until 10.00 am
16 on Tuesday, 31st October 2017)

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