

THE INQUIRY INTO HISTORICAL INSTITUTIONAL ABUSE 1922 TO 1995

MODULE 7

**CLOSING WRITTEN SUBMISSIONS FOR THE HEALTH AND SOCIAL
CARE BOARD**

4 December 2015

Moira Smyth QC

Louise Murphy BL

Eileen Finnegan, Solicitor Consultant, Directorate of Legal Services

CONTENTS

1	Introduction	3
2	The Legislative Framework	5
3	The Evidence of SPT 158	12
4	Discretion to Visit	20
5	Concluding Remarks	28

1. INTRODUCTION

- 1.1. The Inquiry is tasked to investigate historical institutional abuse and examine if there were systemic failings by institutions or the State in their duties towards those children in their care between the years of 1922-1995.
- 1.2. In Module 7 the Inquiry has been considering complaints of abuse by Applicants in relation to Juvenile Justice Institutions: St Patrick's Training School; Rathgael Training School; Lisnevin Training School; Hydebank Wood Young Offenders Centre.
- 1.3. The legislation made provision for the placement of a child or young person in a Training School through three routes:
- Upon application by Social Services;
 - Upon application by the Education Authority;
 - Through the Criminal Justice system.
- 1.4. The HSCB has noted in respect of Applicants in Module 7, the reasons for admission to St Patrick's Training School and Rathgael Training School may be classified as follows:

St Patrick's Training School:	
Social Services Admissions:	7 ¹
Education Case Admissions:	4 ²
Criminal Justice Admissions:	13 ³ + 2 ⁴
Unknown	1 ⁵

¹ HIA 50, HIA 94, HIA 96, HIA 218, HIA 219, HIA 275, HIA 384

² HIA 17, HIA 253, HIA 262, HIA 314

³ HIA 26, HIA 51, HIA 54, HIA 58, HIA 100, HIA 162, HIA 229, HIA 272, HIA 282, HIA 320, HIA 344, HIA 347, HIA 374

⁴ HIA 227, HIA 264 - These Applicants had initial short placements on foot of applications by Social Services, but were subsequently placed for longer periods through the Criminal Justice System

⁵ HIA 519

Total Applicants	27
------------------	----

Rathgael Training School:	
Social Services Admissions:	9 ⁶ + 1 ⁷
Education Case Admissions:	3 ⁸
Criminal Justice Admissions:	5 ⁹
Total Applicants	18

- 1.5. It is submitted that Social Services did not have had any involvement in direct admissions to Lisnevin Training School or Hydebank Wood Young Offenders Centre. The evidence has not shown any example to the contrary.
- 1.6. These submissions seek to address the role of the HSCB's predecessors in admitting children and young people to St Patrick's Training School and Rathgael Training School, the nature and extent of the duty towards children in the Training Schools and how that duty was discharged.

⁶ HIA 83, HIA 172, HIA 182, HIA 198, HIA 248, HIA 268, HIA 386, HIA 429, HIA 438

⁷ HIA 503 had an initial short placement through the Criminal Justice System, before a further placement upon application by Social Services

⁸ HIA 267, HIA 389, HIA 434

⁹ HIA 200, HIA 231, HIA 236, HIA 372, HIA 400

2. THE LEGISLATIVE FRAMEWORK

- 2.1. The core duty upon welfare authorities towards children in their care is found in Section 89¹⁰ of the Children and Young Persons Act (NI) 1950 (“the 1950 Act”) and Section 113¹¹ of the similarly entitled 1968 Act (“the 1968 Act”), which provided that welfare authorities had a duty to further the best interests of children in their care and afford them opportunity for the proper development of their character and abilities.
- 2.2. Welfare authorities also had a duty to ensure that no child in their care was deprived of the benefits available under the enactments relating to health, education and employment.
- 2.3. As the histories of the Applicants in Module 7 demonstrate, some children and young people in care could not be cared for in foster care or children’s homes as their presenting needs were too great or they were considered to present too great a risk to themselves or others. In such circumstances, the legislation empowered welfare authorities and subsequently Health and Social Services Boards to apply to a juvenile court for an order authorising the placement in a Training School of a child or young person already in the care of the State.
- 2.4. As noted in Chapter 1 there have been a number of Applicants in Module 7 that were known to, and placed in a Training School by, Social Services. For each of them their placement occurred under the provisions of the 1968 Act. It is that legislative framework, therefore, that is considered in more detail below.

¹⁰ HIA 226

¹¹ HIA 372

- 2.5. **Section 143**¹² of the Children and Young Persons Act (NI) 1968 Act applied to children and young people who were in the care of the State under a Fit Person Order. Section 143 (6) provided that:

“A welfare authority who are of opinion that it is desirable to do so in the interests of a child or young person who has been committed to their care may apply to a juvenile court.... and that court may, if it thinks it desirable In his interests to do so, revoke the order so committing him and, where it revokes that order, may –

- (a)*
- (b) Order him to be sent to a training school; or*
- (c)”*

- 2.6. It is submitted that section 143(6) is an important provision because it is clear authority for the proposition that once a juvenile court made a Training School Order, it also revoked the Fit Person Order that had previously committed the child or young person to the care of the welfare authority.

- 2.7. It is submitted that this analysis is fortified by a consideration of section 141(1)¹³ of the 1968 Act which sets out the effect of a Training School Order on a Fit Person Order in the following way:

“Where a person has been committed by order of a court to the care of a fit person and, while the order is in force, a training school order is made in respect of him, the order committing him to the care of that person shall be of no effect while he is under the care of the managers of a training school...”¹⁴

¹² HIA 393 – HIA 395

¹³ HIA 392

¹⁴ Section 141(2) makes the same provision in respect of parental rights orders.

2.8. In addition, Section 89 (1)¹⁵ of the 1968 Act provided that:

“A person sent to training school shall after the period of his detention be under the supervision of the managers of his school for a period of three years or until he attains the age of twenty-one, whichever may be the shorter.”

Further by virtue of section 89 (6)¹⁶:

“For the purposes of this Act a person who is out under supervision from a training school shall be deemed to be under the care of the managers of the school.”

In the HSCB’s submission, these provisions of section 89 further demonstrate that in cases where children and young people were the subject of Fit Person Orders and thereby were in the care of a welfare authority/Health Board, the making of a Training School Order heralded a transfer of responsibility from the welfare authority/Health Board to the Managers of the Training School into whose care the child or young person was committed and whose responsibilities extended beyond detention in the Training School for a period of three years or until the young person attained the age of 21 years.

2.9. It is also submitted that the existence of a Fit Person Order, which committed a child, or young person to the care of Social Services, did not, in itself entitle a welfare authority/Health Board to place a child in a training school setting. This is because when a child was in the care of a welfare authority/Health Board under a Fit Person Order, Section 114(1)¹⁷ of the 1968 Act required the welfare authority to discharge its duty to provide accommodation for the child by (a) boarding him out; or (b) by

¹⁵ HIA 354

¹⁶ HIA 355

¹⁷ HIA 372

maintaining the child in a home (either statutory or voluntary). At a certain age the use of a hostel was also authorised.

- 2.10. Section 114(1) of the 1968 does not reference Training Schools and it is submitted that a Fit Person Order did not entitle a welfare authority to place a child in a training school. Rather, an application to a juvenile court was required before a child or young person in the care of social services in Northern Ireland could be placed in a training school and thus social services could not unilaterally place a child in their care within a Training School for an unlimited period.
- 2.11. From the case histories of those Applicants in Module 7 who were in the care of Social Services before being placed in a training school, it is known that invariably Place of Safety Orders were made in respect of them immediately prior to their placement in Training School. In the HSCB's submission, this is because a Place of Safety Order made under section 99¹⁸ of the Children and Young Person Act (NI) 1968 authorised welfare authorities/Health Boards to make such placements as a "Place of Safety" is defined in section 180¹⁹ as:

"Any remand home, any home provided by a welfare authority under Part VII, any constabulary station, any hospital or surgery, or any other suitable place, the occupier of which is willing temporarily to receive a child or young person....Remand home" means a remand home registered under Part IX...
"Training school" means a school approved by the Ministry under section 137."

- 2.12. It is clear that, pursuant to section 100 of the 1968 Act, a Place of Safety Order could last no more than 5 weeks.

¹⁸ HIA 361

¹⁹ HIA 421

- 2.13. It is also clear that pursuant to section 143(7)²⁰ of the 1968 Act, sections 99 to 101²¹ apply *“where an application with respect to a child or young person is or is about to be made to a juvenile court under subsection (4) or (6)...” and as though sections 99 and 101 included references to those subsections.* Section 101 empowered juvenile courts to make an *“interim order for detention or further detention in a place of safety...”* in circumstances where the court was *“not in a position to decide what order, if any should be made...”*
- 2.14. It is submitted that the case histories of many of the Applicants in Module 7 demonstrate that, at or before the expiration of the five week place of safety order, the welfare authority’s application under section 143(6) was listed before the juvenile court at which point section 101 of the 1968 Act came into play, and when the court was *“not in a position to decide what order, if any should be made”* interim orders for detention or further detention in a place of safety were made, which allowed Social Services and the training school to assess the needs of the child or young person.
- 2.15. Section 101(2) placed a maximum duration of 5 weeks upon an interim order made under section 101 and section 101(3) allowed an extension but *“a person shall not be detained by virtue of an interim order (whether in the same place of safety or in different such places) for a period exceeding ten weeks in all”*.
- 2.16. In the HSCB’s submission, the legislative scheme set out in sections 99, 100 and 101 of the Children and Young Persons Act (NI) 1968 worked to enable the use of Place of Safety Orders to bestow the requisite authority to welfare authorities/Health Boards to place a child or young person in their care in a training school.
- 2.17. It is further submitted that the legislative scheme operated to facilitate a period of assessment of the child or young person for a period of up to

²⁰ HIA 395

²¹ HIA 361 – HIA 363

fifteen weeks, being five weeks under a Place of Safety Order, followed by up to ten weeks under Interim Orders where further assessment was felt necessary by the court²².

- 2.18. In the HSCB's analysis, a Place of Safety Order which authorised a welfare authority/Health Board to place a child or young person in a Training School coexisted alongside the Fit Person Order in favour of the welfare authority as did any subsequent interim orders of detention that may have been made under section 101(2) and (3) and it was the making of a Training School Order which served to revoke and render the Fit Person Order to have "no effect". It follows, therefore, that the core duty upon the welfare authority to further the best interests of the child or young person in its care remained whilst the Place of Safety and Interim Orders for Detention under sections 101(2) and 101(3) were in place. During this period, it is submitted that responsibility for the day-to-day care of the child, rested with the training school²³.
- 2.19. The legislative framework outlined above, and particularly the use of Place of Safety Orders by Social Services to place children in training schools, does not appear to have been subject of any comment until 1994. At that time, in the context of the review of circumstances concerning SPT 81 [REDACTED], the Social Services Inspectorate described: "*this legal mechanism has grown up in Northern Ireland over the years and is now an established practice*"²⁴.
- 2.20. In considering this practice, the Social Services Inspectorate made a recommendation that a Place of Safety Order should only be used in an emergency²⁵. It also noted, however:

²² Section 101(2) and (3) of the 1968 Act, HIA 362

²³ SPT 12914

²⁴ SPT 12633, paragraph 3.8

²⁵ SPT 12634, paragraph 3.9

“In any event these questions will become irrelevant with the implementation of the Children (NI) Order 1995.”

- 2.21. This review by the Social Services Inspectorate was commissioned in March 1995 in relation to the case of SPT 81 [REDACTED] who had been in the care of the Western Board.²⁶ A copy was provided to the Western Trust under cover of letter dated 9 June 1995²⁷. The Children (Northern Ireland) Order 1995 commenced in force on 4th November 1996. Thus the issue was first considered with less than 18 months of the statutory regime remaining in place before a complete overhaul of the legislative framework relating to child care in Northern Ireland. This suggests, in the HSCB’s view, that for over 25 years this legislative framework was operated without complaint or review.
- 2.22. In outlining the legislative framework thus, the HSCB notes that this was just one “route” into training school where a welfare authority had involvement with a child. Section 95²⁸ of the 1968 Act, for example, also gave the court the discretion to make a Training School Order if a child, over the age of 10²⁹, was brought before the court by a welfare authority and was in need of care, protection or control. Section 108³⁰ of the 1968 Act allowed a court to make a Training School Order if the child was in the care of the welfare authority pursuant to a Parental Rights Order, and if satisfied that the child was refractory³¹.

²⁶ SPT 12620, paragraph 1.1

²⁷ SPT 12730

²⁸ HIA 359

²⁹ “unless the court certifies that for any reason he cannot be suitably dealt with otherwise”

³⁰ HIA 370

³¹ This route was used in the case of the Applicant HIA 248

3. THE EVIDENCE OF SPT 158 [REDACTED]

The placement of children and young people in training schools

- 3.1. SPT 158's witness statement is found in the bundle at STP 1549.
- 3.2. On 12 October 2015, Day 148, SPT 158 gave oral evidence to the Inquiry in order to "give a general overview about how children came to be in the training schools and how Social Services were involved in that"³².
- 3.3. The following exchange between Counsel to the Inquiry and SPT 158 offers a summary as to the type of children placed in training schools by Social Services:

"Q: as far as Social Services were concerned where you had children in children's homes who could no longer be accommodated there up until the Children's Order and the closure of training schools the next step along the road for Social Services was to move that child to a training school.

*A: That's correct, if the child's behaviour was particularly complex or challenging in the children's home or the foster care home."*³³

- 3.4. SPT 158 also described the legal mechanism for undertaking such placements as being Place of Safety Orders and an initial assessment period for a maximum period of 15 weeks. SPT 158 agreed with Mr Aiken BL's analysis that this "...was a care-based mechanism and it was with a view to seeing through the assessment whether the individual's behaviour could be stabilised so that they could go back to the children's home and reintegrate or whether through that assessment it became clear that that was not possible and

³² Transcript Day 148, page 3, lines 17 - 19

³³ Transcript Day 148, page 4, lines 7 - 15

they'd have to then be the subject of reports from Social Services to the court with a view to a Training School Order being made³⁴

Collaborative working between social services and the training schools

3.5. In his evidence, SPT 158 further described that:

“It would have hopefully been a joint collaborative effort between the training school staff and Social Services staff to come to an agreed position as to what was in the young person’s best interest, should that be a Training School Order, or a return to placement, or back to the community.”³⁵

In the HSCB’s submission, SPT 158’s evidence about collaborative working between social services staff and training school staff is corroborated by the following evidence:

- a. St Patrick’s reported in or around November 1984, in anticipation of future changes: *“The introduction of Care Orders, removing legal responsibility from the Training School, would not be seen as posing great difficulties as the past year has shown that St Patrick’s and Social Services personnel can co-operate and work together regardless of which agency may have the final, legal say”³⁶;*
- b. The involvement of Social Workers from Health and Social Services Boards on panels that reviewed children in close supervision or secure units³⁷;
- c. The Westside Project commenced in St Patrick’s Training School, in 1992, which is discussed further below.
- d. The Eastern Health and Social Services Board provided guidelines regarding sexual abuse to St Patrick’s³⁸.

³⁴ Transcript Day 148, page 5, lines 11 – 19

³⁵ Transcript Day 148, page 5, lines 20 – 25

³⁶ SPT 10246 at SPT 10239

³⁷ SPT 1551: Witness Statement of SPT 158, paragraph 8

3.6 The HSCB submits that the Westside Project, developed in St Patrick's Training School in 1992, evidences both the collaborative relationship, and the determination of professionals that children from the care system should not be in training school for any longer than necessary. This project was developed in April 1992 with an aim of securing a return to the community after the initial assessment period³⁹, and involved a social worker appointed by Social Services based in the Reception Unit of St Patrick's, reporting to a member of their staff. In launching the project it was said:

*"Social Services were beginning to realize what a good job is being done in Training Schools, and this Project is seen as a means of formalizing this co-operation with social services."*⁴⁰

3.7 The following case study also shows good collaborate working between the training school and social services:

3.7.1 HIA 268 [REDACTED] was initially placed in Whiteabbey Training School on a Place of Safety Order on 2 September 1982⁴¹. On 10 September 1982 the social worker visited HIA 268, also bringing her mother to visit⁴².

3.7.2 Her circumstances were reviewed by the Court on 28 September 1982, when the mother and HIA 268 were present. The Social Worker recorded:
*"After some deliberation the magistrate agreed with our recommendation and an Interim Order was approved. [HIA 268] was later transported back to Whiteabbey for a further period of assessment."*⁴³

³⁸ SPT 11355

³⁹ SPT 11313

⁴⁰ SPT 11314

⁴¹ The circumstances that resulted in an assessment that this admission was necessary are found at RGL 55020

⁴² RGL 55019

⁴³ RGL 55018

- 3.7.3 A case conference was convened on 21 October 1982, when the decision was made to apply for a further interim order “to allow us some time to introduce [HIA 268] to Coneywarren Children’s Home”⁴⁴. A further interim order issued on 26 October 1982. During this period the Social Worker continued to visit, as did HIA 268’s mother⁴⁵.
- 3.7.4 HIA 268’s discharge from training school was to be a planned change of placement. At a meeting on 8 November 1982 it was “accepted that she is coming into Coneywarren as a planned admission. The Residential Staff member who will be working with [HIA 268] will spend a day at Whiteabbey Training School getting to know and studying the care programme that she has been on. [HIA 268] will spend two weekends at Coneywarren prior to her admission to help ease the trauma...”⁴⁶.
- 3.7.5 To assist the court with the final disposal, a report provided by Whiteabbey Training School for the court hearing on 23 November 1982 noted: “Staff from Coneywarren have visited Whiteabbey and [HIA 268] has spent two weekends with them and appears to have fitted in well...”⁴⁷.
- 3.7.6 A Fit Person Order was made in respect of HIA 268 on 23 November 1982 and she moved to Coneywarren Children’s Home, Omagh. This placement was sustained until 22 March 1983, when a further Place of Safety Order was granted authorising her placement in Whiteabbey Training School. After this second admission a Training School Order was made on 19 April 1983.

⁴⁴ RGL 55017

⁴⁵ HIA 268 indicated at paragraph 17 of her statement: “I did not receive any visits from my family or from social services during my time in Whiteabbey Training School”. The following are documented in the records: 8 October 1982, visit by social worker and mother, RGL 55018; 29 October 1982, visit by social worker, mother and brother, RGL 55016; 11 November 1982, visit by her mother, RGL 55016

⁴⁶ Memo dated 9 November 1982, RGL 55109

⁴⁷ Report dated 22 November 1982, RGL 55094

- 3.8 In light of this evidence, the HSCB asks the Inquiry to accept the evidence of SPT 158 that in cases where children and young people were admitted to the training schools through the Social Services route *“it wasn’t just an automatic admission to training school. There was a lot of thought and deliberation on where best to place the person.”*⁴⁸.

The Court’s role in placing a child in a training school

- 3.9 SPT 158 also outlined in his evidence that if, after the period of assessment, a conclusion was reached that a Training School Order was in the best interests of that particular child, that recommendation would have been placed before a Court by way of an application for a Training School Order. In this way, the placement of children or young people in training schools was different from other forms of residential care, which did not require additional approval from the Court in the event the child was in care.
- 3.10 Rather, in every case concerning a child in care where there was a plan to place, assess and then maintain a child in a training school, there was independent judicial scrutiny of the proposed plan at periodic intervals coinciding with:
- (a) An application to place a child in a training school under a Place of Safety Order, which lasted a maximum of five weeks;
 - (b) The proposed assessment of the young person in the training school setting when the Court had power to make an interim order of detention for a period of five weeks when it was *“not in a position to decide what order, if any, should be made...”*;

⁴⁸ Transcript Day 148, page 8, lines 6 - 9

- (c) A further period of assessment for a maximum period of five weeks, at the end of which period of time the Court would consider and determine any application for a Training School Order,

This progress of the individual Applicants through this court system has been detailed in the HSCB Response Statements, and can also be seen in the case of HIA 268 outlined above.

- 3.11 In the HSCB's submission, the role of the Court in scrutinizing social services proposals for training school admissions, assessments and placements was an important safeguard for children and young people in care who had care plans, which featured an entry into training school.

- 3.12 The court's role is demonstrated through the following examples:

- 3.12.1 HIA 429 [REDACTED] had been placed in Rathgael (pursuant to a Place of Safety Order) on 17 January 1986⁴⁹. His circumstances were reviewed by the Court on 25 March 1986, following which the Assistant Principal Social Worker sent a memo to the Principal Social Worker on 8 April 1986 stating:

"...[HIA 429]'s last court appearance was on 25th March 1986. Mr. James Tweed⁵⁰ commented the inappropriateness of the Rathgael placement. He consented to grant an Interim Detention Order for a further five weeks on the strict understanding that a residential placement would be found within the give week period.

*Mr. Tweed was not very happy with the situation and spent some time probing for an explanation as to why the current situation existed...."*⁵¹

⁴⁹ This was his second admission. He was previously admitted to Rathgael between 28 November 1985 and 3 December 1985.

⁵⁰ Mr. James Tweed was a Resident Magistrate who would have heard cases of this nature.

⁵¹ Exhibit 18 to HSCB Response, RGL 199

- 3.12.2 HIA 429 transferred to 444 Antrim Road, a children's home, on 9 May 1986.
- 3.12.3 In respect of HIA 182 [REDACTED] Social Services filed a report dated 17 October 1989 for a court hearing the same day. That report concluded with a recommendation that a Training School Order be made "due to the lack of any alternative"⁵². It is known that on that date the Court issued a Fit Person Order⁵³ and thus the recommendation of Social Services was not accepted. HIA 182 transferred to Somerton Road Children's Home that day.
- 3.12.4 By way of contrary example, HIA 483's [REDACTED] contemporaneous records contain the following entry:
- "Following the granting of an Interim Order, HIA 483 was placed full time at Craigmore. However a pattern of absconding and school refusal soon established, which necessitated her returning to the Centre. A request for a second Interim Order to allow us to try again was denied at Court on 19.10.87 and HIA 483 was made the subject of a Training School Order."⁵⁴*
- 3.13 In the HSCB's submission, for all children who entered training school by the Social Services route, the Court had an important role in overseeing, approving and ultimately authorising the placement of each individual child.
- 3.14 The principle to be observed by all courts in dealing with children and young persons, and thus when considering whether or not to make a Training School Order, was contained in Section 48⁵⁵ of the 1968 Act:

⁵² Exhibit 8, HSCB Response, RGL 738 – RGL 739

⁵³ Exhibit 2, HSCB Response, RGL 722

⁵⁴ Exhibit 2, HSCB Response, RGL 259

⁵⁵ HIA 331

“Every court in dealing with a child or young person who is brought before it, either as being in need of care protection or control or as an offender or otherwise, shall have regard to the welfare of the child or young person and shall in a proper case take steps for removing him from undesirable surroundings, and for securing that proper provision is made for his education and training.”

- 3.15 This applied alongside the duty placed on welfare authorities discussed in Chapter 2 at paragraph 2.1. Thus the welfare of the individual child was at the core of the process that led to recommendations and ultimately Court decisions, that a Training School Order was necessary.

4 DISCRETION TO VISIT

4.1 Chapter 2, paragraph 2.7 of this written submission, sets out the provisions of section 141 of the 1968 Act and the effect of a Training School Order upon a Fit Person Order. Sections 141(1) and (2) provide that while a Training School Order is in force a Fit Person Order, or a Parental Rights Order shall be of no effect *“while he is under the care of the managers of the training school”*.

4.2 Section 141(3) of the 1968 Act provides that:

“Where a person has ceased to be in the care of a welfare authority by virtue of subsection (1) or (2) or where a juvenile court, under section 143(6) has revoked an order committing a person to the care of a welfare authority and made a training school order in respect of him, the welfare authority may, while the person is under the care of the managers of the training school but not out under supervision, cause him to be visited and befriended, and may, in exceptional circumstances, make payments for his welfare.”

4.3 The HSCB asks the Inquiry to note that Section 141(3) equipped welfare authorities /Health Boards with a discretion to visit and befriend a child or young person previously in their care before the making of a Training School Order and, in exceptional circumstances, make payments for his welfare. This discretion is distinct from a duty and, in the HSCB’s submission, there was no statutory duty upon welfare authorities/Health Boards to visit or befriend children or young people previously in their care once they were made the subject of a Training School Order.

4.4 In the HSCB’s view, the discretionary nature of the visiting and befriending provision is in keeping with the fact that upon the making of a Training School Order, the child or young person was in the care of the managers of the Training School and any prior Fit Person Order or

Parental Rights Order was of no effect. This was a consequence of the legislative framework and explains why *“when a Training School Order was made the Social Services would normally close the case...”*⁵⁶

- 4.5 In the HSCB’s submission, this is well demonstrated in the evidence of [REDACTED] [SPT 26] on Day 145 when he said,

*“One of the difficulties with the training school system, it was a sort of total system. The Training School Order was a powerful Order. So there wasn’t much engagement with Social Services and the young people once the Training School Order was made”*⁵⁷.

- 4.6 The HSCB also submits that the following exchange between the Chairman and SPT 26 on Day 145 serves to demonstrate how the legislative scheme shaped the parameters of social work practice in the visiting and befriending of children and young people in training schools.

“Q. The material we have looked at would suggest that whilst at the point where the decision was being made by the appropriate court whether a child was to be made subject to a Training School Order there might be input from Social Services or there might be input from St. Patrick's if the boy had been there before, but once the boy went in, Social Services ‘involvement with him ceased -- isn't that right -- in the formal sense?

A. Well, not -- well, not in every case, but the nature of the order -- once the Training School Order was made -

Q. Well, it trumped everything else.

⁵⁶ SPT 1551: Witness Statement of SPT 158, paragraph 6

⁵⁷ Transcript for Day 145, page 101, and lines 7 - 11

A. Yes, that's it. It became maybe the superior order, for want of a different word. So if the young person had been on a Care Order, the Training School Order would have superseded that... it was a structural fault in the system..."

- 4.7 Many Applicants have told the Inquiry that they did not see their field social worker whilst they were placed in Training School. The HSCB's analysis of the evidence is that welfare authorities/Health Boards exercised their discretion to visit under section 141(3) of the 1968 Act in a positive fashion in appropriate cases. This is evidenced by the following case examples:
- 4.7.1 HIA 384 [REDACTED] had been known to Social Services from 1983, and was subject to a Fit Person Order from 5 December 1983. Following a failed rehabilitation to his father's care, he had been in residential care from 24 February 1986. An initial placement in St Patrick's Training School from 17 September 1993 to 15 November 1993 ended with a recommendation that he return to the children's home he had been placed in.
- 4.7.2 Unfortunately this placement did not last, and he was readmitted to St Patrick's Training School on 30 November 1993. After a period of assessment a Training School Order was made on 17 January 1994.
- 4.7.3 After that Order was made, his Social Worker visited him, with his former keyworker, on two occasions: 31 January 1994 and 29 March 1994. SPT 164 [Josie Lynch], his keyworker, recalled:

"I continued to visit HIA 384 along with the Social Worker, SPT 164 [REDACTED] [REDACTED] (now [REDACTED]) at St Patrick's for a period of time. This was agreed by all parties involved as a means of helping HIA 384 transition to his new placement, as he was emotional about being moved.... Outreach was agreed to

*ensure some continuity of relationships for a period of time following his transition....*⁵⁸

She also explained her memory that this ceased at the request of St Patrick's as it was felt it would be easier for HIA 384 to settle without this contact.

- 4.7.4 It is also of note that HIA 384's social worker from the Southern Health and Social Services Board (Craigavon and Banbridge Trust) attended case reviews in St Patrick's Training School on 8 July 1994 and 26 September 1994. In this statement to the Inquiry Mr. O'Rourke [Assistant Principal Social Worker] opined that this continued involvement was "*an indication of the commitment of social services towards HIA 384...*" and "*a recognition that the best outcome for him would have been a professional fostering arrangement to offer him a family experience*"⁵⁹.
- 4.7.5 **HIA 248** [REDACTED] had a number of admissions to care in his early life, both in England and Northern Ireland. A Parental Rights Order was granted in respect of him on 3 January 1968.
- 4.7.6 He was placed in Rathgael Training School on 11 June 1974, and a Training School Order was made on 25 July 1974. As discussed in paragraph 2.7 (footnote 14) the Parental Rights Order was of no effect thereafter.
- 4.7.7 However, by September 1975, Social Services were responding to requests for assistance from the Training School, and "*..between January and August '76 significant efforts to identify a foster placement*" for HIA 248 to go and live with were undertaken⁶⁰. During this period it is recorded that the Social Worker visited HIA 248⁶¹.

⁵⁸ SPT 2030: Witness Statement of SPT 164, paragraph 30

⁵⁹ SPT 1581: Witness Statement of Vincent O'Rourke, paragraphs 18 and 19

⁶⁰ Transcript Day 152, pg 70, line 24 - pg 71, line 1

⁶¹ Exhibit 5, HSCB Response 2, RGL 1793

4.7.8 Following successful assessment of the RG 40 family, a note in records kept by Rathgael record on 26 August 1976:

“consultation with [RG 213] agreed he will comprehensively visit for the next two weeks....”⁶²

4.7.9 HIA 248 was licensed to the foster placement the following day (27 August 1976). A progress report completed by the Social Worker, RG 213, details that visits had occurred in advance of the placement, and intensified thereafter⁶³. It is also noted at that time:

“... since going to the foster home, [HIA 248]’s behaviour has been erratic. He has posed behaviour problems which Rathgael’s After Care Officer, [...], myself and RG 40 have attempted and are still attempting, to iron out.”

4.7.10 This was described on Day 152, 20 October 2015, as *“a series of visits by both the aftercare team at Rathgael and by RG 213 from Social Services to check on how you are getting on”⁶⁴.*

4.7.11 HIA 268 [REDACTED] offers a further example. In Chapter 3 these written submissions have addressed the involvement of Social Services while she was placed in Whiteabbey Training School prior to the making of a Training School Order.

4.7.12 After the Training School Order was made on 19 April 1983, the o cork records reflect that HIA 268’s family continued to be known to Social

⁶² RGL 42970

⁶³ Exhibit 7, HSCB Response 2, RGL 1799. The completion of a progress report by a Board social worker may also reflect section 89(6) of the 1968 being implemented in practice.

⁶⁴ Transcript Day 152, pg 72, lines 2 – 5

Services for other reasons. In July 1983 assistance by way of a travel warrant was issued for the mother to visit HIA 268 in Belfast⁶⁵.

4.7.13 Further, on 8 July 1983, the Social Worker documented liaison with HIA 268's keyworker in Whiteabbey Training School, when they discussed a planned visit for HIA 268 to her mother from 11 – 13 July 1983. A request was made that the Western Board Social Worker would monitor the visit. HIA 268 was duly visited at her mother's home by the Board Social Worker on 11 July 1983⁶⁶.

4.7.14 Further liaison is noted on 2 August 1983⁶⁷, when HIA 268 was absent from the training school without permission, and the Board Social Worker agreed to carry out checks at her home address.

4.7.15 Finally the Social Worker attended a case conference on 12 October 1983 at which discussion was undertaken regarding the possibility of HIA 268 being fostered, a situation that was later achieved with Dr Barnardo's. The Social Worker noted: *"some time spent with HIA 268, [her mother] and HIA 268's replacement keyworker... HIA 268 agreed to look at the idea of fostering"*⁶⁸.

4.8 The HSCB submits that SPT 26's description of Training School Orders as "powerful" was insightful and correct because the making of a Training School Order in respect of a child or young person in care signaled the end of Social Service's duty towards that child or young person.

4.9 The HSCB asks the Inquiry to accept that the legislative scheme had the direct effect of bringing to an end statutory duties previously placed on the welfare authority/Health Board upon the making of a Training School Order. This had an inevitable impact on Social Work involvement with the

⁶⁵ RGL 55013

⁶⁶ RGL 55011

⁶⁷ RGL 55006

⁶⁸ RGL 55003

child, to include visiting, as *“all key decisions in respect of the young person’s life such as home leave and contact with relatives were made by Training School staff... [and] Services Records were normally closed at the point a Training School Order was made unless there were pressing reasons to maintain involvement with other members of the family.”*⁶⁹

- 4.10 The HSCB accepts that a discretion to visit and befriend a young person previously in care was retained and submits that the evidence before the Inquiry, and particularly the examples highlighted at paragraph 4.7 demonstrate that this was exercised appropriately. The illustrations offered involve visiting:
- a. because it was assessed as appropriate to assist a particular child;
 - b. when assistance was being offered to identify a community placement;
 - c. in the child’s home area, which was some distance from the Training School and thus less accessible to the school staff.
 - d. when the Training School requested Social Services assistance with family contact.

This, it is submitted, is further evidence that the core principle at the heart of all decision-making by Social Services was the welfare, needs and circumstances of the individual child.

- 4.11 Where visiting did take place to a child, no evidence has been identified by the HSCB that any of the complaints now made by the Applicants about their treatment while placed in a training school were made known to a welfare authority / Health and Social Services Board social worker. Further, while the Inquiry has received evidence that concerns were raised within the Department of Health about standards in St Patrick’s Training School in 1990, there is no evidence that this was ever communicated to the

⁶⁹ SPT 1551: Witness Statement of SPT 158, paragraph 6

Health and Social Services Boards⁷⁰. Nor does it appear that they received the inspection report that gave rise to the concerns⁷¹.

⁷⁰ SPT 10420

⁷¹ Day 163, 23 November 2015, pg 90, lines 3 – 21: Evidence of Hilary Harrison that the report went to the NIO, the Training School and a copy would have been held by Social Services Inspectorate. It is notable that there is no reference to any predecessor of the HSCB. This is consistent with evidence in earlier Modules regarding the release, or lack of release, of inspection reports on voluntary homes to the HSCB's predecessor.

5 CONCLUDING REMARKS

- 5.1 On Day 164, RG 174 [Campbell Whyte] told the Inquiry that the children who were placed in Rathgael were "the most difficult, disturbed, damaged and in some cases most delinquent children"⁷² and he agreed with Mr Aitken BL that "in terms of behaviour ... the care children, in fact, were more problematic."⁷³
- 5.2 The contemporaneous records relating to the Applicants in Module 7 known to Social Services repeatedly describe them as children and young people with complex needs including mental health, emotional and behavioral problems⁷⁴ as a result of childhood trauma, which, in most cases, originated in the family setting.
- 5.3 The records also show that as children, the Module 7 Applicants, could not be looked after in residential care, foster home or family setting and it seems that very often they ended up in a training school as measure of 'last resort' rather than as a positive choice.
- 5.4 Children who were placed in training school from care lived side by side with other children and young people who entered training school from the criminal justice system and, according to the evidence of RG

⁷² Transcript Day 163, pg 8, line 14 - pg 9, line 6

⁷³ Ibid, page 8, lines 14-15.

⁷⁴ For example: **HIA 50** was assessed to be "an emotionally insecure, disturbed adolescent. He has low intelligence and limited ability to understand or gain insight into his mounting difficulties". SPT 799; When living at home, and aged 8, it was reported that **HIA 96** was "violent towards [his mother and baby brother], that he had threatened [his mother] with a knife and that on a daily basis he hit her." By age 14 his behaviour had deteriorated and he would not co-operate with residential child care staff. SPT 592 - 598. **HIA 384** was repeatedly placing himself at risk through absconding, by age 15 there were two particular concerns: "the way HIA 384 was feeling about himself, his mood, and the other was the presence of sexual thoughts and urges within HIA 384". While in training school he self-reported concern "that he "might abuse somebody" and that he was angry". SPT 1013. **HIA 172**, at age 7 (when in residential care), was considered: "a very disturbed child. He had a very aggressive streak and had tried to strangle the Home's dog. He was soiling continually in the home..." RGL 691. **HIA 198**'s parents were unable to manage her behaviours from around age 9. By age 14 she had experienced two admissions to hospital following attempted overdoses and was running away from home, sleeping on the street on one occasion. RGL 306 - 311.

241 [REDACTED] on Day 163, *“there was no sense of any change between treatment of the young people whether they were care, youth treatment or school refusers...”*⁷⁵.

- 5.5 In the HSCB’s submission, there is good evidence before the Inquiry that the training schools in St Patrick’s, Rathgael and Lisnevin were a specialist resource in Northern Ireland and they each developed considerable expertise and skill in caring for Northern Ireland’s most disturbed and traumatized young people. From the 1980s⁷⁶, the training schools also benefited from the involvement of the Adolescent Psychological Research Unit (APRU) although a psychologist, Bill Lockhart was critical of APRU’s functioning. ⁷⁷ SPT 158 described as it as *“a very specialist resource at the time”*⁷⁸ from the perspective of Social Services.
- 5.6 The evidence also shows that the HSCB’s predecessors worked closely with the training schools. Collaborative working practices were evident in the period of assessment prior to a Training School Order application being made; in the involvement of Social Workers from Health and Social Services Boards on the Close Supervision Review Panels; and in the development and running of projects such as the Westside Project, which was consistent with diversionary governmental policy espoused in the wake of the Black report⁷⁹.
- 5.7 On Day 163, RG 241 told the Inquiry that *“A large proportion of children should never have been sent to training school”*⁸⁰ and he made particular reference to psychiatric provision for children and young people in Northern Ireland. He referred to: *“Small in-patient unit in both Lissue and the Young People's Centre, waiting lists, and again personally I think that led to*

⁷⁵ Transcript Day 163, 23 November 2015, page 13, lines 7 – 10

⁷⁶ LSN 1241: Witness Statement of Dr Bill Lockhart, paragraph 61

⁷⁷ Transcript Day 161, page 51, lines 13-25 and page 52, lines 1-10

⁷⁸ Transcript Day 148, page 6, lines 10 – 11

⁷⁹ HIA 570, Report of the Children and Young Persons Review Group.

⁸⁰ Transcript Day 163, 23 November 2015, page 8, lines 6 – 8

inappropriate referrals to training schools, and especially in the days of Shamrock and Fox Lodge, that that should have been resourced differently”⁸¹ RG 241 also said that training schools were viewed as the only option available after a major breakdown within care/education and from that point of view we then had to develop that expertise. ...when all else was failing, then we had to look beyond ...our jurisdiction...”⁸² and he referred to a complex dynamic between local interventions and regional resources in a small jurisdiction like Northern Ireland⁸³.

- 5.8 The reality is that training schools were the most specialist resource available to Social Services in Northern Ireland when it came to meeting the needs of those young people who could not be looked after and/or kept safe in residential homes, foster care or family.
- 5.9 In the HSCB’s view, the placement of children and young people in more specialist placements outside the jurisdiction of Northern Ireland would have been reserved for the most complex of cases, given that such a move would have resulted in the child being removed from his/her network of family, friends and professionals in Northern Ireland.⁸⁴
- 5.10 On Day 163, RG 241 expressed a view that there was still inadequate provision in Northern Ireland for adolescents with psychiatric health needs⁸⁵. The HSCB is of the view that a range of support services has been developed for children with psychiatric health needs in Northern Ireland. However, the HSCB agrees that identifying specialist residential placements for children with the most complex needs in Northern Ireland

⁸¹ Transcript Day 163, 23 November 2015, page 54, lines 21 – 25

⁸² Transcript Day 163, 23 November 2015, page 9, lines 14-25 and page 10, line 1-2.

⁸³ *Ibid*, page 42, lines 10 – 12

⁸⁴ Such factors led to an objection to a proposed transfer in In the matter of an application by JR 49 [2011] NIQB 41. Mr. Justice Treacy noted, at paragraph 40, the views of an expert report, which the Judge noted crucially referenced the need to be satisfied that the advantages of such a transfer outweighed the disadvantages, and in the context of that case that all options to meet the needs of the young person in the Northern Ireland facility had been exhausted.

⁸⁵ Transcript Day 163, 23 November 2015, page 57, lines 11 – 15

remains challenging for Social Workers and in some cases consideration of placements outside Northern Ireland is still sometimes required⁸⁶.

- 5.11 The Court of Appeal in Northern Ireland recently considered such a situation. A placement in Ireland was proposed for a child where she would “*receive intensive care and support to undo the damage which expert evidence suggests has been caused to her as a result of her relationship with her mother*”.⁸⁷
- 5.12 In quoting the learned Trial Judge, the Court of Appeal agreed that in the particular circumstances of that child, “*There is no available specialized foster placement in Northern Ireland and placing her in a children’s home would not help her.*”⁸⁸
- 5.13 The HSCB submits that the evidence regarding Applicants in Module 7 who were known to Social Services demonstrates that professionals across disciplines of social work, psychology and, in appropriate cases, child psychiatry worked hard to meet their very specific and complex needs. The professionals who worked with such children and young people in Northern Ireland did so within the constraints of available resources and it is submitted that, in the cases examined by the Inquiry, the presenting behaviours and needs of the children and young people necessitated an admission to training school, as ordered by a juvenile court.
- 5.14 Until their demise in 1996, training schools were the most specialist resource available for children and young people within the care system in Northern Ireland with the most complex of needs. Meeting the needs of such children and young people within the confines of resources available

⁸⁶ Where a child is in care, social services can only make arrangements for him or her to live outside Northern Ireland with the approval of the Court under the current legal requirements – Article 33, Children (Northern Ireland) Order 1995

⁸⁷ In the matter of S (A Child) (Arranging for a child in care to live outside Northern Ireland) [2014] NICA 73, paragraph 2

⁸⁸ *Ibid.* paragraph 13

in Northern Ireland, a relatively small geographic area, remains a challenge to the current day for health and social care professionals and those charged with planning and providing such services to the current day.