

THE HISTORICAL INSTITUTIONAL ABUSE INQUIRY**MODULE 1**

**SUBMISSIONS
ON BEHALF OF THE DEPARTMENT OF HEALTH, SOCIAL SERVICES
AND PUBLIC SAFETY**

1. In these Submissions the term “the Department” refers to and includes –
 - 1) The Ministry of Home Affairs
 - 2) The Ministry of Health and Social Services
 - 3) The Department of Health and Social Services
 - 4) The Department of Health, Social Services and Public Safety.

2. The Inquiry’s Terms of Reference require it to consider whether “there were systemic failings by Institutions or the State in their duties towards those children in their care”. This has been interpreted by the Inquiry as meaning that the Inquiry is required to address 3 questions namely:
 - 1) What were the duties of the Institutions and the State towards the children?
 - 2) What constitutes “abuse”?
 - 3) What amount to “systemic failings?”

- 1) **The duties of the State**

Dr Hilary Harrison who headed the Panel of Social Care experts brought together by the Department for the purposes of this Inquiry, at paragraph 2 of her first statement dated 17 January 2014, set out the role of the Department, its duties and powers, in relation to the care of children in residential institutions. At paragraph 3 of the same statement Dr Harrison has set out the legislative provisions by virtue of which the Department was to

carry out its role and discharge its obligations to such children in care and those of Welfare Authorities and Health and Social Services Boards and Health and Social Services Trusts. In many instances the legislation set out in paragraph 3 of Dr Harrison's statement assigned powers, duties and obligations in relation to children in care, to the Welfare Authorities, Boards and Trusts. The Department does not consider it appropriate to comment upon the manner in which those powers, duties and obligations were discharged by the Welfare Authorities, Boards and Trusts.

3. This Module has been concerned with 2 Children's Homes in Londonderry, namely, Termonbacca and Nazareth House, Bishop Street, both of which were run by the Sisters of Nazareth.

Although the Inquiry's remit covers the period 1922 until 1995, the written statements and oral evidence of residents of both these Homes for the most part, relates to events alleged to have occurred in the period between 1950 and the mid-1980's.

4. Turning back for a moment to the Terms of Reference it is self-evident that issues relating to systemic failings only become relevant and material if the Inquiry is satisfied that abuse, in any of the forms set out in the "Definitions" did occur.

5. **ABUSE**

In his opening statement Senior Counsel on behalf of the Sisters of Nazareth ("the Sisters") expressed a fulsome apology on behalf of the Sisters to all those former residents of Termonbacca and Nazareth House who had suffered abuse of any kind while under the care of the Sisters. Implicit in that apology was an acceptance by the Sisters that, having been

provided with witness statements from former residents of both their Homes, that abuse in various forms had taken place.

More recently, Sr Brenda McCall, the Principal spokesperson on behalf of the Sisters, and who had been present in the Inquiry to hear the oral evidence of former child residents, did not resile from Senior Counsel's opening statement and indeed repeated the apology that had already been made.

In any event this interested observer would respectfully suggest that the Inquiry will be satisfied that abuse in many forms did take place, although the nature and extent of such abuse will be a matter for a decision of the Inquiry alone.

It is, however, to be remembered that in her opening statement Christine Smith QC, Senior Counsel to the Inquiry, stated:

“It is important that when examining what occurred in the past ... and it is with the past events that this Inquiry deals ... we do not judge behaviour by today's standards. Accepted practices in caring for children were developed and changed over the years.”

It is respectfully submitted that that concession applies equally to issues of systemic failings as it does to the nature and extent of abuse.

6. SYSTEMIC FAILINGS

It seems fairly clear that the two principal matters being investigated by the Inquiry in relation to possible systemic failures by the Department are:

- a) Finance and
- b) Inspections.

a) **Finance**

Both Homes run by the Sisters are described as “voluntary” Homes. These Homes fell under the auspices of Charitable Organisations and Religious Orders. From the opening of both these Homes until the mid 1970’s the majority of children in the Homes had been “privately placed”. The effect and consequence of these private placements was that the children were not known to the Welfare Authorities, the Boards or indeed the Department. A further and equally important consequence was that the Homes had to acquire sufficient income to enable them to feed and clothe the children and to cover the expense of running the Homes and, where applicable, to pay the wages of lay staff. Both Homes have been described as being “semi-autonomous” and appear to have acquired their finances from collections, donations and legacies and material items from the St Vincent de Paul and other businesses in Londonderry. Even when both Homes eventually closed it was considered that throughout their existences both had been under-staffed with, at one stage, only 2 Sisters being responsible for the care of over 100 children.

In later years the majority, if not all, of the children at least in Nazareth House, had been placed by the Welfare Authorities and later by the Board. As such the Welfare Authorities and the Board paid the Sisters a specified sum for the care of each child that had been placed in the Home by the Welfare Authority or the Board.

It was open to the Sisters from at least 1950 to obtain income from the Welfare Authority and the Board. This would have entailed the Sisters applying to the Welfare Authority, or later to the Board, to have children, already in the Homes, admitted into care. Had such an application been made and granted, the almost certain effect would have been that the children would have remained within the Homes, although the Welfare Authority, and later the Board, would have had an important role to play in the care of those children.

The reasons why the Sisters apparently failed to avail themselves of this opportunity, appear to be many and varied and include:

- a) A fear that the involvement of a Welfare Authority might prejudice the independent and the voluntary character of the Home
- b) That the families of children placed in the Homes would consider that a stigma would attach to them and their child by appearing to have to survive on State Benefits
- c) That the families of the children and others who might have been responsible for the children going into the Homes, were unaware that there was an alternative to a voluntary placement
- d) That families placing the children in the Homes were anxious to ensure that the children were brought up in a particular religious faith.

Ultimately, and in the years preceding the closure of Nazareth House, all children had been placed there by the Welfare Authority or the Board who provided an allowance to the Sisters in respect of each child so placed.

The Department did not have power to directly finance any voluntary Home in relation to its day to day running expenses, but it did have the power, which it exercised, to provide funding to the Welfare Authorities and the Boards to meet the cost of maintaining children who had been placed in the care of the Welfare Authority or the Board.

The Department did have power under Section 118(1) of the Children and Young Person's Act (Northern Ireland) 1950 to make grants to voluntary Homes for the purposes of improving premises, obtaining and improving equipment and enabling staff to obtain relevant social care qualifications. It is right to say that in the early 1950's account

would have been taken of the assets and income of the Governing Body of such Homes and not just of the assets and income of the Home itself. Details of such assets and income would determine whether or not an application for funding would be granted and, if so, the amount of such funding. This procedure was equally applicable in England and Wales as it was in Northern Ireland.

Sadly, until 2000, this procedure proved a step too far for the Sisters who chose to maintain absolute secrecy in relation to the Order's assets and income.

Fortunately, this procedure was eventually relaxed so that by 1967 Departmental Officials were engaging with the Sisters in Termonbacca in relation to plans to build new accommodation for the children in residence. This resulted in Grants being paid by the Department to the Sisters in 1971, 1972 and 1973 and the total of those Grants appears to have made up approximately one half of the cost of providing the new accommodation.

GENERALLY

The testimony of Sr Brenda McCall revealed that it was not until the year 2000 that the Order adopted a transparent and open policy in relation to its financial standing, but that up until that date such matters were shrouded with a veil of secrecy and that matters of importance were known only to the Mother General and her Council. It is obvious that under-staffing at both these Homes created opportunities for sexual and physical abuse of the children by their Peers, former residents and employees of the Home. Such under-staffing would undoubtedly have been improved by additional income and grants, and this in turn would have led to better supervision of the children and the obtaining of relevant social care qualification by the Staff.

Frequent reference has been made to a Home Office Circular of 1951 which was then distributed to all Voluntary Homes in Northern Ireland by the Department. This Circular, said to be ahead of itself in time, was not, sadly, not made available to many of the Sisters engaged in duties at both Homes, and therefore "bad" practices were permitted to continue for many years.

CONCLUSION

Child Welfare Council reports in the 1950's and early 1960's had encouraged closer co-operation between Voluntary Homes and Welfare Authorities. Unfortunately, this did not happen. They also set out the availability of Grants from the Department directly to Voluntary Homes for the purposes set out above. Closer co-operation with the Welfare Authorities and the placement of children into the care of those Authorities, would have brought about an additional income for the Sisters, and with it an increase in the number of staff to assist in the care of the children. Obtaining Grants directly from the Department would have enabled improvement in the accommodation of the children and, perhaps, of equal importance would have allowed staff within the Homes to obtain relevant child care qualifications.

The Department has always been a supporter of voluntary and charitable organisations which play a part in the upbringing, welfare and care of children.

It recognises the contribution that the Sisters of Nazareth have made over many years with thousands of children having passed through Termonbacca and Nazareth House, most without complaint. However, as set out above, the Department had limited powers of financially assisting Voluntary Homes, and it rejects any contention that the difficult financial circumstances which faced the Sisters of Nazareth (and which in turn appear to have been a major cause of abuse being inflicted upon the children), were in any way attributable to a ~~delivered~~ ^{deliberate} withholding of such funds from the Sisters.

INSPECTIONS OF VOLUNTARY HOMES

As far back as 1908 the Ministry had a power to inspect Voluntary Homes (the Children's Act 1908). This power was continued by virtue of the Children's and Young Person's Act (Northern Ireland) 1950 and this 1950 Act was largely re-enacted by the Children and Young Persons Act (Northern Ireland) 1968. Notwithstanding that the Department did not ever have a duty to inspect Voluntary Homes, it appears obvious that it did, in fact, exercise its power to inspect, possibly as early as 1950. These inspections appear to have included both Termonbacca and Nazareth House. Under the provisions of the 1950 Act, Inspectors so appointed by the Department were required to have the necessary qualifications or experience in childcare. The Inquiry is entitled to assume that the Inspector so appointed did have the necessary qualifications or experience.

As has been previously stated, the Department does not have any records of such inspections but, like the Inquiry, relies upon entries in the Journals/Diaries of the Sisters. Regulations made under the 1950 Act (the Children and Young Persons (Voluntary Homes) Regulations (Northern Ireland) 1952 at Regulation 4 provided that the administering authority (the Sisters of Nazareth) was required to make arrangements for the Home to be visited at least once a month by a person who had to satisfy himself that the Home was being conducted in the interests of the well-being of the children. Dr Harrison has acknowledged that, on the evidence available, the Department, through its Inspectors, did not ensure that the administering authority was carrying out that obligation.

The Hughes Report in 1986 criticised the Department in relation to inspections carried out of Homes (including Voluntary Homes) in the period from 1960 until 1980. Those criticisms were based primarily on the frequency and thoroughness of such inspections. The Department accepted such criticism and does not now seek to resile from that acknowledgement. However, at the start of the 1980's the Department developed a system to remedy defects in the inspection procedures

and, by 1986, had developed procedures which have been maintained and, to a certain extent, improved, during the following years.

Voluntary Homes were required to be registered under the 1950 Act and it is suggested, that monitoring of that registration should have continued throughout the life of each Home. While acknowledging that under-staffing of Voluntary Homes has always been a problem in the Social Care system, Dr Harrison has pointed out that in its application for registration of Termonbacca, the Sister stated that there were 7 Sisters and 10 lay staff to look after the needs of 104 children. It is acknowledged from records produced by the Sisters that the ratio of Sisters and lay staff to children was not maintained after first registration and, that at times, there were few Sisters to look after a substantial number of children. It seems likely that a better ratio of Sisters to children would have reduced the possibility of physical and sexual abuse and would have better met the emotional needs of the children.

Understandably, the Inquiry has been referred to a memo/report of Miss Kathleen Forrest, a Departmental Inspector, who carried out inspections of various Voluntary Homes, included Termonbacca and Nazareth House, in 1953. That report concluded with the words "I think we must press for complete overhaul of the whole set-up of these Homes, and assist them in every way possible". It is suggested that this report, and the last sentence in particular, should have set off alarm bells within the Department. Unfortunately, no documents can be found which demonstrate how the Department, if at all, responded to the report. However, it does appear that changes for the better were made at least in Termonbacca, in that in her statement at SND-13946, Sr Brenda McCall sets out from records maintained by the Sisters the following:

1957 "The different officials who have visited from Stormont were very pleased with the boys"

1961 “Miss Wright and Dr Simpson from the Ministry of Home Affairs called in July and were very pleased with the children and the work done”.

1962 “Miss Forrest from the Ministry of Home Affairs came during night recreation, was pleased to find the children so well and happy, some at band practice, they played for her”.

1963 “Miss Forrest and Mr Parks came to see the boys place from Stormont. Members of the Child Welfare Council came to see the children. They remarked how well cared for the children looked and hoped we would be able to improve this present building.

Allowing for the infrequency and thoroughness of inspections carried out by the Department, the question still remains as to whether or not more frequent and more rigorous inspections would have revealed evidence of abuse. The Inquiry is aware:

- 1) From the evidence of SR3, a Sister who was engaged in duties in Termonbacca from 1958 until 1961 and again from 1965 until 1974, that Inspectors came to the Home once a year, walked around, talked to children who were present and supervised meals.
- 2) That members of the St Vincent de Paul frequently called at both Homes and both brought gifts for the children and provided entertainment.
- 3) That the Sisters appointed a full time Residential Social Worker, whose door is said to have been open to every child in the Home.
- 4) That a substantial number of children were “boarded out” to different families at different times of the year.

Although the situation set out above would appear to have provided ample opportunity for the children to make complaints of any type of abuse, there is little, if any, evidence of any such complaint being made. The system and nature of inspections over the last 20 years is very different from that which prevailed during the days of Termonbacca and Nazareth House. The frequency and thoroughness of present-day inspections, a recognition of the rights of children, the provision of family type accommodation, the involvement of parents, the existence of a Complaints Procedure and the assignment of a Social Worker to each child in care, all lead to a conclusion that the risk of abuse has greatly diminished over the last 20 years and that its detection is more likely to arise.

The Inquiry is politely reminded of the words of Christine Smith QC: “We do not judge behaviour by today’s standards”. It is therefore respectfully suggested that before the Inquiry reaches any decision on the Department’s involvement in the inspection of Voluntary Homes, it gathers information on the system of the inspection of Voluntary Homes in the rest of the United Kingdom.

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FRANCIS E. O’REILLY

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