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HISTORICAL INSTITUTIONAL ABUSE INQUIRY  
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being heard before:

SIR ANTHONY HART (Chairman)

MR DAVID LANE

MS GERALDINE DOHERTY

held at

Banbridge Court House

Banbridge

on Tuesday, 27th May 2014

commencing at 10.00 am

(Day 39)

MS CHRISTINE SMITH, QC and MR JOSEPH AIKEN appeared as  
Counsel to the Inquiry.

1                                   A P P E A R A N C E S

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3    On behalf of SND43:

4    Mr Sean Doran BL

5    John McShane, solicitor (McCartan Turkington Breen)

6

7    On behalf of SND14 and SND38:

8    Mr Rodgers QC

9    Mr McAteer BL

10   (McElhinney McDaid Solicitors)

11

12   On behalf of SND224:

13   Mr David Heraghty BL

14

15   On behalf of SR6:

16   Mr Michael Lavery QC

17   Mr Finbar Lavery BL

18   (Donnelly & Wall Solicitors)

19

20   On behalf of HIA144:

21   Mr Billy McCrory QC

22   Mark Reel BL

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24

25

1 Tuesday, 27th May 2014

2 (10.00 am)

3 Closing submissions by counsel on behalf of SND43

4 CHAIRMAN: Good morning, ladies and gentlemen.

5 MR DORAN: Mr Chairman, I represent the witness SND43 this  
6 morning. I don't think it was anticipated she would  
7 come forward.

8 CHAIRMAN: Take your seat at the back. No, no, not asking  
9 any questions this morning.

10 Now just before we start, ladies and gentlemen, can  
11 I just take the opportunity to remind you of what the  
12 ground rules are for this morning, since we are adopting  
13 a procedure that is perhaps not particularly common or  
14 indeed may be unprecedented in this jurisdiction, but  
15 you are time-limited in these submissions. I expect  
16 those time limits to be observed.

17 Secondly, we want to make it clear that the purpose  
18 of the closing submissions is not to take time going  
19 over again what you have each set out in your respective  
20 submissions, in many instances in very considerable  
21 detail. We have that. We have read it. We will look  
22 at it again in due course, and therefore we expect those  
23 making submissions to confine them to either drawing out  
24 specific important points that counsel may feel they  
25 wish to emphasise or providing an overview or a summary

1 of your submissions; in other words, we don't expect you  
2 to start at paragraph 1 and work through to the end,  
3 referring to us every document. That's not what we are  
4 here for and that's not what we want to hear.

5 Now, Mr Doran, you have the unenviable position,  
6 therefore, of starting first.

7 MR DORAN: Yes, Mr Chairman. I shall perhaps act as the  
8 guinea pig for the morning.

9 Mr Chairman, Panel Members, I represent the witness  
10 SND43 at the Inquiry. I can say that SND43 is grateful  
11 to the Panel for the opportunity to make written and  
12 oral submissions following on from her oral evidence to  
13 the Inquiry on 10th April of this year.

14 SND43 was employed by the Sisters of Nazareth in  
15 Bishop Street in 1982 and she continued to work there  
16 until the time of its closure in or around 1999. As she  
17 indicated in her statement, she has worked with children  
18 for all of her adult life. She regards her work as  
19 a vocation rather than a duty.

20 SND43 was brought to the attention of the Inquiry as  
21 a result of being named in the statements of two  
22 siblings, HIA233 and HIA127. In the context of  
23 wide-ranging and more serious allegations against other  
24 persons HIA233 alleges that SND43 engaged in force  
25 feeding her, that she assaulted her and behaved in

1 a threatening manner towards her. Further, she says  
2 that SND43 would throw her brothers into cold baths and  
3 showers.

4 Her brother, HIA127, again in the context of more  
5 serious allegations against other individuals, refers to  
6 one alleged incident in which he says SND43 threatened  
7 him with her husband, who subsequently came to the home  
8 and slapped him around the head.

9 In both statements there are also more generalised  
10 allegations concerning the conduct of civilian staff in  
11 the home during the period of time in which the two  
12 witnesses were in care at Bishop Street and SND43 was  
13 working at that location.

14 It is fair to say that the allegations made against  
15 SND43 fall towards the lower end of the spectrum of  
16 complaints that have been ventilated to date in the  
17 course of this Inquiry. Nonetheless their impact upon  
18 her have been considerable. She has described herself  
19 as deeply hurt at the allegations, and in her oral  
20 evidence she was adamant that she had treated children  
21 within her care at all times with respect and kindness.  
22 She has categorically denied the allegations both in her  
23 written statement and in her evidence before the Panel.  
24 The cornerstone of my submission on her behalf is that  
25 the allegations are unfounded.

1           SND43 has also made a positive contribution to the  
2 work of the Inquiry.

3           First, in her statement she provided details of how  
4 her role as a houseparent in Nazareth House worked on  
5 a daily basis.

6           Secondly, in her oral evidence the majority of her  
7 time in the witness box was taken up with providing  
8 helpful information in response to counsel's questioning  
9 concerning issues such as the staff profile within  
10 Nazareth House at the relevant time with reference to  
11 a list of civilian staff who were working in the units  
12 at that time, the organisation of the units and the  
13 working arrangements in place for the members of staff  
14 within the units, the provision of training for staff,  
15 the various systems of inspection and voluntary  
16 visitors, the arrangements for case conferences in  
17 respect of individual children in care and the  
18 arrangements in place for children to be placed with  
19 foster parents. She was also able to assist the Panel  
20 with questions concerning the practice of visits by  
21 friends to children who were resident in Nazareth House  
22 and also visits from children in Nazareth House to the  
23 homes of friends outside.

24           Therefore, while SND43 was brought to the Inquiry's  
25 attention by reason of the fact that adverse comments

1           were made about her by two witnesses who had made  
2           statements to the Inquiry, she has assisted the Inquiry  
3           over and above simply dealing with the allegations that  
4           were made against her. The Panel has had the  
5           opportunity of seeing SND43 give her evidence. I would  
6           respectfully ask the Panel to accept that she was making  
7           every effort to assist the Inquiry and, further, that  
8           she presented as a dedicated carer of children, who  
9           would not in any circumstances have engaged in the  
10          conduct alleged by the two witnesses.

11           In making these submissions I am mindful that the  
12          Inquiry's task is not concerned with resolving disputes  
13          of fact over whether or not individual incidents  
14          occurred. The Inquiry's focus is on whether there were  
15          systemic failings by institutions of the State in their  
16          duties towards children within the relevant time frame.

17           As I have indicated in the written statement,  
18          however -- the written submission, however, there are  
19          a number of reasons why it is important that individuals  
20          such as SND43 should have the opportunity to respond to  
21          criticism of this kind.

22           I would like to refer to those points briefly before  
23          returning to the specific allegations that have been  
24          made against the witness whom I represent.

25           First, it goes without saying that as a matter of

1 procedural fairness an individual subject to criticism  
2 should be entitled to respond, and SND43 in my  
3 submission has done so in clear and unequivocal terms  
4 both in her written statement and in her oral evidence.

5 Secondly, at an Inquiry such as this if criticism is  
6 made of an institution, there is a real risk that all of  
7 those who work within the institution, including those  
8 who are without fault, may be tainted. This is  
9 particularly so when the number of people working in the  
10 institution at any given time was a relatively small  
11 one. The staff list to which SND43 was referred in her  
12 evidence and with which she provided some assistance to  
13 the Inquiry -- and the reference is SND-6441 -- referred  
14 to just fifteen employees in total at the relevant time.

15 Thirdly, in order to assess systemic issues, even  
16 though the Inquiry are not going to arbitrate on  
17 individual disputes, the Panel will inevitably have to  
18 make some judgment on the reliability of accounts given  
19 by individual witnesses.

20 Fourthly, it will, of course, be open to the Panel  
21 to acknowledge, where appropriate, that individuals  
22 working within the relevant institutions have, in fact,  
23 made a positive contribution to the lives of children  
24 under their care. Systemic fault is not incompatible  
25 with individual virtue. It is submitted that, whatever



1 conclusions the Panel may ultimately reach with regards  
2 to systemic failings, individuals such as SND43 should  
3 not have to bear the burden of institutional fault.

4 I now turn to the evidence before the Inquiry  
5 relating to SND43's alleged conduct. I remind myself  
6 that this is not a trial. The objective of this  
7 submission is not to question the entirety of the  
8 evidence given by the witnesses concerned. It should  
9 indeed be emphasised that, as the representatives of one  
10 witness in an Inquiry, my instructing solicitor and I do  
11 not have the means to conduct a broader forensic  
12 analysis of the evidence given by HIA127 and HIA233 to  
13 the Inquiry. We are also not privy to any third party  
14 material that might have the potential to undermine  
15 their evidence, such as would be disclosed in the course  
16 of criminal proceedings. It is not the function of our  
17 representation of SND43 to conduct collateral inquiries  
18 into the two witnesses' credibility or into other  
19 aspects of the evidence given by those witnesses.  
20 Rather our focus is on the allegation and adverse  
21 comments that they have made against SND43.

22 I confine myself, therefore, to the submission that  
23 those allegations and comments are without foundation  
24 and the basis of that submission is as follows. I make  
25 six discrete points.

1           First, in a career working with children that has  
2           spanned thirty years no other person has made any  
3           complaint about her conduct. Hers is a career without  
4           blemish. The complaints now made against her by HIA127  
5           and HIA233 are entirely isolated.

6           Secondly, and related to my first point, it is  
7           noteworthy that no other witness to this Inquiry has  
8           raised any issue about SND43's conduct. That is  
9           notwithstanding the fact that the Inquiry has conducted  
10          a very focused analysis of the home in which SND43  
11          worked at the relevant time and has gathered evidence  
12          from a considerable number of witnesses who passed  
13          through the home at that time. HIA233 singles out SND43  
14          for particular criticism among the civilian staff. Had  
15          that criticism been grounded in reality, one might have  
16          expected other witnesses to this Inquiry to have  
17          mentioned SND43. Yet that is not so.

18          Thirdly, there is no independent corroboration of  
19          the allegations. As noted in the written submissions,  
20          the lack of support for the account of HIA233 comes into  
21          sharp focus when one looks at the allegation of force  
22          feeding. HIA233 says in her statement that she reported  
23          this to her social worker, SND475. This was not,  
24          however, recorded in her social work records. She also  
25          says that another witness, SND328, knew about it and

1       that she told her primary school teacher, SND329, about  
2       it. There is, however, no indication that either of  
3       those individuals have ever said anything to support her  
4       account.

5             Fourthly, it is submitted one does have to be alive  
6       to the risk that accounts given by these two witnesses  
7       may have been contaminated, whether innocently or  
8       otherwise, through any discussion they might have had  
9       about their evidence to the Inquiry. When describing  
10      the one incident in which HIA127 directly implicates  
11      SND43, that's the incident in which he says she brought  
12      her husband to the home and the husband slapped him  
13      around the head, he does not refer to anyone being  
14      present. HIA233 then refers in her statement made at  
15      a later point in time to seeing SND43's husband hitting  
16      HIA127 with the back of his hand. Could this have been  
17      an attempt to bolster an account of an incident that did  
18      not, in fact, take place? I fully acknowledge that it  
19      is not the Inquiry's function to make findings at the  
20      micro level about every alleged incident, but on behalf  
21      of my client I urge the Inquiry to be very cautious  
22      about the risk of accounts being contaminated at this  
23      remove in time.

24             Fifthly, the accounts are given by witnesses of what  
25      they say occurred nearly a quarter of a century ago and

1           they were very young children. They may well have  
2           suffered traumatic experiences in the institutions in  
3           which they spent their childhood. One must, however,  
4           allow for the possibility that aspects of their evidence  
5           will be flawed, whether through failings in memory,  
6           exaggeration or in some case deliberate falsehood. It  
7           is notable perhaps in their oral evidence, confronted  
8           with SND43's denial of their allegations, they were  
9           unable to give any further details whatsoever beyond the  
10          contents of their written statements.

11                 SND43 to her credit has not responded to these  
12          allegations in a condemnatory manner. It is notable  
13          that when she was asked in her evidence what HIA233 was  
14          like, she responded -- Day 6, page 32, line 23:

15                 "A wee bit challenging, more than other youngsters,  
16          and demanding of her brothers and sisters."

17                 She was then asked:

18                 "And how was that dynamic managed? What steps did  
19          you take to deal with that different approach from her  
20          than perhaps others?"

21                 She responded:

22                 "Well, there wouldn't have been a different  
23          approach. She would just have managed -- been managed  
24          the same as the others. HIA126", that is HIA233's older  
25          sister, "would have mothered her a wee bit and tried to

1 settle her down when she wasn't getting her own way with  
2 her brothers."

3 So, as I say, to her credit she has not dealt with  
4 these allegations in a condemnatory fashion.

5 To conclude my submissions, SND43 has clearly and  
6 robustly denied the allegations made by the two  
7 witnesses. She has also assisted the Inquiry to the  
8 best of her ability in describing the working  
9 arrangements in Nazareth House at the relevant time.  
10 She is a person of integrity, who has devoted her  
11 working life to the care of children. On her behalf  
12 I would respectfully submit that the allegations made  
13 against her in the context of this Inquiry are without  
14 foundation.

15 Mr Chairman, those are my submissions.

16 CHAIRMAN: Thank you very much, Mr Doran.

17 Mr Rodgers, I think you are next in the treatments

18 --

19 MR RODGERS: That is correct, Mr Chairman.

20 CHAIRMAN: -- on behalf of SND14.

21 Closing submissions by counsel on behalf of SND14

22 MR RODGERS: Yes. So far as the allegations of historical  
23 sexual abuse are concerned, they are easily made and  
24 they can prove extremely difficult to refute in that  
25 memories weaken with time, the allegations invariably

1 lack particularity and forensic evidence is no longer  
2 available.

3 It is noted by Mr Justice Gillen in Thornton v the  
4 Northern Ireland Housing Executive:

5 "The presence of contemporaneous records can assist  
6 greatly in determining the weight that can be placed  
7 upon allegations."

8 So far as SND14 is concerned, he has at all material  
9 times denied the allegations made against him. He has  
10 been placed at a considerable disadvantage by reason of  
11 the absence of contemporaneous records. The  
12 complainant, HIA150, at paragraph 18 of his statement  
13 has alleged abuse when he had moved into the senior  
14 dormitory. The contemporaneous record noting when he  
15 had moved into it could have assisted greatly in that if  
16 he had moved in when he was aged 11, that would have  
17 been on 28th February 1968. The window of opportunity  
18 for any abuse was considerably reduced, because SND14  
19 left in April. So we are down to a six-week window of  
20 opportunity.

21 So far as HIA22 is concerned his allegation is that  
22 SND broke a broom handle over his legs. Now that could  
23 have been considered in the light of contemporaneous  
24 records with respect to incidents at the home. Such  
25 records are not available and the Panel is at

1 a disadvantage in trying to assess what did happen.

2 A determination of complaints made against SND14  
3 would have been assisted greatly if there had been  
4 proper, adequate supervision in the Termonbacca. The  
5 allegation made by HIA13 at paragraph 9, that's where he  
6 was pulled into the cubicles, but had there been proper  
7 staffing arrangements, there would have been proper  
8 supervision, and these allegations could be properly  
9 looked at in the light of the presence or absence of  
10 staff at the time, the opportunity, but given the lapse  
11 of time and with -- it would appear from the evidence  
12 that has been presented to the Inquiry that the staffing  
13 levels were insufficient. So it places someone who  
14 wishes to say, "Well, this didn't happen. It couldn't  
15 happen" at a serious disadvantage.

16 Given that young persons, some of whom come from  
17 disturbed backgrounds, were being accommodated at  
18 Termonbacca, it was incumbent upon both the Western  
19 Health & Social Services Board and Termonbacca to ensure  
20 that they were protected, but that would involve on the  
21 part of the Western Health & Social Services Board to  
22 properly supervise the activities at Termonbacca. If  
23 one stands back and looks at it, that would have  
24 involved ensuring that there was a proper staff/resident  
25 ratio to ensure there was proper supervision. It would

1 have involved ensuring that there were proper  
2 contemporaneous records that recorded the events within  
3 the residential setting, such as moving from the junior  
4 dormitory to the senior dormitory, recording any  
5 incidents that had occurred.

6 The Panel needs to be mindful of in this particular  
7 case the danger of collusion on the part of  
8 complainants; the motive, in that SND14 did present as  
9 somebody who was favourably disposed for Termonbacca.  
10 In the absence of contemporaneous corroborative evidence  
11 we say that considerable weight should be given to the  
12 photographic evidence, namely the reunion where a person  
13 who alleged that he had been abused chose to place  
14 himself next to his abuser. He chose to attend the  
15 wedding of his alleged abuser. We would say that those  
16 matters should weigh heavily with the Panel, more  
17 particularly given the fact that there is an absence of  
18 any corroborative evidence supportive of the allegations  
19 that are made, and the absence of such evidence at the  
20 end of the day is very much the fault of those who were  
21 running the institution and those whose duty it was to  
22 supervise how that institution was being run. Staffing  
23 levels were inadequate, supervision was inadequate and  
24 the record-keeping was most certainly inadequate. That  
25 has demonstrated the difficulty the Panel now have in



1           trying to get a handle on what exactly was taking place  
2           and is deprived of evidence which should have been  
3           available, which could have assisted greatly in making  
4           a determination as to whether or not there's any  
5           substance in these allegations, allegations which SND14  
6           has consistently denied.

7           I conclude my submissions.

8   CHAIRMAN: Thank you, Mr Rodgers. I think you are, in fact  
9           --

10   MR RODGERS: In the next one as well.

11   CHAIRMAN: -- due to make submissions for the next  
12           individual, SND38.

13   MR RODGERS: Yes.

14   CHAIRMAN: If it is convenient to you to simply go straight  
15           to that.

16           Closing submissions by counsel on behalf of SND38

17   MR RODGERS: Yes. At the outset so far as SND38 is  
18           concerned an issue did arise after he had given his  
19           evidence. One of the main issues that -- concerning  
20           SND38 was whether or not -- how he became appointed as  
21           a befriender, and what we would say is that in document  
22           SND-5228 it is therein recorded:

23           "Recommendation: Kevin would benefit from  
24           a suitable befriender."

25           That is dated May 1989. We say that predates his

1 appointment. It is not consistent with SND  
2 self-appointing himself. The appointment of  
3 a befriender to HIA127 is a matter of considerable  
4 importance not only in the life of HIA127 but also in  
5 the context of the allegations that have been made  
6 against SND38.

7 The absence of contemporaneous documentation is most  
8 disturbing both on the part of Nazareth House and the  
9 Western Health & Social Services Board. The absence of  
10 contemporaneous records has deprived the Panel of access  
11 to the factors taken into account in making the  
12 appointment, of how the role of key worker and  
13 befriender were to be combined, because they do not  
14 naturally sit comfortably with one another, how the  
15 befriender role has to be monitored and by whom it was  
16 to be monitored. The absence of any substantial  
17 monitoring records with regard to the befriending role  
18 we would say permits of a finding that no particular  
19 concern was shown to protect HIA127 or SND38. In  
20 particular, the evidence suggests that SND38 had  
21 a considerable degree of contact with HIA127 outside of  
22 Nazareth House. That context -- that contact is now  
23 criticised in terms that it was inappropriate and really  
24 was used by SND to afford himself the opportunity to  
25 abuse HIA127.

1           If proper monitoring records had been put in place,  
2           a proper plan had been put in place, then those who were  
3           monitoring would have noted the pattern of contact, more  
4           particularly outside of the institution, could have  
5           appointed someone to check that nothing inappropriate  
6           was taking place at the time in terms to both protect  
7           HIA127 and at the same time to protect SND38, that he  
8           was at risk of being exposed to false allegations.

9           There was a failure to recognise the potential for abuse  
10          of HIA127 and a failure to recognise the potential for  
11          false allegations to be made against SND38. No steps  
12          appear to have been taken to have addressed either of  
13          these issues.

14          One might then -- by way of analogy, in 1989 in  
15          Northern Ireland the Police and Criminal Evidence Order  
16          was introduced and it introduced codes of practice with  
17          respect to the conduct of police interviews and conduct  
18          of identification parades. In terms the code recognised  
19          the potential for abuse by police officers of suspects  
20          who are being interviewed and at the same time it  
21          recognised the potential for suspects to make false  
22          allegations against police officers. That's 1989.

23          One of the recommendations that emerges is that  
24          contemporaneous records by police officers conducting  
25          interviews, that they had to be confirmed by senior

1 police officers. That afforded the police officers  
2 protection from false complaints. Failure to comply  
3 with the code of practice could lead to charges against  
4 suspects being dismissed.

5 So a simple straightforward example of how the risk  
6 of harm to one individual and at the same time the risk  
7 of false allegation made against another individual, how  
8 that could be addressed, but yet it does not appear to  
9 have occurred to anyone when SND14 (sic) was being  
10 appointed as the befriender that such a -- some sort of  
11 plan should have been put in place. Given the  
12 recognised difficulties in placing HIA127 in foster  
13 care, a detailed care plan should have been prepared  
14 with HIA's welfare at its heart. Safeguards should have  
15 been put in place, which would have protected SND from  
16 false allegations. Both Nazareth House and the Western  
17 Health & Social Services Board have failed SND38.

18 Briefly so far as the allegations made against SND38  
19 are concerned the Panel should have regard for the fact  
20 that it appears that it was after SND38's statement of  
21 evidence to the Inquiry that the year of abuse was  
22 changed from 1990 to 1989, a change not made the Inquiry  
23 will note in 1996, that's six years after the alleged  
24 abuse, when HIA127 made a statement to the police in  
25 August of that year, when presumably his memory was

1 a lot clearer. The year is very important, because if  
2 one takes his holiday in Portstewart in 1990, it is the  
3 reference point for subsequent abuse which is placed  
4 within the setting, home setting, between September and  
5 December, at a time when other documentation establishes  
6 quite clearly that he was in foster care at the time.  
7 So those allegations could not be true.

8 Now it emerges, as we understand, for the first time  
9 that when HIA127 came to give his evidence, he is  
10 presented with the statement of evidence of SND38. It  
11 is patently obvious that he's got it wrong. So he puts  
12 it forward, brings it forward by a year, but at that  
13 time he was not aware that the [REDACTED] car to which he  
14 had referred in 1996, in particular in his statement to  
15 the police, that that car had not been purchased until  
16 July 1990. The Inquiry has been furnished with  
17 documentary evidence supportive of that, which we would  
18 say stands in stark contrast with the documentary  
19 evidence that Nazareth House has been able to produce or  
20 the Western Health & Social Services Board has been able  
21 to produce with respect to what one would say is a much  
22 more serious matter, namely the appointment of SND38 as  
23 a befriender, the factors taken into consideration, the  
24 care plan to put in place then, the duties of monitoring  
25 and by whom the monitoring would take place. No such

1 documentary evidence is before the Inquiry, but yet  
2 a simple document which SND had retained, namely the  
3 financial arrangements of the purchase of that car, and  
4 what we would say is that demonstrates not only the  
5 difficulties presented to the Panel in determining what  
6 exactly did take place and making a judgment with  
7 respect to systemic failings, but it also demonstrates  
8 the difficulty that those against whom allegations have  
9 been made, how they answer them.

10 So far as SND38 is concerned, he has devoted his  
11 life to being a social worker, to helping others, and he  
12 went the extra mile with SND38, a mile which is now  
13 viewed in the context of it afforded him an opportunity  
14 to abuse HIA127, but equally it afforded him the  
15 opportunity to, in fact, add to the life of HIA127.

16 Such documentary evidence that is available does suggest  
17 that he had a marked improving influence, a influence  
18 for the good on HIA127, recognised by him in documents  
19 that he filled in at the time, documents which we would  
20 say are not consistent with SND having abused him. He  
21 writes later in glowing terms with respect to the role  
22 that SND had performed and how, in fact, he had helped  
23 him out.

24 So in the circumstances we respectfully submit that  
25 the Panel should look closely at the plans that were put

1 in place with respect to HIA127, and that the absence of  
2 documentary evidence, it, in fact, has exposed SND to  
3 a serious dilemma that makes it impossible for him to  
4 answer matters which, in fact, he shouldn't have to  
5 answer, and that in essence both the Board and  
6 Termonbacca, they have failed in their duty of care to  
7 SND.

8 The written submissions highlight the lack of proper  
9 training afforded to him. There doesn't appear to have  
10 been any plan as to what his role was and given his  
11 background, but he is placed in a very difficult  
12 situation, and those who, in fact, appointed him as  
13 a befriender when he is already a key worker, that they  
14 should have been aware of the difficulties they were  
15 putting him in, and that the greater duty on them to  
16 appreciate the difficulties that could have arisen, and  
17 that SND really should have been advised that he was  
18 putting himself at risk, because it was not something  
19 which he could reasonably have envisaged at that time,  
20 and accordingly both Termonbacca, those who ran it, and  
21 the Western Board, they both -- they failed him.

22 I have no further submissions, Mr Chairman.

23 CHAIRMAN: Thank you very much. Well, our next submission  
24 is listed for 11 o'clock. I don't see counsel here.  
25 I don't think in the circumstances we will proceed

1 without them. So we will rise for a few minutes and we  
2 will sit again at 11 o'clock.

3 (10.45 am)

4 (Short break)

5 (11.00 am)

6 Closing submissions by counsel on behalf of SND224

7 CHAIRMAN: Now, Mr Heraghty, you are for --

8 MR HERAGHTY: Yes, indeed.

9 CHAIRMAN: -- SND224.

10 MR HERAGHTY: Yes. Mr Chairman and Members of the Inquiry  
11 Panel, I am going to be very brief indeed. You have our  
12 written submissions, which are reasonably full.  
13 I simply propose to address some very discrete issues in  
14 relation to the three aspects of the case that we are  
15 required to deal with.

16 As you know, we represent SND224. The first  
17 individual who makes a complaint against SND224 is  
18 witness HIA67. Now we would submit with regard to that  
19 matter that there are -- there is a very significant and  
20 important identification issue at play in relation to  
21 that witness. There doesn't appear to be any particular  
22 evidence that would support an assertion that the  
23 individual being named by that witness is necessarily  
24 the person who we represent, SND224.

25 Now HIA67 was given the opportunity to consider that



1 particular issue both before he came in to this Inquiry  
2 to give evidence and also, of course, during the course  
3 of his evidence. He didn't singularly deal with that  
4 issue either during the course of his main evidence or  
5 when specifically questioned about it by senior counsel  
6 for this Inquiry.

7 Now the Inquiry, of course, has the very short  
8 transcript of this witness' evidence in relation to  
9 SND224, and I simply propose to make reference to one  
10 part of that transcript on the third page at lines 11 to  
11 16 and onwards. Senior Counsel to the Inquiry said the  
12 following:

13 "We spoke about this this morning before you came in  
14 to speak to the Inquiry this morning, HIA67, and I asked  
15 you whether it was possible you were mistaken in the  
16 person who you had identified. What do you have to say  
17 to the Inquiry about that?"

18 The answer that HIA67 gave was:

19 "No. I have no doubt that he is who it was."

20 He goes on to say:

21 "Everything I have said in my statement is true."

22 Well, what we say with respect to that is really one  
23 is dealing with a false premise there for this simple  
24 reason. HIA67 we submit has never made  
25 an identification of SND224 and that is particularly

1 significant in circumstances where he has given  
2 a different name, albeit a name of a broadly similar  
3 nature, but a different name. He has not given any  
4 description, physical appearance or otherwise, of the  
5 individual he says abused him, and all he says is:

6 "Everything I have said in my statement is true."

7 Well, of course, everything HIA67 says in the  
8 statement about what an individual did to him in that  
9 regard may very well be true, but that we submit  
10 entirely misses the point with respect to the  
11 identification of the individual who carried out those  
12 particular forms of abuse.

13 Now a very important feature of this aspect of the  
14 case is we submit the following. SND224, of course,  
15 made a statement to this Inquiry. That statement  
16 contains particular facts about his life since leaving  
17 Termonbacca and not just general commonplace features,  
18 but, for example, the fact that he went on to [REDACTED]

19 [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
20 [REDACTED] [REDACTED]  
21 [REDACTED].

22 Now we say that's particularly significant because  
23 of the comment of HIA67 when he was asked the next  
24 question, bottom of the same page:

25 "You are quite sure in your own mind that you have

1 identified this person as the person [REDACTED]

2 [REDACTED]?"

3 Now leaving aside we submit the questionable  
4 relevance as to whether or not the person identified is  
5 [REDACTED], bearing in mind there is  
6 no suggestion on any of the evidence that SND224 [REDACTED]  
7 [REDACTED], HIA67 rather than answering  
8 that question simply says this:

9 "The same person I am talking about has been in  
10 touch with me since I have left Termonbacca."

11 So when one considers that this witness has been out  
12 with the person who abused him since leaving  
13 Termonbacca, and it is difficult to ascertain when that  
14 might have been, but certainly it was no sooner than ten  
15 years before, because he hadn't told his wife about it  
16 at the time that took place, but bearing in mind he had  
17 been in touch with the person he says abused him, it is  
18 surprising we would submit that he gave no evidence to  
19 in effect corroborate the case, if it is a case that is  
20 being made against SND224, that he is the person who  
21 carried out the abuse. He could easily have said at  
22 that point, "I am quite satisfied the person I am  
23 describing was my abuser, because I can say I was aware  
24 from having contact with him that he had [REDACTED]

25 [REDACTED]

1           ██████████" or anything of that nature.

2           So we would submit so far as that witness is  
3           concerned there really isn't anything available to this  
4           Inquiry to make a positive finding against him in regard  
5           to those allegations.

6           Moving on to HIA150, now I am not going to make many  
7           specific comments about that witness and his evidence,  
8           but I would invite, as I have done in the written  
9           submissions, the Inquiry to take great care with regard  
10          to this witness in terms of his overall credibility,  
11          because HIA150 you will recall, Mr Chairman and Panel  
12          Members, gave evidence which really was challenged in  
13          a full frontal sense by a number of other witnesses who  
14          have given evidence to this Inquiry, and quite properly  
15          and quite fairly Senior Counsel to the Inquiry put  
16          a range of matters to the witness, different accounts  
17          given in relation to precise matters, such as relatively  
18          trivial matters concerning the nature of the food served  
19          to children in Termonbacca to perhaps more serious  
20          allegations of physical abuse, and there are real issues  
21          we would submit with regard to the witness' credibility  
22          as a whole.

23          The only specific point I make with regard to SND224  
24          relates to HIA150's assertion that the person who he  
25          names -- gives the same name as SND224 -- who abused him

1 worked for the nuns. That's at paragraph 32 of his  
2 statement to this Inquiry. That's not -- that's simply  
3 not true, and it is not a grey area. SND224 describes  
4 in his statement how he never worked for the nuns and  
5 how a person sometimes, when they were about to move on,  
6 became employed by the nuns in a formal sense. He  
7 described one person who moved on to be a driver for the  
8 nuns and was in their employ. That was not the position  
9 with regard to SND224, who went on to be a groundsman at  
10 a golf course.

11 Therefore there is a real concern there that this  
12 witness, who describes quite a large number of incidents  
13 of abuse against him -- I think I'm right in saying in  
14 relation to some incidents he is able to name his  
15 abuser; in relation to others he isn't -- but in  
16 relation to this particular incident and this particular  
17 witness -- this particular individual, SND224, who we  
18 represent, we would submit it is highly significant and  
19 can't simply be brushed to one side that the person  
20 HIA150 describes as abusing him was, in fact, in the  
21 employ of the nuns.

22 The final matter I want to touch upon, which is also  
23 dealt with in the written submissions, concerns the  
24 police materials bundle.

25 Now, firstly, I have made some broad submissions in

1 writing that this Inquiry really ought not to have  
2 particular regard or ought not to have to resort to  
3 those materials unless it is convinced there is  
4 significant evidence against SND224. It would be quite  
5 wrong in principle in our submission in the  
6 circumstances of the evidence in this particular regard  
7 to have any regard or take into account in any way the  
8 police materials bundle.

9 Subsidiary points, of course, are as follows. The  
10 allegations contained in the police materials bundle are  
11 mere allegations. SND224 was never charged with any  
12 offence arising out of any of those allegations.

13 The second subsidiary point really is this. There  
14 is nothing about the allegations made and contained  
15 within the police material bundle -- within the police  
16 materials bundle that could be described as being  
17 strikingly similar or having any kind of hallmark or  
18 signature element to them that would tend to suggest  
19 that this individual has or had a propensity to carry  
20 out acts of sexual abuse on children.

21 Mr Chairman, Members of the Inquiry Panel, that's  
22 all I propose to say orally in relation to SND224.

23 Thank you very much.

24 CHAIRMAN: Thank you, Mr Heraghty.

25

1 Closing submissions by counsel on behalf of SR6

2 CHAIRMAN: Now, Mr Lavery, it is three minutes before your  
3 time slot starts, but do I take it you are making the  
4 closing submissions?

5 MR FINBAR LAVERY: I am not, Mr Chairman. Michael Lavery is  
6 making them.

7 MR MICHAEL LAVERY: I apologise, Mr Chairman.

8 CHAIRMAN: I don't have to apologise, Mr Lavery. It is only  
9 unpunctuality that irritates the Inquiry.

10 MR MICHAEL LAVERY: For the record, my name is Michael  
11 Lavery. I am appearing with Mr Finbar Lavery for SR6  
12 and instructed by Mr Dennis Maloney of Donnelly & Wall.

13 CHAIRMAN: Yes. Well, we are happy to hear your additional  
14 submissions, Mr Lavery.

15 MR MICHAEL LAVERY: One matter which I would like to mention  
16 briefly. I am not sure indeed how relevant it is to  
17 inquisitorial proceedings. It is the question of the  
18 onus of proof, and I did some research on it. I thought  
19 there might be something on inquests, but there is  
20 nothing, if fact, on inquests in Phipps. I have  
21 an extract from Phipps with which -- no doubt the  
22 Inquiry will be familiar with the general rule as far as  
23 the onus of proof is concerned. I hand in copies of  
24 that for the ... but I hardly think it is necessary to  
25 explain the onus of proof lies on the person who is

1 making the allegations, and in an inquisitorial --  
2 perhaps if I could hand this up to the Inquiry.  
3 (Handed.) I have not been able to find, but  
4 I respectfully suggest that by analogy if the Inquiry  
5 were to make an adverse finding against someone, they  
6 should only do that if they are satisfied on the balance  
7 of probabilities that the allegation was true. There  
8 has been considerable debate, as I am sure the Chairman  
9 will know, as to what the onus of proof is and where the  
10 onus is the balance of probabilities. It used to be  
11 thought that -- there used to be a dicta to the effect  
12 the graver the allegation, the more cogent the evidence  
13 is required to find even on the balance of  
14 probabilities. That has been to some extent  
15 discredited. The question really is how should the  
16 tribunal approach this question?

17 So I would respectfully submit that if one is  
18 dealing with it on the basis that these allegations have  
19 to be proved, as far as SR6 is concerned one starts with  
20 the fact that she is a woman who spent all her life from  
21 the age of 13 on in the Order. She doesn't have a great  
22 deal of experience of life outside the convent, and  
23 indeed she was -- I do not want to make a great deal of  
24 this -- she was to some extent disadvantaged by the fact  
25 she had to deal with material at fairly short notice.



1           So the first step would be to -- I would invite the  
2           tribunal to say on the balance of probabilities there's  
3           this woman who -- that suggests that she went contrary  
4           to her vocation and that she did these things.

5           Now into the thinking, of course, must come the fact  
6           that there are some inconsistencies in the allegations  
7           that are being made against her. Not every one is  
8           agreed, even individuals who had experience of her and  
9           agree with her. She has got glowing assessments from  
10          some people. So what we respectfully say is in seeking  
11          to establish these allegations there's a fairly heavy  
12          onus on the person to show that a person of fair  
13          character committed these.

14          Now the second observation that I would make on that  
15          is that what is remarkable is the fact that the amount  
16          of complaints are really minimal when one considers the  
17          number of residents that have passed through her hands,  
18          with whom she had contact, and when you consider the  
19          opportunities that they had to make complaints.

20          Now it is well recognised that in cases of sexual  
21          abuse that -- which are absolutely tragic, which are not  
22          alleged against her, that the victims sometimes have  
23          some sense, irrational sense of guilt and shame and are  
24          very reluctant to speak out about it, but we  
25          respectfully say in this particular instance there is no

1 reason that these children -- I am conscious of the fact  
2 they were children, that they were children who were  
3 very disadvantaged, but wouldn't have been able to make  
4 complaints if they wanted to, and they didn't and  
5 neither did anybody else. So we would respectfully  
6 submit that if the Inquiry is approaching it in that  
7 way, that the onus has not been discharged.

8 Now if there are any other matters I could assist  
9 the Inquiry on, I would like to do. So the Inquiry will  
10 have seen our submissions no doubt and I don't want to  
11 simply read that aloud. One of our colleagues was  
12 chided in the Supreme Court for repeating in more  
13 emphatic tones what had already been said before. So  
14 I hope I refrain from that.

15 Finally, I would like to, unless the Inquiry has  
16 further questions for me, to express our appreciation of  
17 the consideration which was shown to SR6 and indeed, if  
18 I may say so, to all of the persons who appear before  
19 this Inquiry.

20 So unless there is something further that I can  
21 assist the Inquiry with, those will conclude my  
22 observations.

23 CHAIRMAN: Thank you very much, Mr Lavery. I can assure you  
24 that we are very grateful for succinct submissions,  
25 because we have the benefit of your very comprehensive

1 written submissions, as we have indeed on behalf of  
2 a number of those who were afforded the opportunity to  
3 make written submissions and who have done so, but we  
4 don't propose to take up time by asking counsel,  
5 including yourself, simply to recite again what has been  
6 set out in writing. We are familiar with this and we  
7 will naturally have to look at it again in the light of  
8 everything that is said to us. Thank you very much.

9 MR MICHAEL LAVERY: Thank you, sir.

10 Closing submissions by counsel on behalf of HIA144

11 CHAIRMAN: Now, Mr McCrory.

12 MR MCCRORY: Yes, Mr Chairman.

13 CHAIRMAN: We have managed to go rather more rapidly than  
14 even I had anticipated. If you are ready to start, we  
15 are ready to hear from you in relation to HIA144.

16 MR MCCRORY: HIA144. I am indebted to Mr Lavery -- has he  
17 gone now? -- for setting the tone of brevity and  
18 conciseness. I take it, Mr Chairman, that you have  
19 received the written submissions on behalf of HIA144 and  
20 I would not offend the Inquiry by a crass repetition of  
21 those submissions.

22 It is not that long ago since HIA144 gave his  
23 evidence before the Inquiry and it may be -- it would be  
24 fairly fresh in the Inquiry's recollection, as it was  
25 just shortly before the break for the Easter vacation.

1           A number of observations occur to me, Mr Chairman.  
2           He presents a rather sad aspect to the whole history of  
3           the matters we are concerned with. He was  
4           institutionalised at a very early age and for the bulk  
5           of his adult life he was, as it were, almost wed to the  
6           institution. [REDACTED]

7 [REDACTED]  
8 [REDACTED]. He may well have  
9           impressed you as a man of not the highest intellectual  
10          ability, but in relation to his experiences he indicated  
11          that he had mixed feelings about Termonbacca. It struck  
12          me his observation:

13                 "There was always a nice part to it but a bad part  
14                 also."

15           Now he did give account of being in receipt of  
16           physical abuse, but denied sexual abuse and denied the  
17           allegations -- there were four sets of allegations from  
18           four sources put to him, and he denied all of those  
19           allegations categorically. In the case of one of the  
20           complainants there would appear to have been a police  
21           investigation. He was questioned about that, and the  
22           matter was not proceeded with further, but these are all  
23           matters which -- the ground has been covered in respect  
24           of the observations about ancient allegations, historic  
25           allegations, and I don't propose to travail the tribunal

1 with any further repetition in relation to them.

2 I would ask you to take account -- have regard to  
3 the personality we are dealing with. He had lived  
4 effectively his entire adult life up until the year 2000  
5 in the institution. I would commend him to the tribunal  
6 as a witness of truth, and in the circumstances unless  
7 there are any particular points that I could assist the  
8 tribunal with I don't propose to repeat the contents of  
9 the written submission. One is conscious of what the  
10 remit of the tribunal is and I don't propose to expand  
11 on what I have already said. One is also conscious, of  
12 course, that there may be -- down the road there may be  
13 involvement of other agencies or other authorities, but  
14 in the circumstances I rest on the evidence of HIA144  
15 and his rejection of any of the allegations of  
16 misbehaviour made against him.

17 Those are my submissions, Mr Chairman.

18 CHAIRMAN: Thank you very much, Mr McCrory.

19 I should perhaps make it clear at this stage for the  
20 record that the purpose of hearing those who wish to  
21 make oral closing submissions led the Inquiry to offer  
22 that opportunity to the representatives of each of those  
23 who have been granted separate legal representation by  
24 the Inquiry at the expense of the Inquiry and we have,  
25 therefore, this morning heard commendably focused

1 submissions on behalf of six of those.

2 However, these have to be seen in the light of very  
3 much more substantial, detailed and indeed comprehensive  
4 written submissions made on behalf of them and on behalf  
5 of the eight others I think it is at this present moment  
6 who are in the same category, who have chosen not to  
7 make written submissions, but simply to confine  
8 themselves to oral submissions.

9 I say that to place on record that we have the  
10 benefit of all of these written submissions, as has been  
11 acknowledged on a number of occasions this morning. We  
12 have had the opportunity to listen to and assess the  
13 evidence of a great many witnesses over a number of  
14 weeks and we will in the course of our work naturally  
15 have occasion to go back to many of the points which  
16 have been made orally this morning and all the points  
17 that have been made in the written submissions.

18 For the benefit of these individuals and for the  
19 wider public this represents the last occasion on which  
20 each individual against whom an allegation has been made  
21 will have the opportunity to put before the Inquiry  
22 their view about the allegations made directly against  
23 them or which may be thought to implicate them in some  
24 form of failing. Therefore, unless the Inquiry comes  
25 across further information which it considers would

1 render it necessary to have a further public hearing in  
2 relation to some such matters, there will not be  
3 a further opportunity for these individuals to make  
4 written or oral submissions to us.

5 However, if there should be such material, we will  
6 give consideration to returning to this module as far as  
7 those individuals are concerned. At present we don't  
8 anticipate that, but we leave the option open.

9 If something further does come to our attention  
10 which we consider requires an individual to be offered  
11 an opportunity to comment on it, that will probably be  
12 done by way of correspondence and may, if circumstances  
13 demand, therefore make further requests of individuals  
14 or their representatives for some further information.

15 This is a continuing process and that may result in  
16 us coming across something that we are not aware of at  
17 present, but unless we do come across some such matter,  
18 we will not be asking for further oral or written  
19 submissions from individuals.

20 Later this week we will, of course, be hearing  
21 submissions from and on behalf of the Order and various  
22 Sisters who are still members of the Order and we will  
23 also be hearing from the other organisations who are  
24 concerned with this module.

25 Now that, therefore, concludes this part of this

1 morning's session as far as you are all concerned,  
2 gentlemen. We will shortly be turning again to the  
3 important question of finance. So I will just rise for  
4 a few minutes and Mr Aiken will then be in a position  
5 hopefully later this morning to take us back to  
6 questions of funding and matters of that sort, but we  
7 will rise just for a few moments. I would hope it won't  
8 be more than about ten minutes or so, ladies and  
9 gentlemen.

10 (11.30 am)

11 (Short break)

12 (11.40 am)

13 Submissions on finance by COUNSEL TO THE INQUIRY

14 CHAIRMAN: Now, Mr Aiken.

15 MR AIKEN: Chairman, Members of the Panel, good morning.

16 This morning I am going to begin what I hope will be  
17 a helpful attempt to bring together a lot of dense and  
18 sometimes complicated material relating to how  
19 children's homes were to be financed and in particular  
20 how that relates to what occurred on the ground for the  
21 two homes that we have been concerned with in this  
22 module.

23 CHAIRMAN: Can I just interrupt you? I realise I left my  
24 glasses in our chamber. So just excuse me. I will go  
25 and rescue them. (Pause.) Yes.



1 MR AIKEN: I was tempted to claim I had already finished,  
2 Chairman.

3 CHAIRMAN: That was too much to hope for obviously.

4 MR AIKEN: Yes, afraid so. The point I was making was that  
5 while it is possible to have a look at what the piste  
6 looks like in terms of the mechanisms that were in place  
7 and to look at from the documents we have amassed to  
8 date the historical position that was taken over time by  
9 government departments and by welfare authorities and  
10 then by the Board in this case, it is inevitable that  
11 the general themes that I am going to outline at the  
12 outset will pervade all of the modules, and it is likely  
13 that further material that will arise from those further  
14 modules will have to fit into this picture that will be  
15 constructed over the course of the Inquiry.

16 That being said, it is possible to deal with some  
17 specific issues that arise for the specific homes that  
18 we are looking at, and we have seen some of those  
19 already in terms of the message that they were sending  
20 back to the Department or the then Ministry about what  
21 was needed or not needed, but inevitably this path that  
22 I am going to take us on is constrained in that way.

23 That being said, I am going to really begin with the  
24 1950 Act. Part VIII of the 1950 Act, if we can bring up  
25 HIA-248, please -- Part VIII deals with matters of

1 finance that arise -- just scroll down, please -- that  
2 arise in respect of the matters -- no. Just back up to  
3 114. Thank you -- that arise in respect of the systems  
4 that were being set up, quite a number for the first  
5 time under the 1950 Act, and section 114 indicates:

6 "The expenses incurred by the Ministry", that's the  
7 Ministry of Home Affairs, "in carrying out the  
8 provisions of the Act ... shall be defrayed out of  
9 monies provided by Parliament."

10 Now the provisions we are going to be principally  
11 concerned with in respect of children's homes if we move  
12 down to HIA-250, please, is, firstly, section 118. This  
13 provision actually contains more than one stream of  
14 funding provision. Section 118(1), I am going to call  
15 the capital grant stream. Here we can see that:

16 "The Ministry may", so it's a discretionary power,  
17 "may pay grants of such amounts and subject to such  
18 conditions as it may with the consent of the Ministry of  
19 Finance", so it's a discretionary power, but is also  
20 subject to approval from another government department,  
21 "determine towards expenses incurred or to be incurred",  
22 so it can cover retrospectively money already expended  
23 or future money to be expended, "by any voluntary  
24 organisation, in circumstances such that it appears to  
25 the Ministry requisite that the grants should be made"

1 -- just scroll down, please, a little -- "for", and this  
2 is important in what we are going to look at over the  
3 next period of time, "for improving premises in which  
4 voluntary homes are being carried on, or the equipment  
5 of voluntary homes, or for securing that voluntary homes  
6 will be better provided with qualified staff."

7 So it is not a provision that has a wide, general  
8 funding mechanism for the Ministry, but is circumscribed  
9 with the earlier caveats that I looked at, and then for  
10 these three purposes that money can be given in the  
11 exercise of that discretionary power.

12 Subsection (3) indicates that:

13 "The conditions on which any grants are paid under  
14 this section towards expenses ... to be incurred ... may  
15 include ... for securing the repayment in whole or in  
16 part of the sums paid ..."

17 I am not going to read that any further, save to say  
18 that was a statutory mechanism which effectively boiled  
19 down to securing from the voluntary home you were giving  
20 the money to an undertaking that if they didn't use the  
21 money or didn't have the home open for as long as was  
22 agreed, then there was an obligation for that money to  
23 be repaid. So in effect it was a protective mechanism  
24 to stop a voluntary organisation pocketing grants and  
25 then shutting up shop and walking off with the money.

1 CHAIRMAN: Did we see in relation to Termonbacca a document  
2 in which there was some discussion of the proportion of  
3 the 40 year rule that was going to apply? Presumably  
4 that was an outworking of this type of requirement.

5 MR AIKEN: Yes, and we will come to look at some specific  
6 examples of that, because for these two homes in this  
7 module, when they closed, they were both effectively  
8 caught by undertakings that they had given, and it is  
9 fair to say some footwork was engaged in so as not to  
10 require the voluntary organisation to have to repay all  
11 that would have been required under the undertaking.

12 So that capital grant mechanism, section 118(1),  
13 which was a power which was constrained because it  
14 required the consent of the Ministry of Finance, and  
15 which had three limbs to it in terms of what the money  
16 could be for, also had an ability to insert conditions  
17 on the funding and subsection (3) then included the  
18 mechanism for recouping funding in appropriate  
19 circumstances.

20 At the same time -- and no doubt the draftsman had  
21 some reason for this -- but in the middle of this  
22 section at 118(2) we have a different stream and that is  
23 a power to the welfare authorities, constrained by  
24 requiring the consent of the Ministry of Home Affairs,  
25 but a power:

1            "... to make contributions to any voluntary  
2            organisation the object or primary object of which is to  
3            promote the welfare of children."

4            So immediately on looking at that subsection it  
5            doesn't appear to carry the same type of constraint as  
6            subsection (1) contains as to the purposes for which  
7            money could be given, but when we come to look at some  
8            of the detail of how this provision was interpreted --  
9            and this takes us into a legal debate, that to properly  
10           read subsection (2) you have got to interpret it against  
11           subsection (1), which was the main power and the  
12           constraints that were imposed on the main power -- we  
13           will see that being worked out in the Ministry between  
14           the Ministry and various welfare authorities.

15    CHAIRMAN: The rationale behind that in part at least no  
16           doubt was because in the context of that time, first of  
17           all, there were local county welfare authorities who had  
18           responsibilities in this area and, secondly, they would  
19           have raised a proportion of their funding from the  
20           rates, in other words, local taxation as opposed to  
21           being wholly dependent upon central government funding.

22    MR AIKEN: Yes, and we are going to come to look at a  
23           tension that works itself out between the Ministry and  
24           the welfare authorities about a clawback provision that  
25           I am going to touch on shortly, where difficulties arise

1 because of the impact on welfare authorities' revenue.

2 But what we can see from subsection (2) is  
3 a provision which on its face has as the primary object  
4 money being paid to promote the welfare of children, and  
5 we will see later that Londonderry County & Borough  
6 Welfare Authority regularly made grants under this  
7 subsection to both homes.

8 CHAIRMAN: Just to interrupt, was there a single welfare  
9 authority for Londonderry County Borough, in other  
10 words, the city as well as for the county?

11 MR AIKEN: Yes. There were two separate welfare  
12 authorities. So there is Londonderry County Borough and  
13 Londonderry County Welfare Authority.

14 CHAIRMAN: It is just the way you expressed it might have  
15 implied that there was a single welfare authority, but  
16 in those days there was one for the county borough,  
17 being the city, and one for the county.

18 MR AIKEN: Yes.

19 CHAIRMAN: So both made grants. Is that right?

20 MR AIKEN: No. The Londonderry County Borough Welfare  
21 Authority. On its letterheads it unfortunately  
22 describes itself as "Londonderry County & Borough  
23 Welfare Authority", but it is the city version that's  
24 making the grants. As we will see, those steps to make  
25 those grants caused difficulty for the Ministry, because

1           they interpret the subsection as not permitting welfare  
2           authorities to provide running costs funding or revenue  
3           funding to voluntary homes. That is to do with how the  
4           purpose of section 118 was interpreted.

5           So so far we have two streams. We have capital  
6           grants that were in the power of the ministry. We have  
7           welfare authority grants which were in the power of  
8           individual welfare authorities, but subject to approval  
9           from the Ministry, and then if we can scroll up, please,  
10          to section 117, we have a third stream. Section 117:

11          "The Ministry with the consent of the Ministry of  
12          Finance", so again it's requiring the approval of  
13          another Department, "may defray", so a discretionary  
14          power, "or contribute towards any fees or expenses  
15          incurred by persons undergoing training approved by the  
16          Ministry with a view to or in the course of their  
17          employment for the purposes of this Act ..."

18          You will see slightly further down:

19          "... or their employment by a voluntary organisation  
20          for similar purposes, and may with the like consent  
21          defray or contribute towards the cost of maintenance of  
22          persons undergoing such training."

23          Then section 117(2) is a power to defray the cost of  
24          the provider of the course that may have been undertaken  
25          by those who are being referred to in subsection (1).

1           Now this provision, unlike section 118, is not  
2           confined to voluntary homes. It applies to all homes,  
3           but it includes voluntary homes. As an aside, because  
4           it is not an issue that I am going to come back to in  
5           the course of this discussion about finance, we can see  
6           evidence of this process happening, and as early as  
7           1954, if we can bring up, please, SND-7426 -- can we  
8           just maximise the size of that, please -- we can see at  
9           the top "1954/55, Payments made since 1.4.54 to 6.9.54  
10          in respect of Staff of Voluntary Homes who Attended Home  
11          Office Refresher Courses". Now unhelpfully the names  
12          are redacted. So I will arrange for -- perhaps if there  
13          is someone in the back office who can print this  
14          page out without the redactions, but you can see that  
15          there are staff from Bishop Street and from Termonbacca  
16          and my recollection is that these are Sisters as opposed  
17          to lay staff who are attending Home Office refresher  
18          courses.

19                 We can see another reference to that, please.  
20                 SND-7459. Just maximise that letter for me, please.  
21                 This is a letter written on behalf of the Ministry to  
22                 the Tyrone County Welfare Committee in 19... --  
23                 December 1954.

24   CHAIRMAN: Is it possible to maximise that a little more?

25   MR AIKEN: Can we make that even larger, if that's possible?



1 The author is saying that:

2 "Staff from the undermentioned voluntary homes for  
3 children attended Home Office refresher courses in  
4 England."

5 There is reference to Nazareth House, Bishop Street  
6 and St. Joseph's, Termonbacca.

7 A third document that demonstrates, if we look at  
8 SND-7429, please -- in fact, this may be a similar --  
9 just scroll up a little, please. Scroll up, please. It  
10 may be the same document as is at SND-7426. Just go up  
11 a little further, please, to SND-7426. Then if you type  
12 in "SND-7429" so we go back to it. Yes, it seems to be  
13 the same document. So this perhaps raises a further  
14 question that I am not going to explore any further  
15 today, but the Home Office memorandum that we have  
16 talked about was written in 1951. It was disseminated  
17 in 1952, and here we have Sisters, subject to someone  
18 bringing me the page just to confirm that's what's under  
19 the redaction, but Sisters from both homes attending  
20 those courses in 1954. It may be there are other  
21 references to courses in due course that we may come  
22 across.

23 Equally effort was clearly -- and I am not going to  
24 go into the detail of it on this issue -- but the Child  
25 Welfare Council reports spanning 15 to 20 years show the

1 difficulty over staff retention, training, and efforts  
2 were clearly made to deal with that in addition to  
3 making use of this provision.

4 So if we look at HIA-6792, we can see that specific  
5 financial assistance for training was being made  
6 available in November 1974. This is a letter from the  
7 Department of Health. You will see the title of it,  
8 "Financial assistance available to voluntary  
9 organisations". You will see in the second  
10 paragraph that the provision now being made was also to  
11 cover the cost not only of the person going to the  
12 training but the member of staff who was employed to  
13 cover for that person who was going to the training.

14 We can see a further example from 1978 at HIA-6791,  
15 please. This is from June 1978, and we can see that to  
16 clarify the Department's position regarding staff from  
17 voluntary organisations who attend short training  
18 courses reference is made to a circular on the subject.

19 "The course, fees and travelling expenses of staff  
20 from voluntary organisations who attend the short  
21 training courses organised or approved by the Department  
22 will, of course, continue to be met."

23 In '79 at -- if we just scroll up to the  
24 page before, please -- SND-6790 we have another letter  
25 from the Department, "Certificate in Social Services

1 Training -- Financial Assistance to Voluntary  
2 Organisations."

3 This was to encourage the development of social  
4 services training in voluntary agencies, and reference  
5 is made to providing financial support, covering the  
6 replacement salary cost, paying the course fees and  
7 expenses.

8 There is a similar document from 1984 at SND-6793,  
9 again from the Department. So financial assistance for  
10 social work training. Copies of circulars issued to  
11 certain other voluntary bodies indicating the finance is  
12 not limitless and inviting applications.

13 So that is an attempt to show we have got the  
14 section 117 power to cover the cost of expenses. It is  
15 reflected again in the 1968 Act, not the same  
16 section number, but the same provision, and some  
17 evidence of efforts being made by the Department to  
18 encourage through finance provision the training of  
19 staff working in the voluntary homes.

20 So I took that digression just to highlight that  
21 evidence that's available, but if we step back, we have  
22 got three revenue streams. We have the 118(1), capital  
23 grant power in the hands of the Ministry; we have  
24 a wider provision in the hands of the Ministry to cover  
25 training for all staff, including voluntary staff; and

1 we have a third mechanism specific to voluntary homes,  
2 which was the ability of the welfare authorities to  
3 provide funding for the welfare of children.

4 Into that -- those three streams came what might be  
5 described as a stone and that's a potentially  
6 complicated provision that appears to have created  
7 tension between the Ministry and the welfare  
8 authorities, if we can go back, please, to HIA-251, and  
9 that can be found in section 119. To try and simplify  
10 this as much as possible, the mechanism for funding the  
11 welfare authorities, if we just scroll down, please, to  
12 section 119:

13 "The Ministry shall pay to a welfare authority in  
14 respect of each financial period grants towards the  
15 expenditure incurred by them during that period for the  
16 purpose of the discharge of their functions under this  
17 Act ... the amount of such grants to be determined by  
18 the Ministry with the consent of the Ministry of Finance  
19 but not to exceed in the aggregate the amount by which  
20 one-half of the expenditure so incurred is greater than  
21 the arrears, if any, of payments due in respect of that  
22 period by the welfare authority to the Ministry under  
23 the next succeeding subsection."

24 Now basically if we give you a grant to cover the  
25 costs that you incur in carrying out your functions

1 under this Act, then we are entitled to deduct from that  
2 up to one-half of what we pay out under section 119(2),  
3 and under 119(2):

4 "A welfare authority shall pay to the Ministry in  
5 respect of each financial period an amount equal to such  
6 proportion, not exceeding one-half, as the Ministry may  
7 with the consent of the Ministry of Finance determine of  
8 so much of the expenditure incurred during that period  
9 by the Ministry under sections" -- just scroll down,  
10 please -- "118 -- 117 and 118 of this Act as the  
11 Ministry may with the like consent allocate to that  
12 welfare authority."

13 So in broad terms if the Ministry of Home Affairs  
14 made grants to voluntary homes under section 118(1) or  
15 section 117, then they were entitled to offset those  
16 costs against the grants that they were making available  
17 to the welfare authorities under section 119 to allow  
18 the welfare authorities to carry out their functions as  
19 required by the Act.

20 CHAIRMAN: Can we just look at the previous page again?

21 MR AIKEN: Scroll up again, please.

22 CHAIRMAN: It is a mandatory power it would seem requiring  
23 the Ministry to grant aid part of the welfare  
24 authority's expenditure. Isn't that right?

25 MR AIKEN: Yes.

1 CHAIRMAN: Would you say it is limited to a maximum of 50%  
2 reduced by any arrears that the welfare authority is  
3 required to pay to the Ministry?

4 MR AIKEN: Yes, that if -- whatever budget is made or  
5 whatever grant is made available to the welfare  
6 authority, there was the ability to claw back and, in  
7 fact, subsection (2) required on one view a clawback,  
8 although it is not quite a mandatory requirement to claw  
9 back, because it is:

10 "... shall pay to the Ministry in respect of each  
11 financial period an amount equal to such proportion not  
12 exceeding one-half as the Ministry may determine of so  
13 much of the expenditure incurred during that period."

14 So it's a complicated mechanism which in effect  
15 boiled down to the Ministry granting funds from the  
16 welfare authority with one hand and then taking some  
17 back with the other, dependent upon how much they made  
18 use of section 118 and section 117. That may be  
19 a matter that we need to return to again, because it is  
20 not entirely straightforward as to what was to take  
21 place, but what it did -- however it was being operated,  
22 it caused a great degree of consternation, which we are  
23 about to see.

24 We can see how it was calculated by way of example,  
25 which hopefully will make it easier to understand, at

1 SND-5890. We have an example of the 1957 calculation.  
2 If we just maximise that page, please. So it records  
3 what was paid under section 117, what was paid under  
4 section 118. In this example we actually have a grant  
5 to Termonbacca, which we will come to look at, and so  
6 those total payments came to £900, which is  
7 a considerable sum at that -- in 1957. 50% of that was  
8 to be recovered from the welfare authorities. So that  
9 was 450, and then there was a mechanism based on  
10 population by which that sum was divided up between the  
11 various welfare committees that are set out.

12 CHAIRMAN: So it seems to be that in this particular  
13 instance what happens is that the Ministry pays 100% of  
14 the costs and then looks to local government to  
15 contribute 50% of that cost and apportions it across the  
16 county councils or their equivalent on a per capita  
17 basis of the population.

18 MR AIKEN: Yes.

19 CHAIRMAN: So, as one might expect, what is effectively the  
20 city of Belfast, which has 443,000-odd, ends up paying  
21 significantly more than the city of Derry, which has  
22 just over 50,000 --

23 MR AIKEN: Yes.

24 CHAIRMAN: -- whereas the county of Fermanagh, which is the  
25 smallest county in population terms, pays slightly more

1 per capita than Derry City.

2 MR AIKEN: Yes.

3 MS DOHERTY: It also means Belfast would be paying for  
4 children that's not within its area, which is the ...

5 MR AIKEN: That's just one of the issues that I am about to  
6 raise with you, because it starts -- when we look at the  
7 physical example of it, the mathematical calculation,  
8 one can start to see where the consternation comes from  
9 on a number of levels. The issues that the mechanism  
10 appears to have raised was, firstly, money was being  
11 taken from the budgets of welfare authorities to make  
12 payments to voluntary homes without the welfare  
13 authorities having any say in the making of those  
14 payments. We will see when we come to look at some of  
15 the specific material that that was described by some as  
16 "taxation without representation". So the welfare  
17 authority was being taxed by central government but  
18 without the welfare authority having any say in how that  
19 taxation came about, as they saw it. That issue led to  
20 long representations about the desire by welfare  
21 authorities and ultimately by their central committee  
22 that met to cover all of the welfare bodies that really  
23 they should be consulted about whether grants should be  
24 paid, because the paying of them had a consequently  
25 adverse impact on the operation of the welfare



1 authority. That was the first issue, that money was  
2 being taken from them and they had no say in it.

3 The second issue that it appears to have raised is  
4 -- and this is why I have described it as the clawback  
5 provision -- it is retrospective in the sense that the  
6 Ministry determines the grant to be paid and pays the  
7 grant and subsequent to that a clawback occurs, and the  
8 argument being put forward by the welfare authority was  
9 essentially that they couldn't plan their services as  
10 they would have wished, because they had a potentially  
11 unknown hole to come in their budget.

12 Now we will see in due course the answer to that was  
13 at the time this debate is taking place the monies  
14 involved were so small this was not considered as  
15 relevant, but when we come to look at some of the very  
16 substantial funding that was made available, its impact  
17 becomes more stark.

18 CHAIRMAN: If we look at this example, as it happens  
19 coincidentally St. Joseph's Boys Home, Termonbacca has  
20 incurred expenditure of £800. The Ministry out of  
21 general taxation will pay half that, but County Down,  
22 for example, which might be expected not to have sent  
23 any children to Termonbacca, will have contributed most  
24 of £79.3.4. Londonderry County Borough and Londonderry  
25 County Council will both, if you put the two together,

1           have contributed a quite significant proportion of that  
2           total expenditure, but presumably they also make the  
3           argument, do they not, "It is not just you don't ask us  
4           about this, but we don't have any say over how that  
5           money is spent"?

6   MR AIKEN:   Yes, and that's the point I am --

7   CHAIRMAN:   That crops up later, does it not?

8   MR AIKEN:   It does, because the first point is welfare  
9           authorities were as a result, some of them, paying for  
10          services that were not even being provided in their  
11          area, and therefore the argument being made was that  
12          there was no benefit to the particular welfare  
13          authority.  So the example that you gave, Chairman,  
14          there was no benefit to the welfare authority in Down to  
15          contributing to services being provided in a voluntary  
16          home in Derry and perhaps vice versa., but the more  
17          acute issue perhaps is the second that you highlighted,  
18          Chairman, which is that the welfare authorities had  
19          a set of duties under the Act and had a care threshold  
20          over which one had to get, as it were, before the  
21          services kicked in, and that obviously had budget  
22          implications for what services needed to be provided.  
23          Yet here you had a mechanism that had them paying for  
24          services that they didn't have a say in the provision  
25          of.  They had no means to know how that money was being

1 spent, and in particular -- and we can then see this  
2 debate raging for the next fifteen to twenty years --  
3 that financial support was being given to a system, in  
4 this case the voluntary homes system, which accepted  
5 more children into it than would have met the care  
6 threshold under the Act, therefore, more children than  
7 would have been required to be supported by the welfare  
8 authorities.

9 The point essentially distils down to one of as the  
10 welfare authorities already had tight budgets, they were  
11 being expected to pay for services beyond what the Act  
12 itself required to be provided, and in the Child Welfare  
13 Council reports recognition is made over and over again  
14 about the debate between the statutory sector and the  
15 voluntary sector that too many children are coming into  
16 care of voluntary authorities which are then falling to  
17 be paid for which would never meet the care threshold  
18 under the Act.

19 So what I will say just so it is clear before we get  
20 into the detail of it that this debate in the end did  
21 not prevent what we will see to be very significant sums  
22 being paid under the capital grant scheme, but it's  
23 a tension that exists certainly as the grants are being  
24 commenced. Equally while Londonderry County outside the  
25 city is on a number of occasions seen in the

1           correspondence to be asking to be consulted and are  
2           aggrieved that they are being simply sent a bill by the  
3           Ministry and want to have some say in the process, at  
4           the same time, as we will come to see, Londonderry  
5           County Borough, the city version, was at the same time  
6           as facing the clawback mechanism of general application  
7           was itself making section 118(2) grants to Termonbacca  
8           and Bishop Street and eventually attempting to do that,  
9           which we will come to look at.

10           So I have taken hopefully -- I have taken some time,  
11           but hopefully it will have been some use to try to  
12           understand the framework that was operating. We have  
13           got three mechanisms of funding and we have a clawback  
14           mechanism in respect of two of those methods.

15   CHAIRMAN:   Could I just ask in relation to the operation of  
16           the clawback, you say that Londonderry County Borough  
17           Welfare Committee was facing a clawback and was making  
18           payments to Termonbacca. Does that mean they were  
19           concerned that the way the system operated meant that  
20           they could be effectively penalised because, on the one  
21           hand, they are making direct grants to Termonbacca but,  
22           on the other hand, they are then also being forced to  
23           contribute to a province-wide scheme so that the amount  
24           which they contributed through both to the voluntary  
25           sector was greater than benefitted people in Derry?

1 MR AIKEN: They don't make the point in that way, but that  
2 is the effect of -- the clawback was then paying for  
3 services across the country while at the same time if  
4 they made use of section 118(2), they were paying  
5 additional funds specific to the homes that were within  
6 their borough.

7 Now --

8 CHAIRMAN: This was another manifestation of the inevitable  
9 tension between local funding or local taxation for  
10 local services and an increasing share being borne out  
11 central taxation on the basis that the richer parts have  
12 to contribute towards the poorer parts --

13 MR AIKEN: Yes.

14 CHAIRMAN: -- which continues to this day.

15 MR AIKEN: It does, and when we get to the creation of the  
16 boards post-'73, in effect that becomes more acute,  
17 because that's central funding being given to the boards  
18 to then disseminate in the carrying out of their  
19 functions under the Act, and I will say one caveat to  
20 this. We can see what the position is. What I cannot  
21 do from the material available at present is indicate  
22 the extent of money that we are talking about in terms  
23 of just how much did the County Welfare Authority have  
24 from its own taxes compared to what it was receiving  
25 from the Ministry? That type of analysis has not been

1 possible. All that we can set out is the framework that  
2 was to operate and the issues from the papers that  
3 organisations appear to have had with it, but it's not  
4 possible and may never be possible to be able to be --  
5 to do an analysis that would allow financial clarity to  
6 be brought about the impact of this.

7 So in that broader context of the streams of revenue  
8 with this clawback mechanism on the side the general  
9 financial issues that sit in that framework will  
10 pervade, as I said, all of the Inquiry's work, but  
11 ironically Derry serves as a useful illustration of the  
12 issues that this general framework gave rise to. We  
13 will see some of those in some specific detail.

14 Now the issues that were at play, if we can look at  
15 SND-7484, please, are set out in a Ministry memo of 16th  
16 April 1953 in terms of the unhappiness of the welfare  
17 authorities. Can you just maximise that, please? You  
18 can see:

19 "Londonderry's argument for no taxation without  
20 investigation is at first sight reasonable, but the  
21 amounts involved are so small and the delay that would  
22 be involved in seeking the views of each welfare  
23 authority on each application would be so great that  
24 I think we should adhere to our existing practice. What  
25 would happen to every case if we agreed to this

1 suggestion is that several of the welfare authorities  
2 would refuse their consent and later their contribution  
3 on the grounds that they received no immediate benefit  
4 from the home and we would be left to apportion the cost  
5 among the less intractable or more generous with a vast  
6 amount of correspondence and calculation, which the  
7 matter does not warrant. I suggest we tell the  
8 committee that in all the circumstances we feel that the  
9 question of grants to voluntary homes is one we feel is  
10 best left to the Ministry's discretion."

11 So the clawback mechanism clearly was causing  
12 difficulty. We have a memo from 26th February 1954 --  
13 can we go to SND-7476, please -- which is a memo of  
14 a meeting between the Ministry and the Association of  
15 County and County Borough Welfare Committees. We can  
16 see -- some of the names of those present on behalf of  
17 the Ministry we will recognise. Miss Forrest, for  
18 instance, is in attendance.

19 Another point that we will come to, it was the view  
20 that it was an economical proposition to make use of  
21 voluntary homes, and there was wide scope for grants to  
22 these homes, as welfare authorities were paying 50% of  
23 these grants.

24 "The Ministry desired to know the policy of the  
25 authorities before commencing to pay grants on a wider

1 basis."

2 So there was a signalling from the Ministry in 1953  
3 that these grants are going to be paid. If we can  
4 scroll up to the next -- the page above, please. Yes.  
5 Just keep going up. If we just take the page back out  
6 to its normal size. Scroll down to the next page,  
7 please. This memo, if we can maximise that as much as  
8 we can, please -- that's not the right page. That page,  
9 please. Yes. Maximise that as much as we possibly can,  
10 please. This is 26th February 1954:

11 "Grants would only be paid to homes in existence  
12 when the new Children's Act came into operation and  
13 would be in respect of capital improvements or  
14 extensions only."

15 They give an example of Glendhu, where an old stable  
16 yard had been converted.

17 "Voluntary homes would have to produce financial  
18 statements. The main part of cost of maintaining the  
19 children in the voluntary homes would remain the  
20 responsibility of voluntary organisations. Giving such  
21 grants was more economical than direct provision of new  
22 homes by welfare authorities, as the voluntary homes do  
23 not charge full rate, as they have their own voluntary  
24 fund and labour. In fact, there was the question as to  
25 whether there should not be a halt in the provision of



1 statutory homes and the using of more voluntary homes.

2 Further advantages to voluntary homes were the  
3 training of staff and facility for emergency admissions.

4 The Ministry felt that where voluntary homes'  
5 standards were low they should have improvement. There  
6 were 21 voluntary homes registered with the Ministry.  
7 Four seemed to be in need of grants for improvement of  
8 premises, equipment and staff."

9 Now I will just pause there to say that may be  
10 a reference to the four Nazareth homes, because we have  
11 in 1953 Kathleen Forrest's minute following her review  
12 of all of the voluntary homes:

13 "But there may be more homes requiring grants.

14 Points made by the representatives of the  
15 Association of Welfare Committees.

16 [They] stated their surprise that the Ministry of  
17 Home Affairs had called a meeting for the purpose of  
18 informing welfare authorities that there were further  
19 grants to voluntary organisations in mind and not to  
20 give the welfare authorities' representatives  
21 opportunity to offer their protests against the  
22 Ministry's method of making grants ...

23 In the western part of the province the  
24 representatives from the authorities stated so far as  
25 ordinary classes of children were concerned they had

1       adequate accommodation in their own children's homes but  
2       they thought that voluntary homes might cater for  
3       children in special cases.

4               These authorities objected to making grants to homes  
5       that they were not likely to use.

6               It was not true that it was possible to obtain  
7       emergency admission to voluntary homes.

8               Not all voluntary homes were up to the standard of  
9       the statutory homes and it was difficult in some cases  
10      to obtain progressive reports as to the children  
11      accommodated in them.

12              Statutory homes were also taking care of  
13      servicemen's children.

14              It was not true at that time authorities had placed  
15      large numbers of children in the voluntary homes in the  
16      Londonderry area" -- in fact, at this point none had  
17      been placed in the voluntary homes -- "for it was  
18      contended that a great proportion of the children  
19      contained in these homes were from Eire."

20              Now I think the percentage was more like 20% than  
21      a great proportion:

22              "It was argued that the Ministry should make  
23      a scheme showing the homes to which it was intended that  
24      grants should be made, the amount of the grants,  
25      description of the capital expenditure for which they

1 were intended and the apportionment of cost to each  
2 welfare authority before the grants were made. The  
3 apportionment on the population basis was not fair in  
4 view of the fact that the largest users of these homes  
5 were the authorities in Belfast and the immediate area.  
6 Nor was it reasonable to apportion on the basis of the  
7 areas from which the children were admitted, for many  
8 children were admitted without the institution of the  
9 local -- without the initiation of the local welfare  
10 authority."

11 An issue is raised over the training of staff in  
12 voluntary homes, given the number of advertisements. So  
13 what that does say in fairness to the Ministry is there  
14 must have been regular attempts through advertisement to  
15 obtain training for staff.

16 Then there is an issue of the boarding out rates.

17 So that demonstrates the extent of the and the types  
18 of issues that were being discussed between the two  
19 representatives, as it were. That continued. For  
20 instance, SND-7465. On 9th August we have a letter from  
21 the County Londonderry Welfare Authority. Just maximise  
22 that, please. You will see that they are sending their  
23 contribution of £3, indicating that it has been passed,  
24 but then strongly protesting that the Ministry continues  
25 to give grants to voluntary organisations without prior

1 notice or approval of the welfare committee.

2 Another example of that -- there is another one in  
3 July 1955 which we don't need to go to. If I give you  
4 the reference, it is at SND-7449.

5 We have on 15th September 1954, if we can go,  
6 please, to SND-7461, a memo to the then Minister of Home  
7 Affairs, who was John Hanna, summarising the debate  
8 that's going on. If we can maximise that, please. So  
9 the basis of section 118 and the clawback is set out.  
10 The objections that are being made: paying for homes  
11 they are not making use of; saddled with expenditure  
12 without their knowledge; and some of the children are  
13 being accommodated from the Free State and they are  
14 being expected to pay for them.

15 The first response that we can see is that the  
16 expenditure we are talking about is said to be  
17 negligible. Well, that has a negligible burden on the  
18 rates. That may be so, but we are about to see very  
19 significant funding being issued. So that argument  
20 becomes less of a ground.

21 They then point out their response to the three  
22 points that are being made.

23 So the tension is there and the Ministry is not it  
24 seems accepting of the complaints of the welfare  
25 authorities. What does happen and what I am not going

1 to go into now is over a period of time efforts are made  
2 to have regular meetings with the overall body that met  
3 in respect of welfare authorities and to try and give as  
4 much notice as possible about grants that were being  
5 made so that steps could be taken to make provision in  
6 the budget.

7 CHAIRMAN: If we just scroll to the next page, there's  
8 a continuation.

9 MR AIKEN: There is, yes, a continuation. If we just keep  
10 going down, please.

11 CHAIRMAN: But there doesn't seem to be any manuscript  
12 notation on this from the Minister.

13 MR AIKEN: No. We will see a progression but down  
14 a slightly different line shortly, where the Minister is  
15 involved.

16 So that's the context with this clawback provision  
17 causing difficulty. The Ministry issued a memorandum on  
18 the main provisions of the 1950 Act as far as they  
19 related to voluntary homes. We can see that at  
20 SND-13697, please. This is a detailed document, which  
21 I am not going to go through now, but you can see at the  
22 top it is "Memorandum by the Ministry of Home Affairs on  
23 the Main Provisions of the Act affecting Voluntary Homes  
24 and Voluntary Organisations".

25 If we can scroll down to the next page, please, at

1 paragraph 14 at the bottom we can see the purpose of the  
2 memo is said to be:

3 "... is designed to assist voluntary organisations  
4 in their understanding of the new Act but it is not to  
5 be taken as an authoritative interpretation of the  
6 legislation. The Ministry will ... give [such]  
7 guidance"

8 on any other matter other than questions of law.

9 That appears to date from 1950, because we can see  
10 if we go back up to paragraph --

11 CHAIRMAN: Just a moment. If we look at paragraph 13, the  
12 Ministry say it does not intend to use the power under  
13 section 118 to defray any part of the cost of new homes  
14 and grants will not be made -- will not be available  
15 towards the ordinary maintenance or upkeep of  
16 a voluntary home.

17 So the Ministry appears to have taken the view that  
18 it wasn't going to contribute on a continuing basis to  
19 the maintenance costs or upkeep costs, in other words,  
20 the revenue costs of a voluntary home.

21 MR AIKEN: It is not going to cover the running costs.

22 CHAIRMAN: No, nor will it pay the cost of a new home, if  
23 there was to be such a thing.

24 MR AIKEN: No. If we go up to paragraph 7, please, we can  
25 see that the memo -- this is important, because the

1 policy develops over time, but we can see -- just scroll  
2 up a little more, please -- that section 7 of the memo  
3 -- paragraph 7:

4 "Section 101 empowered the Ministry to make  
5 regulations for the conduct of voluntary homes ..."

6 You will see in the last sentence:

7 "The regulations have not yet been made ..."

8 So we know the regulations are made in 1952. They  
9 have not been made at the time of this memo, and in the  
10 very bottom corner of the second page, if you just  
11 scroll down, please, you can see -- just keep going down  
12 to the very bottom, please -- you can see beneath  
13 "Ministry of Home Affairs" the coding and "50" is at the  
14 end of coding and of this type of coding we have come  
15 across the last -- after the last forward slash tends to  
16 be the year that the document dates from.

17 I was then going to show you paragraph 13, which was  
18 to say, having said this is pre-1952, pre the  
19 regulations, the policy in relation to section 118 and  
20 117 is set out at paragraph 13. Running costs are not  
21 intended to be met.

22 MS DOHERTY: Can I see the top of that page again?

23 MR AIKEN: Just scroll up, please.

24 CHAIRMAN: It is interesting if you look at 8, that would  
25 seem to suggest that the Ministry contemplated forcing

1 the voluntary home to hand over a child that was there  
2 for a long time to board it out --

3 MR AIKEN: Yes.

4 CHAIRMAN: -- and yet that never seems to have happened so  
5 far as we have heard it suggested in relation to these  
6 two homes.

7 MR AIKEN: Yes. There are again in the Child Welfare  
8 Council reports -- there is debate about how you would  
9 go about doing this and I am not -- need to check, but  
10 I am not sure when the regulations were actually made.  
11 So the Act in section 101 gives you what the regulations  
12 may cover, but when the regulations were actually made  
13 I am not sure that this provision followed through in  
14 that form, but that's something I will look at and come  
15 back to you on.

16 MS DOHERTY: The bit I was looking for was:

17 "They may also ..."

18 This is under 7:

19 "They may also allow the Ministry to call for  
20 particulars of the children in the home and to limit  
21 their number."

22 So it actually indicates that the Ministry, if that  
23 follows through in the memorandum, could limit the  
24 number of children in a voluntary ...

25 MR AIKEN: Yes, and they could have -- whether it follows



1 through in the regulation I will have to look at, but  
2 they could have done it by means of conditions attached  
3 to the registration.

4 MS DOHERTY: The registration or the grant, or the giving of  
5 a grant, but that's quite ...

6 CHAIRMAN: Of course, the local authorities are also  
7 reminded, as everybody is, about the provision of  
8 section 103 to advise and befriend children formally in  
9 the care of a voluntary organisation until they reach  
10 the age of 18, because in those days the school leaving  
11 age was what? 14 or 15 I think.

12 MR AIKEN: Most seem to be saying 15 or thereabouts, but  
13 this is -- the section required -- it was a duty on the  
14 welfare authority unless satisfied from their -- what  
15 they are being told by the voluntary home that they have  
16 been catered for in terms of aftercare, and you will  
17 recall we looked at a document where in the inspections  
18 examination in 1960 where Miss Wright was being assured  
19 -- it was not her. She was the Children's Inspector for  
20 the Ministry, but she was being assured in looking into  
21 the Feeny farm incident that the -- assured by the  
22 Sister in charge that aftercare was being provided and  
23 St. Vincent de Paul was the means by which that was  
24 achieved.

25 CHAIRMAN: Well, the evidence we have seen so far would

1 suggest that section 103 seems to have been a dead  
2 letter for the welfare authorities for many years.

3 MR AIKEN: Yes. So that -- that is an overarching memo that  
4 was issued about the provisions of the Act. It has  
5 a sister memo then specific to applying for grants. We  
6 can see that at SND-13696. Essentially the first three  
7 paragraphs set out the Ministry's policy. We can see:

8 "The Ministry of Home Affairs is prepared in certain  
9 circumstances to consider applications from voluntary  
10 organisations for grants towards improving the premises  
11 or equipment of a voluntary home, or for securing that  
12 the home is better provided with qualified staff. These  
13 grants will be designed to help homes which are doing  
14 valuable work but which are prevented by lack of funds  
15 from making improvements themselves."

16 So you can see immediately that the policy is  
17 infused with what will become the main issue as time  
18 goes on, which is the principle of financial need.

19 "The Ministry does not intend that these grants  
20 should weaken voluntary effort by taking the place of  
21 voluntary donations and endowments, and it is thought  
22 that the larger organisations will have adequate income  
23 from such sources to meet their requirements. Where,  
24 for example, an application is made in respect of one of  
25 a number of homes run by a voluntary organisation, the

1 resources of the organisation as a whole will be taken  
2 into consideration. Generally grants will only be made  
3 to organisations with limited resources maintaining  
4 individual homes.

5 Grants will not be paid towards the acquisition or  
6 construction of new premises, or towards the ordinary  
7 maintenance or general management of a home."

8 4 goes on to talk about conditions; 5, the  
9 information and documents that are required. If we just  
10 scroll down a little further to see can we see -- again  
11 we can see that this is guidance that's issued in it  
12 appears 1950, and that's important in the context of  
13 what we are going to look at, because the principle of  
14 financial need and looking at the organisation as  
15 a whole as opposed to a single home, because this is  
16 relevant in the context of the present two homes, was  
17 not something devised in response to an application from  
18 these homes. It was the policy that existed before the  
19 applications are ever made, and it appears from various  
20 documents that I will open to you that this was  
21 a translation across effectively from the policy that  
22 was operating already in England and Wales.

23 Central to it is the principle of financial need and  
24 a signalling that if there were large organisations at  
25 play, it is unlikely that grants are going to be

1       forthcoming from the government. Obviously it will be  
2       a matter for the Panel to consider, but the whole point  
3       is the government is gladly taking with both hands the  
4       benefits that come from a charitable organisation,  
5       because by its nature that places less financial  
6       pressure on the central funds raised through taxes.

7             We get to see this -- these two central tenets of  
8       the policy being worked out ironically through the two  
9       particular homes we are looking at in this module, but  
10      before I get into the specifics of that I want to look  
11      at -- try to look at the issues a little more generally.

12            There is a personal memo from 18th August 1955 that  
13      looks at this policy. That's at SND-7448. The memo  
14      sets out the consequences of the financial need  
15      principle being taken too far. This is very difficult  
16      to read and therefore I will read out such of it as  
17      I can translate, but we have:

18            "18th August 1955.

19            Dear Holden,

20            I have been looking into the question of the grants  
21      to voluntary organisations under section 118 of the 1950  
22      Act. As you know, that section is wide and really  
23      leaves the onus on the Ministry to decide the  
24      circumstances in which grants should be made provided  
25      they are for improvements of premises or the equipment

1 of the voluntary homes or for the provision of better  
2 qualified staff.

3 As you know, it was agreed in 1950 after the Act had  
4 been passed that grants here should be made on very much  
5 the same basis as grants in Great Britain and that they  
6 would be confined generally speaking to voluntary  
7 organisations which could satisfy us that they really  
8 had not the means to pay for necessary improvements.  
9 I think the time has now come for us to take a rather  
10 wider view. The Act clearly contemplates the  
11 continuance of voluntary homes and authorities --  
12 continuance of voluntary homes and authorises the giving  
13 of government grants and of grants by local authorities  
14 to any voluntary organisations who wish to improve their  
15 homes. I feel that if we are to restrict our grants to  
16 the basis agreed upon in 1950, it will not be long  
17 before there will be very few voluntary homes in  
18 existence and this I think would be a very undesirable  
19 state of affairs. The existence of these homes saves  
20 local authorities from providing homes of their own and  
21 enables a very large number of needy children to be  
22 looked after, and I think we should do all we can to  
23 encourage the organisations to continue the good work  
24 they are doing. If we always require a voluntary  
25 organisation to use up its resources for certain capital

1 work and insist on its providing for this work out of  
2 its own resources, we are taking the charitable few and  
3 saving the money of the uncharitable many who could help  
4 by means of exchequer or local authority grants.

5 What I have in mind is that we should consider each  
6 application for a grant on its merits and no longer turn  
7 an application down because a particular home seems to  
8 have fairly substantial resources. It has been  
9 suggested that we might make per capita grants to these  
10 organisations, but I am not in favour of that scheme,  
11 equitable though it might be. I am also not in favour  
12 of giving grants for extending premises of organisations  
13 because I feel that the welfare authorities might very  
14 reasonably object. It is their responsibility to  
15 provide homes and most of them have made this provision.  
16 It will therefore be unreasonable to compel them to  
17 contribute to voluntary organisations who wish to extend  
18 their activities when the welfare authority itself has  
19 already made what it considered sufficient provision for  
20 the needy children in its area.

21 We have already made grants, as you know, to  
22 Nazareth House and Glendhu and I think these are  
23 perfectly justified grants. We have before us at the  
24 moment an application from the St. Joseph's Babies Home,  
25 Ravenhill Road. If we observe the conditions we agreed

1 to in 1950, this application would have to be turned  
2 down. On the other hand, this organisation is doing  
3 excellent work and we think should be entitled to some  
4 government grant. I am writing to you personally before  
5 I put it up to the Minister or even discuss it with the  
6 Secretary, because if you yourself are not agreed, I do  
7 not think it is worthwhile taking the matter any  
8 further."

9 So there's a lot in that memo, but what in effect  
10 the author is signalling is certainly for those with  
11 larger locations with greater resources, not requiring  
12 them to use their charitable money that they are  
13 receiving for their capital projects and being a little  
14 freer with the interpretation of section 118 than the  
15 policy that was devised in 1950, which was purely  
16 centred on financial need. We will come shortly to see  
17 evidence of that happening.

18 MS DOHERTY: Do we know who this is written by?

19 MR AIKEN: Sadly not. It appears, if we scroll down, there  
20 is possibly a second page to it, because it has the  
21 "I" in the bottom right corner, but we don't have that  
22 second page and it is something we will have to look  
23 into to see if there is any other avenue by which we can  
24 find it.

25 I note that it is 1 o'clock and you have endured

1 a lot of detail already. I can continue if you wish or  
2 we can resume later.

3 CHAIRMAN: 2 o'clock.

4 (1.00 pm)

5 (Lunch break)

6 (2.00 pm)

7 Application re Marion Reynolds by MR O'REILLY

8 MR AIKEN: Chairman, Members of the Panel, before I resume  
9 on the issue of finance Mr O'Reilly on behalf of the  
10 Department has indicated to me that he wants to make  
11 an application to you about Marion Reynolds, the former  
12 inspector who provided a witness statement to the  
13 Inquiry on Friday. I am not sure whether all of you  
14 have had the opportunity to read that as of yet, but it  
15 is a detailed statement about her period inspecting in  
16 Bishop Street from early '90s onwards and it's being  
17 added to the bundle as we speak. I had indicated to  
18 Mr O'Reilly the provisional view of the Panel and he  
19 wishes to address you about that.

20 CHAIRMAN: Very well.

21 MR O'REILLY: I am obliged to my learned friend and to you,  
22 Mr Chairman, for listening to this application. As you  
23 know, I appear on behalf of the Department, which for  
24 a considerable time has been trying to trace the  
25 inspectors who carried out inspections at both



1 Termonbacca and in the latter years at Nazareth House.

2 At the end of the day the only one we have been able to  
3 trace is Miss Marion Reynolds.

4 CHAIRMAN: Does she still work for the Department?

5 MR O'REILLY: No, she does not, Mr Chairman. In fact --

6 I don't think I am giving anything away -- she has been  
7 providing advice to the Sisters of Nazareth in the  
8 course of this Inquiry.

9 What I am conscious about, and as will be evident  
10 from the Department's written submissions, the  
11 Department has already in the Hughes Report been found  
12 justly of criticism for the nature and extent of  
13 inspections particularly between 1960 and 1980. The  
14 Inquiry will be aware probably from the evidence of  
15 Dr Hilary Harrison as well as other material that in  
16 both 1983 and 1986 the organisation then known as SWAG  
17 carried out inspections of the relevant homes and then  
18 issued reports. My learned friend Mr Aiken identified  
19 in a 1983 report the investigation had failed to reveal  
20 or identify for inspectors the requirement to ensure  
21 that the administering authority was attending to its  
22 own statutory duties. That was cured in 1986.

23 Now while the Department is prepared to accept  
24 understandable criticism, it wants to stress to the  
25 Panel that inspection systems since 1986 right until the

1 end of the period that you are investigating, 1995, was  
2 a vast improvement -- I am not saying perfect -- but  
3 a vast improvement. We have the benefit of Ms Reynolds  
4 having been an Inspector from about 1990, and in her  
5 statement she has set out details of the frequency of  
6 the inspections and the subject matter of the  
7 inspections, with one inspection in particular lasting  
8 five days.

9 Now it would be our respectful submission that with  
10 the absence of complaints, as it were, in the latter  
11 stage, latter period of the Inquiry's investigations it  
12 would be appropriate to acknowledge that those new  
13 systems put in place in some way assisted both in  
14 reduction of abuse and in the detection of such abuse as  
15 occurred.

16 Now Mr Aiken was good enough to contact me over the  
17 week-end and indicate his view that, while the statement  
18 of Ms Reynolds would happily be admitted, it wouldn't be  
19 necessary to call her as a witness. My response to that  
20 was well, I am happy that that is the position, provided  
21 that the Inquiry was not the subject of suggestions that  
22 there were any deficiencies in the Department's system  
23 of inspection generally from 1983 but in particular from  
24 1986, and that should count as much in terms of the  
25 Inquiry's ultimate report as does the period when the

1 inspection system was in part deficient.

2 So really what I was asking Mr Aiken or indeed  
3 Ms Smith to do was to make an acknowledgment that the  
4 system that existed from the mid-1980s until 1995, the  
5 end of your period, is not being the subject of any  
6 criticism, and I would happily accept that on behalf of  
7 the Department as an alternative to Ms Reynolds coming  
8 along and having to testify.

9 So my application is either she should come and  
10 testify and to confirm what I hope the position is, or  
11 alternatively, to avoid that, Mr Aiken or Ms Smith to  
12 acknowledge the beneficial nature of the inspection  
13 system for that last nine to ten years.

14 CHAIRMAN: Well, if I can take the second point first,  
15 Mr O'Reilly, the Inquiry is not in a position to give  
16 any such indication until it completes its consideration  
17 of all the evidence.

18 MR O'REILLY: I am sorry, Mr Chairman. Are we not at that  
19 stage yet for the module?

20 CHAIRMAN: The Inquiry has not finished considering all of  
21 the evidence. We are listening to what people have to  
22 say but we have not reached any views yet. That's why  
23 I say we're not in a position to say whether or not  
24 anybody will be subject to criticism.

25 MR O'REILLY: I was not asking the Panel to do it,

1 Mr Chairman, rather counsel, because --

2 CHAIRMAN: With respect, counsel speak on behalf of the  
3 Inquiry in these matters in the sense that they put  
4 forward the point of view. Now ultimately it is the  
5 Inquiry that determines these things.

6 The second point is, having looked at this report  
7 myself, I am bound to say it has come extremely late and  
8 I don't know that there's any real explanation for that  
9 I regard personally as satisfactory.

10 MR O'REILLY: I simply explained the efforts the Department  
11 has made, particularly through its pensions service, to  
12 try and track down former inspectors. Unfortunately and  
13 somewhat reluctantly, because of Ms Reynolds' position  
14 as an adviser to the Sisters of Nazareth, it was left to  
15 a time when we were aware the Inquiry was about to close  
16 and felt it more appropriate to put Ms Reynolds forward  
17 as someone who had the obligations of the SSI Inspector  
18 for the latter number of years.

19 CHAIRMAN: Be that as it may, she speaks from personal  
20 knowledge to matters from 1990 onwards. Isn't that  
21 right?

22 MR O'REILLY: That's right.

23 CHAIRMAN: We have received her statement and it will  
24 receive the consideration we decide that it will require  
25 and deserve. We don't need to hear from every witness.

1           Indeed, I want to make it clear that we are not in any  
2           way accepting that we will call a witness whom we are  
3           not persuaded will advance the Inquiry's work materially  
4           just because a party wants us to.

5   MR O'REILLY:  No, I understand that, but, with respect,  
6           Mr Chairman, in fairness what you have heard so far has  
7           been for the most part criticism of the Department's  
8           system of inspection.

9   CHAIRMAN:  That relates to earlier periods that Ms Reynolds  
10           can't speak to.

11  MR O'REILLY:  I wasn't attempting to suggest she did,  
12           Mr Chairman.  What I was saying was --

13  CHAIRMAN:  I fail to see the relevance of references to '83,  
14           '84 and '85.  She can only speak for her work from 1990  
15           onwards.

16  MR O'REILLY:  I appreciate that, but Dr Harrison gave  
17           evidence without ever having been an inspector and was  
18           permitted to give evidence going back to 1950,  
19           Mr Chairman.

20  CHAIRMAN:  I understand that, but what does that have to do  
21           with Marion Reynolds' evidence?

22  MR O'REILLY:  Because in my respectful submission the Panel  
23           has heard little other than criticism of the  
24           Departmental system of inspections.

25  CHAIRMAN:  But we are aware of what Ms Reynolds says and

1 I can assure you we will take it into account.

2 MR O'REILLY: Well, if that's your view, Mr Chairman,

3 I have --

4 CHAIRMAN: I am simply asking you a question as to why you  
5 think it is necessary for to us hear this witness after  
6 the Department put forward Dr Harrison as  
7 a comprehensive witness.

8 MR O'REILLY: A comprehensive witness without personal  
9 experience of inspections.

10 CHAIRMAN: I understand that. Now you have a witness who  
11 speaks to 1990-95.

12 MR O'REILLY: Yes. I respectfully suggest --

13 CHAIRMAN: We will take it into account.

14 MR O'REILLY: I understand that, but since that's a specific  
15 period within the remit of the Inquiry, the last five  
16 years, and we have direct evidence or we can have direct  
17 evidence, accepted and openly accepted or contradicted,  
18 whatever the case may be, Mr Chairman, in my respectful  
19 submission it is important and it is important that the  
20 Department's position in relation to the system of  
21 inspection then is accepted or alternatively criticised,  
22 but not just treated as being an account in writing  
23 handed into the Inquiry.

24 CHAIRMAN: Well, that is to demean the nature of the  
25 Inquiry's work.

1 MR O'REILLY: No, it is not.

2 CHAIRMAN: No, Mr O'Reilly. We don't treat evidence like  
3 that.

4 MR O'REILLY: I wasn't in any way -- simply -- I am sorry.

5 CHAIRMAN: It wouldn't consider it an appropriate way to  
6 describe the Inquiry's work.

7 MR O'REILLY: I am sorry if that's --

8 CHAIRMAN: The Inquiry has been faced after many months of  
9 work with a statement produced over the week-end by your  
10 clients, and you are asking us -- we have already fixed  
11 our programme -- to call a witness in respect of whose  
12 evidence there does not appear to be any great issue.  
13 Now I hear what you have to say about the reasons for  
14 that.

15 MR O'REILLY: I have nothing further to say, Mr Chairman.

16 CHAIRMAN: Well, we will consider your application in due  
17 course and you will be notified later this afternoon  
18 when we have had a break to consider this.

19 MR O'REILLY: I am sorry. I won't be able to stay this  
20 afternoon, Mr Chairman. My wife is in hospital at the  
21 moment.

22 CHAIRMAN: I am sure your instructing solicitor will pass to  
23 you --

24 MR O'REILLY: Yes, of course.

25 CHAIRMAN: -- the decision of the Inquiry.

1 (Mr O'Reilly withdrew)

2 Submissions on finance by COUNSEL TO THE INQUIRY (cont.)

3 MR AIKEN: Chairman, Members of the Panel, just before we  
4 broke for lunch we were looking at a memorandum from  
5 August 1955, which was a communication to Holden and  
6 an examination and discussion about the financial need  
7 principle that was at the core of the Department policy  
8 from 1950. We are shortly going look at a memo from the  
9 then Minister of Home Affairs in February '56, Mr Hanna,  
10 but just before we do that in terms of the chronology on  
11 13th January 1956 -- if we can bring up, please,  
12 SND-7504. Now to set what we are about to see in  
13 context, there is an application that has been made in  
14 and around this period of time from the congregation in  
15 respect of a proposal to build a play hall at Bishop  
16 Street, and we are going to look when we get into the  
17 specifics at the processing of that application, but  
18 this is a letter of 13th January 1956 and from the  
19 address it appears to be from the then MP for Derry  
20 City, Mr Jones, and it is written to Mr Hanna, who at  
21 that point is the Minister of Home Affairs. They appear  
22 to have had a discussion which seems to relate to the  
23 issue of grants. You will see his first reaction was:

24 "I could not accept such a proposition at all" -- it  
25 is not clear what that was -- "and on reflection I am



1 bound to say that that is even more definitely my  
2 attitude. Within that principle, however, I am only too  
3 delighted to help you in any way possible and I should  
4 welcome an opportunity of doing so. But if ultimately  
5 you feel that at your level you cannot take the desired  
6 action, then I would be very much obliged if I might be  
7 informed in good time as, in such circumstances and as  
8 indeed you suggested yourself today, I would feel bound  
9 to approach the Prime Minister", who at that stage was  
10 Basil Brooke, "personally in order that no stone might  
11 be left unturned to prevent such a very unfortunate and  
12 I believe wrong step being taken.

13 I would again thank you very much indeed for your  
14 consideration in letting me know of this. I can assure  
15 you that I deeply appreciate it.

16 So far as the other matter is concerned ..."

17 That seems to be about something else. The reason  
18 we are able to say this appears to be about a grant is  
19 because of the next letter we will shortly see. This is  
20 13th January 1956, and on 1st February 1956, if we look  
21 at, please, SND-7415, we have what is a memo from the  
22 Minister himself. He says:

23 "I am very greatly concerned about the operation of  
24 section 118 of the 1950 Act. Under this section the  
25 Ministry may pay grants in certain circumstances to

1 voluntary organisations where it appears to the Ministry  
2 requisite that grants should be made. I am not at all  
3 sure what the word 'requisite' means in this context.  
4 Is it necessary for the organisation to prove that the  
5 money is needed to enable the work to be carried out --  
6 carried on or is it a matter of proving that some  
7 particular works are needed?

8 Subsection (2)", which relates to welfare authority,  
9 "makes provision for grants being made by a welfare  
10 authority with the consent of the Ministry. In this  
11 subsection no indication is given of the considerations  
12 to be taken into account in the making of such grants or  
13 in the exercise of the Ministry's discretion.

14 We have a situation in which the Ministry can make  
15 grants, 50% of which must be paid by welfare authorities  
16 without reference being made to the welfare authorities  
17 in the matter of the grants or the need for the sum.  
18 This is a clear instance of taxation without  
19 representation. A welfare authority can make a grant  
20 but only with the consent of the Ministry. The  
21 section will be bound to create difficulties even if  
22 administered with the utmost goodwill on all sides. It  
23 occurs to me that we could have an instance where  
24 a welfare authority refuses grant and the Ministry could  
25 come along and make the grant, overriding the view of

1 the welfare authority. This is wholly unsatisfactory.

2 In the circumstances presently prevailing in  
3 Northern Ireland grants to voluntary homes must  
4 necessarily be a source of great political danger. In  
5 my opinion it is unwise to increase the difficulties for  
6 this Department in the political field. The whole  
7 matter will have to be reviewed and I would like to have  
8 suggestions as to possible courses which we could adopt.

9 I hesitate to give a decision on the case presently  
10 before me. Apparently it was agreed that certain  
11 improvements were necessary at Nazareth Lodge", that's  
12 in Belfast, "but agreement was not reached on the extent  
13 of the improvements. Those responsible for  
14 administering the home were more ambitious than the  
15 Ministry thought was reasonable. While negotiations  
16 were being carried on the organisers proceeded with  
17 their own scheme. In equity it might appear that the  
18 Ministry should make the grant of such sum as would have  
19 been payable had their own scheme been adopted, but if  
20 such a course were followed, it would leave it open to  
21 any voluntary organisation which had funds available to  
22 proceed with elaborate reconstruction using their  
23 available funds for such purposes and leaving the State  
24 with the responsibility of providing a contribution  
25 although their advices had not been accepted. I just

1 don't like it and I think that any decision will have to  
2 be withheld until we have the whole matter put in  
3 order."

4 Then there are a series of annotations added. It is  
5 said:

6 "This is far reaching. It would be a good idea if  
7 you would take some early opportunity of finding out  
8 exactly how the business is working in Great Britain  
9 particularly in regard to these welfare contributions.  
10 I don't think it can be done on paper. A few bales of  
11 malt in the appropriate quarter is indicated."

12 Then we see slightly further down:

13 "I shall certainly see Mr Gwynn."

14 I am assuming he is the recipient of the bales of  
15 malt.

16 "In the meantime what action are we to take on this  
17 and the Derry applications?"

18 Then it is said:

19 "We may await the outcome of the Minister's letter  
20 to the Prime Minister."

21 So this seems to be the Minister of Home Affairs  
22 taking up the debate we were looking at that the welfare  
23 authorities were feeling hard done by by capital grants  
24 being made to voluntary homes, which then had an adverse  
25 impact on the budgets of welfare authority homes. We

1 will see that ultimately being resolved in the creation  
2 of the Maconachie Committee, which presumably was to  
3 deal with the mooted political danger that was seen in  
4 decision-making of this type. Whether that's to do with  
5 the religious operation of voluntary homes being more  
6 with one community than another or whatever the  
7 rationale is that's not clear from the papers, but it is  
8 certainly evident when we come to look at the setting-up  
9 of the Maconachie Committee that the purpose was to put  
10 clear blue water between it and its decisions over  
11 whether a grant should be made and the Ministry itself  
12 in making those decisions.

13 So that memo indicates there is a letter to be  
14 written by the Minister to the Prime Minister. Up to  
15 this point we don't have the letter itself, although we  
16 are going to have another look to see if that could be  
17 found, but on 9th February, so eight days later, at  
18 SND-7503, please, there is another letter from the MP  
19 from the area to the Minister. You will see:

20 "I am very much obliged to you for telling me about  
21 the present position in relation to the proposed grant  
22 to the Nazareth home in Londonderry. On further  
23 reflection about this matter I am even more strongly  
24 convinced that this grant should not be made at any time  
25 but particularly at the present time when public monies

1           should be so carefully guarded. As you know, I take  
2           a very strong view about this matter and, if it should  
3           go through, I could not undertake even to give outward  
4           support to the proposition. I do urge that this grant  
5           is not made and I feel that the matter is one of  
6           sufficient importance to be put to the Prime Minister --  
7           in which I am so glad that you agree -- and also I would  
8           suggest that it is one that might be put before the  
9           party.

10           Again I would say how grateful I am to you for  
11           having kept me in the picture over this matter."

12           Now we will shortly see that the grant that's being  
13           referred to was, in fact, made, but it is clear that  
14           there is an issue that is, as it turns out, centring in  
15           on Londonderry.

16           On 14th May 1956, if we go to SND-7416, there is  
17           a memo to the Minister of Home Affairs, who by now in  
18           May 1956 is Terence O'Neill. This signals the  
19           commencement of the Maconachie Committee, and raising  
20           one of those issues that tends to trouble the Civil  
21           Service from time to time about creating legitimate  
22           expectations. So he says --

23           CHAIRMAN: Who is the author of this memorandum?

24           MR AIKEN: The author is -- if we just scroll down to the  
25           second page, please -- just keep going -- I think the

1           initials are "AR".

2   CHAIRMAN:   Yes.

3   MR AIKEN:   Perhaps someone in the back would check that for  
4           me from --

5   CHAIRMAN:   Just you said Captain O'Neill was Minister of  
6           Home Affairs.

7   MR AIKEN:   Yes.

8   CHAIRMAN:   I don't think that's correct.   Finance perhaps.  
9           Mr Topping became Minister of Home Affairs after  
10          Mr Hanna I am fairly sure.

11   MR AIKEN:   I am sure I will be proved to be incorrect, but  
12           I will check that over our next break, but it is a memo  
13           that -- if we scroll back up to the top, it is always  
14           possible that this is then in the Finance Department,  
15           but it is --

16   CHAIRMAN:   It may simply be to the new Minister.

17   MR AIKEN:   To the new Minister in Home Affairs.

18           "I am afraid this is an extremely difficult and  
19           troublesome matter concerning certain applications for  
20           grants ..."

21           Then it sets out Nazareth Home, Londonderry.   That's  
22           the one I mentioned, which is the play hall at £10,000,  
23           as it turns out:

24           "... and to the Nazareth Home in Belfast, which is  
25           a very substantial matter that we will see shortly.

1 Further grants to both these homes, particulars are  
2 given below this minute."

3 There is another grant for fire precautions for  
4 Bishop Street that we will see shortly. Without --  
5 obviously if you want to take the opportunity to read  
6 the detail of it, but essentially he is raising the  
7 issue that they have decided to set up the Maconachie  
8 Committee. That's putting this clear blue water between  
9 the Ministry and the decision to make the grant, and the  
10 concern is that they would be seen to be being unfair  
11 if, having signalled their intention to make these  
12 grants in principle, to then pass the decision off to  
13 the Maconachie Committee and be seen to be on one view  
14 going back on their word to make the grant or trampling  
15 on the new committee in the sense of having these  
16 decisions already in process and continuing to make them  
17 rather than referring them to the Maconachie Committee.

18 If we just scroll down a little, please, you will  
19 see the paragraph:

20 "The point here concerned is whether if a voluntary  
21 home receives an unexpected windfall in some years so  
22 that its financial position for that particular year is  
23 exceptionally good, this should operate against the  
24 making of grants. It is a point that can be argued with  
25 considerable force in either direction and I think that



1       it certainly should go before the committee for its  
2       consideration."

3               So he is identifying in the paragraph before that  
4       a point of principle, because in a number of cases the  
5       voluntary home has proceeded with the work without  
6       waiting for approval, which then goes to the financial  
7       need test, because how could they do that? If they  
8       really needed the money by way of grant, then they  
9       wouldn't have been able to get on with the work.

10              He reflects that it is better that all these matters  
11       are referred to the Maconachie Committee to be looked  
12       at. They are going to try to deal with any difficulty  
13       that creates with those representing the homes.

14              If you just scroll down, please, he sets out what  
15       the new committee is going to be asked to do and there's  
16       a summary in the paragraph that begins:

17              "Applying this to the voluntary home, it would mean  
18       that here again the committee would not be asked to  
19       scrutinise the detailed plans. They would simply be  
20       furnished with a sufficiently full description of the  
21       works the home proposed to carry out and an estimate of  
22       what would it would cost. They would not say in the  
23       case of a kitchen lay-down whether an Aga cooker was to  
24       be purchased or whether they were to cook by gas or any  
25       details of that kind, and you will notice by the way

1 that ...", and I think that's Mr Hanna's letter, "... to  
2 the Prime Minister seeks in effect the Prime Minister's  
3 approval and sets out that he would propose to take  
4 certain persons into his confidence before making  
5 anything public. I expect you would probably like to  
6 act with the Prime Minister's agreement in whichever  
7 course you decide to take, but I think Mr Hanna's  
8 proposals as to the consultations no longer necessarily  
9 apply, having regard to the setting-up of the  
10 committee."

11 So while we have an incomplete picture from those  
12 documents that we have, what's emerging is certainly  
13 unhappiness amongst those who might be engaged with the  
14 welfare authority's points at money being granted to  
15 voluntary organisations, and the response of the  
16 Ministry of Home Affairs is to set up what became known  
17 as the Children's Homes and Training School Committee,  
18 that's the Children's Homes and Training School  
19 Committee, which is colloquially known as the Maconachie  
20 Committee.

21 Now in summary -- and we can see this -- we don't  
22 need to bring it up, but it is SND-6019 -- the purpose  
23 of the Maconachie Committee was to advise the Prime  
24 Minister whether or not the circumstances appear to be  
25 such as to call for special financial assistance from

1 public funds under the Act. We know from the work that  
2 we did and the inspections that there were visits from  
3 the Maconachie Committee in 1957, for instance, to  
4 Termonbacca in examining a grant application that they  
5 had.

6 Now of interest to try to set the broad picture is  
7 a document -- if we can bring up, please, SND-5800 --  
8 and this is a 1958 Ministry record of the grants that  
9 were made to that point. If we can just maximise that  
10 as much as possible, please. You can see from --  
11 obviously we have the names of the voluntary homes, the  
12 type of work being done, the cost of the project, then  
13 the grant that was approved and in percentage terms what  
14 that related to the whole, and then you can see the date  
15 of the approvals down the right-hand column. What we  
16 know at this point -- and I am not going to bring it up  
17 -- but from reference HIA-1440 we know that at this  
18 point in time there are twenty voluntary homes.

19 CHAIRMAN: I am sorry to interrupt, but what is the date of  
20 this document? Do we know, Mr Aiken?

21 MR AIKEN: It is 1958, Chairman. There isn't a specific --  
22 if we just scroll down to the next page, please.

23 CHAIRMAN: It obviously is post-September 1958, because  
24 there are a number of approvals from the Ministry of  
25 Finance given on 12th September.

1 MR AIKEN: Yes.

2 CHAIRMAN: So presumably it postdates that.

3 MR AIKEN: Yes. If we just scroll down a little further,  
4 please, that's some that are already made.

5 CHAIRMAN: Yes. Could we go back to the previous page?

6 MR AIKEN: Go back up, please. Now what I want to use this  
7 document to do is to try and put some context to the  
8 discussion that we have been having. As I say, there  
9 are twenty voluntary homes, and what this document shows  
10 is that all four of the Nazareth homes receive funding  
11 for various different purposes.

12 By way of example, if we look at the Nazareth Lodge  
13 Children's Home, you can see that there are a series of  
14 grants being paid. They are listed from 1 through to 5.  
15 Now they total approximately £25,000 and they are paid  
16 between 1955 and 1958. In today's terms that is the  
17 equivalent of half a million pounds.

18 That raises a number of points that I will highlight  
19 for your consideration. One is if we return to asking  
20 the question of Kathleen Forrest's memo, "What was done  
21 to these homes that needed a complete overall?", well,  
22 one answer appears to be the extent to which financial  
23 contributions were made between 1955 and 1958.

24 A second is you can see perhaps to a greater extent  
25 why there was such consternation from the welfare

1 authorities, because all of this money will end up  
2 coming out of their budgets. I shouldn't say "all of".  
3 50% of the total being paid will come out of their  
4 budgets.

5 CHAIRMAN: So they are expected to make a contribution of  
6 25% in round terms.

7 MR AIKEN: Yes. Some of these -- we can see in the  
8 percentage column some -- there's as high as --

9 CHAIRMAN: 25% of the money the government pays out I meant.  
10 The government -- no, it is not correct, because the  
11 percentages are different.

12 MR AIKEN: Yes. Of the total money that the government pays  
13 out 50% will be recovered from the welfare authority as  
14 a matter of practice.

15 CHAIRMAN: So where Manor House, Lisburn or Glendhu gets 70  
16 or 73%, half of that will be paid by the welfare  
17 authorities is the expectation.

18 MR AIKEN: Yes. Essentially rather than the percentages for  
19 this purpose the sums, if you like, if one totted them  
20 up, that total figure will have been -- 50% of that will  
21 have been recouped from the welfare authorities across  
22 a series of years.

23 CHAIRMAN: And in relation to Nazareth House play hall, it  
24 is going to cost £10,000. The Ministry is paying 5 and  
25 the local authorities across the province will be

1 expected to contribute 50% of that 50%.

2 MR AIKEN: Yes.

3 CHAIRMAN: Then if we judge by the earlier pages you have  
4 shown us, the County Borough Welfare Committee in Derry  
5 would pay a per capita contribution to that, depending  
6 on its population.

7 MR AIKEN: Yes.

8 CHAIRMAN: So both they and central government would be  
9 making a direct contribution to the provision of this  
10 facility --

11 MR AIKEN: Yes.

12 CHAIRMAN: -- ultimately.

13 MR AIKEN: Yes, and the point that the welfare authorities  
14 as a whole were making was that, "You are taking these  
15 decisions about money that's supposed to be in our  
16 control and we have no say in the matter".

17 CHAIRMAN: If we just go to the second page, because I think  
18 I noticed a reference there to -- yes. We see it for  
19 Glendhu and Nazareth Lodge in Belfast. Quite  
20 substantial grants for provision of qualified staff --

21 MR AIKEN: Yes.

22 CHAIRMAN: -- though it doesn't make it clear whether that  
23 is to train staff or to pay for staff.

24 MR AIKEN: No, and it may be when we come to module 4,  
25 I will be able to flesh that out a bit more as to what

1 exactly was being done, but this was to try and give  
2 an idea of the context --

3 CHAIRMAN: Yes.

4 MR AIKEN: -- because in addition I think, when I did the  
5 maths to this, if you take all of the grants that were  
6 given by 1958, they come to I think just over what would  
7 equate to £750,000 in today's money, and the vast  
8 majority of that money has been given to the four  
9 Nazareth homes. Over the next break I will just check  
10 the maths if that's -- so I am giving it to you  
11 precisely, but if we scroll back up a little, please,  
12 you can see that there is some money being paid to  
13 Glendhu, to Manor House and there's a second payment to  
14 Glendhu, but beyond that the rest of the money -- and  
15 the Nazareth Lodge version is the most significant in  
16 terms of amount -- is being paid to the Nazareth homes.

17 CHAIRMAN: Of which I think, looking at the figures, the  
18 great bulk of it is going to Nazareth Lodge in Belfast.

19 MR AIKEN: Yes, it is. Now I should say these are  
20 applications that have been made. We are going to  
21 shortly come and look at it. You can see the  
22 Termonbacca improvement of kitchen apartments. That's  
23 an allocation that was made by the congregation through  
24 the involvement of Mr McAteer, MP, and Mr Maxwell, the  
25 solicitor, to the Ministry, and it was then one of the

1 grants that ultimately went through the Maconachie  
2 Committee and saw the redevelopment of the kitchen. We  
3 will look at that in due course.

4 So that's just one example of a context document  
5 that perhaps assists in trying to understand what might  
6 on the face seem in today's terms small amounts of money  
7 but are, in fact, in terms of value very substantial  
8 sums.

9 There is a similar record, just to bring it towards  
10 the end of period, in 1978/'79 if we look at SND-6135,  
11 and by this stage we are now in the Department of Health  
12 & Social Services, but it is indicating grants made by  
13 the Department of Health and Social Services in 1978/'79  
14 to voluntary organisations. You can see the list that  
15 apply in '78/'79. If we just scroll down, please. So  
16 there are no Nazareth grants in that section. They  
17 indicate in that financial year in effect £125,000 was  
18 given by way of capital grant.

19 Now to take us back to the provisions under the 1950  
20 Act, the Act, as we have seen in other contexts,  
21 provided for a Child Welfare Council to examine and  
22 report on aspects of child care and, as we know, there  
23 were a series of councils over the next twenty years.  
24 The first reported in 1956 in a publication called  
25 "Children in Care" and I just want us to look at --



1 that's at SND-1742, please. Sorry. That will be  
2 HIA-1742. This is the front cover of "Children in Care"  
3 in 1956. If we look at HIA-1744, we can see the very  
4 wide range of individuals who sat on the Child Welfare  
5 Council. The one name that's blacked out is that of  
6 **BR 39**, who was very influential, if not the  
7 top person, in the De La Salle Order in Northern  
8 Ireland. He was head of the home at St. Patrick's, but  
9 he sat on a number of committees and interacted with  
10 government and sat on the Child Welfare Council.

11 So this group of individuals made up the first  
12 council, and they examined the issue of funding of  
13 voluntary homes from paragraphs 112 to 116. If we can  
14 go to HIA-1766, please, now they give two principal  
15 methods, and I haven't come to -- what is 112(a) is one  
16 that I haven't yet touched on. That's the welfare  
17 authorities paying maintenance grants for children who  
18 have been placed in a voluntary home at the request of  
19 the authority concerned.

20 Now the language here is unfortunate in trying to  
21 keep all of these things separate. They are not  
22 maintenance grants. They are a maintenance charge per  
23 week per person that's placed in the voluntary home by  
24 the welfare authority and we will come to that as  
25 an issue.

1           The second aspect then at 112(b) is grants  
2           towards --

3   CHAIRMAN:   So what you are really saying is that this should  
4           be interpreted as meaning at least in technical terms  
5           the charge which the voluntary home makes to the welfare  
6           authority for accommodating children at welfare  
7           authority's expense.

8   MR AIKEN:   Yes.  It's just an unfortunate -- in trying to  
9           keep the various streams, as I am calling them,  
10          separate, this is to conflate some terminology which  
11          might confuse.  They are not paying maintenance grants.  
12          They are paying --

13   CHAIRMAN:   They are buying a service.

14   MS DOHERTY:  They are maintaining the child.

15   MR AIKEN:   They are maintaining the child and paying for  
16          that.

17   CHAIRMAN:   The council says the voluntary homes in  
18          calculating their charges should be essentially more  
19          realistic to include depreciation of furniture and  
20          premises and so on.

21   MR AIKEN:   Yes.

22   CHAIRMAN:   So that they are not undercharging --

23   MR AIKEN:   Yes.

24   CHAIRMAN:   -- and therefore presumably not getting the State  
25          to pay the proper rate, as it were, to represent all the

1 many different financial elements that have to be taken  
2 into account by the voluntary home.

3 MR AIKEN: Yes. Then at (b) we have the section 118(1)  
4 capital grants, which is the Ministry making grants  
5 towards capital expenditure and recovering 50% of these  
6 grants from welfare authorities by means of a levy  
7 that's divided proportionately according to the  
8 population in each authority's area. They record:

9 "Some objections have been expressed that this  
10 represents an unfair method of assessment, since it  
11 bears no relation to the actual use of the home by the  
12 authority. It is difficult to devise a satisfactory  
13 alternative, but we commend the recently introduced  
14 practice of prior consultation by the Ministry about its  
15 grant proposals with the Association of Welfare  
16 Committees. We also suggest that the Ministry might, if  
17 desirable, consider funding these grants over a period  
18 of ten years so that the welfare authorities should be  
19 billed for loan charges over such a period and thereby  
20 could make more satisfactory estimates of their future  
21 commitments. We further commend that such capital grant  
22 should be available for the provision of new premises  
23 where a voluntary organisation wishes to transfer to  
24 a new site or for more suitable premises."

25 So there's three things: they are commending the

1 step that has already been taken; their suggestion of  
2 effectively trying to spread out the recovery process,  
3 the clawback provision over ten years, and I am not  
4 aware of any suggestion the Ministry took that up.  
5 I imagine it would have been an administrative burden  
6 that might not have been welcome. The third aspect is  
7 to interpret the suggestion of new premises, ie if  
8 a home -- if an organisation has four homes and wants to  
9 build three more to take it up to seven, that wouldn't  
10 be covered, but of the four homes, if they want to  
11 replace the fourth home by moving it a little further  
12 down the street or rebuilding it in some way to make  
13 what is a provision that's already there better, then  
14 section 118 shouldn't exclude that.

15 We looked at the Nazareth Lodge grant, which was the  
16 replacement of an existing building. So it seems that  
17 section 118 was being interpreted in that way, ie, "You  
18 can replace a building you already have and we will look  
19 at the capital expenditure of that, but we won't cover  
20 you expanding your collection of homes".

21 They then go on to say:

22 "These two methods of financial assistance do not  
23 meet the urgent needs of many of the larger homes, since  
24 in many cases the greater proportion of children in some  
25 of these homes is not placed by the welfare authorities

1 and therefore no grants available. Since it is possible  
2 for any child in need of care to be brought to a welfare  
3 authority, all of whom are willing to place such a child  
4 in a suitable voluntary home if it is not possible to  
5 arrange for adoption or boarding out, we cannot  
6 recommend any form of grant aid for a child placed  
7 directly in a voluntary home without an approach being  
8 made in the first place to the welfare authority. Such  
9 a practice would raise problems of policy in relation to  
10 further public control of the management of voluntary  
11 homes, which we do not consider appropriate to discuss  
12 at the present time."

13 So the Child Welfare Council is encouraging, if you  
14 like, the type of step that **SND 483** took in her  
15 January 1976 letter, which is to invite the welfare  
16 authority to take children into care, whether that means  
17 they continue to reside in the voluntary home, and if  
18 you remember from that letter, the response from the  
19 Board was to agree to do that and indicate that they  
20 should remain in the voluntary home pending attempts to  
21 board them out. So it's suggesting greater effort made  
22 to bring children to the attention of the welfare  
23 authority.

24 It then recognises at 114 that:

25 "Voluntary organisations which wish to carry out

1 a policy of boarding out are at present at  
2 a disadvantage, because it is financially impossible for  
3 many of them to pay boarding out allowances as high as  
4 those of welfare authorities. They recognise a child in  
5 voluntary home is technically not in need of care within  
6 the meaning of the Act and therefore not the  
7 responsibility of the welfare authority, but such  
8 a child had a right to the same or has a right to the  
9 same opportunities of a family life as those who are  
10 within the legislative term in need of care."

11 They say:

12 "We suggest that such child who would otherwise have  
13 been the responsibility of a welfare authority should in  
14 appropriate cases be taken into care by the welfare  
15 authorities concerned with a view to their being  
16 boarded out."

17 You will see:

18 "We recommend that the Ministry of Home Affairs urge  
19 upon all welfare authorities and voluntary organisations  
20 the need for some action on their part to reduce the  
21 present number of children for whom permanent  
22 accommodation is provided by institutional care."

23 You will see that they were recommending that the  
24 voluntary home should consult the welfare authority  
25 before admitting any child. Then they make the

1 suggestion as to the procedure that might be adopted to  
2 give effect to their recommendation. In effect this  
3 difficulty that they are identifying and proposals they  
4 are making replicate across many years that follow as  
5 those involved in governance try to find ways to square  
6 what might be concluded to be a circle. Difficulty  
7 seems to have been had in identifying mechanisms that  
8 would sort this issue out of, on the one hand, too many  
9 children being in the voluntary home and not being  
10 maintained by welfare authorities and having potentially  
11 not the same opportunities as the children in the care  
12 of the welfare authorities might have, but at the same  
13 time acknowledging the public policy difficulty of money  
14 being paid by the Ministry to maintain children taken  
15 into voluntary care.

16 If we look, please, at HIA -- if we just scroll --

17 CHAIRMAN: Just go down through this page.

18 MR AIKEN: Just scroll down a little further, please.

19 CHAIRMAN: Paragraph 115 suggests quite an elaborate scheme  
20 which it would seem seeks to achieve a number of  
21 different objectives. The overriding objective is to  
22 increase the number of children, in the then language,  
23 being boarded out, in other words, fostered, thereby  
24 reducing the number of children in institutional care.

25 The next consideration that has to be faced,

1           however, is how is it to be achieved and whether the  
2           voluntary home would approach the welfare authority, but  
3           the welfare authority would have to make all the  
4           necessary arrangements, but subject to consultation with  
5           and subject to a veto by the voluntary organisation  
6           presumably to protect its concerns. If there couldn't  
7           an agreement, they can appeal to the Ministry.

8   MR AIKEN: It will a matter for the Panel, but on one view  
9           you can immediately see that trying to work a scheme  
10          like this, it perhaps is obvious why it wasn't adopted  
11          and efforts made to work it.

12   CHAIRMAN: Given the considerations Dr Harrison reminded us  
13          about, which included the desire of organisations to in  
14          a legitimate sense of the word protect the desires of  
15          the parents, the ethos of the organisation concerned to  
16          protect their independence, it may have been a very good  
17          plan in theory to try and reconcile all these different  
18          considerations, but a very difficult one to implement in  
19          practice.

20   MR AIKEN: And perhaps even beyond if you had the will to  
21          implement it across the Board, how it could be enforced,  
22          it being a major consideration for the Ministry, because  
23          how would one regulate where difficulties arose and the  
24          administrative machinery that would have arisen to try  
25          to execute this type of plan would appear considerable.



1 CHAIRMAN: Yes.

2 MR AIKEN: If we look at HIA-1953, we have another Ministry  
3 memo that looks at the --

4 CHAIRMAN: I think what we will do at this stage is we will  
5 take a short break principally for the benefit of our  
6 stenographer, and we will give some thought to  
7 Mr O'Reilly's application and then we will return to  
8 this.

9 (3.02 pm)

10 (Short break)

11 (3.30 pm)

12 Ruling re Marion Reynolds application

13 CHAIRMAN: If I could just deal with Mr O'Reilly's  
14 application that he made earlier this afternoon that the  
15 Inquiry should call a witness put forward on behalf of  
16 the Department, namely Marion Reynolds.

17 We have had the opportunity again of looking at her  
18 statement, which unfortunately was provided at a late  
19 stage over the week-end, and there are a number of  
20 points that I wish to make.

21 The first is this report is very helpful in that it  
22 refers in some considerable detail to matters relating  
23 to the content and nature of inspections in general.  
24 That information we note and we don't consider it  
25 necessary for Marion Reynolds to come to tell us these

1 matters.

2 The second thing is that at this stage we are not in  
3 a position to indicate what our view is about the  
4 adequacy or otherwise of the inspection regime operated  
5 by the Department as a whole across all voluntary homes.  
6 This may well be an issue we will have to address at  
7 some stage during the Inquiry, but not during the  
8 present module. It may be appropriate to deal with it  
9 at the end of the Inquiry, when no doubt we will expect  
10 the Department to deal with a whole range of issues  
11 which will have arisen in respect of individual homes,  
12 but to look at them in the overall context of the  
13 responsibilities and practices of the Department. It  
14 may also be the case that an opportunity will arise for  
15 the examination of such matters in the specific content  
16 of all four Nazareth House homes. We are only at the  
17 stage presently of looking at two and there are two more  
18 coming later in the Inquiry programme. It may be,  
19 therefore, when we finish looking at all our Sisters of  
20 Nazareth homes that there will be an occasion when it  
21 will be appropriate to look at these matters.

22 So far as these issues are concerned to which Marion  
23 Reynolds speaks about inspection and so forth, in the  
24 context of Nazareth House, which is the only home in  
25 respect of which she can say anything from her personal

1           experience from May 1992 onwards, we don't consider that  
2           there is anything that we need to take up with her at  
3           the present time, and for these reasons we don't  
4           consider it appropriate to call her as a witness at this  
5           stage.

6           In ruling to that effect I do want to emphasise,  
7           lest there should be any mistake about this, that  
8           because we accept someone's evidence as merely contained  
9           in a written statement form does not mean that it  
10          receives any less attention or is given any less  
11          importance than if they were to have come and spoken to  
12          us. It will become clear as the Inquiry proceeds that  
13          there will be quite a number of witnesses who fall into  
14          this category, and we will, of course, take into account  
15          everything that has been said and written.

16          But should it prove to be the case that there are  
17          specific issues which we consider it appropriate to  
18          raise with Marion Reynolds in relation to Nazareth  
19          House, issues which may not be apparent to us yet, but  
20          which may occur at some later stage, then in the first  
21          instance we will write to the Department setting out the  
22          questions we consider that we wish to pose to her, give  
23          her and the Department the opportunity to produce  
24          a witness statement in response to any such request, and  
25          then we will consider whether we need to call her to

1 give evidence.

2 In short form we don't propose to call her at  
3 present. Her evidence may well be taken, either orally  
4 or in written form, in relation to other homes and other  
5 matters later, and if we need to revisit her evidence in  
6 relation to Nazareth House, we will be in contact with  
7 her. No doubt when Mr O'Reilly has the opportunity to  
8 see the transcript and receive the report which his  
9 attending solicitor will no doubt give him orally, that  
10 reasoning will be clear to him.

11 I should say, lest it be thought that's any form of  
12 implied or express criticism, we do fully understand his  
13 personal circumstances and we do not in any way  
14 criticise him for not being here at this stage of the  
15 afternoon. We quite understand that and sympathise with  
16 him.

17 Submissions on finance by COUNSEL TO THE INQUIRY (cont.)

18 CHAIRMAN: Mr Aiken, we can return to the dry topic of  
19 finance.

20 MR AIKEN: Yes. For that reason, Chairman, I was about to  
21 say I am shortly going to move on to the fourth stream,  
22 but perhaps track might be appropriate, with less water  
23 analogy.

24 If we bring up, please, HIA-1953, just before the  
25 break we were about to look at a Ministry memo. If we

1 can scroll down to the bottom to see is it possible for  
2 us to date the memo. Can we scroll down, please? The  
3 cursor appears to be -- if we type in a different page,  
4 HIA-1952, and then type in HIA-1953 again and see does  
5 that cure the problem.

6 CHAIRMAN: Well, it is certainly post-May 1957 according to  
7 the internal evidence.

8 MR AIKEN: There we are. We seem to have had functionality  
9 restored. If we just scroll down to the bottom, please.  
10 Just keep going a little further, please. So it appears  
11 to be 1958. So efforts were being made to examine the  
12 report and take issues forward. If we scroll back up  
13 a little, please, if it is not going to cause -- we seem  
14 to have life restored. Again if we just move down  
15 a little, please. Just move down a little further,  
16 please. You can see paragraph 112.

17 CHAIRMAN: Could we just go back to above -- yes. That's  
18 far enough. Yes.

19 MR AIKEN: You will see the analysis that was done of the  
20 suggestion in paragraph 112 of spreading it out over  
21 a number of years and that would be borne in mind. Then  
22 we have paragraph 115:

23 "Considerable opposition on the part of welfare  
24 authorities to the making of any grants to voluntary  
25 homes and such grants as have already been paid have

1       been to some extent in the face of this opposition.  
2       Whether or not welfare authorities in their present mood  
3       are prepared to cooperate with voluntary homes on the  
4       lines of a Child Welfare Council as in mind is therefore  
5       open to doubt. As the council will realise, the fullest  
6       cooperation from voluntary homes will also be necessary  
7       if this scheme is to be a success. A large proportion  
8       of the children in voluntary homes have been placed  
9       there by welfare authorities because of the inability to  
10      find suitable foster homes for them."

11       So the matter is being looked into, but it is  
12      clearly a difficult issue to resolve. As an issue it is  
13      one that doesn't go away in terms of funding and the  
14      interaction in respect of it over the ensuing years and  
15      further child welfare councils, but what I want to do at  
16      this point is turn to the fourth stream or fourth track  
17      we haven't touched on yet.

18       So we have had a look at the capital grant mechanism  
19      under section 118(1). We have the welfare authority  
20      ability to grant under section 118 (2). We have  
21      section 117's training costs provision in the power of  
22      the Ministry. Then we have the fourth method, which are  
23      the maintenance rates or per capita rates for children  
24      in the care of voluntary homes that are placed there by  
25      the welfare authorities, so if and when welfare

1 authorities and later boards placed children in  
2 voluntary homes, they paid a weekly rate to the  
3 voluntary home for the placed child.

4 If we can look at HIA-3500, please, this is a 1983  
5 DHSS or Department of Health discussion paper which  
6 usefully summarises the issue that existed over the per  
7 capita funding arrangement in respect of voluntary  
8 homes. I am not going to look at all of this, but it is  
9 something you can consider, but at paragraphs 23 to 26,  
10 if we go, please, to HIA-3506 -- now just go up, please,  
11 to 23. Thank you. So under a section "Financial  
12 position of voluntary homes" and something that has been  
13 noted previously as what appears on its face to be  
14 a disparity between what was being paid to the voluntary  
15 home per child per week, comparing that to the cost of  
16 an equivalent child in statutory home and noticing one  
17 is much lower than the other. Paragraph 23 is  
18 signalling:

19 "It is not possible to make a strict comparison  
20 between the running costs of statutory homes and those  
21 of voluntary homes."

22 Now this doesn't go on further to explain why, but  
23 the various reasons we will see in a later document,  
24 which are to do with the size of the homes and the  
25 mechanisms that are being employed that create

1 differences between a statutory home and a home provided  
2 by anyone else, in this case a voluntary provider.

3 "However, the following figures give some idea of  
4 the present position."

5 This indicates:

6 "At the end of the 1982 the weekly per capita  
7 charges of voluntary homes ranged from £63", which was,  
8 in fact, the Bishop Street figure, "to £187. The  
9 average cost was about £115. The average cost per  
10 resident per week in statutory homes was approximately  
11 £170 in the Eastern area and over £200 in the other  
12 three areas.

13 As indicated in paragraph 8, boards pay a weekly per  
14 capita charge in respect of each child whom they place  
15 in a voluntary home. The charge varies between homes,  
16 but the cost per child is generally calculated on the  
17 assumption of 100% occupancy."

18 Then we see:

19 "The per capita rates are reviewed annually but  
20 boards tend in general to limit any increase to the  
21 percentage increase which they themselves have received  
22 in their financial allocation from the Department. Thus  
23 homes which had a low per capita rate initially have  
24 received only a small percentage increase on a low  
25 baseline in recent years and in some cases have found



1 themselves under considerable financial pressure.  
2 Voluntary organisations providing residential care argue  
3 that in such circumstances boards are in effect  
4 exploiting the voluntary sector. Boards expect  
5 professional standards of child care and criticise  
6 voluntary homes when they fail to keep up with or fall  
7 short of modern child care practice but are not prepared  
8 to pay an economic rate for the service. Boards on the  
9 other hand argue that the many competing demands on  
10 their limited resources preclude them in present  
11 circumstances from underwriting any substantial increase  
12 in the per capita charge levied by voluntary homes."

13 Scroll down, please.

14 "It is not departmental policy to direct boards in  
15 the use of monies allocated to them. It is for boards,  
16 in the light of their assessment of needs and  
17 priorities, to determine how best existing and planned  
18 provision across the range of client groups might be  
19 funded ... take account of the resources provided by the  
20 voluntary sector."

21 It is indicating:

22 "In the present context there is a clear need for  
23 discussion between the voluntary sector and boards.  
24 Boards must answer the question: do voluntary homes have  
25 a justified case for seeking an increase in the per

1       capita rate paid by boards in respect of children in  
2       care whom they place in a voluntary home? If so, what  
3       remedial action would boards propose to take? Both  
4       parties, however, will have to take cognisance of the  
5       revenue assumptions in the regional strategic plan for  
6       the Health and Social Services and consider the extent  
7       to which increases in the per capita rates might be  
8       funded through efficiency savings, bearing in mind the  
9       current over-provision in the number of residential  
10      child care places, which is discussed in  
11      paragraphs 36-38 below."

12             So what this is indicating in 1983 is a mechanism  
13      whereby boards are given a funding allocation and as  
14      a result of that funding allocation they are not in  
15      a position to do any more than an incremental or  
16      inflationary type increase in the per capita amounts.

17             Now when we take that back to how this began in the  
18      late '50s/early '60s, when children started to be placed  
19      by the welfare authorities in voluntary homes, the rate  
20      was set by the Ministry of Home Affairs, and that --  
21      those are the rates that were paid. Then after the  
22      reorganisation that created the board structures then  
23      the boards were free to agree the rates with the various  
24      homes that they used and that mechanism seems to have  
25      led to the tension that's being described in the 1983

1 discussion paper.

2 We looked previously in the inspection context at  
3 the paper that was issued in 1985 by Chris Patten on  
4 behalf of the Department. If we go to SND-8525, please,  
5 this is a paper entitled "The Statutory/Voluntary  
6 Relationship in the Provision of Residential Child Care,  
7 January 1985" and Chris Patten writes the foreword on  
8 the next page, but these issues are dealt with at  
9 paragraphs 36 to 40 at SND-8534, please. Scroll down to  
10 the bottom, please. Scroll down. You can see language  
11 is similar. The figures have been updated. Just keep  
12 going down, please. So there are some further  
13 suggestions made.

14 "If so, what remedial action would boards propose to  
15 take to pay voluntary homes the higher per capita rates  
16 required to meet the running costs of the homes, taking  
17 account of the costs incurred by the homes in developing  
18 and improving their standards, for example, in terms of  
19 higher staffing ratios? Should legal agreements be  
20 drawn up between the boards and the voluntary homes to  
21 guarantee payments at economic rates over a given  
22 period?"

23 That in due course is what appears to have happened,  
24 ie a formal contract type arrangement was entered into  
25 to give greater stability to the homes.

1           "Given the limitation of public funds, however, any  
2           increased expenditure in this respect will have to be  
3           funded through savings elsewhere in the board's  
4           services."

5           So the Department is saying in 1985, "There won't be  
6           new money coming from here".

7   CHAIRMAN: I see at paragraph 41 an interesting point is  
8           being developed, which is there is clearly a concern  
9           where the boards have unused places in their own  
10          statutory homes, that's where they tend to put children  
11          rather than seeing whether the voluntary home can do  
12          a better job. So one can see the position in the mind  
13          of the voluntary home. They are become increasingly  
14          dependent on the boards who determine standards and  
15          funding, perhaps are thought to favour their own homes  
16          first. So the voluntary homes perhaps feel themselves  
17          in a very exposed position.

18   MR AIKEN: Yes. I am not going to go into the detail of it  
19          now, but in June 1985 as a response to this the Eastern  
20          Board -- perhaps I am being unfair -- may have because  
21          of its size taken a lead on a number of these  
22          developments. Ms Smyth no doubt will correct me in due  
23          course if I am being unfair to the other boards.

24                 HIA-4101, please. The Assistant Divisional Director  
25          of Child Care in the Eastern Board issued a discussion

1 paper entitled "Partnership between the Statutory and  
2 Voluntary Sectors. Methods of Funding for Voluntary  
3 Children's Homes."

4 It gave three options for providing funding. The  
5 first was what was being used, the weekly per capita  
6 charge, and recognition that was becoming less  
7 satisfactory -- if we just scroll down, please -- and he  
8 gives the reasons for that. Then he postulates some  
9 alternatives in the form of a user agreement. Then  
10 a more direct apportionment of costs model. So he is  
11 recognising that this is not an easy problem necessarily  
12 to resolve, but he has come up with two other ways of  
13 trying to resolve it. That's because this issue carries  
14 on in Bishop Street, as we have seen, until the '90s,  
15 this debate over funding, and we will look at that more  
16 specifically in due course, but if we go back to look at  
17 the early '50s, in 1958, for example, at HIA-1894 we can  
18 see that this is the Ministry of Home Affairs setting  
19 the rates to be paid, the maintenance charges, and if we  
20 scroll down, we can see about seven or eight down St.  
21 Joseph's Home, Termonbacca is £2.10s.0d per week and  
22 Nazareth House, Bishop Street is the same. You can see  
23 that there were other voluntary homes who were paid less  
24 and others who were paid more.

25 In March 1962, if we look at SND-12995, please, this

1 is a similar type document and the rates in Bishop  
2 Street. It is now at £3.0s.0d and Termonbacca remains  
3 at £2.10s.0d. Again you can see that there are some  
4 rates that are lower and others that are higher.

5 Now in 1965, for instance -- look at SND-13026,  
6 please -- on 18th March 1965 the Reverend Mother in  
7 Termonbacca writes to the welfare authority signalling  
8 an increase in the rate maintenance charge from £3.60  
9 (sic) to £4.0s.0d per week with effect from April 1965,  
10 and the Welfare Committee at SND-13027, just the next  
11 page, please, if we scroll down, writes back saying it  
12 has had the attention of the committee:

13 "... and have to inform you that no objection was  
14 raised to the increased charge proposed."

15 CHAIRMAN: Sorry. I missed -- this is which welfare  
16 committee responding?

17 MR AIKEN: This is the Londonderry County and Borough. So  
18 the city I believe. If we just scroll up, please,  
19 again. I am not sure the letter itself -- I think it  
20 comes from the Derry City version of the  
21 welfare minutes.

22 Shortly thereafter if we look at SND-6034, please,  
23 March 1965 -- if we can just blow that up as much as  
24 possible -- you can see that the rate is being increased  
25 again by the Ministry. So it's now moved up to

1           £5.5s.0d.

2   CHAIRMAN:  If we pause at that particular point and remind  
3           ourselves these are the charges or notionally, nominally  
4           the charge being made by the provider, in this case  
5           Termonbacca, to the funder of a child placed by the  
6           welfare authorities and it goes up from £3.10s to 5  
7           guineas by 1965.  The corollary of that is if that  
8           amount is correctly calculated by the provider in this  
9           case, Termonbacca, and it only applies to a proportion  
10          of its children, it is effectively having to raise or  
11          find by 1965 5 guineas a week to provide the services  
12          for those children who have been placed privately.  Very  
13          few of the parents I think it is correct to say it would  
14          seem do make payments.  There are sporadic references to  
15          somebody promising to pay and then they stop paying.  No  
16          doubt some do pay --

17  MR AIKEN:  Yes.

18  CHAIRMAN:  -- but the Sisters are having to find week by  
19          week 5 guineas a child --

20  MR AIKEN:  Yes.

21  CHAIRMAN:  -- just to provide properly for them, because  
22          that's what they charge the Welfare Committee for its  
23          children.

24  MR AIKEN:  Yes, or -- it is unclear from the papers at this  
25          point whether the Ministry is setting the rate

1 independently of the home itself. We have one example  
2 of the home acknowledging there is a problem for them  
3 and doing something about it and that being accepted,  
4 but the earlier documents seem to be suggesting the  
5 Ministry is setting the figures. Now whether that was  
6 ever a process of interaction between the Ministry and  
7 the home isn't clear.

8 CHAIRMAN: Well, either the Ministry approved a proposal  
9 made to us -- made to it by in this case Termonbacca or  
10 in practice it decreed what it would pay, and that  
11 became the going rate is perhaps a matter for more  
12 refined consideration than it is necessary for us to  
13 engage in, but in either event somebody was working out  
14 this is what it was going to cost per child --

15 MR AIKEN: Yes.

16 CHAIRMAN: -- because in theory I imagine it was open to any  
17 voluntary home to charge less.

18 MR AIKEN: Yes. I am not sure that was a common feature,  
19 but the -- what I am going to do is skip forward to  
20 1985, because it is in the '80s and early '90s that the  
21 Bishop Street issue becomes particularly pertinent.  
22 I am going to use an illustration hopefully that will be  
23 of some assistance I trust.

24 If we go to SND-13111, please, this is a return  
25 that's provided as part of the new review process of the



1 registrations that's set up. We can see at this point  
2 in time in Bishop Street there are 19 children, 15 of  
3 which come from two welfare authorities. You can see  
4 that in the top of the page.

5 CHAIRMAN: And what year is this?

6 MR AIKEN: This is 1985. If we scroll down, please, to the  
7 bottom of the next page. Keep going. Just keep going  
8 a bit further. Yes. Just stop there. Now -- and this  
9 is picking up the point you were making, Chairman, that  
10 at this point in time the Sisters of Nazareth are saying  
11 that the cost per child per week to them arising from  
12 their accounts to 31st March 1985 is £92.15. They  
13 suggest there may be some downward pressure on that  
14 figure, but they are reviewing their costing procedures  
15 to establish more accurate figures. What they were  
16 being paid to that point was £88.34 per week per child.

17 Now provided my maths is correct, there are fifteen  
18 children to whom this relates, and per child effectively  
19 it amounts to a shortfall of £198.12 per year. So it is  
20 just shy of £4 per week and when you multiply that up --

21 CHAIRMAN: Well, it seems it is costing the Sisters not far  
22 short of £60 a week from their own resources to keep the  
23 children.

24 MR AIKEN: Who are not in ...

25 CHAIRMAN: Well, to keep the children who are being funded

1 by the State -- isn't that right -- because the next  
2 figure is the maintenance rate per child per week is  
3 £88.34.

4 MR AIKEN: Yes. So there's a shortfall of almost £4 per  
5 week for those --

6 CHAIRMAN: £3.81 per child per week, 15 children. So it is  
7 nearly £60 a week of a shortfall.

8 MR AIKEN: Yes. You have done the maths the other way round  
9 from me, but it comes to the same point --

10 CHAIRMAN: Yes.

11 MR AIKEN: -- that by the end of the year you are talking  
12 about £3,000 effectively of a shortfall. I have worked  
13 it out at £2,971.80.

14 CHAIRMAN: Well, that's 29 years ago. You would need to  
15 multiply it probably by 4 at least.

16 MR AIKEN: I will be able to -- a very clever computer  
17 programme that assists me with the dating of the money.  
18 I just haven't done it for that one, which I will  
19 rectify.

20 CHAIRMAN: But it is quite a substantial amount.

21 MR AIKEN: It is, but at this point in time in 1985 in  
22 comparison to what it appears to become it is quite  
23 a small shortfall, because when we get there, we end up  
24 talking about figures that are nearer £200,000 of  
25 a shortfall, which is difficult to work out how that's

1 arrived at, but at this point in time there is obviously  
2 a shortfall between what is said to be needed and what  
3 the Board are prepared to pay, and this is only in  
4 respect of the maintenance charge for 15 of the 19  
5 children, because even in 1985 there are still four who  
6 are not in care within the legislative meaning.

7 So that's the fourth track or stream, which is this  
8 issue over the maintenance charge, and hopefully some of  
9 what I have had to say will have helped set the context  
10 and the structure around which these issues were  
11 tackled.

12 What I propose to do now, subject to you, Members of  
13 Panel, in terms of whether you have the stomach for  
14 a little more, is to begin to look at Termonbacca's  
15 capital grants, because through that mechanism we see  
16 a debate which rages all the way up to the Cabinet in  
17 the 1960s where this decision about the voluntary  
18 financial mean test is discussed at length, or we can  
19 begin again in the morning.

20 CHAIRMAN: Do we have a closed session tomorrow morning?

21 MR AIKEN: We have a -- no, we don't. The present plan,  
22 although I have not been speaking to Ms Smyth about  
23 this, is there are two -- the Diocese of Derry is not  
24 making an oral submission tomorrow. The Department of  
25 Health, if they are making a submission, it will be

1 a very short submission, and I haven't spoken to Ms  
2 Smyth as yet to know her position, but the plan, subject  
3 to the Members of the Panel, is that we will continue  
4 this process up until lunchtime tomorrow and then deal  
5 with the submissions from whichever of those three  
6 bodies make any submission.

7 CHAIRMAN: Well, we certainly are content to carry on, say,  
8 until no later than 4.45.

9 MR AIKEN: No visible sign of dismay from anyone round  
10 about.

11 Trying to look at some of the matters specific to  
12 the two homes, we can see in 19... -- I am going to deal  
13 first with Termonbacca, but it quickly becomes enmeshed  
14 with Bishop Street. So what I am going to try to do is  
15 show how the section 118(1) capital grant applications  
16 effectively ran in tandem with a series of  
17 section 118(2) applications that were made to the Derry  
18 City Welfare Authority, if I can call it that to avoid  
19 confusion and what that brings in terms of debate within  
20 the Ministry of Home Affairs and ultimately to the  
21 Cabinet.

22 It begins with an application from Patrick Maxwell  
23 -- if we look at HIA-5973, please -- in 1956. Can we  
24 just maximise that, please? He has already begun  
25 an application which relates to the play -- this is for

1 Termonbacca. So this relates to kitchen improvements  
2 that are proposed and toing and froing that's going on  
3 over estimates. He indicates:

4 "It was at my suggestion that application was made  
5 to your Ministry for some contribution towards this work  
6 which, as I say, is already underway."

7 So this application has begun within the Ministry in  
8 1956, towards the end of 1956, and there is a similar  
9 one that's underway for Bishop Street in respect of the  
10 play hall, and at the same time or virtually the same  
11 time if we look at HIA-12945, please, on  
12 21st January 1957 Eddie McAteer, MP, writes to the Derry  
13 City version, the city version, of the welfare authority  
14 and applies for a grant of £250 per annum he asks for  
15 towards basically the running costs of Termonbacca. He  
16 indicates usefully the figures, the numbers that are  
17 involved, and points out that it's a very small fraction  
18 of the annual running cost that's being asked for. Now  
19 in 1957 £250 today would be worth £5,250. You may  
20 recall that at this point there are only voluntary  
21 placed children in Termonbacca. There are no welfare  
22 authority children placed there at all.

23 At the same time at SND-12946 he writes a similar  
24 letter to the same authority making application for this  
25 time £500 towards Bishop Street. He does it under

1 a separate piece of legislation, which is the Welfare  
2 Services Act (Northern Ireland) 1949. That's because  
3 there are elderly residents in Bishop Street and there  
4 is a provision in what was then the Welfare Services Act  
5 that allowed a grant to be given, but in making the  
6 request for £500, which was the equivalent today of  
7 10,500 annually, he is indicating it is not just for the  
8 old people, but also for the children.

9 Now on 8th February 1957 the relevant subcommittee  
10 of the welfare authority, that's the County Borough of  
11 Londonderry or city version, recommended payment of --  
12 the £500 to Bishop Street went to -- it had to be  
13 approved by the Ministry of Health and Local Government.  
14 So it goes one direction, and the one under the Children  
15 & Young Persons Act relating to Termonbacca goes to the  
16 Ministry of Home Affairs. I am not going to bring the  
17 letters up, but just for your reference the approval is  
18 at SND-12948 and SND-12947, and the town clerk sends off  
19 the letters in March 1957 at SND-12955 and SND-12952.

20 Both of these -- so the welfare authority gives  
21 approval. They write off to the Ministry of Home  
22 Affairs for ratification, because the approval of the  
23 Ministry is required in each case, and on 2nd April  
24 1957, if you just bring up SND-12954, please, this is  
25 the Ministry of Home Affairs writing back giving

1 approval to pay the £250.

2 I should say, while Mr McAteer applied for an annual  
3 grant, the welfare authority gave a specific grant of  
4 the sum that he sought, and that's what was then being  
5 approved by the Ministry. We will not bring it up, but  
6 the same approval was given on the same date by the  
7 Ministry of Health and Local Government and that's at  
8 SND-12957.

9 Now we have seen at this point that the capital  
10 grant application is underway. If we can look at --  
11 that application went to be considered by the Maconachie  
12 Committee at SND-5802, please. You can see they are  
13 having a meeting in April 1957 and one of the matters on  
14 the agenda is "St. Joseph's Home, Termonbacca". We saw,  
15 when we were looking at the inspection reports, that  
16 they attended Termonbacca on two occasions and they  
17 considered the previous four years of accounts. I think  
18 if we just scroll down, please, I should have a -- yes.  
19 That's just giving us a summary of the process.

20 If we look, please, at SND-5923, on 7th May 1957 --  
21 just maximise that for me, please -- the Chairman of the  
22 committee, Ms Bessie Maconachie, writes to the Minister  
23 of Home Affairs, who at that stage is Mr Topping, and  
24 says they have:

25 "... carefully considered the question of financial

1 assistance ... to Termonbacca towards the expenditure of  
2 £1066 incurred", because it has already been done, "by  
3 the recent extensive improvements of the kitchen  
4 apartments in the home."

5 Two visits have been paid. They have examined four  
6 years of accounts and were satisfied the works carried  
7 out were necessary.

8 "We recommend government grant aid amounting to 75%  
9 of the approved cost of the project."

10 In August 1957 that money was paid at SND-5800 and  
11 in today's terms that equates to a sum of £16,800. So  
12 we see this is a page we looked at earlier that shows us  
13 a record of what was paid and financial approval being  
14 given.

15 I am not going to bring it up now, but in April 1958  
16 after the money has been given an undertaking is  
17 executed at SND-5867 and also at SND-13591 and  
18 SND-13592. That undertaking requires in return for  
19 receiving the grant a children's home was supposed to  
20 operate for the next forty years. Now you can see at  
21 the same time that the play hall application has been  
22 dealt with by this point and the sum of £5000 has been  
23 paid over, which is the equivalent in today's money of  
24 almost £100,000.

25 Now in 1958 then Mr McAteer resumes his application



1 for the next year's payment to the city welfare  
2 authority at SND-12963. We can see his application for  
3 Termonbacca. This time it's gone up from £250, which  
4 was given the year before, to £500, which is £10,000 in  
5 today's terms. On the same date -- don't bring this  
6 page up, please -- at SND-12962 he makes a similar  
7 application for Bishop Street, this time for £750. The  
8 subcommittee was set up to consider the applications at  
9 SND-12961 and SND-12964 and, having considered the  
10 accounts for both houses, they, in fact, recommend  
11 a payment of £1,000 to Termonbacca and declined -- if we  
12 go to SND-58077, please -- and declined to make any  
13 payment to Bishop Street.

14 So the town clerk is writing to the Minister of Home  
15 Affairs or to the Secretary and referring back to last  
16 year's contribution and indicating that there were  
17 applications for both Bishop Street and Termonbacca, and  
18 indicating £1,000 should be granted to Termonbacca. He  
19 asks for the accounts -- he indicates he has already  
20 asked for the accounts to be sent through to the  
21 Ministry.

22 CHAIRMAN: Just allow us a moment to look at this. (Pause.)

23 So they are saying really as far as Nazareth House is  
24 concerned the Sisters appear to have sufficient money in  
25 the bank --

1 MR AIKEN: Yes.

2 CHAIRMAN: -- and therefore got nothing for Nazareth House.

3 MR AIKEN: Yes.

4 CHAIRMAN: They actually gave them more than they asked for  
5 for Termonbacca.

6 MR AIKEN: Yes, or proposed to, because we are going to come  
7 to where the difficulty arises.

8 The accounts were sent through on 21st May, and just  
9 for your reference that's at SND-5991 through to  
10 SND-5998, and then if we go back to SND-6009, please, on  
11 18th July 1958 Mr Alexander in the Ministry writes  
12 a memo to Mr Duff in the Ministry and you can see that  
13 it relates to this proposal to pay the grant of £1,000  
14 under the second track, the 118(2), and he says:

15 "It is impossible to get a clear picture of this  
16 home's financial position from the data which we have.  
17 However, from the income and expenditure accounts  
18 available it appears that the cost of running the home  
19 in the three years 1953/1955 ...", and he indicates,  
20 "was about £10,000 per annum, towards which substantial  
21 sums were provided on loan from the mother house, 5000  
22 in '53, 2300 in '54 and 200 in '55.

23 In '56 running costs went up to about £16,000 mainly  
24 due to practically a doubling of expenditure under the  
25 heading of fuel, light, etc (heaven knows what this

1       conceals!) and to substantial increases under rates,  
2       board and salaries. But the income of the home is  
3       evidently a very elastic affair -- see the amounts  
4       received under subscriptions and income under other  
5       sources in 1956 as compared with other years. Despite  
6       the very substantial increases in income under three  
7       heads in 1956 the home still needed a loan of £3,000  
8       from the mother house.

9               In the last year for which we have figures running  
10       costs have dropped to about 9700 a year after making an  
11       adjustment for the 1600 worth of '56 bills, presumably  
12       paid in 1957. The income appropriate to this year, ie  
13       excluding the opening balance, is about 9500 and this  
14       includes nothing by way of loan from the mother house.  
15       Thus as far as I can interpret these statements 1957 was  
16       a normal year in that it included no extraordinary  
17       expenditure and no loan from the mother house and in it  
18       income just about met expenditure.

19              There is nothing here as yet to suggest the need for  
20       a grant of £1000 from the welfare authority. Another  
21       thing which makes me doubtful about the wisdom of grant  
22       aiding the running expenses of this voluntary home is  
23       the apparent ease with which it can increase its income  
24       when the need to do so is there. On the other hand,  
25       there is no doubt whatever that this home by its

1 activities has in the past and will in the future  
2 relieve the ratepayer and the taxpayer of very  
3 considerable sums on child welfare, compared with which  
4 the proposed grant of £1000 is a trifle, but, of course,  
5 the same thing could be said of a dozen other voluntary  
6 organisations in Northern Ireland. This particular home  
7 is lucky in having in Mr McAteer a member of the local  
8 welfare authority who is active and pressing on its  
9 behalf.

10 The transactions with the mother house are described  
11 in the accounts and in correspondence as 'loans' but we  
12 have no certain evidence that they are in fact 'loans'  
13 in the real sense. We have no evidence of any attempt  
14 at repayment.

15 In the circumstances I think the line to take with  
16 the welfare authority is that we have examined the  
17 accounts of this organisation for the past five years  
18 but on the information available we have been unable to  
19 find that its financial circumstances warrant a grant  
20 from public funds and regret that we cannot approve  
21 their proposal."

22 So you can see that the Ministry's interest is based  
23 on financial need, which is in line with their 1950  
24 policy.

25 Now shortly thereafter Mr Duff then writes

1 a two-page memo to the Secretary, and we can see that,  
2 please, at SND-6007. Obviously while this is in the  
3 context of a section 118(2) grant to Termonbacca, it  
4 will pervade this voluntary home issue right across the  
5 Inquiry.

6 We can see here we have a slightly different version  
7 of the problem presented to us by the Poor Sisters of  
8 Nazareth, this time in connection with St. Joseph's  
9 Home, Termonbacca. I think the earlier problem that he  
10 is describing may be the play hall, and we looked  
11 earlier at the Ministry of Home Affairs' letters going  
12 to the Prime Minister, the setting-up of the Maconachie  
13 Committee in 1956. This time in connection with the St.  
14 Joseph's Home, Termonbacca:

15 "You will probably remember in recent years we gave  
16 quite a substantial grant to this home for the purpose  
17 of improving the kitchen, etc" -- so that's the £1000 --  
18 "having satisfied ourselves that the home's normal  
19 resources were not capable of coping with all of this  
20 capital expenditure. You may also remember that Paddy  
21 Maxwell was very much interested in the cases and that,  
22 in fact, it was one of the cases then on the tapis which  
23 led to the constitution of the Maconachie Committee, and  
24 one of the cases discussed by me with Mr Maxwell in the  
25 course of my very much off-the-record mission to him

1 preparatory to the setting-up of the Maconachie  
2 Committee."

3 It is then said:

4 "You will recall that section 118 has two  
5 subsections. Under subsection (1) the Ministry is  
6 authorised to make grants to voluntary organisations for  
7 the purpose of extending or improving their facilities  
8 and/or assisting in the provision of additional  
9 qualified staff. Under the subsection we are not  
10 allowed to contribute towards the running costs of  
11 a home. We can only contribute financially towards  
12 ensuring that its physical standards are such that we  
13 can conscientiously continue the home's certificate, ie  
14 the registration. When we make such a grant, we charge  
15 half the cost to the various welfare authorities in  
16 proportion to their population. Subsection (2) of the  
17 section authorises a local welfare authority to make  
18 grants to voluntary organisations and there are no  
19 strings attached to this authority. As I conceive it,  
20 the intention of the Act was that it is the duty of the  
21 Ministry to ensure that the physical conditions provided  
22 in voluntary homes are such as are required by current  
23 standards, and if any home were to fall, permanently,  
24 seriously below these standards, we would be under  
25 obligation to discontinue its certificate. This was

1 done, for example, in regard to the Manor House Home,  
2 Lisburn."

3 We were discussing the other day whether there was  
4 any evidence that such a step had been taken.

5 "The value of these voluntary homes being  
6 recognised, however, the Ministry is authorised to  
7 contribute towards bringing up the home to standard  
8 where the sponsors of the home are unable to do so. On  
9 the other hand, the local welfare authority is  
10 responsible for the day-to-day well-being of deprived  
11 children in its area, not necessarily only those in its  
12 care under the Act. Welfare authorities make use of  
13 voluntary homes, and when they send children in care to  
14 a voluntary home, they, of course, pay out of their  
15 ordinary funds whatever is charged by the home for the  
16 maintenance of the children. It is at the same time  
17 true that the voluntary homes look after a number of  
18 children who otherwise would have to be taken into care  
19 by the welfare authority, and therefore the homes, so to  
20 speak, assist the welfare authority in providing for  
21 deprived children. In these circumstances it is logical  
22 that conditions might arise when a welfare authority in  
23 its wisdom decided that it would be very much in the  
24 execution of its duty if it contributed something  
25 towards the day-to-day running costs of one or more

1 voluntary homes in its area over and above any  
2 contribution which it might have to make in respect of  
3 children in care lodged in the home. If a welfare  
4 authority makes such a contribution, it is entitled to  
5 charge it up as legitimate expenses under the Children  
6 Act and the expenditure, if approved, ranks for the  
7 usual 50% grant from voted monies.

8 There has been no great enthusiasm shown by welfare  
9 authorities to exercise their powers under 118(2) and  
10 some time ago we went to considerable trouble to try to  
11 incite the various welfare authorities to exercise their  
12 powers rather more generously in favour of the Society  
13 for the Prevention of Cruelty to Children. Our attitude  
14 towards the welfare authorities in this regard has  
15 therefore been rather one of stimulation, not  
16 restriction, although we have to pay half in any case.

17 Coming back to St. Joseph's, Termonbacca, at the  
18 same time as we approved a capital grant for the  
19 recreation hall, the Londonderry Welfare authority  
20 declined to make a small grant -- decided to make  
21 a small grant of £200 towards the running costs of the  
22 home" -- it was actually 250 -- "and in the  
23 circumstances we approved this almost with acclamation.  
24 I don't think there is any doubt that the Londonderry  
25 Welfare Authority is year by year getting far more than



1           £200 worth of value from the existence of the home.

2           However, this year in a burst of generosity, one  
3           suspects because of agitation by Mr McAteer, Londonderry  
4           proposes to pay a grant of £1000, and whilst I should  
5           have no hesitation whatever in agreeing a repetition  
6           after some years' interval of the £200 grant, the  
7           increase of the amount of the grant by some 500% made us  
8           think, and we have made enquiries and have given a great  
9           deal of consideration to the matter, as will be seen  
10          from the papers on the file.

11          Mr Alexander's third paragraph in his minute of 18th  
12          instant gives a pretty fair picture of the relationship  
13          between income and expenditure at the home. I don't  
14          know that I agree with him entirely in his arithmetic,  
15          but generally the position appears to be that it costs  
16          roughly £10,000 per annum to run the home and that the  
17          normal income against this is probably a little less.  
18          Apart from the welfare authority's small contribution,  
19          any deficit (and it is awfully hard to estimate what the  
20          deficit was or might have been) seems to have been made  
21          up by so-called loans from headquarters. There is  
22          nothing to show whether or not these loans have to be  
23          repaid, but one cannot help feeling that the loans are  
24          made on what has been described as the Kathleen  
25          Mavourneen system and that, in fact, they are gifts. It

1 is also reasonable to assume that no matter what deficit  
2 occurs and no matter what deep water the home should at  
3 any time find itself in headquarters or somebody will  
4 rally round and fill the gap. In other words, the  
5 position is exactly as the Mother Superior let out to  
6 you at the presentation of certificates about Nazareth  
7 Lodge, Belfast."

8 You can see the annotation in the side:

9 "which was that a higher authority, God, will  
10 provide the money."

11 "When considering the admissibility of this proposed  
12 grant of £1000, we must therefore make up our minds  
13 whether we are going to take heed only of the normal  
14 income and expenditure position, in which case I think  
15 we must admit there is case for the grant, or whether we  
16 are going to take cognisance of the fact that the  
17 presence or absence of the grant will make no difference  
18 in the end, because if the welfare authority do not make  
19 the grant, the money will turn up from another source as  
20 it has done in the past.

21 In other words, it seems to me that the whole thing  
22 is a question of political expedience and can only be  
23 settled on that basis. On the nominal figures and on  
24 the arguments put forward by the welfare authority  
25 I don't think we would go very far wrong in approving

1 the grant, always remembering that the welfare authority  
2 directly voted monies and voted monies indirectly are  
3 being saved probably far more than this over the years.

4 On the other hand, if in view of the fact that for  
5 well-known reasons section 118 grants are mainly going  
6 to Roman Catholic institutions, we have to take  
7 cognisance of the real position as set out above.

8 I don't think there is a vestige of justification for  
9 the grant or at any rate for a grant of this size. As  
10 you will see from his last paragraph, Mr Alexander quite  
11 definitely favours the second course. I am not just so  
12 certain, because I am rather afraid of the repercussions  
13 that might result from such a policy carried out to its  
14 logical conclusion, but as I have already said, the  
15 decision is one of the kind that cannot properly be  
16 taken at official level."

17 Now that is followed on 22nd July 1958 by a memo  
18 written to the Minister himself at that stage, Walter  
19 Topping. If we go to SND-6605, please. It is written  
20 by the Secretary. It is about the breadth of the  
21 section 118(2) welfare contribution provision. I am not  
22 going to go -- you will have the opportunity, should you  
23 wish, to read this in detail, because it summarises  
24 quite a lot of what Mr Duff has already said, setting  
25 out the history, but if we just scroll down a little,

1 please:

2 "A question of principle is involved on which we  
3 have been trying to get guidance by research into the  
4 origins of section 118(2) of our Act and of the  
5 corresponding section of the English Act and also by  
6 enquiry of the Home Office."

7 You can see research through Hansard has been  
8 abortive.

9 "The Home Office have replied as in the letter dated  
10 16th July",

11 which unfortunately we don't have, but it refers to  
12 there being so little use of this particular provision  
13 subsection in Great Britain that no clear policy has  
14 been formulated.

15 "The position about subsection (1) is quite clear.  
16 Such grants made by us and reclaimed as to 50% from the  
17 local authorities at large in proportion to their  
18 population are for the purpose of helping managers of  
19 homes to maintain or bring up their homes to physical  
20 standards acceptable to us or to augment their qualified  
21 staff in cases in which we are satisfied that without  
22 such aid the managers could not meet the whole of the  
23 capital expenditure. Such grants have nothing whatever  
24 to do with the day-to-day running costs of the homes  
25 except in the special case of qualified staff."

1           Then he says:

2           "Subsection (2) is far from clear in intention. It  
3           gives unqualified power to local welfare authorities to  
4           make grants with our approval to the general funds of  
5           voluntary organisations and to include such grants as  
6           legitimate expenditure under the Act; in other words, we  
7           pay half in due course.

8           According to one school of thought, exemplified by  
9           the Secretary and Mr Alexander, and I must admit shared,  
10          if somewhat vaguely, by the ..." -- if you scroll down,  
11          please -- "by the Home Office, the only legitimate use  
12          that can be made of the subsection is for grants towards  
13          the general funds of organisations such as the NSPCC,  
14          which do 'fieldwork' rather than run homes and so  
15          actively cooperate with and save money for the welfare  
16          authorities in their normal functioning.

17          Myself, I have always thought that the subsection  
18          intended to go rather further, and that if the welfare  
19          authority feels that the managers of a children's home  
20          in their area are, in fact, helping and relieving them  
21          indirectly of looking after children, some of whom would  
22          otherwise fall to be taken into care and perhaps housed  
23          by the welfare authority, and if that home is finding it  
24          impossible to make ends meet, it is a legitimate and  
25          proper thing and incidentally good business to make some

1 contribution to the home's general funds by a grant  
2 under subsection (2)."

3 It goes on to point out that the intention is not  
4 clear from the text. Can't get much information about  
5 its background.

6 "It must include what I have just suggested.

7 Two points now have to be settled:--

8 **A. Is the very restricted view of the purpose of**  
9 **the subsection to be adopted or is the subsection to be**  
10 **regarded as permitting the giving of a grant by a local**  
11 **welfare authority to the managers of a locally useful**  
12 **home in genuine, serious financial difficulty?**

13 **B. If the answer to A is that grants to homes are**  
14 **permissible, does the present case qualify as to**  
15 **circumstances and amount?**

16 As to A I have expressed my opinion. As to B  
17 I don't think the true financial position of the home is  
18 by any means sufficiently bad to justify approval.  
19 I recommend approval be withheld unless for purely  
20 political reasons the contrary is regarded as expedient.  
21 This is not a case in which the Maconachie Committee  
22 could help."

23 So, in summarising, on one view this is saying views  
24 have been expressed that a proper interpretation of  
25 subsection (2) is really -- it is really for fieldwork

1 type organisations. It is not to fund children's homes.  
2 The Secretary is saying, "I don't agree with that.  
3 I think the provision is wider. I think that it permits  
4 of grants being given to homes such as the present",  
5 which in this case Termonbacca was being discussed, but  
6 only where there was the financial need, which is taking  
7 us back to the point from the 1950 policy.

8 What's interesting is he is expressing the view to  
9 the Minister that the merits of the application, ie the  
10 one based on financial need, in his view looking at the  
11 accounts could not be justified, but making the  
12 suggestion that, "It might be politically expedient for  
13 you to give the money anyway". So, "They wouldn't be  
14 entitled on the merits based on how we operate our  
15 policy, but you may want to give the grant in any  
16 event".

17 So on one view if the original analysis is right  
18 that on the merits, based on how the Ministry operate  
19 its policy, then the application should be declined,  
20 then the suggestion here is it is not discrimination or  
21 it is positive discrimination, if you like, giving funds  
22 that were not justified on the merits test that was  
23 being applied.

24 Now I notice I have reached 4.45. So if you can  
25 wait until tomorrow for what happened, then we can stop.

1 CHAIRMAN: Very well. What time should we start tomorrow  
2 then?

3 MR AIKEN: If we begin at 10.00, if that's ...

4 CHAIRMAN: Yes. Very well. 10 o'clock tomorrow, ladies and  
5 gentlemen.

6 (4.47 pm)

7 (Hearing adjourned until 10 o'clock tomorrow morning)

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