

1 Tuesday, 30 January 2018

2 (10.00 am)

3 LADY SMITH: Good morning.

4 As you know we completed the evidence in this case study last week
5 and today we turn to closing submissions and I understand that I am going to
6 hear submissions from Senior Counsel to the Inquiry, INCAS, Police Scotland,
7 The Lord Advocate, Scottish Ministers, The Bishop's Conference of Scotland
8 and of course the Daughters of Charity and I thank you all for sending in as
9 asked written notes of your submissions in advance. They were all received
10 by last night and that was helpful so I am now going to turn to Mr MacAulay,
11 Senior Counsel to the Inquiry to make the submissions that he would like to
12 do for my assistance.

13 Mr MacAulay,

14 Closing statement by MR MacAULAY

15 MR MacAULAY: Good morning, my Lady.

16 INTRODUCTION

17 Can I begin by observing that since the case study into the Daughters
18 of Charity started on 28 November 2017, the Inquiry has heard 20 days of
19 evidence with a focus on two establishments, Bellevue and Smyllum, run by
20 the Daughters of Charity and it has to be said the particular focus has been on
21 Smyllum. The principal focus of that evidence has been on allegations of
22 abuse made in oral and written evidence by some 48 Applicant witnesses.

23 The Daughters of Charity have responded to those allegations,
24 principally through the evidence of twelve Sisters who worked at Smyllum
25 covering the period 1957 to its closure in 1981. Two of these Sisters have

1 since left the Order. There has also been evidence from other witnesses who
2 had some connection with Smyllum and also evidence in connection with
3 deaths and burials and on the final day of evidence, last week, the Inquiry
4 heard from Sister Eileen Glancy, the safeguarder representative of the Order
5 and from Sister Ellen Flynn, the Provincial of the Congregation in the UK.
6 These are all areas I intend to cover this morning in what I have to say.

7 The evidence from Applicants that the Inquiry has heard relating to
8 their time in Daughters of Charity establishments cover the period from about
9 1940 through to Smyllum's closure in 1981, in essence covering a 40 year
10 period. Virtually all of the Applicants although speaking about experiences in
11 different periods of time give evidence of being badly treated by Sisters and
12 staff at Smyllum and Bellevue. Evidence has been given by Applicants which
13 has described the beatings of children, sometimes severe, by Sisters and staff
14 using hands, feet, a variety of implements that has included brushes and
15 belts. There has been evidence of other forms of treatment including
16 humiliation and punishment for bed wetting, a trend that has to be said has
17 persisted throughout the years, force-feeding another trend that seemed to
18 have persisted and routines for washing and bathing where children endured
19 scalding or cold water and punishments.

20 LADY SMITH: I haven't counted Mr MacAulay but my impression is that
21 humiliating treatment for bed wetting often involving physical
22 punishment was maybe the commonest feature amongst the evidence allied
23 to physical abuse generally but it came up again and again and again over the
24 whole of this period.

1 MR MacAULAY: Over these decades. These allegations have been
2 made by many Applicants.

3 LADY SMITH: Yes. Bed wetting, force feeding.

4 MR MacAULAY: Routines for washing and bathing where children endured
5 scalding or cold water on punishment and there has also been
6 evidence across the decades of other demeaning verbal behaviour by nuns
7 and in general terms Applicants from across these decades gave evidence of
8 what can be described as atmospheres of fear and intimidation.

9 In addition to the evidence of their experiences while in Smyllum and/or
10 Bellevue many Applicants described in evidence the long lasting impact on
11 them of their childhood experiences while in the care of the Daughters of
12 Charity and which many said they have carried with them throughout their
13 lives. Your Ladyship may wish to consider whether that evidence does
14 support the kind of allegations being made against the Order.

15 There is no dispute from the Daughters of Charity that if the practices
16 spoken to by Applicants happened then they constituted the abuse of children
17 and the essential issue for your Ladyship is whether your Ladyship can be
18 satisfied that these abusive practices did indeed happen and that of course
19 means accepting the evidence of the Applicants and rejecting the contrary
20 evidence, particularly the evidence provided by the Sisters who gave
21 evidence.

22 My Lady there are areas of care where the Order accept that there
23 were failures. As Sister Eileen Glancy said last week, there was "grave
24 concern that no record was made of a child's progress whilst in care" and
25 generally the Order seems to accept that the record keeping was inadequate.

1 Nor is it disputed that those responsible for the care of children did not know
2 about the circumstances in which children were admitted into care.

3 LADY SMITH: Yes, that is quite striking as there being no evidence
4 that whilst it may well have been the case it wasn't being volunteered
5 to them, no inquiries appear to have been made.

6 MR MacAULAY: I think your Ladyship made the point that at least in two
7 instances the children were going into care against a background of
8 mothers who perhaps had committed suicide or died in tragic circumstances
9 and it might be thought that that sort of information would be highly relevant in
10 relation to the care of such children.

11 LADY SMITH: Yes.

12 MR MacAULAY: So that meant that nothing was really being done to
13 repair any damage that may have been caused by a particular child's
14 previous experience and as I understand it there does not appear to be any
15 dispute that that approach does reflect sub-standard care. There also
16 appears to be agreement, at least with the benefit of hindsight, that there
17 should have been a system in place that more experienced and better training
18 of people were in charge of children at least in the 1950's and 1960's and I
19 think we heard evidence that some of the Sisters who started at Smyllum
20 were very young and totally inexperienced.

21 LADY SMITH: Yes.

22 MR MacAULAY: The failure to report Brian Dailly to the police in the
23 1970's was recognised as unacceptable. Furthermore the failure to engage
24 with the allegations when made in the late 1990's was seen as a failure in
25 leadership by the Order. These were concessions made last week.

1 My lady I now intend to move on and make some comments on the
2 evidence. I don't intend to examine the evidence in detail, I will seek to
3 remind your Ladyship of the periods covered, the nature of the evidence we
4 heard and the practises that were described in that evidence. This is to be
5 seen as a narrative. How the evidence is to be assessed is entirely a matter
6 for your Ladyship.

7 1940'S TO MID 1950'S

8 Can I then look at the period 1940's into the 1950's, perhaps the first
9 decade or so of the 40 years that was covered in the evidence. Generally the
10 evidence from Applicants who were in Smyllum in particular in the 1940's and
11 1950's went on to describe a regimented regime and a culture of control and
12 fear. There has been evidence of punishment and humiliation for bed wetting,
13 in which there has been the description of a process that involved Sisters and
14 staff inspecting beds, putting wet sheets over children's faces or heads with
15 children then being paraded and being ridiculed by other children who were
16 encouraged to do so. There has been evidence of children being physically
17 punished for bed wetting including evidence involving Sister [BAE] who
18 featured substantially during this particular period using a belt on children
19 lying face down on a bed with their nightshirts pulled over their heads. The
20 use of a belt or sometimes a hair brush to strike a boy who had wet the bed
21 was described by one witness as a daily occurrence.

22 There has been evidence from a number of Applicants from this period
23 of force-feeding including that some children that even if they were sick could
24 be forced to eat food on which they had been sick and indeed made to eat
25 food which may have fallen to the floor. Force-feedings sometimes involved

1 two people, one holding the child's head back and the other forcing food into
2 the child's mouth.

3 A number of witnesses from this era spoke of regular beating and
4 humiliation by Sister [BAE] in particular, both of themselves and others
5 by different implements. There has been in particular evidence of a routine
6 form of mass punishment by Sister [BAE] involving a clicker which was
7 known as the frog where boys would stand in rows at arms-length away from
8 the next boy and she would walk from behind clicking the clicker. The
9 practice was spoken about in detail last week by Mr Carberry because he was
10 able to demonstrate on the screen the movements he said Sister [BAE]
11 expected in the course of this routine and how her pointer would come down
12 on his fingers if they were not square on the shoulders. It seems to be a very
13 strange form of punishment and possibly, if true, a form of seeking to control
14 children.

15 LADY SMITH: He was not the only witness who spoke of this exercise
16 with the clicker.

17 MR MacAULAY: Frank Docherty for example in his witness statement
18 which was read out also spoke about this particular practise. We also
19 heard evidence from this era of a punishment of scrubbing and polishing
20 floors and that Sister [BAE] would find fault and kick buckets over so
21 they would have to start again from the beginning. There was also evidence
22 by some witnesses of not being allowed to sleep with their hands under
23 blankets and punished if you did so and it does seem that this particular
24 practice also according to some evidence persisted into the 1960's. There
25 has been evidence from Applicants that some of the nuns were afraid of

1 Sister [BAE] but that the other Sisters knew what was going on and
2 indeed would be present for the frog routine, for example. But there was also
3 evidence that beatings were also meted out by other nuns during this period.
4 Sister [BAE] was described as the worst and according to the evidence
5 of some Applicants, Sister [BAE] was just the main perpetrator,
6 particularly on the boys side of Smyllum.

7 There has also been evidence covering this early period of similar
8 practices in relation to the girls at Smyllum and a number of Sisters have been
9 identified in the evidence as potential abusers by female applicants who were
10 at Smyllum during this early period and have spoken to similar practices such
11 as punishment and humiliation for bed wetting, beatings, force-feedings,
12 queuing for baths where the first children in the queue had to endure scalding
13 hot water.

14 LADY SMITH: But if you were at the end it was cold and dirty.

15 MR MacAULAY: And I think we hear from other evidence that once
16 children became wise to this practice the middle was the best place to
17 be.

18 During this period we heard evidence that siblings were separated,
19 particularly girls and boys and indeed siblings of different ages. There has
20 been evidence of siblings not seeing other siblings for years.

21 LADY SMITH: Not realising they had siblings because they were so
22 young when they went in, they would lose the memory of having
23 siblings.

24 MR MacAULAY: Again there was evidence that during this period gifts
25 given to children would be removed never to be seen again and that

1 birthdays were not celebrated or marked by Sisters and staff. As I have
2 already mentioned, there was evidence also that children were demeaned,
3 one example being a child being told that his mother did not want him and that
4 he was the scum of the earth. These were not uncommon allegations.
5 Another witness for example during this period was told that the Jewishness
6 would be beaten out of him. Another was told he had killed his mother, which
7 was not the case.

8 LADY SMITH: In that case it was not an incidence of a woman having
9 died in childbirth, she died when he was a baby but it was a perforated
10 ulcer I think that they discovered later when he was a few months old.

11 MR MacAULAY: Many of the practices spoken to in evidence, if accepted
12 as true by your Ladyship would also constitute real cruelty and if I can
13 give this example if your Ladyship were able to accept this to be true, one
14 witness described an incident where he and other boys were punished by
15 Sisters for kicking a football on Sunday, being asked to take their clothes off
16 and stand outside as a punishment. They all got the strap and had to stand
17 there for 2 or 3 hours by which time it had started to rain and it had become
18 very cold. He described this as one of his very abiding memories of Smyllum
19 and one that stands out and has haunted him for many years afterwards. He
20 talked about one of his friends, one of the children who had been out with him
21 in the cold crying and being very cold and when he woke up in the morning
22 that particular child had disappeared and he was never told what had
23 happened to him.

24 My Lady up to the period 1957 we have not heard direct evidence from
25 any Sister who was involved in caring for children at Smyllum because the

1 first surviving sister who took the pseudonym Sister Carol Kane, known as
2 Sister [EAD] while at Smyllum, arrived in 1957 when she said she replaced
3 Sister [BAE] in caring for the boys. She thought there were about 90
4 boys when she arrived. She said around 18 months after her arrival the boys
5 were divided up into 3 groups of around 30 with Sister [EAC] having the
6 younger ones in Sacred Heart 8 – 10 years old, Sister [AGI] having the
7 10-12 year olds in St Anthony's and Sister [EAD] herself having the older
8 boys 12-16.

9 LATE 1950's TO THE 1960's

10 Can I then move on my Lady to the period of the late 50's and into the
11 1960's. In short the Inquiry heard evidence from Applicants to the effect that
12 practices such as those just outlined from the 1940's and mid 50's
13 continued perhaps with the exception of the particular procedure described
14 involving the clicker and the pointer. That seems to have disappeared,
15 possibly once Sister [BAE] was off the scene. The late 50's and early
16 60's was when Sisters we have heard quite a lot about like Sister [EAD],
17 Sister [EAC] and Sister [AGI] were at Smyllum and serious allegations
18 of abuse have been made against these Sisters in particular.

19 Force-feeding again was an allegation made by a number of Applicants
20 There was evidence similar to the evidence of the previous Applicants,
21 namely that Sisters would take hold of a child by the hair or the chin and
22 force, for example, porridge into the child's mouth and again sometimes the
23 child would be sick. Other Applicants spoke of trying to avoid this
24 consequence by passing food on that they did not like to other children and
25 there was also evidence particularly during this period that if a child didn't eat

1 a particular meal that it would be served to him later and again that particular
2 practice persisted into the later 60's and into the 1970's.

3 The bed wetting practices were similar to those of previous years.
4 Children who wet the bed were punished and humiliated. There was
5 evidence that some children had to wear their sheets like togas or around
6 their necks. There was evidence that described Sister [REDACTED] AGI waking the
7 boys up with a bell and going down the rows of beds to see if they were wet,
8 taking hold of a boy by the hair, rubbing his face in the sheets. That was not
9 an isolated event. She called him a "fish" and again the description "fish"
10 seemed to have been one used in connection with bed wetters. The
11 suggestion was that Sister [REDACTED] AGI and her assistant during this process
12 worked in tandem, one going up and down one side of the room and the other
13 up and down the other side.

14 There was also evidence of severe beatings during this period. Being
15 hit by Sisters was said to be "almost a daily occurrence". Witnesses give
16 evidence of regular beatings from Sister [REDACTED] EAD with a hair brush, described
17 as her weapon of choice. We have heard evidence of Sister [REDACTED] EAD knocking
18 children down onto the floor so she could kick them, causing injury.

19 On bathing and showering there has been evidence that during this
20 period that the water was often cold and that nuns checked to see if you were
21 properly clean. Children were told that they had not washed properly and
22 sent back again to wash and it was suggested that this process was just a
23 reason to hit a child.

24 Again over this period there has been evidence that birthdays were not
25 celebrated and indeed some Applicants said that they did not know when their

1 birthday was. In relation to Christmas the evidence for this period again from
2 Applicants was that any presents given were removed and not seen again.

3 Again during this particular period there was evidence for the majority
4 of Applicants that siblings and in particular girls and boys continued to be
5 separated.

6 My Lady perhaps I can focus on the evidence of two particular
7 witnesses during this period because they crossed between Bellevue and
8 Smyllum just to see what the contrast was if any between these 2 institutions.
9 The Inquiry heard evidence from Sister Louise, a witness who of course is
10 now a Sister in another congregation who was at Bellevue from 1957 until
11 1961 and thereafter at Smyllum from 1961 to 1964. While at Bellevue she
12 gave evidence of being hit by a Sister EAB, of communal bath areas and
13 children at their most vulnerable in their underwear being hit with a brush over
14 their knuckles and that the violence also involved being hit with lacquer
15 brushes and a cane. She described being checked after washing and being
16 punished and then being wise to what was happening and playing a trick of
17 going back to the nuns without having washed again and they would say you
18 are ok. One thing she said was that you could get used to the beatings, and
19 although the bruises disappeared what was done to your psyche and inner life
20 did not disappear as easily. She said the atmosphere of fear is her pervading
21 memory of both Bellevue and Smyllum. And one piece of evidence she gave
22 which, if your Ladyship accepts it might be quite important, and that is that in
23 Smyllum she described being asked to help with the young boys who were
24 aged 5-8 and the Sisters showing her what should happen if the boys wet the
25 bed. She was told that the boys had to wear their sheets and then go into the

1 wash area into a bath of cold water and wash the sheets. The Sister told her
2 that is what she had to do. Because Sister [REDACTED] EAB moved to Smyllum
3 from Bellevue she said that the physical abuse from Sister [REDACTED] EAB
4 continued in Smyllum.

5 Now the other witness I want to draw particular attention to in
6 connection with this period, again because he crossed from Bellevue to
7 Smyllum is the witness Michael who gave evidence of the routine at Bellevue
8 and then at Smyllum in the 1960's once Bellevue had closed. While at
9 Bellevue he described children being required to stand beside their beds in
10 the morning when a nun would walk and check for bed wetting. He described
11 this as an everyday occurrence. He described how in Bellevue a nun ordered
12 a boy to take the wet sheet and to stand still beside his bed and put it over his
13 head like "a ghost" and left to stand there. Once she had examined all the
14 beds the next instruction was to send him to the washroom. He described this
15 as being the same every day. He too described a washing routine where
16 children were checked for cleanliness and hit with a clenched fist that would
17 sometimes knock you to the ground and told to get back to the washroom and
18 get washed properly. He went on to say that the problems he identified from
19 Bellevue also prevailed at Smyllum when he went there in about 1961.

20 Also my Lady during this period there is evidence of children being
21 demeaned just as they had been in the previous period. One Applicant
22 spoke about being told she was the devil's spawn, immoral, that she would be
23 nothing in life and there was no wonder that she was not wanted even by her
24 mother. We shall see when I look at the next chapter that there is a certain

1 persistence again in that sort of demeaning language being used towards
2 children.

3 My Lady can I just touch upon some evidence that sought to contradict
4 the evidence of the Applicants during this particular period from other former
5 residents because the Inquiry has heard evidence from two witnesses, Patrick
6 and Rondo who give positive accounts of their experience of being in Smyllum
7 in the late 1950's and early 1960's.

8 Patrick spoke of being extremely well treated at Smyllum by both
9 Sisters and staff. He described the food as being good. The only thing that
10 he didn't like was lumpy porridge. He did not consider there to be any
11 pressure on him to eat his food saying there were always boys that were
12 bigger than him who were more hungry. In relation to bed wetting he did
13 explain that from time to time the boys who did wet the bed had to put their
14 sheets over their heads and stand. He explained that was done in his
15 presence and that it was designed to shame them. Patrick however
16 disagreed with much of the evidence that had been put forward by Applicants
17 covering his own period in Smyllum. In relation to punishment he said that if
18 somebody really misbehaved they would be sent to Sister EAD and she
19 might deal out one or two of the strap. I don't think Sister EAD ed
20 that but that was his position. He said that if the nuns caught you fighting
21 they might tug your ear and tell you off. In relation to washing he described
22 having showers and recalled the water as being hot. In relation to birthdays
23 he said that boys might have given him bumps if you told them that it was
24 your birthday but he could not remember if there was any sort of celebration

1 from the Sisters. In response to accusations of violence by Sisters and staff,
2 Patrick's evidence was that he saw nothing like that.

3 Perhaps even more positive was the evidence provided by Rondo. He
4 also spoke favourably of the Sisters and staff who he said cared for him. His
5 evidence was that there was corporal punishment in Smyllum although I think
6 some Sisters don't accept that and that Sisters carried and used a strap and
7 that included Sisters EAC, AGI and EAD. Rondo did give
8 evidence of what happened to bed wetters in The Sacred Heart house. The
9 sheets would be put over their heads by what he described as a young
10 assistant and the bed wetters would stand there with the sheets on their
11 heads. He said that this would happen nearly every day but that they would
12 not be beaten. Rondo disagreed with some of the evidence heard by the
13 Inquiry about the bed wetting regimes spoken to by Applicants describing it as
14 "absolute rubbish". He also dismissed evidence given by particular
15 witnesses as being untrue. His general position was that Smyllum was a
16 happy place and that he had been well cared for while there.

17 Of course my Lady in addition to the contrary evidence given by these
18 residents, there is also contradictory evidence given by the Sisters that
19 disputed much of the evidence provided by Applicants during this particular
20 period and clearly your Ladyship will have to consider carefully all that
21 evidence, the evidence of the positive accounts, the accounts of the surviving
22 Sisters who worked at Smyllum, the account of Margot, who I will mention
23 shortly and the accounts of the Applicants themselves and will have to decide
24 whether the evidence of Applicants can be accepted in relation to the regimes
25 and practices that they have described.

1 MID 1960'S – 1970'S AND CLOSURE

2 Can I then my Lady turn to the period of the mid 1960's into the 1970's
3 and up until when Smyllum closed. The evidence from Applicants who were
4 in Smyllum during this particular period continued in the main to describe the
5 practices described by Applicants from previous times with descriptions of
6 children being beaten including with implements, punishments and humiliation
7 for bed wetting, force feeding, routines around washing and bathing and a
8 general atmosphere of fear with little affection shown to children.

9 As in previous decades Applicants spoke of not dissimilar bed wetting
10 practices that included the associated humiliating process of previous years.
11 One witness spoke of being put into a cold bath and disinfectant thrown on
12 her by Sister AEG. She also described how this particular Sister would
13 press her knuckles into her head and I think in evidence she gave an example
14 of that. One witnesses sought to avoid the humiliation associated with bed
15 wetting by urinating in the corners of the room or getting up during the night
16 and washing and drying his sheets.

17 LADY SMITH: It was either that witness or another witness who also
18 spoke of the first time he realised he needed to urinate during the night
19 and did not know where he could do to find a toilet he did it on another child's
20 bed.

21 MR MacAULAY: I think that was another witness.

22 LADY SMITH: At the same period.

23 MR MacAULAY: It is in this era. Again according to some Applicants force
24 feeding was practiced during this period also. There were descriptions
25 of food being forced into children's mouths and children being forced to eat

1 food contaminated with sickness and beatings being associated with these
2 practices.

3 There was evidence of children having to bath in scalding water, their
4 screams of pain being ignored by Sister AEG and, as I mentioned earlier
5 my Lady, children learned as they got older to go into the middle of the queue
6 when queuing up for baths.

7 Again there was evidence of beatings and indeed severe beatings in
8 this particular period. One witness said that the worse beating he got was
9 when he threw a cushion and broke a lamp and indeed he started crying
10 before Sister AEG came on the scene because he knew what was coming.
11 He was dragged down to the laundry by Sister AEG who he said told him
12 to strip naked and left him there for about 3 hours. When she returned his
13 feet were blue and, according to his evidence, she stamped on them. She
14 pulled a brush out and started to beat him and his evidence was that she had
15 to stop because she was absolutely exhausted but that she started again. He
16 said that the next morning he realised that his ear had been damaged and
17 there was blood there. He was taken to hospital and he is still deaf in that
18 particular ear.

19 In connection within this period I propose also to mention two particular
20 witnesses because they were in Smyllum from the mid 1960's – 1970 but
21 were then moved from Smyllum to St Vincent's in Newcastle.

22 The first of these, Jimmy, give evidence to the effect that he was never
23 shown any love or affection in Smyllum or ever congratulated. That is a
24 common theme. He too spoke on having to sleep with his hands on top of the
25 blankets, otherwise he would get slapped if they were under the sheets. He

1 described force feeding whereby a hand would be held over his mouth until he
2 swallowed the food.

3 In particular he gave quite a detailed account on an incident where he
4 saw two nuns in an embrace in the boiler room at Smyllum and that one of
5 them, the one that he described as being in charge of St Kentigern's when he
6 left in 1970, responded by punching, kicking, pulling his hair and putting his
7 face really close to the flame of the boiler, so much so that his hair and
8 eyebrows were singed in the process.

9 His evidence was that he woke up in there by himself, that there was
10 blood and the only thing on top of his body was the collar of his jumper. He
11 went on to say that after that incident life was particularly bad and that he was
12 always on his guard and careful about what he said. He gave another
13 example of when he received a chocolate Santa from a school teacher and
14 this same nun smashed it by putting it on the floor and standing on it. Now
15 these are extreme allegations. He spoke also of his sudden departure to St
16 Vincent's, Newcastle and also getting some physical punishment while there
17 but he said that it was not as severe as Smyllum. He also spoke of sexual
18 abuse and the inappropriate behaviour by Bernard Traynor who we heard
19 give evidence recently.

20 The other witness, Michael, who was Jimmy's brother again said that
21 he was never shown any love or affection at Smyllum. He said that he was
22 forced to eat food that he didn't like. As he put it, his hair would be grabbed,
23 his head would be pulled back and it would be shovelled in. He said that he
24 was forced to eat his vomit and if you did anything wrong the answer was to
25 be given a hiding. Now he too was moved to Newcastle and spoke of sexual

1 abuse by Bernard Traynor and as your Ladyship will recall Bernard Traynor
2 gave evidence and told the Inquiry that what the Inquiry had been told about
3 sexual abuse was true. He gave evidence of his convictions in relation to his
4 crimes and it is apparent from his evidence that he had unsupervised access
5 to children at St Vincent's.

6 LADY SMITH: I think Bernard Traynor also said something to the effect
7 in relation to maybe an account Jimmy gave of part of the sexual abuse
8 he suffered that he Bernard Traynor did not have a specific memory of that
9 but if Jimmy said it happened it happened.

10 MR MacAULAY: I think it has to be said, on the face of it, Mr Traynor was
11 a perfectly candid witness.

12 LADY SMITH: Yes indeed but he also seemed to be telling me what this
13 man tells you will be true and the next question of course is well how
14 can things that this man told me not about what Bernard Traynor did but what
15 happened to him in Smyllum not be true if that is the validation he gets from
16 that man.

17 MR MacAULAY: The question as your Ladyship has just mentioned does
18 arise whether as well as confirming Jimmy and Michael's evidence on
19 the sexual matters, Bernard Traynor's evidence could be used as a
20 touchstone for the credibility of these particular witnesses.

21 Can I also mention though particularly during this period that
22 notwithstanding the experiences that have just been described, there were
23 witnesses/Applicants who explained that Smyllum was not all bad. I think
24 one witness said it was 70% good. There is evidence certainly in this
25 particular latter period that birthdays were acknowledged and Christmases

1 were celebrated with presents being provided and it would also appear that
2 children were given pocket money and were able to venture into the local
3 town.

4 One other witness I would like to mention in connection with this period
5 because of the degree of controversy over her evidence is Theresa Tomlie-
6 McGrane. Now she too spoke to the different practices of physical abuse,
7 bed wetting practices, queuing for baths and force-feeding. The physical
8 abuse included being hit with crosses, a hairbrush, hangers-hangers feature
9 on a number of occasions with different people, slapping, kicking and
10 punching. But more particularly she spoke of sexual abuse by a Father
11 ADA over a period of time and being assaulted by a Sister AFR
12 walked in while she was sitting on Father ADA's lap. As a consequence
13 of that assault she said that her arm was broken. Her evidence was that she
14 was eventually driven to Law Hospital by Sister EAC who she said told her
15 not to tell anyone what had happened or she would break her other arm.
16 Now Sister EAC gave evidence and she disputed that evidence and indeed
17 on the morning of her evidence produced a copy of her driving licence which
18 shows that she did not obtain her driving licence until 1982. That may be
19 important evidence and your Ladyship will have to consider carefully whether
20 the fact that as it appears to be that Sister EAC did not have a driving
21 licence when the trip to the hospital is said to have taken place undermines
22 Ms Tomlie-McGrane's evidence.

23 SEXUAL ABUSE

24 Can I then look at a number of different issues dealing sexual abuse
25 allegations in Smyllum. In addition to Ms Tomlie-McGrane's evidence there

1 has also been evidence from other Applicants about sexual abuse at
2 Smyllum. Two Applicants spoke of sexual abuse by Sister [REDACTED] AGI [REDACTED] in the
3 early 1960's. One of these Applicants also spoke of sexual abuse by a
4 female member of staff. There was evidence of one incident of sexual abuse
5 by a boy around the mid 1950's and one incident of sexual abuse by [REDACTED]
6 [REDACTED] in the 1950's early 1960's and evidence of sexual abuse over a
7 period of time in the late 1950's early 1960's by [REDACTED]. There was also
8 evidence from an Applicant of sexual abuse by an older boy over a period of
9 time and from another Applicant of sexual abuse by 3 brothers over a period
10 of time. So far as that latter situation is concerned the witness gave evidence
11 that eventually their abuse was discovered and they were dealt with in a
12 public way by being punished in the gymnasium. There is no suggestion that
13 anything was reported to the any of the authorities.

14 [REDACTED] BAC [REDACTED]

15 Can I then look briefly at evidence that has implicated Mr [REDACTED] BAC [REDACTED]
16 [REDACTED] BAC [REDACTED] in abuse at Smyllum. Throughout the approximate 40 year period
17 covered by the evidence there has been evidence about [REDACTED] BAC [REDACTED],
18 most of that has been very negative but there has been some positive
19 evidence. Although he may have been [REDACTED] at Smyllum he also
20 seems to have had quite significant involvement with the boys, apparently
21 being in charge of them for football and other sports and also band practice.
22 From Applicants who were in Smyllum in early 1950's right up to the final
23 period there has been a body of evidence to the effect that [REDACTED] BAC [REDACTED]
24 could be a vicious and violent man. Conversely, witnesses such as Patrick,
25 Rondo and indeed another witness who used the pseudonym Chief spoke

1 very positively of [REDACTED] BAC, describing the positive impact he had on
2 their lives and disagreed with the evidence the Inquiry heard about him being
3 a violent man. [REDACTED] BAC himself died in 1983 so we have not heard
4 from him.

5 SAMUEL CARR

6 Can I now my Lady look at the evidence in connection with the young
7 child Samuel Carr. Throughout the case study we have heard evidence from
8 various witnesses regarding their recollections of Samuel Carr who died in
9 June 1964. The Applicant David said that he witnessed a sustained attack on
10 Sammy Carr by Sister [REDACTED] AGI sometime before Samuel Carr's death.
11 He described how he had to go and lie on top of him in an effort to protect him
12 and he also said that he has lived his life in the belief that he played a part in
13 Samuel Carr's death because it was his reaction to what he and Samuel Carr
14 where doing that attracted Sister [REDACTED] AGI's attention. Now your Ladyship
15 might want to consider whether David's evidence in relation to the guilt he
16 says he has carried throughout his life could be used as a useful touchstone
17 of his credibility in relation to this evidence.

18 Insofar as the death itself is concerned the Inquiry has heard evidence
19 from DCI Graham McKellar who was the senior investigating officer on
20 Operation Kern, the operation set up by Police Scotland to investigate the
21 death of Samuel Carr in 2015. Mr MacKellar gave evidence of the enquiries
22 and investigations carried out by his team including the breakthrough of
23 ultimately recovering the post-mortem report dealing with Samuel Carr's
24 death. That was analysed by paediatric pathologists and they concluded that

1 no link had been established between any alleged assault and Samuel Carr's
2 death.

3 The Inquiry has heard evidence from Professor Anthony Busuttil. He
4 was instructed by the Inquiry to examine the post-mortem report relating to
5 Samuel Carr. His evidence was that based on the incomplete medical
6 evidence it appears that trauma following an alleged assault did not have a
7 direct part to play in the death. He said that given Samuel Carr's low body
8 weight at the time of death, that he may have been suffering from some
9 degree of malnourishment, and he looked at a growth chart to substantiate
10 that, which would have predisposed him non-specifically to infection and also
11 decreased his general resistance to infection once any infection had become
12 established. Professor Busuttil said that evidence suggesting that Samuel
13 Carr touched or poked a dead rat could have been the source of an intestinal
14 infection with an E-coli organism which in turn could have resulted in severe
15 acute kidney failure, eventually causing haemorrhaging in his brain. That is
16 the mechanism that Professor Busuttil has advanced as to Samuel Carr's
17 death. His position was if there had been a traumatic event to deal with, for
18 example from an assault, as well as handling a vicious infection that has also
19 affected the child, the body may have to work harder. It is a question of the
20 straw that broke the camel's back. The more you add on, the more likely that
21 the body will not be able to recuperate and that indeed was I think in answer
22 to a question from your Ladyship. Nevertheless he is clear that the nature of
23 the haemorrhaging itself was not that of trauma and therefore on the evidence
24 there does not appear to be a direct link between any trauma inflicted on
25 Samuel Carr and his death. This of course is with the benefit of medical

1 hindsight because Professor Busuttil was able to say how this particular
2 mechanism was not really truly understood at the time Samuel Carr's post-
3 mortem was carried out.

4 LADY SMITH: Although we did hear evidence that it was thought that his
5 death was something to do with a rat because after we had heard
6 Professor Busuttil's evidence we heard the evidence about Sammy being
7 seen not just playing with a rat but actually putting it tail end in his mouth. It
8 was a dead rat and it had lice on it at the time.

9 MR MacAULAY: And that perhaps reinforces what Professor Bussuttil has
10 said. This episode where there has been a consistent body of
11 evidence to support the conclusion that Samuel Carr was in contact with a rat
12 does raise a question of the adequacy of the supervision of such a young
13 child at that particular time and indeed the state of cleanliness in the vicinity of
14 the orphanage.

15 FRANCIS McCOLL

16 The other death that the Inquiry has heard some evidence about it is in
17 relation to the death of Francis McColl in 196. It does appear to be the case
18 that Francis McColl was struck on the temple by a golf club that had been
19 used by another child. There is evidence to support the view that the children
20 at the time were engaged in some sort of game involving the golf club and golf
21 balls, although there has been evidence from Sisters that a priest or priests
22 might have also been involved so there is a bit of confusion over the
23 evidence. The evidence from children who were there who are now
24 Applicants was that this was a game that had been organised by BAC
25 BAC and that he was given overall supervision of what was going on.

1 Your Ladyship has heard evidence that the situation may have arisen due to
2 Francis McColl having had a hearing difficulty and possibly not having heard
3 instructions to stand back from where the next shot was being taken but again
4 the question really arises in relation to the adequacy of any supervision that
5 was in place while young boys were engaged in such an activity. We heard
6 from Professor Bussuttil and we can see from the autopsy report that it does
7 record that Francis McColl was struck on the left side of the head, I think in
8 the report it says a golf ball and that ultimately he died as a result of that
9 injury.

10 PATRICIA MEENAN

11 The other child we heard evidence about who died was Patricia
12 Meenan who was killed in a road traffic accident in 1969. We had evidence
13 from two of the Sisters who had some knowledge of the background to that
14 and it appears to suggest that Patricia Meenan and another child ran away
15 from Smyllum after one or both their mothers had not turned up for a visit.
16 Again it has to be said a question may arise as to the nature of the
17 supervision, whether it was adequate and whether adequate means of dealing
18 with children in a situation where they may be upset were truly in place.

19 Can I say my Lady more generally in relation to running away on which
20 there has been evidence from several witnesses, there is no suggestion in the
21 evidence that any efforts were made to ascertain why children did run away
22 from Smyllum and indeed on the evidence of the Applicants the response to
23 running away was any such child would be beaten on returning back.

24

25

1 EVIDENCE FROM SISTERS

2 Can I now my Lady look for a moment or two at the evidence provided
3 by the Daughters of Charity Sisters. During weeks five and six of the case
4 study evidence was provided by Sisters who were at Smyllum as I said earlier
5 from 1957 – 1981, that is ten current Sisters and two who have now left the
6 Order. Seven of the 12 had allegations made against them to a greater or
7 lesser extent.

8 The general position from all of the Sisters is a denial of any of the
9 allegations. Their position was that Smyllum was a happy place where
10 children were well cared for. There appears to have been, as I have
11 mentioned before, a general acceptance by them that they would have
12 benefited from knowing more about the backgrounds to the children, their
13 position being at the time they knew very little about the children and the
14 circumstances that had brought into care. The general position of the
15 Sisters was that they did not keep records of a child's progress while in care
16 and that they were not involved in the review of whether a child was to remain
17 in care and the end of a child's time in care might not have been organised or
18 arranged as well as it could have been. But the position of the majority of the
19 Sisters was that they did not use or see others use any form of corporal
20 punishment in Smyllum. Four of the Sisters said they used some form of
21 physical punishment. Sister Mary said that she gave children a slap on the
22 hand. Sister Cecilia Dowd spoke of taking children by the arm or maybe
23 giving a slap on the bottom. She also spoke of children being hit on the
24 knuckles with a hairbrush. Sister Esther said that she would administer a
25 slap on the legs, hands or bottom and Mary-Anne who gave evidence having

1 now left the Order said children were slapped. She also gave evidence of an
2 incident involving Sister [EAC] and being shown red marks on a child's back
3 that appeared to have been inflicted by Sister [EAC]. One Sister, Sister
4 Evelyn did say that she saw a child being humiliated by a lay member of staff
5 for bed wetting but that the Sister in charge of the group, Sister [HBP], was
6 aware of that and put a stop to it. Generally speaking my Lady the evidence
7 of the Sisters sits in stark contrast to what has been heard from Applicants
8 across the period in relation to life at Smyllum and how children were treated
9 there and as I mentioned earlier that really will be the essential issue for your
10 Ladyship and whether your Ladyship can be satisfied that the evidence
11 provided by Applicants can be accepted in its important aspects.

12 ELIZABETH AITKEN, MURRAY HADDOW AND MARGOT

13 I want to draw attention to three particular witnesses who were not
14 either residents or Sisters and the first of these is Elizabeth Aitken. Her
15 statements was read into the proceedings. She spoke of her time as a Staff
16 Nurse at Carluke Hospital in the 1940's where she cared for some children
17 from Smyllum. What she said was that these children were not like normal
18 children, that they just sat on their seats as if they were frightened and that
19 they were subdued children. She went on to say that when they went to
20 Smyllum to collect children the children were brought to them rather than
21 them going to the children. Her evidence was that there was no affection
22 shown by the nuns and that they were very strict with the children, with
23 children being seen and not heard.

24 The other witness I want to draw attention to my Lady is Murray
25 Haddow. Again his statement was read into the proceedings. He spoke of

1 his time as a social worker in Greenock between 1971 and 1974 during which
2 time he visited a child in Smyllum. He described how a nun took up a position
3 on a chair within hearing distance of himself and the child and can I say that
4 there was evidence quite separately from Applicants that when visits were
5 made by social workers that a Sister might be present. His position was that
6 this caused him alarm that a child should be in a setting with staff that took
7 that sort of attitude with children in their care and he said that he got the
8 impression that at Smyllum no outsider was going to be given the opportunity
9 to build a relationship with one of the children in their care.

10 The third witness I want to draw attention to is the witness who took the
11 pseudonym Margot. She worked as a care assistant at Smyllum from
12 [REDACTED] 1965 to [REDACTED] 1966. Her statement was read into the
13 proceedings. She said her “overall memory of Smyllum is of this dark period
14 in my life”. Her recollection of bathing was that “it was just like one child after
15 the next, in and out of the bath, there were 22 children to bath so you just got
16 through them all”. She spoke of the issue of modesty sticking in her mind and
17 of an older girl “kind of standing and lying in the bath as well as trying to cover
18 herself” and with a Sister just washing her, thinking this was not right and that
19 the girl should be bathing herself. She thought this showed a lack of
20 understanding. This witness had no recollection of any birthdays being
21 celebrated at Smyllum. She did recall an incident of seeing a young child
22 being hit repeatedly on the knuckles with a fork by a staff member for not
23 eating his food and the child crying. As she put it “I have an impression that it
24 happened more often but I could not swear to it”. She also recalled
25 witnessing a Sister beating two children which included “wailing

1 indiscriminately on both of them with her shoe". So that is quite independent
2 evidence of serious physical punishment. She went on to say there was "this
3 sudden yelling and beating and her being really angry and red faced". This
4 witness also provided evidence of a child being shouted at by a Sister for bed
5 wetting, being called dirty, having to strip the sheets off the bed and take them
6 and put them in a bath and putting on the cold tap. She described an image
7 of a small boy of eight or nine with his sheets "almost like a cape". She also
8 spoke of another carer who had just finished the childcare course with her
9 shoe off, "wailing on a boy and telling him he was a disgusting and dirty boy".
10 Her evidence was that she did not know how many of these things were one
11 offs but suspected they were not. She went on to say "there was nothing you
12 could even vaguely describe as staff supervision at Smyllum". Another point
13 to mention in connection with this witness and this could be important is that
14 she suffered what she described as "intrusive thoughts" in her life relating to
15 her time at Smyllum. But as I said perhaps the real importance of this
16 evidence in particular lies in the fact that it comes from an independent source
17 and does provide some support for some of the allegations that have been
18 made separately by Applicants.

19 DEATHS AND BURIALS

20 My Lady can I now turn to the matter of deaths and burials and the
21 evidence provided by Janet Bishop and Dr Tom Turner. Mrs Bishop spoke to
22 a report she produced for the Inquiry following her examination of the burials
23 register for St Mary's cemetery in Lanark. Now it has to be stressed my Lady
24 that the cemetery at St Mary's belongs to the Parish Church and that the
25 Parish managed and controlled the cemetery. From 1900 – 1981, having

1 examined the burials records, she discovered that there were 16 deaths of
2 people under the age of 18 who had been residents at Smyllum. Their burials
3 were in a section of the cemetery that had been set aside for Smyllum. Now
4 there were many more deaths than those 16 recorded burials set out in the
5 report Mrs Bishop did for the Sunday Post and the BBC which recorded
6 deaths of children at Smyllum as opposed to burials at St Mary's cemetery.
7 Mrs Bishop was unable to assist of course with where these other children
8 who died over the period may have been buried and she noted that in most
9 cases it would be the family who would decide where someone is buried and
10 they could be buried anywhere. Her evidence was that they could be buried
11 at St Mary's although there is no indication that that was the case. Now I can
12 say my Lady that Samuel Carr is listed in the burials register whereas Francis
13 McColl, Patricia Meenan are not in the register. I think we know from
14 evidence from the Sisters that Patricia Meenan was buried elsewhere in that I
15 think at least one Sister went to the funeral.

16 LADY SMITH: In Glasgow

17 MR MacAULAY: Somewhere in Glasgow. What Mrs Bishop did say is
18 that in contrast to other burials at St Mary's cemetery the precise
19 locations of where children were buried could not be identified from the
20 register and there is no indication as to where the lairs may have been.

21 Now as far as Dr Turner was concerned he was a retired consultant
22 paediatrician and he was asked to comment on the causes of death of
23 children who had died while residing in Smyllum based on the details of the
24 deaths set out in Janet Bishop's report for the Sunday Post and the BBC. He
25 was asked if he could come to any conclusions about the standards of care

1 the children had received and whether there were any obvious trends or
2 patterns in the deaths and in particular whether there was anything that
3 seemed unusual or inappropriate for the time. His general position was that
4 he thought that the trend was in line with what was happening in terms of the
5 community as a whole including various outbreaks of infectious diseases and
6 improvement in healthcare as time went on. He could not draw any
7 conclusions from the certified causes of death about the standard of care the
8 children had received other than to note that the causes were in large part
9 similar to those occurring in the community at large.

10 LADY SMITH: We are talking about largely a pre-antibiotic period where
11 a lot of deaths were attributable to infections of a type that would be
12 able to be dealt with nowadays.

13 MR MacAULAY: Tuberculosis being a classic example, even pneumonia
14 and bronco-pneumonia.

15 RECORDS

16 I think I put to the Sisters Ellen and Eileen last week that the Inquiry
17 during the course of its investigations has sought to recover documents from
18 a number of different sources including local authorities, Scottish
19 Government, Health Boards The Crown Office and Police. It is the case that
20 certain social work records have been recovered from placing authorities,
21 authorities that placed children at Smyllum, but not a lot. Very few records
22 have been recovered from the Scottish Government or from Health Boards
23 and no records have been recovered regarding the reporting of deaths such
24 as those mentioned, Samuel Carr, Patricia Meenan or Francis McColl.

25

1 SISTER ELLEN & EILEEN

2 Can I then make a few more comments in connection with the
3 evidence of Sisters Ellen and Eileen. In the main they spoke to the
4 Daughters of Charity response to the requests made by the Inquiry covered
5 by what is referred to as Part C and D. Part C sought a response from the
6 congregation to questions exploring the prevention and identification of abuse,
7 in particular looking to see what policies had been in place over the relevant
8 period. Part D of the response was focused on the abuse allegations and
9 any response to those allegations on behalf of the congregation. The Sisters
10 explained that they had recently changed their responses to Part C and D to
11 reflect the situation that came to light regarding allegations that were made by
12 two children in the 1970's about Brian Dailly which went un-investigated and
13 unreported at the time. Sister Ellen also said that they had changed their
14 previous position in terms of their apology because they realised there was as
15 she said more than a possibility that some abuse had occurred. That is how
16 she expressed it and that is how she left it.

17 My Lady I have already mentioned what position is now taken by the
18 Order in connection with record keeping or indeed the lack of record keeping.
19 Where there may have been records, for example medical records, the Order
20 cannot provide any explanation as to what has happened to them and on the
21 face of it that is rather disappointing. Sister Eileen Clancy accepted that
22 having heard the evidence of the Sisters that worked at Smyllum she now saw
23 that the groups were very distinct and perhaps there wasn't so much common
24 procedure as they had previously indicated in the response as each house
25 had its own kind of practice or procedure. She accepted that even when there

1 was a Mother Superior generally in charge there was quite a significant
2 degree of autonomy and that is a picture that comes out of the evidence, one
3 house may not know what the other house was doing.

4 LADY SMITH: And there is no evidence of for example any Smyllum
5 guidance about how you punish children.

6 MR MacAULAY: There is nothing at all.

7 LADY SMITH: Even less about whether you should record what you do
8 when you punish children.

9 MR MacAULAY: Sadly Sister Eileen accepted in the last period when
10 Sister Maria Lanigan went as Mother Superior effectively to close
11 Smyllum down she had nothing to do with the children so each house had
12 complete autonomy. Sister Eileen also accepted that the response provided
13 in Part C gave a picture that inspections of the establishment were much
14 more structured than it now seems they were having heard the evidence of
15 the Sisters and that it was not factually correct to state that a child's continued
16 residence was reviewed. It was also accepted by the Order, and this was in
17 line with the evidence that was heard, that until the family group home set up
18 came in that boys were separated from girls and within the boys and girls they
19 were separated into nursery age, junior and senior ages. That was the case,
20 it was accepted, until the family group homes came into existence in the
21 1960's and indeed into the 1970's.

22 LADY SMITH: And I suppose Mr MacAulay it is striking that even if one
23 is driven to a policy for whatever reason of dividing children according
24 to age into different groups surely there must then be a responsibility to
25 recognise I am splitting up the family. We are splitting up the families, now

1 what system are we going to put into place to see that these children still see
2 each other and have contact with each other more than, oh well when they
3 are in the playground they should bump into each other.

4 MR MacAULAY: Even then my Lady there has been evidence that at least
5 for periods of time children were not allowed to see their siblings,
6 particularly if they were girls and boys.

7 LADY SMITH: Yes.

8 MR MacAULAY: As your Ladyship just mentioned a moment ago in terms
9 of discipline and punishment it was confirmed on behalf of the Order, again in
10 line with what surviving Sisters had said, that there were no written policies or
11 procedures in place in relation to discipline and that effectively it was clear
12 that matters relating to discipline rested with the Sisters in charge of the
13 groups. In terms of childcare training the Sisters agreed that it appeared
14 from the evidence that only one Sister seemed to have done the course
15 before going to Smyllum there there were Sisters who didn't do the course at
16 all and Sisters who did the course having been at Smyllum that some of them
17 went back to Smyllum and some did not. The Order did accept that it did
18 appear that trainee priests, for example Bernard Traynor and people such as
19 Brian Dailly, were able to have unsupervised access to children at Smyllum
20 and also at St Vincent's. Evidence was also given on behalf of the
21 congregation about the number of complaints and civil claims both in relation
22 to Smyllum and Bellevue and that in total there were 148 complaints of abuse
23 made against the congregation, staff and priests and 117 civil claims.

24

25

1 CONCLUSION

2 My Lady in conclusion therefore, in looking at the evidence through the
3 lenses of Applicants covering a period of 40 years, although in some
4 instances there are possibly different emphasises on the alleged practices
5 that have been identified, there is, on the face of it, a real degree of
6 consistency in the nature of the allegations and no doubt that is the matter
7 your Ladyship will take into account. Of course against that there is also a
8 broad consistency in the evidence given in particular by the Sisters against
9 whom allegations have been made, subject to some differences of practice in
10 relation to corporal punishment. As I have already mentioned, therefore, the
11 essential issue for your Ladyship is whether your Ladyship can be satisfied
12 that the allegations being made by Applicants have been established.

13 My Lady that concludes my submissions.

14 LADY SMITH: Mr MacAulay thank you for much, that is very helpful. It
15 is now 11.20am and although there is no impetus for me to give any
16 stenographers a break this morning I think that is an appropriate point for us
17 to take a break and hopefully that will enable the rest of those who are going
18 to make submissions to take on board what Mr MacAulay has said and have
19 an opportunity to revise their own thoughts if necessary in light of that and get
20 a cup of coffee. So we will rise now. Sit again in about 15-20 minutes, if you
21 can keep in touch please.

22 LADY SMITH: I turn next to Mr Scott who represents INCAS, when you
23 are ready Mr Scott, I am ready to hear you.

24 MR SCOTT: Thank you my Lady. Before making closing submissions
25 on behalf of INCAS, including submissions on facts which your Ladyship

1 could find established on the basis of the evidence heard in Phase 2, I have
2 some introductory remarks.

3 INCAS members continue to support the work of the Inquiry and
4 remain committed to its purposes. Evidence in the case study in this chapter
5 has been powerful and difficult to listen to, especially for those who sat
6 through the testimony of the survivors.

7 There has not previously been an inquiry of this scale in Scotland
8 and I know that we will all learn from each chapter and case study, adapting
9 and improving our approach as appropriate as the Inquiry progresses. In an
10 initial review by INCAS and their legal team, we have identified areas in
11 which we may be able to work better and improve our contribution to
12 your work. We aim to have a further review before the start of the next chapter
13 which may inform our approach to future case studies.

14 One area which has been working well is the spirit of co-operation
15 fully embraced by Counsel to the Inquiry and others in the wider Inquiry
16 team. Timely discussions behind the scenes with Counsel to the Inquiry,
17 before and during this chapter, have allowed matters to progress more
18 smoothly and without delay. I am sure that this will continue, and we will
19 continue to offer constructive suggestions which we think may assist.

20 I pay tribute to Mr MacAulay for the heavy load he has carried in this
21 chapter, and the willing and helpful manner in which he has incorporated my
22 suggestions for specific questions or lines of questioning to different
23 witnesses. I confess my Lady that it takes a little time to get used to sitting
24 silently when questions are to be asked, but I appreciate that this is an

1 inquisitorial hearing and what matters are the questions and more especially
2 the answers, as opposed to who is doing the questioning.

3 There has been another important success in this chapter. Many of
4 those survivors who have given evidence wish it to be known that they felt like
5 they have finally been heard. Some said so in this room at the conclusion of
6 their evidence, others thereafter. Being heard and listened to has been
7 something absent for most of them as children and at crucial times in their
8 lives. It comes very late for them, but it is appreciated. It follows on
9 seamlessly from the process of statement-taking with which survivors have
10 also been impressed.

11 Being heard is important. Unfortunately, it seems to many survivors
12 that they have not been heard by the Daughters of Charity whose sceptical
13 attitude continues to pervade their official response, even after unavoidable
14 amendment, and also the evidence of Sisters from the Order.

15 Last week, we heard again from Sisters Eileen and Ellen. I have no
16 doubt that their upset was genuine, but I regret that their purported apology
17 was unconvincing for survivors. I wish to say a little more about their so-
18 called apology.

19 On 31 May 2017, the Inquiry was told in the Opening Statement on
20 behalf of the Daughters of Charity "... the Order wishes to extend its
21 deepest sympathy and heartfelt apology to any former resident who *feels let*
22 *down* by those that were entrusted with their care." These were carelessly
23 crafted words which offended survivors.

24 Subsequently, on 11 July, in the Closing Statement, we were told "As
25 Daughters of Charity, our values are totally against any form of abuse and

1 thus we offer our most sincere and heartfelt apology to anyone who suffered
2 any form of abuse whilst in our care.” No doubt more carefully crafted words,
3 and certainly identical to a press statement to the Sunday Post in September,
4 but only meaningful if supported by an accepting and repentant attitude.

5 The furthest any representative of the Daughters of Charity went in
6 acknowledgement of abuse was upon being pressed by my Lady on 13 June
7 as to whether there was any possibility of the allegations being well-founded.
8 The answer to that was: “There’s a possibility.... And shortly thereafter
9 “There’s always a possibility.”, before referring to claims made in around
10 1998- 2000 when matters were left in the hands of solicitors. And from what
11 we heard last week from Sisters Ellen and Eileen, being told of the time-bar
12 for those claims seems to have brought an end to the interest of the
13 Daughters of Charity in any allegations of abuse.

14 LADY SMITH: It is clear that no investigation of the allegations
15 themselves was made at the time and once the legal answer was given
16 to them the door was closed, that was it, that was the end of the claims and
17 they didn’t need to think about them anymore. In fairness they recognise now
18 that they were wrong to do that.

19 MR SCOTT: Of course my Lady.

20 LADY SMITH: And that as a result people have died who were available
21 at that time who had worked at Smyllum and Bellevue at that time and
22 now are no longer available.

23 MR SCOTT: And that is a source of great regret to survivors and
24 indeed obviously to the Order.

25 LADY SMITH: I am sure it is.

1 MR SCOTT: It is not clear how that approach of simply leaving matters
2 once the legal advice was given sits with the annual vow of service to
3 the poor which we heard is so important to them.

4 It may be that today we hear a further stage in the development of what
5 may in time become a full, sincere and heartfelt apology for the abuse
6 perpetrated on children in the care of the Daughters of Charity. For the
7 avoidance of doubt, we have not yet heard such an apology, notwithstanding
8 how these purported apologies have been framed.

9 It seems to some survivors that the Daughters of Charity have
10 continued to be more interested in what was once the good name of their
11 order and Smyllum Park orphanage. I should say that, given the emphasis in
12 this Chapter on Smyllum, I will refer only to Smyllum but, of course, my
13 intention is that my submissions should be understood as referring to Bellevue
14 House as well. To an extent, the Daughters of Charity have been successful
15 in their PR mission because much reporting of this Inquiry has presented or
16 repeated these purported apologies in the superficial terms in which they were
17 offered, as opposed to examining the substance or context of what was
18 actually being said. I hope that those who have unquestioningly reported
19 their words as an apology will listen today and realise that their inevitably brief
20 reports are inaccurate in this respect. They can then report matters fully and
21 accurately.

22 Unlike, apparently, some reporters or editors, survivors have ears
23 which are most sensitive to genuine acknowledgement and apology, as well
24 as to empty or doubting words. As we heard from some survivors who gave
25 evidence in this chapter, they are well aware of what the Daughters of Charity

1 are saying, as opposed to what they claim to be saying. Survivors have heard
2 no sincere and heartfelt apology, and therefore no apology at all.

3 It appears to survivors that the Daughters of Charity simply refuse to
4 recognise what happened to children in their care. That refusal is a choice,
5 not an inevitability, and can be contrasted with the official response of others.
6 Despite the scepticism or denial of the Daughters of Charity, I suggest that it
7 is absolutely clear that abuse happened in their homes. Of course, survivors
8 appreciate that the abuse they suffered is unthinkable because it remains
9 unthinkable to them, all the more so with the perspective of adults. The fact of
10 the abuse is hard to accept, and yet survivors have had to try to accept it
11 while also trying to prevent it from defining them. As the Inquiry has heard,
12 many have succeeded in that but some have not. That involves no fault or
13 failing on their part. Just how overwhelming the abuse remains to the children
14 of Smyllum as adult survivors was apparent from their evidence, both here
15 live in the Inquiry hearing room and even from the words in the daily
16 transcripts. I doubt that anyone has been able to listen or read the words in
17 those transcripts without being affected by an emotional response. All the
18 abuse about which we have heard is appalling, from the traumatic banality of
19 eating, sleeping and washing rituals to the more overt physical, verbal and
20 sexual abuse.

21 Survivors understand that the Daughters of Charity have a duty of care
22 to surviving sisters but surely the overriding duty is to the truth and therefore
23 to the survivors, especially where there is no true contradictor for most or
24 much of the abuse.

1 As your Ladyship pointed out, for all the allegations to be untrue would
2 suggest an extensive conspiracy of lies with common themes and facts
3 agreed on by individuals of many ages from many different places who were
4 resident in Smyllum in different decades and were strangers to each other.
5 Coincidence could not begin to cover the concurrence of common themes, to
6 which I will return when making submissions on specific findings in fact.

7 LADY SMITH: And the paths their lives have taken are quite different,
8 they haven't all gone to working in one area or live in a particular place
9 or a particular way. It is a huge variety in what's happened to these people
10 as they got to their adult lives.

11 MR SCOTT: While there have been some themes that we have heard
12 almost any many different stories as there has been witnesses.

13 LADY SMITH: Yes.

14 MR SCOTT: In this Chapter from those witness, the Daughters of
15 Charity have been offered examples of painful honesty and genuine
16 integrity.

17 Several survivors have emphasised the fact that their memories are not
18 all unhappy ones. Those survivors painted a more rounded picture of Smyllum
19 which balanced some happiness and affection against abuse, even including
20 happy memories of some abusers. Those who suffered abuse do not seek to
21 deny the truth of those who did not. It is unfortunate that some witnesses
22 seemed to think that their truth was universal for all times and all children.
23 That some children were not abused seems clear. For those children or nuns
24 who did not abuse or see abuse to say that there was no abuse goes too far.

1 By comparison to survivors, the Daughters of Charity have barely
2 suffered a bad word to be said against their order. Smyllum was a happy,
3 indeed idyllic, place where abandoned children were offered love and
4 encouraged to thrive. Any allegations must be the result of damage by
5 others, at some other time before or after Smyllum.

6 Survivors offered a picture which, I suggest, is more credible for its
7 balance and the understated manner in which many spoke of traumatic
8 memories from their childhood.

9 The Daughters of Charity offered no such balance. Scarcely a cloud
10 in the sky. The only establishment in Scotland where physical discipline or
11 corporal punishment didn't feature, at times when it would have been a
12 feature in most for many homes and all schools throughout the country. It is
13 acknowledged that some of Smyllum's children were damaged long before
14 they ever passed through its doors but there can be little doubt that further
15 significant damage was suffered there.

16 LADY SMITH: The point of course to be made there is if you are starting
17 point as a non-family carer for a child is that child has already been
18 through trauma and is damaged and may not have had much by way of an
19 appropriate upbringing your responsibilities are that much higher to
20 understand and work out what the child needs as an individual.

21 MR SCOTT: Indeed my Lady and that is where issues about record
22 keeping also contributes to dealing with these children, less well than
23 should have happened.

24 That some damaged children might behave in a challenging manner is
25 probably uncontroversial. No doubt, that was a feature at least on occasion in

1 Smyllum. Perhaps young and untrained nuns might struggle to cope with
2 such behaviour. Perhaps they would then do bad things because older nuns
3 told them to do so, for the discipline and supposed betterment of the children
4 and the redemption of their immortal souls. And at least some of those
5 practices survived, perhaps because there was some sort of institutional
6 memory passed on without question by surviving nuns to their successors.
7 Otherwise, it seems odd indeed that similar practices endured beyond any
8 individual's time at Smyllum. If we had heard that it happened like that, it
9 would still have been awful, but it would have been a glimpse at a probable
10 truth. It would explain what otherwise remains a "mystery" for the Daughters
11 of Charity.

12 Even when forced to accept that there were allegations of which they
13 should have been aware, the dam breached but did not burst. The Daughters
14 of Charity managed to avoid accepting the obvious in that even a single such
15 instance, of which there were no surviving records, is enough to allow them to
16 accept that there may have been, indeed I suggest must have been, more
17 instances of which they themselves are unaware. The evidence of Sister
18 Louise in December suggests the same. While her evidence suggests that
19 the Daughters of Charity as an organisation did not believe the allegations or
20 the claims, it also demonstrated their reaction to the truth. Walking away
21 because they did not want to hear it.

22 It is not too late and even a forced apology, if genuine and sincere,
23 may do some good for some survivors. On the other hand, if the attitude Of
24 the Daughters of Charity remains the same, then they should not bother to
25 have their empty apologies repeated. For all said in evidence last week, the

1 Daughters of Charity should be in no doubt that their continuing refusal to
2 acknowledge abuse has caused further avoidable damage to survivors.

3 I turn now to the question of facts which your Ladyship in my
4 submission should find established on the evidence heard in this case study.

5 In approaching the making of findings in fact, a number of factors may
6 be relevant. There may be some evidence which seems inherently
7 unlikely or improbable, whether of abuse or absence of abuse. There
8 may be evidence of abuse or a pattern of abuse which is supported by a
9 number of witnesses, even where their involvement in events described is
10 quite different, for example, members of staff, medical practitioners and
11 children in care, especially so where the pattern of abuse is described over an
12 extensive period of time. There may be evidence which is uncontradicted,
13 although, when considering whether evidence is uncontradicted, contradicted
14 or supported, regard may be had to the difficulty in some instances in
15 reconciling descriptions of timing and events to establish if different witnesses
16 are describing the same thing. This is especially so given the passage of
17 time, the destruction or lack of records and the fact that some witnesses were
18 young children at the relevant time. Consideration may also be given to the
19 unlikelihood of abusers perpetrating abuse where there are other witnesses,
20 with certain types of abuse perhaps likely to occur privately, albeit there has
21 been evidence that some abuse happened in plain sight and in front of
22 witnesses. Lastly, there will be situations as described by Mr MacAulay
23 where there is a clear conflict of testimony and relevant findings will be
24 possible only by resolving these. There are maybe fewer of these, but the

1 Inquiry has heard evidence from nuns who are the subject of specific
2 allegations, and who deny everything alleged against them.

3 My submissions on facts or possible facts are in general terms, as
4 indicated by the length of time anticipated for each closing statement. While
5 some survivors gave examples which were specific to them, there is a body of
6 evidence which goes beyond the individual witnesses and Mr MacAulay has
7 indeed summarised much of this. I suggest that we heard of similar or even
8 identical practices which persisted over many decades, despite the inevitable
9 changes of nuns, staff and children. This evidence and these practices form
10 the basis for most of my submissions. Where there are differences over
11 time, I will seek to point this out.

12 I suggest that the following findings in fact can be made:

13 LACK OF TRAINING/VETTING/SUPERVISION

14 Most of the nuns and staff who worked at Smyllum had no
15 qualifications for doing so.

16 LADY SMITH: What about the comments made by some of the nuns to
17 the effect that they came from a large family before they went to
18 Smyllum therefore they knew about looking after children, I think was the
19 inference they were asking me to draw.

20 MR SCOTT: It is a possible inference my Lady and there may well
21 have been childcare responsibilities for some of them so that it
22 something your Ladyship could take into account. That might well be
23 relevant experience but the setting and in particular the type of children and
24 the trauma they had been through would perhaps mean that even if they were

1 used to dealing with younger siblings these children would present challenges
2 that they had never experienced before.

3 LADY SMITH: Rather different from helping to care for children in your
4 own family in your own family circumstances. Children's
5 circumstances you knew all about.

6 MR SCOTT: And have known you all of their lives and where there
7 may well have been an attitude of love and affection.

8 Many of the nuns and staff were young with no relevant practical
9 experience. This changed to some extent in the late 1960s when certain staff
10 obtained relevant qualifications. Even then, it was not a requirement for all
11 staff.

12 There was no vetting of staff beyond perhaps that the parish priest had
13 recommended some or a parish priest.

14 There was no formal supervision of staff. Each house operated with
15 significant autonomy, allowing different and inconsistent practices to develop
16 in different parts of the establishment. The ratio of staff to children improved
17 over time but before the 1960s was sometimes as low as 1:4.

18 LACK OF HUMAN AFFECTION

19 Many children experienced no human warmth or affection while at
20 Smyllum. Whether they did depended to some extent on the attitude of
21 individual nuns because I do not suggest that this was the only experience, it
22 depended to an extent the attitude of individual nuns or members of staff who
23 might display or choose to display affection to them. Some nuns and
24 members of staff had "favourites" among the children, although even that was
25 no guarantee of avoiding abuse.

1 SEPARATION OF FAMILIES

2 Children were allocated and Mr MacAulay has spoken of this in his
3 submission and your Ladyship has made some comments about this already,
4 children were allocated to different parts of Smyllum according to age and
5 sex, seemingly with no regard whatsoever for family relationships. Some
6 children discovered that other family members were also resident there and
7 sometimes saw siblings, but nothing was done to try to encourage or preserve
8 these family relationships.

9 RECORDS

10 The full extent of record-keeping throughout the relevant period is
11 unclear. Most relevant records no longer exist. It appears that some were
12 destroyed, for reasons which are also unclear.

13 FAMILY VISITS

14 Family visits were allowed but sometimes withheld as punishment.

15 BIRTHDAYS AND CHRISTMAS

16 Children's birthdays were generally not recognised or acknowledged in
17 any way.

18 Christmas was sometimes recognised.

19 When presents were handed in, by family or others, children were
20 allowed to receive them, but they were removed shortly thereafter and
21 kept from them without explanation.

22 WASHING

23 Mr MacAulay has dealt with this in more detail. Washing often involved
24 queues of children ultimately sharing the same baths, which naturally became
25 increasingly cold and filthy.

1 FOOD

2 The quality of food varied but was often basic and poor. Children were
3 told to eat everything and were sometimes force-fed if they did not do so. This
4 could involve taking hold of the children by the head and forcing their mouths
5 open, while forcing the food in with cutlery. And there was evidence from one
6 witness about damage to her teeth as a result of that. Children were
7 sometimes forced to eat their own regurgitated food.

8

9 BEDWETTING

10 Children who wet the bed were forced to stand beside the bed with
11 their urine-soaked sheets around their necks or otherwise draped around
12 them. Sometimes they were assaulted or given cold baths or showers. This
13 was done as punishment and humiliation for the bed-wetting.

14 VERBAL ABUSE

15 Children were subjected to verbal abuse. They were called names like
16 “bed-wetter”, “fish”, “scum of the earth” and “sinner”.

17 CONTROL/DISCIPLINE/PUNISHMENT

18 Children of all ages were assaulted by nuns and staff. This involved
19 blows with hands - slaps, punches and other means of striking. Sometimes
20 children were thrown to the ground and the assaults involved blows with feet,
21 mainly kicks. Assaults also involved blows with implements, including
22 hairbrushes, a wooden stick, a leather strap and a heavy wooden crucifix.
23 Blows, with and without implements, were aimed at different parts of the child,
24 but including the head, hands, arms, legs, and bare buttocks. This was done
25 as a means of control, discipline and punishment. It was used to punish

1 bed-wetting, not finishing meals, and any other incident of perceived or actual
2 disobedience.

3 SEXUAL ABUSE

4 While many children were victims of other sorts of abuse, sexual
5 abuse was less common but occurred. Boys and girls were subjected to this
6 form of abuse by nuns. This abuse included indecent touching and more
7 serious sexual activity.

8 LADY SMITH: And there was also evidence of abuse by a priest.

9 MR SCOTT: And a priest indeed my Lady.

10 AWARENESS OF ABUSE

11 Children made complaints of abuse to nuns, staff members and
12 others, including the police I think. These complaints were not pursued by
13 those to whom they were made. There is certainly no evidence of them
14 being pursued and no records.

15 There has been awareness of allegations of abuse for many years,
16 certainly since the late 1990s, at the highest levels in the Daughters of
17 Charity. These allegations were not fully investigated within the Order at the
18 time of various claims. Some of the new allegations made by survivors have
19 not been fully investigated, despite the Order receiving disclosure of relevant
20 witness statements although investigations have been offered.

21 In closing my Lady, it is worth pointing out that there may be survivors
22 of Smyllum or Bellevue who have not yet come forward and some who have
23 come forward only as the evidence as being heard from others. I am sure
24 that your Ladyship will agree that the fact that the evidence in this case study
25 has been completed or completed to a point should not deter them from not

1 coming forward if they have not yet done so. The Inquiry will be able to
2 consider evidence in statements even if not heard in oral hearing and it is
3 important I think for the world which is watching to realise that what happens
4 in these public hearings is only a part of your Ladyship's work and the work of
5 the Inquiry.

6 LADY SMITH: Absolutely, thank you for that Mr Scott.

7 MR SCOTT: It may even be that such witnesses could yet be able to
8 give evidence in public hearing those whom may not yet have
9 come forward if thought appropriate, albeit in some later chapter or in a
10 section specially arranged for such additional witnesses and that would be a
11 matter for your Ladyship in due course. Indeed, the Inquiry may wish to hear
12 in public of the outcome of the inquiries promised by the Daughters of Charity
13 into the evidence of Sister Louise and the refusal of at least one Sister to
14 listen to the truth. In relation to that particular passage of evidence it is in my
15 submission inconceivable that discussion between someone had the
16 headquarters of the Order and a Sister of another Order who had been
17 identified as a child of Smyllum would not have had ripples within the
18 organisation.

19 LADY SMITH: We also heard of some work put in place by the Order to
20 look into the number of burials in the St Mary's cemetery which
21 of course will need the co-operation of the parish. It is not their ground but it
22 seems that maybe at early stages but I think I had an indication from them
23 that we will hear from them about that.

24 MR SCOTT: Indeed.

25 LADY SMITH: We will certainly follow it up if we don't.

1 MR SCOTT: Thank you my lady. And finally my Lady , on behalf of
2 INCAS, I would like to thank you for the careful patient and
3 human way in which you have presided over the giving of evidence in this
4 difficult case study. INCAS members are also grateful to you for deciding to
5 issue findings relevant to this case study when you have been able to fully
6 consider the evidence which has been heard. Undoubtedly, there are
7 survivors who may hear those findings this year who would not do so if they
8 had to wait until after the conclusion of all of the oral hearings in the Inquiry
9 and with that I close my Lady.

10 LADY SMITH: Thank you very much Mr Scott and thank you for your
11 careful attention to the evidence which you have obviously been
12 most insidious in following. I am grateful for that.

13 MR SCOTT: Thank you my Lady.

14 LADY SMITH: Now, next I turn to Police Scotland and I think Ms van
15 der Westhuizen, yes I can just see you now thank you. When you are
16 ready.

17 MISS van der WESTHUIZEN: My Lady, Police Scotland is grateful for the
18 opportunity to make this closing submission.

19 During this phase of the Inquiry we heard testimony from survivors who
20 suffered abuse within The Daughters of Charity Institutions and Police
21 Scotland would like to express its continued sympathy to those survivors, and
22 to all the other survivors who suffered abuse within the various care
23 establishments throughout the country.

24 Police Scotland has welcomed the opportunity to provide information
25 and evidence in relation to the investigation carried out by officers based

1 within Homicide Governance and Review into the death of Samuel Carr, a
2 resident at Smyllum Park Home, Lanark, who died on the 12th June 1964.

3 Homicide Governance and Review is a department of experienced
4 officers working on major crimes and specialising in the investigation of
5 unresolved homicides.

6 The inquiry heard evidence from Detective Inspector Graham
7 MacKellar, an officer with 28 years policing experience, who was the Senior
8 Investigating Officer in the investigation undertaken in 2015 into the death of
9 Samuel Carr.

10 Detective Inspector MacKellar provided evidence about how Police
11 Scotland received the initial report and recognised that it should be
12 investigated by specialist officers. He informed the inquiry of how he tasked
13 his officers to uncover material that would assist the investigation and the
14 lengths that they went to in order to ensure that all possible opportunities were
15 fully explored. He gave evidence about how he eventually obtained a copy of
16 the original post mortem report and how he obtained an up to date medical
17 expert opinion on that report, which concluded that there was no evidence of
18 any trauma or assault to Samuel Carr's body and that his death was caused
19 by an illness rather than by an assault.

20 Detective Inspector MacKellar's evidence also included how his officers
21 had uncovered that the suspect in relation to the alleged assault on Samuel
22 Carr was now dead.

23 In the event that your Ladyship is minded to make any finding of fact in
24 relation to Police Scotland's investigation into the death of Samuel Carr, I
25 respectfully submit that it should be that the investigation carried out by

1 Homicide Governance and Review under the direction of Detective Inspector
2 Graham MacKellar, correctly concluded that Samuel Carr did not die as a
3 result of an assault but rather due to a brain infection.

4 My Lady, Police Scotland is committed to investigating all forms of child
5 abuse. These investigations, particularly of non-recent crimes, are complex
6 and challenging, but Police Scotland will continue to investigate all reports of
7 child abuse alleged to have taken place in Scotland, irrespective of when that
8 abuse occurred. My Lady unless I can be of further assistance those are the
9 closing submissions on behalf of Police Scotland.

10 LADY SMITH: Thank you very much and I am particularly grateful to you
11 for that final indication that the hunt will not cease. Very helpful.

12 Can I now turn please to representation for the Lord Advocate, Mr
13 Richardson. Sorry I was expecting Ms Laurie at the last indication I had.

14 MR RICHARDSON: Indeed my Lady, thank you, and thank you my lady for
15 this opportunity to make a closing submission to the Inquiry for this
16 phase of the Inquiry on behalf of the Lord Advocate.

17 I don't intend to take up much of the Inquiry's time and will focus my
18 submissions on two aspects which arose during the evidence led in this phase
19 of the case study which relate to the role of the Lord Advocate. First the
20 investigation of deaths of children in care and second the ongoing review
21 process being undertaken by a dedicated team of prosecutors within COPFS,
22 that is the Crown Office and Procurator Fiscal Service.

23 First in relation to the investigation of deaths during the case study, the
24 Inquiry heard evidence from a number of witnesses in respect of the sad
25 death of children who died during their residency at Smyllum Park. It has

1 become apparent from listening to that evidence and the reaction to that
2 evidence that there is still a great deal of interest as to how deaths of children
3 in care were investigated.

4 As I mentioned in my opening statement, the Lord Advocate is the
5 head of the system of prosecution of crime and also the investigation of
6 deaths in Scotland. This is a role that the Lord Advocate exercises
7 independently of any other person. Put very briefly, it is the duty of the
8 appropriate Procurator Fiscal to investigate all sudden, suspicious, accidental,
9 unexpected and/or unexplained deaths of which the Procurator Fiscal is made
10 aware and to consider whether that death has occurred in circumstances
11 where a Fatal Accident Inquiry may be required or appropriate or where
12 criminal proceedings are appropriate.

13 LADY SMITH: Just to pick up on that Mr Richardson of course it is for
14 some decades now that that is a role that has been performed by the
15 Lord Advocate albeit the legislative basis for him doing so has changed over
16 the years. Am I right about that?

17 MR RICHARDSON: Absolutely my Lady. During the period about which my
18 Lady has heard evidence the precise statutory guides as it were may
19 have altered but the role of the Lord Advocate in investigating suspicious
20 deaths is one that dates back into the 19th century and indeed possibly
21 beyond that. So that role is certainly one that the Lord Advocate has always
22 had

23 LADY SMITH: Thank you.

24 MR RICHARDSON: Based on the evidence the Inquiry has heard, it appears
25 to the Lord Advocate that there is a clear public interest into the way in

1 which the deaths of children in care were investigated historically. The Lord
2 Advocate understands that the response of the criminal justice system to
3 allegations of the abuse of children in care will be the subject of a separate
4 phase of hearings in the future and we would welcome the opportunity at that
5 stage or in advance of that stage to provide information to the Inquiry in much
6 greater depth as to the role of the Procurator Fiscal in the investigation of
7 deaths, including the deaths of children in care and that information would
8 include topics such as the type of deaths in which the Procurator Fiscal would
9 have become involved, the nature of the investigation that would have been
10 carried out and how that process has evolved over time.

11 Accordingly, it is our intention to cover the investigation of deaths within
12 the report which is currently in preparation to be submitted to the Inquiry in
13 advance of the phase of hearings addressing the response of the criminal
14 justice system.

15 I turn to my second topic. In my opening statement, I explained that
16 the Lord Advocate had established a team of prosecutors dedicated to
17 reviewing decisions taken in the past by the Crown Office and the Procurator
18 Fiscal Service. The review team is presently reviewing allegations of abuse
19 of children in care which were reported to it by the police. In my opening
20 statement I also made clear that, where appropriate, cases are being re-
21 investigated using modern investigative techniques and consideration is being
22 given as to whether or not a prosecution can and should now be brought.

23 I wish to say a little more about this, in light of the evidence that has
24 been heard during this phase of the Inquiry.

1 A number of the witnesses who gave evidence to the Inquiry spoke
2 about actions and indeed practices which, if proved, following due processing,
3 including a criminal trial, might well amount to a crime in Scots Law .

4 The review team are working closely with Police Scotland to review any
5 evidence which could be relevant in assessing whether there is a legal
6 sufficiency of evidence to establish a crime being committed by an individual.
7 As part of this process, officers of Police Scotland are, under instruction from
8 Crown Office and the Procurator Fiscal Service, currently speaking to relevant
9 individuals who wish to engage with them.

10 During the present case study, the Inquiry heard evidence of this
11 ongoing review work. A number of witnesses mentioned that they had
12 recently spoken to a police officer and that engagement is directly as a result
13 of the ongoing review work to which I have referred.

14 The work of the review team is ongoing and will be ongoing throughout
15 I suspect, the duration of the Inquiry and the review team will continue to work
16 closely with Police Scotland providing direction to their investigations and
17 working to ensure the capture of any available evidence relevant to a potential
18 prosecution.

19 We will, where possible and appropriate, keep the Inquiry updated as
20 to the work of the Review Team.

21 Finally, may I take this opportunity to reiterate to the Inquiry that the
22 Lord Advocate is committed to supporting its work, and, where possible, to
23 contributing positively and constructively to that work.

24 LADY SMITH: Thank you very much Mr Richardson.

25 MR RICHARDSON: Thank you my Lady.

1 LADY SMITH: Now I would like to turn to Scottish Minister, Ms O'Neill,
2 when you are ready.

3 MISS O'NEILL: My Lady I am obliged. Your Ladyship invited parties to
4 make submissions on that evidence heard in this first part of Phase 2
5 from the perspective of their particular interest and I begin by making some
6 observations on the Scottish Ministers' interest in Phase 2 of the Inquiry.

7 The Scottish Ministers of course have an overarching interest in all
8 aspects of the Scottish Child Abuse Inquiry and in the effective conduct of its
9 work.

10 The Inquiry was established by the Scottish Ministers under Section 1
11 of the Inquiries Act 2005 and the Inquiry's terms of reference were set by the
12 Cabinet Secretary for Education on 27 May 2015 and amended by the Deputy
13 First Minister on 17 November 2016.

14 The preamble to the Inquiry's terms of reference record that the
15 Inquiry's overall aim and purpose is to raise public awareness of the abuse of
16 children in care, particularly during the period covered by the Inquiry, and to
17 provide an opportunity for public acknowledgement of the suffering of those
18 children and a forum for validation of their experience and testimony.

19 The Scottish Ministers have been represented throughout the Phase 2
20 hearings that have taken place to date and that have concerned the
21 residential care provided by the Daughters of Charity of St Vincent de Paul. It
22 is clear that those hearings have contributed to fulfilment of the Inquiry's
23 overall aim and purpose. So far as Ministers' involvement in the Daughters
24 of Charity Case Study is concerned, The Scottish Government Response Unit

1 has responsibility for co-ordinating the provision of information by Scottish
2 Government to the Inquiry.

3 In relation to Phase 2 of the Inquiry, including in relation to the
4 Daughters of Charity Case Study, the Response Unit has provided
5 information to the Inquiry in response to four notices issued by the Inquiry
6 under Section 21 of the 2005 Act.

7 Those included a notice issued on 17 July 2017 by the Inquiry to the
8 Response Unit seeking, in summary, documents held by or within the control
9 of the Scottish Government relating to the Smyllum and Bellevue institutions
10 in respect of the period 1 January 1930 to 17 December 2014 inclusive. The
11 notice also sought, specifically, documents in respect of the child Samuel Carr
12 who lived in Smyllum in Lanark and died whilst in the care of that
13 establishment in around 1964.

14 The Response Unit complied with that notice in early August 2017.
15 Only a relatively limited number of relevant records were identified. Those
16 records have been made use of in the course of the Phase 2 hearings. For
17 example, documents recording the number of children living at Smyllum have
18 been put to witnesses to test or refresh their memory (see for example
19 document SGV001.001.0422).

20 LADY SMITH: I think we probably all remember seeing what looked like
21 the standard form that had to be put in by way of a statutory return with
22 numbers of children, number of girls, number of boys, the amount a child that
23 was being paid for the child, the purposes of the Order and so on. We looked
24 particularly at one for I think 1961 and one from 1968.

1 Ms O'NEILL: But it is acknowledged my Lady that there was a
2 relatively little amount of material that was provided and was able to be
3 provided in response to the notice.

4 My Lady in relation to specific findings of fact, while the Scottish
5 Ministers have been represented throughout the Daughters of Charity case
6 study and have provided information to support the work of the Inquiry during
7 Phase 2, those representing the Scottish Ministers have not been actively
8 involved in the taking of evidence from witnesses who have given evidence
9 during the case study.

10 The Scottish Ministers did not consider that it would have been
11 appropriate for them to apply to the Inquiry for permission to question those
12 witnesses. In particular, the Scottish Ministers do not consider that they had
13 any basis on which to test or challenge the veracity of the evidence given by
14 witnesses during the case study.

15 In the circumstances, the Scottish Ministers do not intend to make
16 detailed submissions on the evidence heard by the Inquiry during the case
17 study or to propose that the Inquiry should make specific findings in fact in
18 respect of the accounts given by witnesses as to events at Smyllum and
19 Bellevue.

20 The Scottish Ministers' submissions are therefore restricted to the
21 following observations:

22 Your Ladyship has decided to apply the civil standard of proof when
23 determining what facts have been established in the course of the Inquiry.
24 Your Ladyship has also indicated that you may be prepared to make findings
25 about, for example, what may possibly have happened or about the strength

1 of particular evidence, where she considers it would be helpful to do so. In
2 light of this decision on the standard of proof, Ministers would submit first:

3 it remains open to your Ladyship in making findings of fact, to use
4 language that reflects the degree of certainty or confidence that you
5 have in any given finding; and my Lady that is not to suggest any
6 moveable feast of the sort that your Ladyship rejected in her
7 decision but rather that it anticipates that your Ladyship in delivering
8 reasoning for facts may for example refer to what I think Mr
9 MacAulay described as a real degree of consistency in the evidence
10 of particular witnesses.

11 Second, that your Ladyship is entitled to, and should, make it clear
12 when you consider the evidence insufficient to make a finding of fact
13 on any given matter; and
14 third that your Ladyship may express the view that you suspects, or
15 regards it as a possibility, that a particular event or act has taken
16 place, while recognising in doing so this is not making a finding of
17 fact as such but expressing comment as provided for by Section 24
18 of the 2005 Act.

19 Ministers would also make one perhaps technical observation about
20 terminology. During the case study hearings, questions have been put to
21 witnesses and evidence has been given about when (if at all) children had
22 access to, for example, 'social workers' or 'welfare officers'.

23 This evidence will be relevant to future consideration by the Inquiry of
24 (a) which bodies and agencies had legal responsibility for the care of children;

1 and (b) whether and to what extent those bodies and agencies failed in their
2 duty to protect children in care in Scotland from abuse.

3 If the Inquiry proposes to make findings of fact about the involvement
4 (or otherwise) of external agencies or bodies in monitoring the welfare of
5 children in the care of the Daughters of Charity, it is submitted that in so doing
6 it would be appropriate to make clear that the language that was used in
7 evidence was used in an informal way. The term 'social worker', for example,
8 may be regarded as having come into common currency with the passing of
9 the Social Work (Scotland) Act 1968 and has a technical meaning that would
10 not necessarily have been intended by those witnesses giving evidence
11 (particularly those giving evidence about their experiences before 1968).

12 LADY SMITH: We had statutory terminology from 1948 Act which
13 produced something called a children's officer. I see the point
14 you make when we are talking about social workers pre 68, we are not talking
15 about a social worker under the 1968 Act with the duty solicitor's
16 responsibility.

17 MISS O'NEILL: It is a technical point my Lady, that is accepted.

18 My Lady finally in making these limited submissions the Scottish
19 Ministers are not to be taken as intending any lack of respect for the
20 witnesses who have given evidence or concern about the evidence that has
21 been heard. Those my Lady are the submissions on behalf of the Scottish
22 Ministers.

23 LADY SMITH: Thank you very much Miss O'Neill.

24 I would like now to turn to the representation for the Bishop's
25 Conference of Scotland, Mr Anderson, whenever you are ready.

1 MR ANDERSON: Thank you my Lady. I am grateful for this opportunity to
2 make this closing submission. I might start my Lady by briefly putting
3 this submission into context. Following the conclusion of the phase one
4 hearings last year the Bishops' Conference of Scotland gave detailed
5 consideration to their status and ongoing participation in my Lady's Inquiry
6 and in particular the present case study. Matters pertinent to that
7 consideration were dealt with in the phase 1 evidence and very briefly they
8 were on the one hand as that evidence showed neither the Bishops'
9 Conference of Scotland nor the relevant Diocese which in this case study is
10 the diocese of Motherwell, were directly involved in the operation of the
11 establishments with which this case study is concerned. On the other hand,
12 there is nonetheless a relationship between the Bishops Conference of
13 Scotland, the Diocese and the Religious Order operating the establishments,
14 there was the possibility (as has eventuated) of there being allegations made
15 against Priests for whom a Diocese would be responsible under the Canon
16 Law and as we heard in the first Phase the local parish was responsible for
17 pastoral care within the establishments for example by celebrating Mass.

18 Ultimately the Bishops' Conference took the view - consistent with their
19 commitment to my Lady's Inquiry - that core participant status ought to be
20 sought together with leave to appear in this case study. The relevant
21 applications were made, core participant status was sought on 21 November
22 of last year and leave to appeal was sought on 24 November 2017/ It was
23 obviously very close to the commencement on the case study. Core
24 participant status was granted on 5 December 2017 while leave to appear
25 was granted on 20 December 2017. As a result of that my Lady, and I say

1 this purely to put the submission into context, the Bishop's Conference of
2 Scotland did or did not yet have access to the entire body of evidence
3 throughout the case study.

4 LADY SMITH: Are you aware Mr Anderson that the opportunity to
5 receive the training that is necessary to be able to operate the
6 document management system has been available for quite some time, but
7 not yet accessed.

8 MR ANDERSON: I am aware of that my Lady.

9 LADY SMITH: The short point I am making is, I don't think it is the
10 Inquiry's fault that they haven't had access to documents.

11 MR ANDERSON: And I don't want my submissions to be understood to be
12 made in that respect. As I say I am simply highlighting this by
13 way of the context of my submission.

14 While it is considered appropriate in the context of the Bishops'
15 Conference of Scotland's commitment to appropriate participation in the
16 Inquiry, to make submissions as to what can be taken from the evidence
17 these submissions are very brief and made at a high level.

18 So accepting my Lady that assessment of the evidence is a matter for
19 my Lady, it is submitted that two general findings in fact are open to my Ladu
20 on the evidence in this case study, and that is first:

21 that a significant number of incidents of child abuse (as defined
22 in the Terms of Reference) took place at the establishments with
23 which the case study is concerned; and second
24 looking back to those incidents, the Daughters of Charity did not
25 have sufficient safeguards in place to detect or prevent abuse;

1 Very briefly dealing with the first proposed finding my Lady, if the
2 evidence of the Applicants is accepted and that being a matter for my Lady, it
3 is submitted that it is sufficiently clear for it to be open to the inquiry to
4 determine on the balance of probabilities that abuse of children took place in
5 the relevant establishments. Clear themes emerge from the evidence. The
6 similarities in treatment reported by multiple witnesses is striking. This
7 evidence has gone effectively without challenge, nor would the Bishops'
8 Conference seek to challenge any of it.

9 Referring my Lady to the evidence of Sister Ellen Flynn of 24 January
10 2018, although she described her difficulty in accepting allegations of abuse,
11 when these were put specifically to her, taking her evidence and the evidence
12 of Sister Eileen Glancy as a whole, it does appear taking that evidence as a
13 whole, although it wasn't offered in terms, that there is a degree of
14 acceptance on behalf of the Order that abuse in the relevant establishments
15 did take place. Albeit that the Sisters giving evidence the day before took a
16 different position and assessment of that is a matter for my Lady.

17 LADY SMITH: It is quite an interesting position for the Bishops'
18 Conference to take Mr Anderson. Are you influenced
19 particularly by the language that it is accepted that it is more than a
20 possibility?

21 MR ANDERSON: Yes my Lady. When my learned friend, Mr MacAulay put
22 specific allegations to the Sisters, those allegations weren't
23 accepted but if we take what was said around those specific allegations in
24 more general terms, my submission on that evidence is that there is a level of
25 acceptance in that evidence.

1 LADY SMITH: Thank you.

2 MR ANDERSON: From a personal position the Sisters find these
3 allegations difficult as they were not personally involved in the
4 running of the establishments at the time but they did express their deep
5 sorrow and regret for any suffering endured by a child in the care of their
6 community.

7 In relation to the second finding and fact which is available in my
8 submission, the whole body of evidence, if accepted by my Lady, indicates
9 that there were insufficient systems or safeguards in place to detect or
10 prevent abuse. Sister Ellen Flynn accepted in her evidence that there was
11 insufficient attention paid to training and governance. That is a failure of
12 systems and safeguards in itself. Whether this is unique to the Sisters or
13 present over a wide number of institutions is something that the inquiry will no
14 doubt continue to examine.

15 Accordingly my Lady, the Bishops' Conference of Scotland submit that
16 the two proposed findings are open to the Inquiry to make. These are,
17 offered at a high level. It may be thought appropriate that findings are made
18 in more detail. In the circumstances, the Bishops' Conference would leave
19 those submissions to others. Mr MacAulay has already gone over the
20 evidence in detail.

21 One other matter which I would seek to address very briefly in this
22 submission my Lady is the matter of allegations, against priests and other
23 matters which are pertinent to the Diocese. Now there have been allegations
24 against priests made in this case study and that evidence for my Lady to
25 assess. I don't propose to deal with these in any detail here my Lady, I would

1 make a short comment on the Bishops' Conference of Scotland's position in
2 this regard and put simply the Bishops' Conference of Scotland takes these
3 allegations seriously. The Bishops' Conference of Scotland or the relevant
4 Diocese will consider all of these allegations respectfully and in detail and if
5 further assistance can be given to this Inquiry in this regard this will be given
6 and I say that in relation to allegations but also other matters which are
7 pertinent to the Diocese. I have nothing further to add my Lady.

8 LADY SMITH: Thank you very much Mr Anderson.

9 Finally I would like to turn to Mr Rolfe who is here for the
10 Daughters of Charity.

11 MR ROLFE: Much obliged my Lady. My Lady the Daughters of
12 Charity offer their thanks for the opportunity to have been represented
13 during this Case Study. They pay tribute to all witnesses - applicants or
14 otherwise - who have had the courage, strength and determination to come
15 forward and relive their experiences for the benefit of the Inquiry. The
16 Daughters appreciate what a traumatic experience it was for applicants to
17 give their evidence. It was traumatic too for those who were reliving the
18 experiences of former residents who are no longer with us. They extend their
19 thanks to current and former members of their Community too for their
20 evidence.

21 The Daughters pay tribute to those who sadly passed away before they
22 had the opportunity to give evidence but nonetheless had the courage to
23 assist the Inquiry. Whichever way the evidence was brought before the
24 Inquiry the Daughters understand the enormous bravery it takes to vocalise

1 the experiences that the witnesses did, for the benefit of greater
2 understanding of the life they faced.

3 Much of the evidence from the applicants was harrowing. These
4 witnesses had all been children who came to the Daughters of Charity at their
5 most vulnerable. Some came from a turbulent home life. Some came to the
6 Daughters as a result of family tragedy. What these children all had in
7 common was that they were in desperate need of the Community's love, its
8 care, its protection and its compassion. The evidence heard suggests that the
9 Community failed them.

10 The Daughters of Charity have been consistently represented at every
11 day of this Case Study. Every word of the evidence has been heard and
12 taken account of. The Community are listening to these accounts. The
13 evidence of the applicants matters to the Daughters of Charity.

14 Neither Sister Ellen Flynn nor Sister Eileen Glancy sat through the
15 evidence of the applicants. It was considered more appropriate for the Sisters
16 to follow the evidence closely, but remotely, without their presence or the
17 associated press interest having any adverse effect or impact on the already
18 difficult process of giving evidence. Applicants giving evidence may have felt
19 intimidated by the presence of members of the Community whose members
20 they were accusing. Members of the public, perhaps with their own
21 experiences of abuse, who were not giving evidence, may not have felt
22 comfortable sitting alongside members of the Community in the public
23 benches.

1 LADY SMITH: Mr Rolfe I appreciate this was a judgement call for those
2 particular two witnesses, am I right in thinking nobody from the
3 Order was listening in the public benches to the Applicants giving evidence?

4 MR ROLFE: There was no representatives of the community within the
5 public benches my Lady, that is correct.

6 LADY SMITH: If there had been it may have assisted them to
7 understand the evidence of the Applicants in a way that can
8 never really be gained from simply looking at it in black and white in a
9 transcript.

10 MR ROLFE: I appreciate that entirely my Lady however the way in
11 which the Legal Team communicated with those Sisters in
12 particular ensured that emphasis was placed on the relevant parts of the
13 Applicant's evidence to ensure that they did get a feel for the emotion that
14 these witnesses conveyed during their accounts.

15 LADY SMITH: Thank you.

16 MR ROLFE: I am obliged my Lady, and indeed my Lady I make
17 reference in the submission to one Applicant's evidence of the
18 fact that he had an 'absolute fear' of nuns with your Ladyship taking the time
19 to advise him "...can I assure you there are no nuns in here." My Lady that is
20 an appropriate point at which to make reference to the footnotes which
21 purveyed my submission. I don't propose to go through each individual
22 reference unless of course my Lady would like me to do so.

23 LADY SMITH: No, there is no need and I have seen them and they are
24 helpful. Thank you Mr Rolfe for going to the trouble of doing
25 that.

1 MR ROLFE: In my submission it was clear from the evidence of
2 Sisters Eileen and Ellen that they had closely read the
3 transcripts of the evidence. They take this opportunity to thank the Inquiry
4 Team for arranging that transcripts were made available by secure means as
5 quickly as possible so that they were able to read all other evidence heard
6 before giving their own evidence. As I have alluded to my Lady they received
7 (undertaking compliant) updates from their solicitor at least daily, often several
8 times in a day.

9 The Community is deeply troubled by the accounts of experiences at
10 Smyllum, Bellevue and St Vincent's which have been recounted in evidence.
11 They are horrified. They offer their sincere and heartfelt apologies to those
12 Applicants and their family members who are dealing with the lifelong effects
13 of the experiences they described.

14 The Daughters encourage anyone with recollections of their
15 experiences at Smyllum and Bellevue, (or any other establishment that they
16 either operated or were involved with), to come forward and speak to the
17 Inquiry Team. The Daughters' desire to hear the accounts of, as Sister Ellen
18 put it in her evidence, 'their children' does not end at the conclusion of this
19 case study. The Inquiry will not stop listening. The Daughters of Charity will
20 not stop listening.

21 The Inquiry too has heard from those who have positive memories of
22 their time at Smyllum. The Daughters also offer their sincere thanks to those
23 witnesses. The Daughters also take this opportunity to acknowledge and
24 thank those who communicated with them or their solicitors directly with them
25 or their solicitors but from whom the Inquiry did not hear. Again, the Inquiry

1 will not stop listening to similar accounts and neither will the Daughters of
2 Charity.

3 However my Lady the Daughters do not seek to hide behind the
4 positive accounts of time spent at Smyllum. Helen Holland's point - made on
5 day 17 of the evidence, 4 July 2017 - is endorsed by the Community. Senior
6 Counsel put it to her: -

7 " But you also go on to say that not everybody's experience of care is
8 negative and you recognise and respect that? The answer was as follows my
9 Lady:-

10 "Absolutely, yes. We have someone on our committee whose experience of
11 care was good but she also recognises the fact that many people's
12 experience in care was particularly bad. You can't cancel out one from the
13 other..."

14 My Lady put that succinctly during Phase One closing submissions,
15 when she said "Helen Holland .. made what I think is a very valid point that
16 one must be careful not to adopt an algebraic approach and say a good
17 experiences is fine, it cancels out the negative ones, because it doesn't."

18 The Daughters agree entirely with that assessment. All that evidence
19 of a 'good experience' at Smyllum – or anywhere else for that matter -
20 demonstrates is that it was clearly possible for the Community to provide such
21 'a good experience'. If the Daughters could provide a positive experience for
22 some, why couldn't they do it for all of the children in their care? That is
23 something that deeply troubles the Daughters of Charity.

24 The Inquiry has seen and heard how emotional Sister Ellen, the
25 Provincial of the Daughters of Charity in the UK, was at the evidence provided

1 by the Applicants. She said: "The core of our being is about being there for
2 vulnerable people in distress, and I think the core of our being has been
3 wrenched by some of the testimonies from the Applicants that we've heard
4 and experienced, just even through the transcripts, clearly not visible to us.
5 But we accompany people who suffer in long lasting effects of things that
6 have happened to them early on or during their lives, so we know, we feel the
7 impact and any child that has been abused whilst in our care, we would feel a
8 very, very deep sense of regret for the long lasting effect on that person."

9 Their apology to those affected by abuse at any establishment under
10 their control is unqualified and it is unequivocal.

11 Abuse is totally against everything the Daughters of Charity stand for.
12 The allegations of abuse have rocked the Community to its core. The
13 Community's leadership finds it difficult to reconcile, on the one hand, the
14 many and varied accounts of abuse with the evidence of the Sisters and staff
15 (and indeed some of the former children from whom evidence was led) who
16 spent time at Smyllum. That difficulty was not and is not advanced as a
17 defence of the Community, but as an explanation of why the Daughters of
18 Charity have welcomed the Inquiry. The Daughters of Charity are open to any
19 findings which your Ladyship feels able to make.

20 Your Ladyship wrote to Core Participants with leave to appear in
21 December. As well as inviting submissions on the standard of proof, Your
22 Ladyship advised: "At this stage, closing submissions should be only in
23 relation to what facts I may find established".

24 Your Ladyship has since issued her decision on the appropriate
25 standard of proof to be applied and I propose to turn to facts which the

1 Daughters of Charity invite your Ladyship to find established on the balance of
2 probabilities, thereafter propose to proceeding to matters where the weight of
3 evidence is submitted to be such that no finding can be made, but the issue is
4 nonetheless noteworthy.

5 The Community invites your Ladyship to make the following findings:-

- 6 (i) The Community failed in their obligation to keep and maintain records;
7 (ii) Sammy Carr's death was a result of infection, not trauma;
8 (iii) There were 16 burials of individuals under the age of 18 with a "Smyllum
9 connection" at St Mary's cemetery between 1900 and 1981;
10 (iv) The causes of death of those connected with Smyllum mirrored the
11 causes of death in the wider community;

12 Other Noteworthy matters my Lady are threefold, the first of which being:-

- 13 (i) Headstones
14 (ii) The evidence of the Community's failure to recognise and support the
15 Jewish faith of a child is equivocal; and
16 (iii) Records related to Francis McColl's death and burial.

17 If I may turn to the failures and record keeping my Lady.

18 Sister Eileen Glancy conceded that certain terms of the Administration
19 of Children's Homes (Scotland) Regulations 1959 had not been complied with
20 at Smyllum. Aside from the difficulty in locating records in archives, the
21 evidence heard from those who served at Smyllum in relation to the
22 compilation and maintenance of those records - it is submitted - inevitably
23 leads to the conclusion that obligations incumbent under the Regulations were
24 not met. While accepting that records would have reported and not
25 necessarily shaped practice, Sister Eileen agreed that this shortcoming in the

1 personal records of children caused, what she described as "...the greatest
2 sadness because to us this is the most important record for any child, even for
3 when they're an adult and they want to look back and see any history about
4 them when they were children in Smyllum. So this does cause us grave
5 concern."

6 Sister Ellen Flynn agreed that the Community had and I quote
7 "...clearly been remiss in terms of professional training and all the things that
8 Senior Counsel had gone through today. Remiss in governance. Many, many
9 things. We can say, yes, we were completely wrong, especially by today's
10 standards."

11 The Community accept that the 1959 Regulations were not in all
12 respects fulfilled, they accept responsibility for this, and accept that they are
13 accountable for these failings in record keeping.

14 LADY SMITH: Mr Rolfe, do they accept that the point of regulations like
15 the 1959 Regulations is twofold, not simply to keep an official
16 record of what was happening in relation to children in a number of respects.
17 We have already alluded punishment books for example today but there were
18 other requirements in the 1959 Regulations but to impose on those
19 responsible for keeping the records and responsible children a repeated
20 reminder of the way they were supposed to behave in relation to the children.
21 What was important, what mattered. A regularity system, a discipline on
22 themselves about the way they behaved towards the children. The short
23 point is the very fact of having to keep records can affect the conduct of the
24 record keepers. Isn't that right?

25 MR ROLFE: That is entirely conceded my Lady.

1 LADY SMITH: Thank you.

2 MR ROLFE: My Lady the next matter that I wish to address your
3 Ladyship on is Sammy Carr.

4 Samuel "Sammy" Carr was born on 8 February 1958. He was six
5 years old when he died on 24 June 1964 during his second period at
6 Smyllum. He was in the care of the Daughters of Charity at Smyllum for 15
7 or 16 months prior to his death.

8 Eminent pathologist Professor Anthony Busuttil examined the evidence
9 available into the death of Sammy Carr and prepared a report. In so doing
10 he had access to the post mortem report produced by Dr Derry MacDonald
11 who, during the evidence of Prof. Busuttil, was referred to as one of the
12 'earliest solely paediatric pathologists, renowned and quite eminent in his
13 field'.

14 Prof. Busuttil summarised the post mortem as follows:-

15 "Death was said to have been the result of a diffuse brain condition." He went
16 on to conclude in his report and I quote:- "I am in no doubt at all that the brain
17 haemorrhage seen in this instance **was not** traumatic in origin." (emphasis
18 added)

19 In evidence he said of the post mortem findings:

20 "It is not the right situation for trauma, it doesn't fit any traumatic picture of any
21 variety."

22 It is submitted therefore my Lady that Prof. Busuttil's evidence on the
23 non-traumatic origin of Sammy Carr's death should be accepted by the
24 Inquiry.

1 If I may then turn to look to the number of Smyllum children buried at St
2 Mary's cemetery my Lady.

3 Some Applicants made reference to a 'mass grave', a 'huge grave' or
4 an area where 400 children were interred in their evidence. Certain press
5 outlets continue to refer to 400+ deaths at Smyllum between 1864 and 1981
6 with the young people, and I quote "feared to be buried in a single unmarked
7 grave." It is in light of that my Lady that in my submission it would be
8 appropriate to address the issue of deaths at Smyllum and burials.

9 At the outset in my submission my Lady it is important to distinguish
10 Smyllum itself from St Mary's and its cemetery. Neither St Mary's nor its
11 churchyard were under the control of the Daughters of Charity during the
12 period 1864 to 1981. Neither St Mary's nor its churchyard were – or are -
13 within the wider Smyllum grounds.

14 Genealogist Janet Bishop was initially instructed by the BBC to
15 investigate the deaths, rather than burials, of those up to 18 years old when
16 they died, registered with, what they described as a 'Smyllum connection',
17 between 1864 through to 1981. The "Smyllum connection" was defined as,
18 and I quote: "...children under 18, who either died at Smyllum or who died
19 elsewhere but were given - they were registered as living in Smyllum. That
20 could be Smyllum Orphanage, Smyllum school – there are various names
21 given, I recorded them all."

22 Mrs Bishop considered 15,000 records made available to her by, in the
23 written submission my Lady it suggested it was solely by Father Jim
24 Thomson, however, him amongst others, he was involved in the simply of

1 certain records but not all of them and Jim Thomson is the Parish Priest at St
2 Mary's, Lanark. My apologies for the error.

3 During Janet Bishop's evidence she confirmed that she was initially
4 searching for relevant deaths between 1900 and 1981. She reported what
5 she subsequently found about burials at St Mary's. She said, "For children
6 under 18, I found **16** burials of under-18-year-old children who had been
7 residents at Smyllum and their burials were in a section set aside for
8 Smyllum." (emphasis added)

9 It is accordingly submitted my Lady that your Ladyship can find that
10 there were 16 burials of children under 18 years of age with a connection to
11 Smyllum during that period.

12 The origin of the figure of 400 deaths at Smyllum is not clear to the
13 Daughters of Charity. However, some clarification might be gleaned from
14 the evidence of Dr. Thomas L. Turner, the former consultant paediatrician,
15 who gave evidence on day 34.

16 The Inquiry Team provided Dr. Turner with document
17 INQ.001.001.2060, which a list of names and dates of deaths that was found
18 to contain inaccurate numbering. At page 78 of the transcript of day 34
19 evidence. the following exchange is recorded my Lady. Senior Counsel put it
20 to Dr. Turner that: "... What you are drawing attention to there is the entry at
21 the bottom of [page WIT.001.001.2080] which is numbered 158 in 1908?

22 The response

23 A: Yes

1 Next question, moving on to the next page, if we jump to number 231, that's
2 on page [WIT.001.001.2081] 2081, that is another example of a hiccup in the
3 numbers. The response:

4 A: I think there were perhaps others but they were not as obvious – not as
5 large a number as that."

6 So to summarise that exchange my Lady in the list provided to Dr.
7 Turner from one death to the next the number of deaths increased from 158 to
8 231. Now that document was initially attributed to Janet Bishop but her
9 position was that the numbering of the entries had not been carried out by
10 her. The question of who was responsible for incorrectly numbering the
11 entries was not further clarified in the evidence.

12 Dr Turner calculated the number of individual deaths recorded on the
13 document by counting the individual entries themselves. He came to a total of
14 283 and he split those into two my Lady
15 • 204 deaths occurred before 1920 (a cut-off provided by the Inquiry Team);
16 • 79 thereafter from 1920 onwards.

17 Senior Counsel to the Inquiry put it to Mrs Bishop that there appeared
18 to have been: "...many, many children recorded as having died at Smyllum
19 according to the press article.

20 Senior Counsel asked Mrs Bishop about, what he termed "the other
21 children," and, "where they might be buried," on the basis that her research
22 showed that they were not buried at St Mary's and there was no indication
23 that the register there was incomplete. Mrs Bishop's response was: "The
24 other children could be buried anywhere. In most cases it is the family who
25 would decide where a child was buried, if there was family, if there were

1 surviving family, they would decide, so they could be buried anywhere.
2 There's no way of ever knowing where anyone is buried. It is a process of
3 digging around, I'm afraid, to find where someone is buried."

4 It is submitted that the Inquiry heard no evidence of where any of those
5 beyond the 16 interred at St Mary's were buried.

6 Relatives do express concern that it was not possible to identify where
7 within St. Mary's the 16 young people were buried. In her evidence, Janet
8 Bishop contrasted the records she accessed relating to the burial of nuns and
9 the burials of children. Her evidence was that the only reason it was not
10 possible to identify where any child is buried is because the lair number within
11 the Smyllum plot was not noted on the burial record. That was to be
12 contrasted with the identification of the lair number for the nuns.

13 The burial record which identifies lair numbers is a St. Mary's record –
14 a record neither created nor maintained by the Daughters of Charity. The
15 burial record remains within the custody of St Mary's and that is where it was
16 viewed by Janet BishoP. The Daughters of Charity are sadly unable to
17 assist on the question of why there is no record of which lair relates to which
18 burial.

19 LADY SMITH: ADJOURNED FOR LUNCH

20 LADY SMITH: Mr Rolfe when you are ready.

21 MR ROLFE: Much obliged my Lady.

22 So if I may return to the fourth of the issues upon which your
23 Ladyship has respectfully invited to make findings and that is in relation to the
24 causes of death at Smyllum and the fact that in my submission those mirrored
25 those in the wider community over the years.

1 Dr. Turner was asked to use his experience to look at a list of deaths
2 provided to him by the Inquiry Team to see whether a conclusion could be
3 reached on the standards of care the children had received, whether there
4 were any obvious trends or patterns in the deaths, and particularly whether
5 anything was unusual for the historical period under review. He split the
6 deaths into those occurring pre- and post-1920. In relation to the pre-1920
7 deaths my Lady, Dr Turner found that there was no obvious pattern to the age
8 of death. There was no evidence of gender predominance. Dr Turner
9 found no clear pattern that would allow him to make a conclusion about care
10 or quality of care. The causes of death were much as he had expected to
11 find. The percentage split of causes of death was not unusual and he was
12 not surprised by it.

13 In relation to the post 1920 deaths, there were years when there were
14 no deaths recorded at all and that was, as he described it, 'in step' with an
15 improvement in the standard of healthcare in the community, that is the wider
16 community as a whole. Of those deaths recorded within the post-1920
17 period Dr Turner found no real surprises in the types of infection noted as the
18 cause of death.

19 Dr Turner could draw no conclusions from the certified causes of death
20 about the standard of care in Smyllum. The causes of death were in large part
21 similar to those occurring in the community at large. The two main causes of
22 death in Smyllum during that period were the two main causes of death in
23 society at the material times.

24 Dr Turner's evidence is to the effect that the causes of death in
25 Smyllum mirrored those in the general population over the period of review

1 and that is the finding that I respectfully invite your Ladyship to make in
2 relation to the causes of death over Dr. Turner's period of review.

3 LADY SMITH: Mr Rolfe, I note from this summary of the matters in
4 respect of which you invite me to make findings that you don't
5 include anything about the specifics of the abuse that is said to have been
6 experienced by children at Smyllum and Bellevue. For example, the bed
7 wetting treatment, the force-feeding, the verbal abuse, the physical
8 punishment practices, the sexual abuse that took place. The non-celebration
9 of birthdays, the separation of families and against a background of a lack of
10 training, lack of supervision. Am I right in thinking that you are not proposing
11 to make any submissions about what findings I ought to make in relation to
12 these?

13 MR ROLFE: That is precisely the position my Lady. The Daughters of
14 Charity are entirely open to whichever findings your Ladyship
15 seeks to make, however, I am not instructed to invite your Ladyship to make
16 those specific findings.

17 LADY SMITH: Your sitting on a fence. Is that it?

18 MR ROLFE: I think Sister Ellen put it quite concisely herself when she
19 said that she finds it difficult to reconcile on the one hand the
20 evidence of many and varied accounts from the Applicants and then on the
21 other the accounts from the Sisters and she and the Order leave it to your
22 Ladyship to reconcile those two issues.

23 LADY SMITH: And you have no specific instructions even to address
24 those matters which some of the nuns themselves spoke about
25 occurring. The bed wetting treatment, some hitting, some slapping with

1 hands, there was even a reference of acceptance on the part of one of the
2 witnesses to the use of a brush and the use of a strap and you tell you have
3 no instructions to tell me that I should make any particular finding one way or
4 the other about these. Is that it?

5 MR ROLFE: That is precisely the position my Lady.

6 LADY SMITH: I can't help express some surprise Mr Rolfe, particularly
7 in light of the indication given in last week's evidence by Sister
8 Flynn that she now accepts that it is more than possible that abuse happened.

9 MR ROLFE: My Lady, in my respectful submission that is not
10 equivalent to providing instructions to make specific concessions
11 in relation to specific examples of the abuse that my Lady has summarised.
12 The Order has, as I had intended to set out, in mind to anything which your
13 Ladyship seeks to find.

14 LADY SMITH: Very well but after hearing that you are not submitting
15 that I should find that these things did not happen. Can I put it
16 that way?

17 MR ROLFE: I entirely concur with that my Lady.

18 LADY SMITH: Very well. Where do we go next Mr Rolfe?

19 MR ROLFE: Much obliged my Lady. I then propose to turn to matters
20 which I have headed as Other Noteworthy Matters. The first of
21 which my Lady is:

22 Headstones

23 Mrs Bishop was asked in her evidence about the absence of headstones for
24 each individual child at the Smyllum part of the St Mary's churchyard. She
25 was asked with reference to her experience as a genealogist, why there might

1 be no headstone to mark where a person is buried. Mrs Bishop's evidence
2 was and I quote: "Most graves don't have a headstone. It is a matter of
3 finance because it is down to the family to put up a headstone." Senior
4 Counsel asked whether it came down to cost and Mrs Bishops response was:
5 It comes to cost and I mean in general, throughout the years, probably 25% -
6 30% of deaths have a headstone and it is down to cost".

7 According to Mrs Bishop's evidence therefore my Lady, up to three-
8 quarters of graves have no headstone.

9 A headstone is currently in place within the cemetery....

10 LADY SMITH: Just before you go to the headstone that has since been
11 erected, I am to infer from that am I that the Daughters of Charity did
12 not for example decide to use their funds, their resources to mark even in a
13 simply way, by way of a stone, the death of a child in the local graveyard and
14 where they had been caring for the child. Is that right?

15 MR ROLFE: Well my Lady as I come on to discuss prior to the
16 installation of the, if I can put it this way, INCAS related stone,
17 there was a Celtic cross within the churchyard at St Mary's that had been
18 erected by the Daughters of Charity.

19 LADY SMITH: But nothing for individual children?

20 MR ROLFE: No that is correct my Lady.

21 LADY SMITH: And then the INCAS initiative that you were about to go to
22 I think which resulted in a stone being erected.

23 MR ROLFE: That is correct my Lady. Yes, that headstone was
24 erected following collaboration between the Daughters of

1 Charity and INCAS in the mid 2000s. Jim Kane's evidence which was read
2 into the transcript discussed the wording placed on that stone.

3 "Their life so short, no world to roam,
4 Taken so young they never went home,
5 So spare a thought for them as you pass this way
6 A prayer, if you remember, day by day
7 Yes lives so short, bereft of love
8 But found in the arms of the Lord God above."

9 Jim Kane discussed the thought process behind a verse rather than naming
10 the children on that memorial and I quote:

11 "The plan was the we build a monument on behalf of these children and our
12 proposal to start with was to put the names on it, but then we met up with a
13 guy from Falkirk, he was a Smyllum boy and rather than put names on it,
14 because with all due respect someone's name might have been left off – if
15 you notice the dates they go back to 1864 – and so he done a prayer." And
16 as I submitted my Lady the current memorial replaced a former memorial,
17 which was a carved stone Celtic cross. And as my Lady would have heard in
18 the evidence of Sister Ellen last week, the Daughters of Charity are in the
19 process of engaging an independent expert to verify the names of all Smyllum
20 children buried in St Mary's Cemetery, Lanark.

21 Once the research is complete they will share the results with INCAS in
22 order to establish the most appropriate way to honour the children.

23 My Lady the next matter that I turn to deal with is the recognition of the
24 Jewish faith of a child.

1 During the evidence of "Sister Carol" your Ladyship asked what
2 approach would be taken at Smyllum with a child that was a protestant. Sister
3 Carol advised that she hadn't thought that there were any.

4 LADY SMITH: There was some reference in the evidence to protestants
5 and to I think protestants being referred to as children of the
6 devil or something like that wasn't there.

7 MR ROLFE: Well my Lady in terms of the evidence of Sister Carol she
8 simply hadn't been aware of it but my Lady may recall that there
9 were certain references to those that were not of the Catholic faith.

10 LADY SMITH: Yes, and there came a time when they went to a different
11 school but it was difficult wherever they went because you would
12 get taunted one way or the other, so they did have children, needed to be
13 aware of having children of different faiths.

14 MR ROLFE: Indeed so my Lady.

15 So your Ladyship next asked what the position would be if the child
16 was Jewish and your Ladyship put that to Sister Eileen Glancy that evidence
17 had been heard from: "...one applicant whose heritage and faith was Jewish."

18 That witness used the pseudonym "Victor" and gave evidence on day
19 35. Victor's evidence was that his mother attempted to find a Jewish home
20 for him when she was taken ill. He said: "Barnardo's, I believe, got me into
21 Smyllum. ***But I think the nuns were told I was Jewish***, but I was brought up
22 very much a Catholic in Smyllum, taught everything Catholic and went to
23 church, had communion, had to learn the catechism ... right up to the day I
24 left Smyllum, I was a Catholic." (emphasis added)

1 Victor confirmed he was born in 1944 and was admitted to Smyllum on
2 [REDACTED] 1947. The admissions records identify one child that was born in
3 1944 and admitted on [REDACTED] 1947.

4 The only evidence available on the origins of any knowledge of those
5 serving at Smyllum of Victor's Jewish faith came in my submission from
6 Victor, in the passage just described.

7 LADY SMITH: Victor did also refer to it having been said to him we are
8 going to beat the Jewishness out of you.

9 MR ROLFE: That was also his evidence my Lady and perhaps I ought
10 to caveat what I say in relation to the knowledge of his faith as at
11 the date of admission.

12 LADY SMITH: That may be of limited use Mr Rolfe. If the knowledge
13 was gained somehow whether from Barnardo's who no doubt
14 knew about the background of his mother trying to find a Jewish orphanage or
15 from the simple fact the child had been circumcised which would be obvious,
16 he was very young when he went in and it would be clear to them what they
17 were dealing with. Wouldn't it?

18 MR ROLFE: Therein lies the difficulty my Lady with what appears to
19 be evident from the admissions record, which was that Victor
20 had been recorded as having been baptised.

21 LADY SMITH: Well if that's right that would fit with his father's efforts to
22 formalise his family in a way that they wouldn't be immediately
23 identified as Jewish. I think he explained that they had a different surname
24 than their actual surname at that time because their actual surname might
25 have given away their cultural background. For what it is worth Mr Rolfe,

1 once sets that against Victor's evidence about what was said to him and how
2 he was as a child.

3 MR ROLFE: I accept that point my Lady.

4 So my Lady if I may move on to Frances McColl who was a child
5 mentioned by a number of witnesses. Comment in this submission is offered
6 only in relation to the records of his death and the absence of record of his
7 final resting place.

8 LADY SMITH: So you will make no submissions about the supervision
9 or lack thereof of this golf game that was going on?

10 MR ROLFE: My Lady I am instructed only to make comment in relation
11 to the death and burial records or lack thereof.

12 LADY SMITH: I see.

13 MR ROLFE: The Inquiry considered the death register entry of Francis
14 McColl and noted that his death at the Royal Infirmary
15 Edinburgh was registered by a family member. Janet Bishop reported that
16 Francis McColl was not recorded as buried at St Mary's. Beyond concluding
17 that Francis McColl is not buried at St Mary's, it is submitted that it is not
18 possible to draw a conclusion, from the available evidence, on where he was
19 buried.

20 LADY SMITH: What about Patricia Meenan?

21 MR ROLFE: My Lady I am obliged for the opportunity to discuss that
22 with my colleague and the only evidence that we can recall
23 having heard was one of the Sisters who went to her funeral in Glasgow.

24 LADY SMITH: Because she spoke about remembering what the house
25 was like.

1 MR ROLFE: Yes my Lady.

2 LADY SMITH: Being struck at the family circumstances in which the
3 child lived, when she was there. It sounds as though there was
4 a burial in Glasgow.

5 MR ROLFE: Yes my Lady.

6 LADY SMITH: And again, am I to take it that you have no instructions to
7 make any submission about the circumstances which resulted in
8 her death, the evidence we have about the child being upset on the Sunday
9 when her mother hadn't appeared and her runaway with another child which
10 has been mentioned already by Mr MacAulay might lead one to think shows
11 that no attention was given to whether she was in need of special care and
12 special consideration that day.

13 MR ROLFE: My Lady I invite no specific finding in relation to that but
14 as with other matters the Daughters of Charity are open to any
15 findings that your Ladyship makes in that regard.

16 LADY SMITH: Thank you.

17 MR ROLFE: My Lady to conclude it seems in my submission
18 appropriate for the words of the Community's provincial to be
19 used. The written submission I'm afraid omits the particular reference for this
20 passage my Lady but it can be found on the evidence on day 44, that is 24
21 January at page 79.18. "People who experienced abuse in our care – we
22 are deeply deeply sorry and distressed by what we have heard. When we
23 started this Inquiry we knew what was in Part D .. since then, in the evidence,
24 hugely different things have been said – some really horrifying shocking
25 things have been said. That's what we've been learning in these weeks, that

1 there's so much more being said and so many more people have come
2 forward... All of this is alien to us, it's totally against everything we stand for –
3 we've been torn apart by this. I'm not defending [the Community] by saying
4 that and I'm finding it hard to understand it. Obviously I want to stand by
5 these people, these were our children and we were supposed to be taking
6 care of them. But on the other hand I want to stand by our Sisters who say
7 this was such a happy place. We are open .. At this point we are open and we
8 have to rely on your Ladyship's judgement eventually, but we will respond in
9 whatever way we can to try to put right what wrongs are found."

10 Later Sister Ellen said: "Some of the witnesses.. were obviously feeling
11 that we might be a bit cynical that this was all about money. So let me just
12 get rid of that. We know it's about more than that. But clearly there could be
13 claims. Okay? For me that's the least of it. What's really important is the
14 people. I would be trying to seek advice from anywhere that could give advice
15 about how to engage in a better way than that with people to effect some kind
16 of healing. If we can. If we can."

17 All that remains my Lady is to confirm that the Daughters of Charity
18 remain committed to assisting the Inquiry in any way they possibly can and
19 they wish your Ladyship and the Inquiry team well with the task ahead.
20 Unless I can be of any further assistance my Lady that concludes the
21 submission on behalf of the Daughters of Charity.

22 LADY SMITH: Thank you very much.

23 That completes the submissions we hear today and it means that we have
24 now reached the end of the evidential hearings in this case study. I should
25 however advise that there are Daughters of Charity Applicants who have

1 come forward more recently to have private sessions with the Inquiry Team
2 and I want to take this opportunity to assure them that their statements will be
3 taken into account when I come to consider what findings can be made in
4 relation to the case study. These statements, once signed, will be added to
5 the website. I should add that at any time, even thereafter, we would
6 welcome any Applicants who wish to come forward to tell us about their
7 experiences, in care, in institutions, for which the Daughters of Charity of St
8 Vincent de Paul were responsible.

9 My intention is to publish my findings in relation to this case study as
10 soon as is practicable. Mr Scott referred to how much that would mean to
11 individuals who have given evidence and no doubt those who may yet come
12 forward if those findings can be made sooner rather than later. I am very
13 conscious of that and I will do all I can to let them know what those findings
14 are. As I say as soon as practicable.

15 It then remains for me to say a few things about what is planned in
16 terms of public hearings as we progress through 2018. Our plan is to move
17 next to the second case study, that will start on Tuesday, 24 April and it will be
18 the Sisters of Nazareth case study, looking at the residential childcare which
19 that Order provided in Nazareth Houses in Aberdeen, Kilmarnock, Cardonald
20 and Lasswade. That case study is likely to last several weeks. Following it,
21 early in the Summer we plan to move to the public hearing of Part C of Phase
22 1. It will include the conclusion of Professor Norrie's work and other expert
23 evidence. Thereafter, in the Autumn, there will be a case study taking three
24 care providers together, Quarriers, Barnardo's and Aberlour. That case study
25 is also likely to last for several weeks. I hope that by giving those dates and

1 timeframes today, it will assist everyone with diary arrangements and with
2 giving an indication of what preparations may be required. As I have
3 previously outlined, other investigations are ongoing and it is likely from the
4 work that has already been done that there will be an expansion of the
5 number of institutions that will feature in future investigations. But at this
6 stage I propose to rise for today and we will sit again on Tuesday, 24 April to
7 begin the Sisters of Nazareth case study.

8 Thank you all very much.

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