

1 Tuesday, 5 November 2019

2 (10.00 am)

3 LADY SMITH: Good morning and welcome back to the case study  
4 into the provision of care by the Marist Brothers. As  
5 everybody knows, today is the day that I have invited  
6 those who have leave to appear and, of course, inquiry  
7 counsel to make closing submissions. Unless there's  
8 anything anybody needs to raise at this stage, I was  
9 proposing to move immediately to asking Mr MacAulay.

10 Closing submissions by MR MacAULAY

11 MR MacAULAY: Good morning, my Lady.

12 As your Ladyship has said, this is the third case  
13 study, in fact, in what's been termed phase 4 of the  
14 inquiry's investigations.

15 By way of an overview of what I have to say, just to  
16 confirm that the Marists managed two boarding schools in  
17 Scotland that have been the focus of this particular  
18 case study.

19 As far as St Columba's is concerned, there has been  
20 evidence that children's lives were blighted by abuse  
21 inflicted over some 25 years or so, by, first,  
22 Brother Germanus and then [REDACTED], [REDACTED].

23 Brother Germanus stands accused of brutal physical  
24 abuse, emotional abuse and sexual abuse. And of course,  
25 [REDACTED] was [REDACTED] that

1 involved serious sexual abuse where young children were  
2 induced to engage in sexual behaviour with each other.

3 So far as St Joseph's is concerned, there has been  
4 some evidence that some punishments might be viewed as  
5 excessive. On the evidence, Brother <sup>MFU</sup> [REDACTED], who was  
6 responsible for the younger boys, was unsuitable for  
7 that role. There have been allegations of inappropriate  
8 sexual behaviour in particular by a brother,  
9 Brother Damien, and also of sexual abuse that have been  
10 made against a number of brothers, and again, with one  
11 brother having [REDACTED] serious sexual abuse of  
12 two boys over the period [REDACTED]  
13 [REDACTED].

14 Can I then map out the background to the two  
15 particular schools. As I have said, the case study has  
16 centred on St Columba's College, Largs, and  
17 St Joseph's College, Dumfries. The case study started  
18 on 3 October and between then and the final day of  
19 evidence, the inquiry has heard 13 days of evidence.  
20 Oral evidence was provided by 25 former pupils of the  
21 schools: 19 in person and six through statements read  
22 into the proceedings.

23 As well as evidence from former pupils, evidence was  
24 provided by a boy who had moved from Smyllum to  
25 St Columba's as a worker at the age of 15 and also from

1 a witness who said, while he was a boy at  
2 Nazareth House, Kilmarnock, he was taken to  
3 Hetland House by a Marist Brother by the name of  
4 Brother <sup>AKU</sup> and was abused.

5 The inquiry has also heard oral evidence from  
6 ten brothers or former brothers who were at the schools  
7 over the period covered in the evidence, eight of whom  
8 gave evidence in person and two who had statements read  
9 into the proceedings.

10 We've also heard evidence from <sup>MF2</sup>; from  
11 Barbara, an employee at the Kinharvie Institute  
12; and also from Detective Inspector  
13 Lynsey Watters; from Colin Chalmers, the order's  
14 archivist; and Brother Ronnie McEwan, who was the former  
15 UK provincial and who in particular dealt within the  
16 order with complaints of abuse between 1993 and 2009;  
17 and, finally, Brother Brendan Geary, who had listened to  
18 most, if not all, of the evidence, and spoke on behalf  
19 of the order and issued an apology on behalf of the  
20 order to anyone who was abused while under the care of  
21 the brothers.

22 My Lady, to repeat what has been said at the end of  
23 other case study hearings, although this public hearings  
24 part of the case study has come to an end, the evidence  
25 gathering process continues and will continue until we

1           enter the final report stage.

2           LADY SMITH: Indeed, and experience has shown us that people  
3           do keep coming forward after the closure of case  
4           studies.

5           MR MacAULAY: Indeed so, and indeed one finds that the  
6           closure of a case study promotes a spike in people  
7           coming forward.

8                     Former pupils of the schools or anyone with relevant  
9           evidence are therefore able to continue approaching the  
10          inquiry to provide evidence of their experiences in both  
11          schools and indeed are encouraged to do so.

12                    Also, as with other case studies, in comparison to  
13          the numbers of children who attended the two schools  
14          over the years, the number who became applicants in the  
15          inquiry process is relatively small, but the applicants  
16          were not only speaking about their own experiences but  
17          also what they witnessed happening to others.

18                    So my Lady, can I then deal with each of the schools  
19          in turn. Looking first at St Columba's College in  
20          Largs. That school opened in 1920 as a small boarding  
21          preparatory school for boys aged from around 7 up to  
22          about 12, although there has been some evidence of  
23          children younger than that being admitted to the school.

24                    It was primarily a boarding school, although there  
25          has been evidence that day pupils also attended from

1 time to time.

2 Although not specifically a preparatory school for  
3 St Joseph's College, many of the St Columba's pupils  
4 went to St Joseph's for their secondary education.  
5 St Columba's finally closed in June of 1982. According  
6 to the order, that was essentially due to a lack of  
7 manpower to staff the school.

8 Also, on the basis of information provided by the  
9 order, there were never more than 36 pupils at the  
10 school and indeed, in light of the evidence led and  
11 information contained, I think, particularly in the  
12 daybook, the numbers for the most part were lower than  
13 that.

14 LADY SMITH: It was a very small school and one of the  
15 things that struck me as we went through the evidence is  
16 where you have such a small group of pupils, the  
17 evidence of one person that goes beyond their own  
18 experience to what they felt was a general culture or  
19 a general attitude to children seems to become much more  
20 powerful because it's more likely that they were pretty  
21 accurate in their feeling of how things were right  
22 across the board.

23 MR MacAULAY: Yes, that's very true.

24 So far as the evidence heard from former pupils is  
25 concerned during the hearings, relating specifically to

1 St Columba's, the period covered began from about 1958  
2 and covered the period to the school's closure in 1982,  
3 although there are some small gaps in years in the  
4 evidence.

5 Many of those who gave evidence spoke of physical,  
6 emotional and also sexual abuse.

7 Turning then to physical and emotional abuse, there  
8 has been evidence of boys being physically punished in  
9 a way that your Ladyship could conclude went far beyond  
10 what could be described as reasonable chastisement by  
11 way of corporal punishment.

12 As has been mentioned before in other contexts,  
13 it is worth bearing in mind this particular context and  
14 that the children at St Columba's were very young  
15 children.

16 An early insight of the regime was provided by the  
17 witness Dexter. Your Ladyship may recollect he had been  
18 moved from Smyllum at about the age of 15 or so in 1958  
19 to work at St Columba's. He described how he was  
20 "lashed" by a brother some 15 times for spilling the  
21 brother's coffee.

22 Another witness, John, who was at St Columba's from  
23 the age of 7, from 1960 to 1964, described an occasion  
24 when he and three other boys each received 18 strokes of  
25 the belt from the <sup>SNR</sup> [REDACTED], that being six on each

1 hand and six on their bottoms.

2 My Lady, there have been two particular brothers  
3 that have featured largely in the evidence in the  
4 context of abuse, both physical abuse and sexual abuse;  
5 those are Brothers Germanus and <sup>AKU</sup> [REDACTED].

6 Brother David Germanus was born on [REDACTED] 1916  
7 and he took his first vows in 1934. It appears that  
8 from 1934 to 1957 he was at St Joseph's, Dumfries, and  
9 in 1957 he was moved to St Columba's, where he remained  
10 until 1980, other than a three-year period from 1973 to  
11 1976 when he returned to St Joseph's. He eventually  
12 left St Columba's in September 1980.

13 It does appear on the evidence that Brother Germanus  
14 inflicted physical abuse and, perhaps more particularly,  
15 he was a serial sex abuser, and it is clear that he was  
16 in a position of trust in relation to young children,  
17 a position, if the evidence is accepted, that he  
18 manifestly abused.

19 So far as physical punishment would be concerned,  
20 he was, on the evidence, capable of inflicting excessive  
21 punishment. It appears that he combined frequent use of  
22 a leather strap, including on the boys' bare bottoms,  
23 and with physical beatings using his hands on boys'  
24 faces and bodies.

25 For example, Billy, who was at St Columba's from

1 1978, from the age of 8, to 1982, provided a vivid  
2 description of having witnessed Brother Germanus  
3 dragging a boy out of bed, taking hold of the boy's  
4 foot, and dragging the boy down the hall, striking his  
5 head off a radiator, before punching the boy and  
6 dragging him into a shower area, with the boy screaming  
7 for help. The boy was seen returning to the dormitory  
8 with no pyjama bottoms on and faeces running down his  
9 leg. This witness also spoke to Brother Germanus  
10 hitting boys as hard as he could in the face.

11 A number of witnesses gave evidence about being  
12 belted by Brother Germanus on their bare bottoms,  
13 including Jack, who recalled an occasion when he and  
14 another boy had their pyjama bottoms pulled down and  
15 were each belted over their bare bottoms some eight to  
16 ten times.

17 The other boy was David and he said that Germanus  
18 was:

19 "... literally jumping up off the ground, almost  
20 like he was obsessed with maximum pain."

21 So far as <sup>AKU</sup> [REDACTED] is concerned within the  
22 context of physical punishments, can I just say, first  
23 of all, that <sup>AKU</sup> [REDACTED], who gave evidence, was born on  
24 [REDACTED] 1957. He took his first vows, and only his  
25 first vows, in 1975. He arrived at St Columba's in



1 [REDACTED] 1980, having visited on previous occasions, and  
2 he was there until the school closed in 1982. He  
3 effectively took over from Brother Germanus as the  
4 dormitory master or prefect within the main building.

5 The inquiry has also heard evidence of physical  
6 abuse that implicates <sup>AKU</sup>[REDACTED]. This includes  
7 evidence from Billy, who spoke of <sup>AKU</sup>[REDACTED] throwing  
8 a wooden duster at him, which hit him, and left a mark  
9 on his face and also of <sup>AKU</sup>[REDACTED] striking him on the  
10 legs with a belt.

11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED].  
14 David, who was at St Columba's from the age of 8,  
15 from 1979 to 1981, also said that:

16 <sup>AKU</sup>[REDACTED] threw blackboard dusters in the  
17 classroom and if they hit you, you knew about it."

18 He also spoke about an occasion when <sup>AKU</sup>[REDACTED],  
19 after having hitting him with a duster, punched him  
20 in the side and knocked him off his chair.

21 So far as the practice of throwing dusters was  
22 concerned, Brother <sup>MLA</sup>[REDACTED] was also implicated in that  
23 practice.

24 Perhaps I can quote from David who provided this  
25 rather telling description of the atmosphere at

1 St Columba's:

2 "There was also a fear of consequence, a fear of  
3 intimidation, a fear of doing the wrong thing  
4 inadvertently because the parameters would change on  
5 a daily basis. There was no rulebook per se; things  
6 just evolved and changed on a day-to-day basis."

7 And this witness also described Brother Germanus'  
8 mood swings:

9 "On occasions he could be very forgiving, on other  
10 occasions he would be quite the opposite."

11 Turning then to sexual abuse, I've already provided  
12 your Ladyship with some context in connection with  
13 Brother Germanus. The following eight applicants made  
14 allegations of sexual abuse of themselves and sometimes  
15 others against Brother Germanus: John McCall, who was at  
16 St Columba's from 1958 to 1962; John, 1959 to 1962;  
17 James, 1960 to 1963; Edward, 1961 to 1965; David, 1969  
18 to 1971; James, 1975 to 1980; Billy, 1978 to 1982; Jack,  
19 1977 to 1980.

20 Looking at that timeline, the evidence is that  
21 Brother Germanus sexually abused children over a period  
22 of about 20 years. There is a gap in the evidence  
23 between 1971 to 1975 and, coincidentally, that gap  
24 covers two of the three years that Germanus was absent  
25 from St Columba's.

1           The first applicant in time who made sexual abuse  
2           allegations against Brother Germanus was John McCall,  
3           who was admitted to St Columba's in 1958 and he was  
4           there until 1962. He spoke of Germanus coming into the  
5           dormitory, taking him to his room, initially to tickle  
6           him, and that progressed to the witness lying on his  
7           front and Germanus putting his penis between the  
8           witness's legs, up near his bottom. This happened to  
9           him three or four times when he was between the ages of  
10          8 and 11.

11          The inquiry has also heard evidence that  
12          Brother Germanus induced John to masturbate him under  
13          the guise of applying cream to a rash, and this  
14          happened, according to John, three or four times.

15          James provided evidence that he was asked by  
16          Germanus to do crab-like exercises in Germanus' room  
17          while naked. He gave evidence that he learned in later  
18          life that his younger brother, who was also at  
19          St Columba's, may have been raped by Germanus.

20          Edward described being sexually abused by Germanus  
21          around "two dozen times", and the approach here was that  
22          Germanus would take Edward from his room, and he began  
23          by asking him to retrieve a bag from an attic space  
24          before telling him he was dirty and then sexually  
25          abusing him in the bathroom.

1           He gave evidence that there was one occasion when  
2           he was sexually abused by Germanus in the bathroom, that  
3           the incident was interrupted by another male, an unknown  
4           male, who told Germanus to leave Edward alone and then  
5           helped to clean up Edward and put him back to bed.

6       LADY SMITH: Mr MacAulay, just going back to these dates, in  
7           1958 Germanus would have been about 42 years old.

8       MR MacAULAY: Yes.

9       LADY SMITH: Am I right in thinking that, on the evidence,  
10           he was already established in the role that he had at  
11           St Columba's by that stage and seemed to be performing  
12           that role on his own in these upper floors of the  
13           building? Do I have to ask myself whether I should  
14           infer that these were habits indulged in by Germanus  
15           that must have pre-dated 1958?

16       MR MacAULAY: I think that must be an inference. We don't  
17           have applicants who pre-date that date, but what we do  
18           know is that Germanus persisted, on the evidence, in  
19           this behaviour --

20       LADY SMITH: Yes.

21       MR MacAULAY: -- really for his whole time while at  
22           St Columba's.

23       LADY SMITH: We've got evidence covering, as you say,  
24           a 20-odd year period, and it just feels unlikely that he  
25           would suddenly have started behaving like this at the

1           age of 42.

2       MR MacAULAY: Although it has to be said in relation to his  
3           involvement with St Columba's, he only arrived at  
4           St Columba's in 1957, so although we don't cover the  
5           whole period, we cover most of his period.

6       LADY SMITH: Yes, but he had been working with children  
7           before.

8       MR MacAULAY: He had, at Dumfries.

9       LADY SMITH: And at a stage that the Dumfries school,  
10           St Joseph's, had younger children as well.

11      MR MacAULAY: They did indeed. I think the evidence has  
12           been that children aged about 9 would go to the younger  
13           section in St Joseph's.

14      LADY SMITH: Yes.

15      MR MacAULAY: Whoever the unknown male who interrupted the  
16           abuse being carried out by Germanus was, it made no  
17           difference because, according to Edward, the abuse by  
18           Germanus continued.

19           David also gave evidence about and described how  
20           Brother Germanus asked him to come to his room, got him  
21           to sit on top of him, on top of Germanus, to remove his  
22           pyjamas, and that then Germanus would place his hands on  
23           David's hips and move his hips around Germanus' genital  
24           area while his dressing gown was open.

25           David said he was visibly upset by this and would

1 ask to go back to the dorm and would not be allowed to  
2 do so. The way David explained what happened was by  
3 saying:

4 "Once Germanus achieved what he wanted to achieve",  
5 he was allowed back to his bedroom.

6 He thought this happened on three occasions. On the  
7 fourth occasion he said he was going to fall asleep and  
8 thereafter, to avoid being taken, he pretended to be  
9 asleep. This witness also said that he saw other boys  
10 being taken to Germanus' room at night.

11 Jack provided evidence that, when he was suffering  
12 from a rash between his legs, Germanus told him to go to  
13 his room and that he would help him. Jack was told to  
14 strip naked and lie on Germanus' bed, open his legs, and  
15 rub cream on himself, while Germanus sat on a seat  
16 opposite and watched, masturbating.

17 As well as evidence of Germanus sexually abusing  
18 children in his own room, there was also evidence of him  
19 abusing boys in the dormitories and in the shower area.  
20 For example, there was evidence that he would often be  
21 at boys' bed sides, with his hands under the blankets.

22 In relation to showering and drying practices,  
23 a number of applicants provided evidence, for example  
24 John McCall, who recalled Germanus supervising showers  
25 and making the boys clean the showers while naked.

1 James said that Germanus would be waiting to dry him off  
2 after showering and would put his hands over his face to  
3 distract him from what he was doing to his genitals.  
4 Billy described Germanus taking his towel after  
5 showering and drying him, concentrating on his private  
6 parts and rubbing Billy's penis.

7 My Lady, if that evidence is accepted, then it is  
8 apparent that Brother Germanus was a serial sex abuser  
9 of children in his care.

10 Turning to <sup>AKU</sup> [REDACTED]. The inquiry has heard  
11 evidence from six applicants of sexual abuse by  
12 <sup>AKU</sup> [REDACTED], covering the period 1980 to 1982, and that  
13 was James, Billy, David, John, Alan and Thomas. That  
14 effectively was the whole period spent by <sup>AKU</sup> [REDACTED] at  
15 St Columba's.

16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]

21 Alan told the inquiry he was sexually abused by  
22 <sup>AKU</sup> [REDACTED] throughout his time at St Columba's and that  
23 included <sup>AKU</sup> [REDACTED] inducing Alan and other boys to perform  
24 sexual acts on each other and on him.

25 John described <sup>AKU</sup> [REDACTED] sexually abusing him,

1 including inducing him and another boy to engage in  
2 sexual activity with one another in his presence.

3 Billy gave evidence of sexual abuse by [REDACTED]  
4 including evidence to the effect that he slept next to  
5 [REDACTED] on a school trip to Barcelona and woke up the  
6 following morning with dried semen on his leg.

7 David, who was not involved in [REDACTED],  
8 and had not come forward [REDACTED] at that time,  
9 provided evidence of sexual abuse by [REDACTED], including  
10 being given the option of engaging in sexual activity  
11 with another boy as a form of punishment, and being  
12 instructed by [REDACTED] to lie on [REDACTED] bed and touch  
13 himself for [REDACTED] sexual gratification.

14 Thomas, who again wasn't a [REDACTED]  
15 also recalled an occasion of inappropriate sexual  
16 touching by [REDACTED]

17 A number of applicants gave evidence of [REDACTED]  
18 showing horror films to the boys in order to scare them  
19 and cause them to cuddle in to him on the sofa.

20 Aside from the evidence directly from St Columba's,  
21 the inquiry has also heard evidence from James, who was  
22 at Nazareth House from 1977 to 1981, to the effect that  
23 during his time there, a Brother [REDACTED] took him to  
24 Hetland House. He recalls Brother [REDACTED] telling ghost  
25 stories and he said that one night he woke up to find



1 Brother <sup>AKU</sup> [REDACTED] masturbating him, and he recalled a time  
2 when there were three men in the room and his pyjama  
3 trousers had been pulled down. Another night he said he  
4 saw Brother <sup>AKU</sup> [REDACTED] putting a boy back to bed.

5 <sup>AKU</sup> [REDACTED] accepted that he did spend time in  
6 Nazareth House in 1977 and 1978.

7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 As I mentioned earlier, <sup>AKU</sup> [REDACTED] has given  
19 evidence to this inquiry. He does not accept [REDACTED]  
20 [REDACTED] and he continues to deny all the allegations  
21 made against him.

22 It is worth noting that [REDACTED]  
23 [REDACTED]  
24 [REDACTED] that mirrored the type of sexual behaviour that  
25 <sup>AKU</sup> [REDACTED] induced children at St Columba's to engage

1 in. It is clear that <sup>AKU</sup> abuse was designed  
2 to corrupt the children in his care.

3 My Lady, as well as Brothers Germanus and  
4 <sup>AKU</sup>, the inquiry has also heard evidence of  
5 allegations of sexual abuse being made against other  
6 brothers at St Columba's across the period being  
7 examined.

8 This evidence included that of John McCall, who  
9 described sexual abuse by Brother <sup>MID</sup> when the  
10 witness was in the sickbay, and also in the piano room  
11 where he said that Brother <sup>MID</sup> would put the witness's  
12 hand on the brother's erect penis. He said this  
13 happened weekly between the ages of 10 and 11.

14 John eventually disclosed the abuse to a lodger who  
15 was staying with his aunt during a period out of the  
16 school. His father, when hearing of it, said that he  
17 would deal with it, and when John returned to  
18 St Columba's, Brother <sup>MID</sup> was no longer there. So  
19 that is one, perhaps, rare instance of a contemporaneous  
20 complaint and some action being taken.

21 Francis described sexual abuse by Brother <sup>MZY</sup>,  
22 whereby he said that Brother <sup>MZY</sup> put his hand down  
23 <sup>██████████</sup> pants and fondled his penis.

24 Brother <sup>MZY</sup> gave evidence and he denied this and  
25 it may be that there was one incident but

1 Brother <sup>MZY</sup> [REDACTED] may not have been the culprit.

2 But my Lady, overall, if the evidence of applicants  
3 is accepted, then that evidence does suggest that  
4 serious sexual abuse of boys was ongoing at St Columba's  
5 for the majority of the period covered by this case  
6 study.

7 Can I then look at the position of Aldo Moroni, of  
8 which we've had evidence in this case study. There has  
9 been evidence that Aldo Moroni attended St Joseph's as  
10 a boarder, aged 7, between August 1979 and  
11 February 1980. Aldo died on 29 February 1980.

12 I don't propose to rehearse all that evidence, but  
13 can I suggest that three issues emerge for consideration  
14 by your Ladyship. Firstly, was Aldo maltreated?  
15 Secondly, was a man by the name of <sup>MFZ</sup> [REDACTED] involved  
16 with Aldo? And thirdly, did any treatment suffered by  
17 Aldo at St Columba's have any connection with his death?

18 Can I just make this point, and it's a point that no  
19 doubt is relevant to all the evidence: as is the case  
20 generally with evidence that dates back to when  
21 witnesses were young children, the fact that they were  
22 children at the time is an important factor,  
23 particularly in relation to their recollections of time.  
24 Events may very well have happened but may not be  
25 associated in time with other events.

1           Looking then at how Aldo was treated, Billy said  
2           that Brother Germanus constantly picked on Aldo and  
3           belittled him by calling him "moron". He described an  
4           occasion when Germanus struck Aldo hard across the face  
5           and Aldo's glasses flew off to the other side of the  
6           dining room. This witness also said that there was an  
7           incident there was a commotion upstairs heard from the  
8           main hall, that a group of boys went upstairs, and when  
9           Aldo appeared, his face was bleeding and he collapsed on  
10          the floor.

11          It seems likely that the incident spoken to by John  
12          was the same incident. He said that one day there was  
13          a bit of a commotion involving Aldo, he remembered being  
14          at the bottom of the stairs near the entrance hall, and  
15          that a boy was screaming upstairs like he was in pain.  
16          Some of the boys started going up the stairs and an  
17          adult started shouting at them to get back down the  
18          stairs and the boys being ushered away. He said:

19          "The next thing was that Aldo wasn't there and,  
20          within a number of days, the news was that he had died."

21          Jack gave evidence to the effect that Germanus would  
22          often be seen slapping Aldo in front of other children,  
23          that he would slap him or hit his bottom in front of the  
24          other boys. He said he witnessed an incident at  
25          night-time when Aldo was in the hallway, screaming and

1 repeatedly asking to be allowed to use the toilet, and  
2 kicking the bathroom door, and that Germanus was beating  
3 him:

4 "Battering him, hitting him as hard as he could,  
5 like a man's full hard punch [and] shaking him like  
6 a rag doll."

7 He said that Aldo's pyjama bottoms were down and  
8 he was trying to get away and that Germanus was pulling  
9 him back. Jack said that he was so scared by what he  
10 had witnessed that he went back to bed and wet the bed.

11 Jack also mentioned in his evidence the upstairs  
12 commotion and that subsequently he saw Aldo being  
13 carried down the stairs with a blanket covering him.

14 So my Lady, there is evidence, clearly, from  
15 a number of sources that Aldo was targeted by Germanus  
16 for ill-treatment, and one has to bear in mind, if  
17 that is correct, that Aldo was only a 7-year-old boy at  
18 the time.

19 There is no direct evidence that Aldo was sexually  
20 abused by Germanus, although there was some evidence of  
21 there being a rumour of Aldo being in bed with Germanus  
22 and indeed also <sup>MFZ</sup> [REDACTED].

23 That brings me to the second issue that arises from  
24 the evidence about Aldo, and that is the evidence  
25 relating to <sup>MFZ</sup> [REDACTED] and whether or not he was ever

1 present at St Columba's in connection with Aldo.

2 There has been evidence from a number of witnesses  
3 linking a man known as MFZ [REDACTED] or MFZ [REDACTED] to  
4 St Columba's and Aldo and Germanus in particular. Billy  
5 believed MFZ [REDACTED] to be Aldo's stepfather and that  
6 he had the nickname "MFZ [REDACTED]" amongst boys at the  
7 school.

8 David said the only person he remembered visiting  
9 Aldo was a gentleman by the name of MFZ [REDACTED] Aldo would  
10 get upset at the prospect of these his visits. He spoke  
11 of one occasion when MFZ [REDACTED] was in the dormitory, which  
12 was against Germanus' rules, but that Germanus did not  
13 seem to object to MFZ [REDACTED] being there.

14 Witnesses provided descriptions, with [REDACTED] being  
15 the common theme. Jack did not name the visitor, but  
16 did say that he had [REDACTED]  
17 MFZ [REDACTED] has given evidence. He has  
18 safeguarding responsibilities for the Marist Brothers,  
19 and has been an [REDACTED] of the  
20 Kinharvie Institute since 2003. He provided evidence  
21 that he had involvement with the Marist order, both at  
22 school and afterwards, for example he spoke of going on  
23 a retreat arranged by the Marists with Brother Ronnie  
24 and Brother AKU [REDACTED] when he was aged around 18, and  
25 he said he also attended Hetland House on a couple of

1 occasions throughout his school days.

2 His clear position was that he had never been to  
3 St Columba's College and that, whoever the person  
4 described by witnesses as attending to visit Aldo was,  
5 it was not him. He said he never knew of a boy named  
6 Aldo Moroni until safeguarding meetings later on and  
7 [REDACTED] in recent times, and he did not meet  
8 Brother Germanus until some time after 1992(?). So  
9 there is a clear issue of fact for your Ladyship to  
10 address in relation to that particular aspect the  
11 evidence relating to Aldo Moroni.

12 Can I say that in relation to the lady, Barbara, who  
13 gave evidence and was thought by James to be  
14 Aldo Moroni's mother, plainly she was not.

15 Can I then turn to the third issue, and that is  
16 whether there is any connection between any treatment  
17 Aldo suffered at St Columba's and his death. Detective  
18 Inspector Lynsey Watters provided evidence to the  
19 inquiry about a Police Scotland investigation into  
20 Aldo's death in 2016.

21 As part of that investigation, a post-mortem report  
22 dated 3 March 1980 was recovered, which disclosed that,  
23 having been admitted to Inverclyde Hospital on  
24 25 February 1980, Aldo's health deteriorated. On  
25 29 February 1980, he was transferred to the Royal

1 Hospital for Sick Children in Glasgow, where he was  
2 admitted with a clinical diagnosis of Gram-negative  
3 septicaemia and shock and died later that day. There  
4 was no specific reference to trauma as being linked to  
5 the death.

6 As part of the police investigation, a review of the  
7 post-mortem report was instructed by two consultant  
8 paediatric and perinatal pathologists and DI Watters  
9 confirmed that, according to that report, while there  
10 was a skin biopsy that indicated some previous bleeding  
11 into the skin, which could be traumatic in origin, there  
12 was no suggestion that that had any link to death.

13 There was nothing to link trauma to the death.

14 LADY SMITH: Yes. It's quite clear from the report of  
15 Dr Penman and Dr French that, although they've noted  
16 that the biopsy of skin indicated some previous bleeding  
17 into the skin that could be traumatic, it was previous  
18 as in previous in relation to the date of death,  
19 possibly traumatic, but it's plain from the report that  
20 they haven't even gone as far as saying there was  
21 a possible link between that bleeding into the skin --  
22 colloquially, bruising I take it they're talking  
23 about -- and the death, but it was noticed that there  
24 was evidence there.

25 MR MacAULAY: Yes. Just to move on to say, to look at the



1 time frame and the gap that may have existed between  
2 when Aldo was last in school and his death.

3 That was taken in the main, in particular, from  
4 daybook entries that DI Watters looked at, which she  
5 confirmed appeared to show that there had been a break  
6 in the school term between 13 and 18 February 1980,  
7 during which time Aldo had gone home, and that Aldo did  
8 not return to school after the break.

9 It's perhaps worth noting that Billy gave evidence  
10 that he thought it was after the mid-term break that he  
11 learned Aldo had died, so that links into the evidence  
12 from the daybook.

13 The detective inspector also spoke to a statement  
14 she took from Aldo's mother on 26 April 2016, and Aldo's  
15 mother had informed the police officer that Aldo never  
16 complained about anything or anyone at St Columba's and  
17 was always happy to return after his weekends at home.  
18 She told the police officer that Aldo took unwell while  
19 at home and was admitted to Inverclyde Hospital.

20 So my Lady, in summary, there is evidence that Aldo  
21 was maltreated by Germanus, but it appears to be the  
22 case that there was a significant gap in time between  
23 any such treatment and his death, and that trauma was  
24 not in any way causative of the death.

25 LADY SMITH: Can you remind me when Aldo first started at

1 St Columba's?

2 MR MacAULAY: I think I said he started in August 1979.

3 LADY SMITH: So that was the previous year?

4 MR MacAULAY: Yes. He'd been there for a period of -- yes,  
5 between August 1979 until he died in February 1980.

6 LADY SMITH: So really, he'd only been there for about one  
7 and a half school terms?

8 MR MacAULAY: Yes.

9 LADY SMITH: And he was 7 when he died?

10 MR MacAULAY: He was.

11 LADY SMITH: But it does mean, if I accept that he was  
12 harshly treated, both emotionally and physically, by  
13 Brother Germanus, the last half year or so of this  
14 little boy's young life at the age of 7 must have had  
15 great misery in it.

16 MR MacAULAY: And that certainly is the picture if the  
17 evidence is accepted.

18 Perhaps one other point to make about St Columba's  
19 is that, according to the order's section 21 response,  
20 there was a matron there but only for the period 1952 to  
21 1970, which seems odd that there was not a continued  
22 presence with a matron.

23 My Lady, can I then turn to St Joseph's, Dumfries.  
24 St Joseph's, Dumfries was opened in 1875 and it was  
25 opened as a boarding school in the United Kingdom,

1 initially for British boys being educated in the  
2 Marist Brothers boarding schools in Beauchamps in  
3 France.

4 From about 1970, St Joseph's also provided day and  
5 boarding education for Catholic boys from the Dumfries &  
6 Galloway region, and in 1981 the school was handed over  
7 to the local authority to become a co-educational day  
8 school for Catholic pupils from the Dumfries & Galloway  
9 area.

10 LADY SMITH: Of course, we have some evidence that, even  
11 before the complete handover in 1981, there were  
12 children at the school who were being supported in terms  
13 of the fees being paid by the local authority and  
14 it would also have been the era of the assisted places  
15 scheme that was operating that enabled Central  
16 Government support to pay part of the fees.

17 MR MacAULAY: Indeed, and there was also a number of day  
18 pupils in that period.

19 LADY SMITH: Yes.

20 MR MacAULAY: The evidence heard from former pupils who were  
21 applicants during the hearing of the case study relating  
22 specifically to St Joseph's covered the period from 1957  
23 to 1975. There have been accounts of some physical  
24 abuse and certainly of sexual abuse.

25 So far as physical abuse is concerned, a number of

1 applicants who gave evidence spoke of what were  
2 described as mass physical punishments of boys.

3 Richard Kozub, who was one of the early witnesses  
4 and was at St Joseph's from 1957 to 1963, in particular  
5 provided evidence of a mass punishment where around  
6 150 boys were belted as they left the dining hall.

7 Gerry, who was at St Joseph's from 1971 to 1976,  
8 also spoke of mass punishments, particularly if boys did  
9 not own up to something they were supposed to have done.  
10 Andrew, I think, also gave evidence in a similar vein.

11 One particular brother perhaps demands some special  
12 attention and that is Brother <sup>MFU</sup> [REDACTED]. He was born,  
13 according to the information provided to the inquiry, on  
14 [REDACTED] 1914. He appears to have been at St Joseph's  
15 from about 1936 to 1979; that's a period of over  
16 40 years.

17 He appears to have been there primarily as  
18 a dormitory master or prefect. He was the brother in  
19 charge of the younger boys and that's why Richard Kozub,  
20 who was aged 9 on arrival, would have been under his  
21 charge.

22 Richard Kozub described Brother <sup>MFU</sup> [REDACTED] as  
23 "a sadist", and he recalled a particular occasion when  
24 he resisted the belt from <sup>MFU</sup> [REDACTED] and <sup>MFU</sup> [REDACTED] chased  
25 him while lashing the belt at the back of his legs.

1 Jim, who was at St Joseph's from 1958 to 1962, from  
2 the age of 9 onwards, provided evidence of a similar,  
3 possibly the same incident, where he recalled MFU  
4 chasing a boy down the dormitory and lashing at his bare  
5 back for resisting the belt.

6 This witness also provided evidence of the laundry  
7 regime, whereby young boys had to list all their items  
8 and, if they got it wrong, they were strapped by

9 MFU

10 Andrew spoke of MFU banging boys' heads against  
11 the wall and lifting boys by the ears as punishment.

12 Kenny described Brother MFU forcing him to  
13 remain in a cold room with a broken window in his  
14 pyjamas for hours and also "leathering", as he put it,  
15 a boy with a tawse across the neck for playing table  
16 tennis too loudly, a blow or blows that left two clear  
17 lines on the boy's neck.

18 Stephen Behan said of MFU that:

19 "[He] never talked when he could shout, never  
20 cajoled when he could threaten."

21 So on the evidence, if your Ladyship is accepting  
22 that evidence, then he does not appear to have been an  
23 appropriate choice to be in charge of a dormitory of  
24 such young children.

25 Witnesses spoke of the belt being frequently used,

1 usually on the hands, and that perhaps reflected the  
2 practice of the time. But the inquiry has also heard  
3 evidence of brothers using the belt on boys' bottoms,  
4 including boys' bare bottoms, and there has been  
5 evidence also of boys being struck with other  
6 implements.

7         Kenny provided evidence of a brother hitting boys on  
8 the crown of the head with a golf club, and hitting one  
9 boy with a set of keys, leaving "blood streaming down  
10 the front of his face".

11         Jim gave evidence of a particular brother who  
12 suffered from a slipped disc, "banging" boys against the  
13 plaster cast he was wearing if they got vocabulary  
14 answers wrong.

15         There has been evidence that a matron was in place  
16 in St Joseph's over the period, and a number of  
17 applicants have spoken about that. According to the  
18 order's section 21 response, there was a matron at  
19 St Joseph's until the boarding section closed. In its  
20 response the order accepts that:

21         "Sadly, reports regarding some of the women who  
22 served as matrons do not suggest that a sympathetic  
23 approach was always in evidence in the medical care of  
24 children."

25         Jim, who was from St Joseph's from 1958 to 1962,

1 described the matron as "far from motherly or maternal",  
2 and Nigel, 1968 to 1973, told the inquiry that she  
3 "disliked the children and treated them as a nuisance".

4 He was of the view that the matron knew about the  
5 abuse, the sexual abuse, in relation to what was  
6 happening to boys.

7 Stephen Behan, who was there from 1970 to 1974 said  
8 she was "wicked, inhumane", and she would give "a verbal  
9 beating for bed-wetting".

10 Andrew described her as being "a typical old  
11 battle-axe", who showed no kindness or care.

12 Other boys described how she treated or maltreated  
13 children who had wet the bed.

14 One of the brothers who gave evidence,  
15 Brother Douglas Welsh, recalled how the matron was  
16 dismissed for her treatment of the boys, for shouting  
17 and using derogatory language towards the children. He  
18 told the inquiry that [REDACTED] Brother <sup>MLA</sup> [REDACTED]  
19 dismissed the matron within a day or two of his arrival  
20 at St Joseph's when he heard about her way with  
21 children, and Brother Douglas thought this was some time  
22 in the mid-1970s.

23 So my Lady, if that body of evidence relating to the  
24 matron is to be accepted, then it does not appear that  
25 she was someone to whom the boys could turn to for any

1 comfort or support and, indeed, that in fact her own  
2 treatment of boys may at times have constituted abuse.

3 Can I then turn to the matter of sexual abuse.  
4 It is perhaps to be noted that in their response to the  
5 section 21 notice, the order says that it has received  
6 allegations of sexual abuse for the period 1952 to 1953  
7 and also dating back to the 1940s.

8 As your Ladyship may recollect from the evidence,  
9 there has been evidence relating to sexual abuse that  
10 can be derived from notes that were found dating back to  
11 1956 and indeed suggesting that some form of  
12 investigation was conducted into allegations of sexual  
13 abuse at that time.

14 Looking to the evidence from applicants, one brother  
15 who has been implicated is Brother <sup>MLS</sup> [REDACTED]. He was born  
16 on [REDACTED] 1934 and was at St Joseph's from the late  
17 1950s to the mid-1960s. Two applicants from the earlier  
18 period covered by the case study spoke to sexual abuse  
19 by this particular brother. Evidence was heard to the  
20 effect that Brother <sup>MLS</sup> [REDACTED] took Richard Kozub, who was  
21 there from 1957 to 1963, to an attic room as punishment  
22 for a misdemeanour, and when he asked Richard to pull  
23 down his trousers, he touched his private parts while he  
24 himself was masturbating. The brother then had this  
25 witness bend over the bed and he belted his bare bottom.



1 According to Richard Kozub, this happened on several  
2 occasions.

3 Jim, who was at St Joseph's from 1958 to 1962,  
4 a similar period, said that on one occasion in  
5 particular, he went to Brother <sup>MLS</sup> ██████████ room, where  
6 ██████████ explained "the facts of life", and put his hand  
7 up the witness's trouser leg to make contact with his  
8 private parts, and he also asked the witness to hold the  
9 brother's penis.

10 Can I then look at the position of Brother Damien.  
11 Again, there has been quite a lot of evidence in  
12 connection with this particular brother. He was born on  
13 ██████████ 1922. He had spent time, it would appear, in  
14 Africa, and he was at St Joseph's as a teacher in  
15 particular from 1969 to 1979, a period of some  
16 ten years. A number of witnesses described a practice  
17 of Brother Damien's whereby he would masturbate by  
18 pulling the cords or tassels from his cassock that were  
19 attached to his penis as he walked around the classroom,  
20 quite blatantly, it would appear.

21 For example, Gerry, who was there from 1971 to 1976,  
22 described how Brother Damien would walk up and down  
23 between the desks, masturbating, and indeed he was  
24 nicknamed "the Wanker" by the boys. This witness also  
25 described how Damien would stand behind a locker and

1 masturbate while looking out over the boys in the  
2 dormitory.

3 Kenny spoke of a particular occasion when  
4 Brother Damien took hold of him in the dormitory area,  
5 forcibly putting his hand down Kenny's pyjamas, and  
6 Kenny sensing that Damien was trying to put his finger  
7 into his anus.

8 Stephen Behan also described Brother Damien  
9 masturbating in French classes describing that "he had  
10 no compunction, absolutely no inhibitions".

11 John, like others, provided evidence of  
12 Brother Damien masturbating under his cassock in class.  
13 In relation to this practice, John said that there was  
14 an investigation in around 1973 when three boys reported  
15 Brother Damien's behaviour to the SNR [REDACTED],  
16 Brother MMK [REDACTED] John was called to see Brother MMK [REDACTED] and  
17 told Brother MMK [REDACTED] what Damien was doing, in particular  
18 that he was masturbating in the classroom, and John  
19 described Brother MMK [REDACTED] response to the effect that it  
20 didn't matter and that what he said was "insignificant".

21 John went on to say that nothing appeared to change  
22 as a result of this investigation and Brother Damien  
23 continued to teach as normal.

24 Ronnie McEwan, in his evidence, spoke to a letter  
25 written to him in his capacity as provincial from

1 Brother <sup>MMK</sup> and that letter was dated 11 April 2000.  
2 In that letter Brother <sup>MMK</sup> referred to three boys  
3 having complained about Brother Damien's conduct around  
4 1973/1974. He stated that the mother of one of the boys  
5 agreed that the accounts seemed to be exaggerated and  
6 was quite happy to drop the matter. But this, taken  
7 with John's evidence, appears to show that concerns  
8 about Damien's conduct were raised with the school  
9 at the time.

10 There does not appear to have been any report to  
11 outside agencies, including the police, although there  
12 was some police involvement much later, I think in 1994.

13 Can I say, my Lady, the order's section 21 response  
14 does suggest that the police were involved in 1973 but  
15 that is not borne out by the evidence.

16 Nigel spoke of a practice whereby Brother Damien  
17 would ask boys to come up to his desk, under the guise  
18 of perhaps speaking about the boys' homework, and he  
19 said that Damien would put his hand down the back of  
20 boys' trousers while having his other hand inside the  
21 pocket of his cassock, masturbating.

22 Nigel also said that Brother Damien arranged for  
23 a French pupil's bed to be close to his room -- this was  
24 when he was on dormitory duty -- and that most nights  
25 the French pupil would go into Damien's room for half

1 an hour or so and then simply go back to bed.

2 Perhaps the most extreme description of abuse by  
3 Brother Damien came from Andrew. He described being  
4 taken into Brother Damien's room on a regular basis to  
5 the point that he would masturbate Damien and then  
6 perform oral sex on him. He also described that, as  
7 time went on, he was taken by Brother Damien to  
8 different rooms in the school and abused, and he said  
9 that on numerous occasions Brother Damien took  
10 photographs of him naked.

11 Andrew also gave evidence of being taken to  
12 Kinharvie House on three occasions and being raped there  
13 by Damien and indeed by other brothers.

14 The other brother worth mentioning at this point is  
15 Brother <sup>MFI</sup> [REDACTED]. He was born on [REDACTED] 1926 and he  
16 was at St Joseph's from 1949 to 1977.

17 Thomas spoke of Brother <sup>MFI</sup> [REDACTED] asking him to remove  
18 his trousers and pants so he could show him how to put  
19 on an abdominal protector and jockstrap for cricket. He  
20 said that Brother <sup>MFI</sup> [REDACTED] was handling his private parts  
21 in carrying out this procedure and he repeated the  
22 process several times with Thomas being naked from the  
23 waist down for about 45 minutes.

24 But perhaps more seriously, Stephen Behan, who was  
25 at St Joseph's from 1970 to 1974, described being

1 violently beaten and raped by Brother <sup>MFI</sup> [REDACTED] who was  
2 supposed to be providing him with extra [REDACTED] tuition.  
3 Stephen told the inquiry that Brother <sup>MFI</sup> [REDACTED] raped him  
4 about six times and attempted to do so on another two  
5 occasions. On the final occasion that this happened,  
6 Stephen recalled how he "lost it", as he put it, with  
7 him and he bit part of <sup>MFI</sup> [REDACTED] ear off.

8 Another brother against whom allegations have been  
9 made is Brother <sup>MFS</sup> [REDACTED]. He was born on [REDACTED] 1903.  
10 He was at St Joseph's from 1929 to 1931 and then later  
11 from the 1960s into the 1970s.

12 Thomas described how Brother <sup>MFS</sup> [REDACTED] would sit next  
13 to him in [REDACTED] touch him on the thighs, very close to  
14 his genitals, and that he would put his arm around him  
15 and kiss him on the neck in quite a blatant fashion.

16 One day, another boy shouted at <sup>MFS</sup> [REDACTED] in class,  
17 "Keep your hands to yourself, you pervert", and that's  
18 when Thomas realised he was not the only one that <sup>MFS</sup> [REDACTED]  
19 might have been interfering with.

20 Nigel said that Brother <sup>MFS</sup> [REDACTED], like Brother Damien,  
21 would take pupils behind his desk during class, under  
22 the guise of helping the boy with some work, and would  
23 have his left hand down the back of the boy's trousers  
24 and pants, fondling the boy's bottom. Nigel said this  
25 was a regular occurrence and it happened to a lot of the

1 other witnesses and other pupils in the class and that  
2 it was something boys openly talked about because:

3 "it was happening to everybody or virtually  
4 everybody."

5 Can I then turn to <sup>AKV</sup> [REDACTED]. He was born on  
6 [REDACTED] 1951 and he was at St Joseph's from 1973 to 1979.  
7 Focusing first on Stephen Behan, he described how, after  
8 he had been sexually abused by Brother <sup>MFI</sup> [REDACTED], he  
9 attacked Brother <sup>AKV</sup> [REDACTED], as he was then called, when  
10 Brother <sup>AKV</sup> [REDACTED] tried to "feel him" subsequently.

11 Stephen told the inquiry that Brother <sup>AKV</sup> [REDACTED] watched  
12 boys getting changed and:

13 "You made sure not to shower when he was around."

14 Nigel said that his brother was sexually abused by  
15 Brother <sup>AKV</sup> [REDACTED] and there has been evidence of  
16 Brother <sup>AKV</sup> [REDACTED] taking groups of boys out drinking and  
17 having them back in his room listening to music.

18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED] It appears  
23 that he was [REDACTED] from  
24 Scotland, the inquiry heard possibly to [REDACTED]  
25 from where Brother Douglas subsequently received

1 a telephone call in around 2008, which suggested that  
2 Brother <sup>AKV</sup> had died. This has never been confirmed  
3 and, despite efforts being made, a death certificate for  
4 him has not yet been obtained.

5 Looking at both schools, my Lady, if the evidence  
6 relating to sexual abuse in particular is accepted, it  
7 might suggest that the Marist Brothers did not have  
8 appropriate systems in place to protect the children in  
9 their care.

10 While Rule 443 of the order, that's the 1960  
11 version, set out that:

12 "Supervision should be more exact and careful in the  
13 dormitories. For this purpose there will be two  
14 brothers for each of the boys' dormitories."

15 The evidence suggests -- and this was accepted by  
16 Brendan Geary -- that this does not appear to have been  
17 observed.

18 The Germanus/<sup>AKU</sup> periods at St Columba's spanned  
19 over 20 years, and that in itself begs the question, if  
20 the evidence is accepted, why their practices could  
21 continue for so long.

22 My Lady, there has been positive evidence presented  
23 in connection with both schools. James, who was at  
24 St Columba's from 1965 to 1968, described the experience  
25 as broadly positive. He didn't experience anything

1 which caused him concern. It's perhaps interesting to  
2 note there are no other former pupils who have come  
3 forward covering the years that James was at the school.  
4 But the same witness also said he had very happy  
5 memories of his time at St Joseph's.

6 Another witness James, who was at St Joseph's from  
7 1963 to 1969, said St Joseph's was a more positive  
8 experience than St Columba's, and he could not recall  
9 being subjected to any abuse other than receiving the  
10 belt.

11 These are but examples, but clearly an indication  
12 that it was perfectly possible, and indeed it did  
13 happen, that children could be provided with positive  
14 experiences at the schools.

15 My Lady, there's no doubt that many of the children  
16 who attended both schools went on to have fulfilling and  
17 successful lives. But in addition to that, there is  
18 evidence from some witnesses of the adverse impact,  
19 at the time and sometimes long-term, on them and their  
20 wider families that their childhood experiences had on  
21 them while in the care of the brothers.

22 Richard Kozub said that he was distrustful of  
23 authority and institutions, and indeed he gave an  
24 example of being on holiday in Malta with a group that  
25 included a 9-year-old boy about the same age he was when



1 he went to St Joseph's, and:

2 "... not being able to conceive how people would be  
3 so harmful to such a fragile little creature."

4 Gerry spoke of how he feels that he has put a hard  
5 shell around himself to prevent people from getting  
6 close to him.

7 Edward -- and this was a common theme from a number  
8 of witnesses -- spoke about carrying shame with them  
9 from their experiences of abuse, and he went on to say:

10 "Even now, and nothing's going to change that,  
11 I carry shame and fear and cowardice for not coming  
12 forward. I think about this often."

13 A number of witnesses spoke of dealing with mental  
14 health issues, which they attributed to their  
15 experiences at the schools, and having had difficulties  
16 with alcohol and/or drugs during periods of their lives.

17 So overall, if that evidence is accepted, it appears  
18 that the impact of abuse is something which has played  
19 a part in the lives of some of the former pupils.

20 Can I then turn to evidence that has been presented  
21 to the inquiry particularly from brothers. We've heard  
22 evidence from ten brothers or former brothers who were  
23 at the schools over the period covered in evidence,  
24 eight of whom gave evidence in person, and two who had  
25 statements read in.

1           Of these, all the brothers against whom allegations  
2 of abuse have been made denied abusing any children  
3 at the schools. Some said they had witnessed and/or  
4 administered corporal punishment, but nothing beyond  
5 that, and none of the brothers had at any time been  
6 aware of any sexual abuse.

7           Brother Ronnie McEwan, he was the former  
8 United Kingdom Provincial, and he dealt within the order  
9 with complaints, particularly between the years 1993 and  
10 2009, and he also provided evidence.

11           [REDACTED] had provided evidence that Ronnie McEwan and  
12 others had been present at St Columba's on an occasion  
13 in the late 1970s or early 1980s and Ronnie McEwan  
14 denied that. He said he never visited St Columba's  
15 during that period.

16           Can I say, my Lady, other persons mentioned by [REDACTED]  
17 as having visited St Columba's have since written to the  
18 inquiry denying that they were ever at St Columba's.

19           Brother Colin Chalmers gave evidence. He is the  
20 general archivist of the Marist Brothers and he's based  
21 in Rome. He explained that the administrative archive  
22 dated back to the early 19th century. He said that  
23 every brother should have a file held in Rome and that  
24 he believed these have been made available to the  
25 inquiry, although there may still be documents of

1 interest to the inquiry which have not been sent, for  
2 example, letters relating to <sup>AKU</sup> [REDACTED] refusal to  
3 have permission to take his final vows.

4 So far as the position of the order is concerned,  
5 that essentially was spoken to on the final day of  
6 evidence by Brother Brendan Geary. He had been  
7 Provincial of the order until April of this year and is  
8 now in the process of being appointed as the order's  
9 safeguarder for Scotland.

10 Can I say, I can also confirm that the order has  
11 updated its section 21 response and indeed the  
12 information now provided will have to be taken into  
13 account.

14 Brendan Geary explained, in relation to records that  
15 what were at one time known as the annals, the annals  
16 became the daybooks, and the point is that the daybooks  
17 have been made available to the inquiry.

18 Brother Brendan, as I mentioned earlier, my Lady,  
19 sat through the evidence in the case study and he  
20 described that as one of the most difficult things he  
21 has done in his life as a Marist Brother. He accepted  
22 that the provisions relating to two brothers being  
23 in the dormitories had been there as a safeguarding  
24 provision and that on the evidence this practice had not  
25 been adhered to.

1 He also accepted that on the evidence, the rule,  
2 "Brothers are absolutely forbidden to strike their  
3 pupils", had not been adhered to at the schools.

4 He accepted that, on the evidence, there had been  
5 occasions when very young men went to teach, who were  
6 totally unqualified to teach, and that this had not been  
7 appropriate.

8 Brother Brendan also gave evidence that, having  
9 finished his theology studies in Ireland in 1977, he was  
10 at St Joseph's for six weeks and was told by one of the  
11 senior pupils at the school that Brother <sup>AKV</sup> [REDACTED],  
12 <sup>AKV</sup> [REDACTED], had gone into one of the rooms of the  
13 senior pupils, shown him male pornographic magazines and  
14 asked the boy to masturbate him.

15 Brother Brendan said he had considered reporting  
16 this to the headmaster at the time, but didn't in case  
17 he was accused of being too familiar with senior  
18 students, which was against the rules. This is now  
19 covered in the updated section 21 response.

20 But this account perhaps gives an insight into how  
21 difficult it might have been for a child to report  
22 abuse, given that a young adult in Brother Brendan's  
23 position felt unable to do so at the time.

24 Brother Brendan wished to apologise profoundly to  
25 anyone who suffered abuse at the hands of the

1 Marist Brothers. Indeed, he went on to say, indeed  
2 beyond that, anyone whose educational experience wasn't  
3 what it should have been in terms of what should have  
4 been provided, and that's leaving aside sexual abuse.

5 He went on to say that if there were any victims or  
6 members of their families who would be open to meeting  
7 with him, he would be happy to do that, to hear anything  
8 that they want to say, and to listen, and to offer  
9 a personal apology.

10 So my Lady, in conclusion, your Ladyship will have  
11 to carefully consider all the evidence of the former  
12 pupils, including the evidence relating to allegations  
13 of both physical and sexual abuse, as well as the  
14 accounts of the surviving brothers who were at the  
15 schools and the accounts of the other witnesses and  
16 your Ladyship will ultimately have to decide whether the  
17 evidence of the applicants is accepted in relation to  
18 the abusive practices spoken to in evidence and, if  
19 accepted, whether there were systemic failures within  
20 the order which allowed such practices to exist.

21 There are, of course, [REDACTED], and that in  
22 themselves perhaps do show that children were abused at  
23 both schools.

24 My Lady, those are my submissions.

25 LADY SMITH: Thank you very much, Mr MacAulay.

1           It's almost 11.15, and although it's a little  
2           earlier than we would normally take the break, I think,  
3           to give the stenographers a break from quite hard work  
4           in noting a whole run of submissions, I'll take the  
5           morning break now and we'll sit again just after 11.30.

6           (11.15 am)

7                                 (A short break)

8           (11.35 am)

9           LADY SMITH: I would now like to turn to Mr Scott to present  
10           closing submissions on behalf of INCAS. Mr Scott.

11                                Closing submissions by MR SCOTT

12          MR SCOTT: Thank you, my Lady.

13                 Whereas this case study has been mainly about abuse  
14                 perpetrated on children who were in private education at  
15                 these two establishments, the primary focus for INCAS  
16                 and its members is survivors of abuse committed when  
17                 children were in care --

18          LADY SMITH: Hang on, Mr Scott, children at independent  
19                 schools, independent boarding schools, are children in  
20                 care under my terms of reference.

21          MR SCOTT: They are, my Lady.

22          LADY SMITH: What do you mean?

23          MR SCOTT: I'm simply referring to the articles of  
24                 association for INCAS and its focus.

25          LADY SMITH: Sorry, what do you mean by "in care"?

1 MR SCOTT: Children whose parents were no longer alive and  
2 were taken into care by the state.

3 LADY SMITH: Well, if we look at, for example, Smyllum, we  
4 had quite a lot of evidence of children being placed  
5 there voluntarily by parents and indeed charged money  
6 for it.

7 MR SCOTT: It's a complex picture across the different  
8 establishments, both state run and private. There were  
9 different situations for different children. It was  
10 simply a reference to the primary focus for INCAS,  
11 my Lady.

12 LADY SMITH: Well, we'll leave it there, but, Mr Scott,  
13 please be assured, so far as my interests are concerned,  
14 they extend to all children in residential institutions  
15 that fall within the terms of reference. Boarding  
16 schools are expressly mentioned in the terms of  
17 reference as a type of institution that I require to  
18 look into for, I think, very good reasons.

19 MR SCOTT: Of course, my Lady, I clearly don't quarrel with  
20 that at all. It's simply a question of the term of  
21 reference for the inquiry are in some respects broader  
22 than those of the memorandum and articles in relation to  
23 INCAS.

24 LADY SMITH: I see. Thank you.

25 MR SCOTT: The position of many children abused in care was

1 different to some of those in this case study because  
2 many of those in care had no family outside and  
3 therefore even the possibility of refuge or rescue,  
4 temporary or otherwise, was impossible rather than  
5 remote.

6 The heightened responsibility of the state for those  
7 in care, as I tried to describe just a short time ago,  
8 endures. INCAS recognises, however, that there can be  
9 no league tables of trauma or suffering, comparisons are  
10 invidious, with the abuse of each individual very much  
11 a deeply personal experience as well as part of the  
12 wider picture.

13 As we heard in the schools in this case study, the  
14 experience of these boys was all too familiar. Even  
15 a loving and well-intentioned family was no barrier to  
16 abuse. Of course, we heard something of the movement of  
17 abused children, part of the complex patchwork I was  
18 referring to, in the evidence of two applicants.

19 James gave evidence in May 2018 regarding his time  
20 at Nazareth House and his statement, insofar as relevant  
21 to this case study, was read in on Day 162.

22 In addition, the witness Dexter gave evidence in  
23 November 2017 about his time in Smyllum, but what he  
24 experienced at St Columba's was read into evidence also  
25 on Day 162.



1           In addition to his evidence of abuse there, he also  
2 explained the trauma and isolation, additional  
3 isolation, of unexplained and unwanted uprooting. This  
4 is relevant to issues about the widespread nature of  
5 abuse that seems more than coincidental when experienced  
6 and sustained across separate locations under the same  
7 order, across different orders or organisations, across  
8 care or private establishments, across international  
9 borders and across decades.

10           Before continuing, my Lady, I wish to acknowledge  
11 the attendance of Brother Brendan Geary during this case  
12 study. The survivors appreciate his presence to listen  
13 to their testimony and are glad that he has been able to  
14 hear the truth first-hand for himself. It clearly  
15 informed his evidence on 25 October.

16           There was no "Yes, but" moment, such as he referred  
17 to in the article which I mentioned in my opening  
18 statement on behalf of INCAS, and his profound apology  
19 is significant and is likely to help some survivors.

20           The evidence in this case study has demonstrated  
21 significant and inexplicable failings by the Marists,  
22 even including inexplicable failings in more recent  
23 times, and I'm thinking of the admitted long delay in  
24 contacting the police regarding Edward.

25           Despite this, the community has also sought in its

1 approach to this inquiry to respect the central concepts  
2 of responsibility, accountability and transparency,  
3 which were at the heart of this year's Vatican Summit on  
4 abuse and at the heart of your Ladyship's work.

5 The next part of my submissions is updated slightly  
6 or needs updating slightly. It says:

7 "No doubt the amended section 21 response, which is  
8 not available as at [Friday], will reflect these  
9 principles and update, amend and expand on the  
10 community's previous responses."

11 Ms MacLeod pointed out this morning that the updated  
12 section 21 response had gone through the redaction  
13 process yesterday and was now available on Delium, so  
14 I had an opportunity to read through it rather quickly  
15 this morning.

16 My Lady, education has always been at the heart of  
17 the work of the Marist Brothers. Their founder,  
18 Marcellin Champagnat, said:

19 "We aim at something better. We want to educate  
20 them, to instruct them in their duty, to teach them to  
21 practice it, to give them a Christian spirit and  
22 attitudes, and to form them to religious habits and the  
23 virtues possessed by a good Christian and a good  
24 citizen."

25 He said also:

1            "To bring up children properly, we must love them  
2 and love them all equally."

3            Apart from any condemnation for the community which  
4 will rightly follow the work of this inquiry, these  
5 words of the order's founder must leave a bitter taste,  
6 given how far from his thoughts and ideals has been the  
7 experience of survivors.

8            The abusers and those that allowed the abuse or the  
9 abusers to continue and to continue unpunished in their  
10 abuse have tarnished some of the reputation and good  
11 work of Marcellin Champagnat and his Little Brothers of  
12 Mary.

13           "Help us, St Columba's College", a message,  
14 I suggest, my Lady, of hope and desperation put into  
15 a bottle found by the sea in Largs. The traditional,  
16 and often the only, means of communication by castaways.  
17 We heard of this episode in Billy's evidence on Day 163  
18 and also in the read-in evidence of James on Day 166.

19           In a very real sense the boys in these schools were  
20 castaways. Cast away from family and friends, placed in  
21 fearful, heavy and violent places where every effort was  
22 made to create and maintain an atmosphere of isolation,  
23 akin to that of the castaway. None of the love espoused  
24 by Marcellin Champagnat.

25           Abuse was at the centre of school life for many boys

1 but abuse in an even more terrifying context of near  
2 absolute control.

3 And that, I think, perhaps reflects the wider terms  
4 of reference that your Ladyship was referring to  
5 earlier.

6 Outgoing mail to family was monitored and censored.  
7 Running away was punished rather than causing concern  
8 and enquiry as to why. People on the outside kept from  
9 knowing the truth by a combination of suppression,  
10 intimidation, ridicule of stories of abuse, and also  
11 abiding faith and trust in the church. Examples perhaps  
12 of the various types of clericalism also mentioned in  
13 Brother Brendan's article, the imposition of force to  
14 violate the conscience and bodies of the weakest.

15 These boys saw themselves as castaways and tried  
16 in the only way they could to reach out for help. The  
17 answer to their plea? The police laughing with their  
18 abusers, worse off even than before their efforts  
19 because of how easily they could see that their cry for  
20 help was dismissed, no doubt exacerbated and assisted by  
21 clericalism.

22 Turning then to questions of facts which  
23 your Ladyship should find or could find established on  
24 the evidence heard in this chapter. The main headings  
25 are again, sadly, all too familiar.

1 Evidence of institutional abuse, I suggest, or  
2 a culture of abuse which is supported by several  
3 witnesses. Once more, abuse described by individuals of  
4 different backgrounds, ages, residents at different  
5 times, some unknown to each other. Abuse carried out by  
6 several abusers, not merely one or two, taking place  
7 over many years.

8 I suggest the following findings in fact, my Lady.

9 So far as general atmosphere is concerned, it seems  
10 from most of the evidence that the atmosphere in these  
11 establishments was very far from nurturing. There was  
12 no love felt by many of the boys. The schools were  
13 cold, controlled, oppressive places with little or no  
14 nurture, but rather permanent dread for many who lived  
15 there.

16 Hate and fear as opposed to love was at the heart of  
17 the schools for these boys and even the monks who were  
18 not involved in abuse, some of whom were good men trying  
19 to do their best, could not compensate for what was done  
20 by those who abused boys in their care.

21 Bullying was rife, perhaps even encouraged, with  
22 prefects often among the worst, whether by design,  
23 accident or encouragement in terms of their bullying of  
24 other boys.

25 Excessive use of alcohol seems also to have been

1 a noticeable feature, and --

2 LADY SMITH: Which brothers do you have in mind when you  
3 refer to the excessive use of alcohol?

4 MR SCOTT: My Lady, I think it was a feature in relation to  
5 more than one.

6 LADY SMITH: MFU [REDACTED], certainly.

7 MR SCOTT: Certainly in relation to MFU [REDACTED].

8 LADY SMITH: Are you thinking of the picture of the brothers  
9 retiring to have a pint or two on an almost nightly  
10 basis, I think at St Joseph's, anyway?

11 MR SCOTT: Yes, my Lady.

12 There was evidence also, my Lady, of  
13 Brother Germanus targeting boys for abuse who were more  
14 vulnerable and not happy in their home life, further  
15 compounding their misery.

16 So far as education is concerned, the education of  
17 which we have heard in this case study was private, and  
18 that assists in demonstrating the insidious and  
19 pervasive nature of childhood abuse. Even in education  
20 threat and violence played a part and I am thinking,  
21 apart from the general atmosphere, of a boy being belted  
22 for getting his times tables wrong.

23 For all that education was the basis of their care,  
24 it seems that teaching was not a priority to the extent  
25 of ensuring that there were relevant qualifications and

1 experience for all teaching staff and, as your Ladyship  
2 highlighted during some of the evidence, many of those  
3 who had the care of the boys were themselves very young  
4 men.

5 We heard complaints of poor education with little  
6 regard for boys achieving their academic potential.

7 Turning then to control, discipline and punishment.  
8 The oppressive atmosphere of the schools was dominated,  
9 for some boys at least, by acts of physical violence and  
10 threat by which the abusers and staff either sought or  
11 actually exercised control and discipline, albeit what  
12 we heard, as Mr MacAulay said, went well beyond what  
13 could be ever described as reasonable chastisement, even  
14 in those days of corporal punishment in schools.

15 Assaults taking place with little or no  
16 justification offered or required. Arbitrary violence  
17 involved assaults and beatings of various sorts with and  
18 without implements. The belt, being a particular  
19 feature, used not simply to strike the hands but  
20 evidence of it being used targeted at the wrists, for  
21 example, but also other parts of the body.

22 Other implements and items, for example golf balls  
23 and dusters, and mass beltings and mass punishments were  
24 a notable feature.

25 Bed-wetting was mentioned in evidence and the

1 humiliation and punishment of those who wet their beds,  
2 a feature in earlier case studies, was part of this case  
3 study also.

4 Turning then to sexual abuse. The inquiry has heard  
5 evidence of serious sexual abuse. Alarming, it  
6 appears that aspects of inappropriate sexual activity  
7 were carried out openly. Abusers who seemingly felt no  
8 need to make much effort at all to conceal their  
9 actions, proclivities and intentions. Grooming was  
10 a feature. Sexual abuse included indecent groping and  
11 touching but also, significantly, more serious sexual  
12 activity up to and including rape.

13 Boys were told or induced to engage in inappropriate  
14 sexual activity with other boys, a further aggravation  
15 of the abuse of innocent young boys with the obvious  
16 purpose of gratification for the abuser.

17 Awareness of and response to abuse. There was clear  
18 evidence from which your Ladyship would be entitled to  
19 make a finding that the abuse was known about, mainly  
20 through what the survivors say they told others at the  
21 time and what appears to have been an open and obvious  
22 atmosphere of intimidation, threat and violence.

23 Abuse was reported by survivors at the time or by  
24 some survivors. Boys complained to others within the  
25 institution and on occasion tried to reach out beyond



1 its walls. Their complaints appear not to have been  
2 pursued or certainly not pursued sufficiently by those  
3 to whom they were made and it seems that abusers and  
4 their colleagues succeeded in making sure that the few  
5 complaints which reached the outside world were  
6 discredited and disbelieved.

7 Boys were groomed, but it seems that parents and  
8 others may also have been groomed in this way too,  
9 albeit to an extent there may simply have been reliance  
10 on the trusting attitude towards the church, so the  
11 abusers were able to rely on general respect for the  
12 church.

13 LADY SMITH: That sounds somewhat like echoes of the  
14 observations you made about the dangers of clericalism  
15 in your opening submission, Mr Scott; is that what  
16 you're thinking of?

17 MR SCOTT: It is indeed, my Lady, yes.

18 LADY SMITH: I have noted since then, when I looked at that  
19 a little further, that Pope Francis went as far as  
20 describing clericalism as a perversion and at the root  
21 of many evils in the church because of the elitist and  
22 exclusivist vision that it perpetuates.

23 MR SCOTT: It's something that increasingly appears to be  
24 recognised as part of the picture, my Lady.

25 There was evidence of bloody sheets in one

1 particular case, but no apparent enquiry into the cause.

2 Even when an internal investigation took place into  
3 allegations by three boys in the 1970s, it is hard to  
4 see that as a serious attempt to ascertain the true  
5 extent of the abuse.

6 As acknowledged in the amended section 21 response,  
7 nothing at all seems to have been done or recorded as  
8 a consequence of these relevant allegations, and as  
9 Mr MacAulay said, the suggestion of the police being  
10 informed seems at odds with the evidence.

11 On this matter, I was also thinking of the evidence  
12 on Day 168 of the letter put to Ronnie McEwan, but  
13 Mr MacAulay has quoted that and I will not do so again.  
14 Again, a suggestion of the excessive and unjustified  
15 reliance on trust and respect for the church to  
16 encourage thoughts of exaggeration or even distortion.

17 Details of the internal investigation in 1956 are  
18 even more sparse, but taken together, it is impossible  
19 for the community to claim complete ignorance.

20 My Lady, those are the submissions on behalf of  
21 INCAS regarding findings in fact. Once again, I thank  
22 my Lady and the inquiry team, especially Mr MacAulay and  
23 Ms MacLeod, for the thorough but sensitive manner in  
24 which all those who have come forward have been treated.

25 LADY SMITH: Thank you very much, Mr Scott.

1           Could I now turn to representation for the  
2           Lord Advocate and I think I can see Ms Lawrie is here.  
3           When you're ready, Ms Lawrie.

4                           Closing submissions by MS LAWRIE

5           MS LAWRIE: Thank you, my Lady. I'm grateful for this  
6           opportunity to make a closing submission to the inquiry  
7           on behalf of the Lord Advocate.

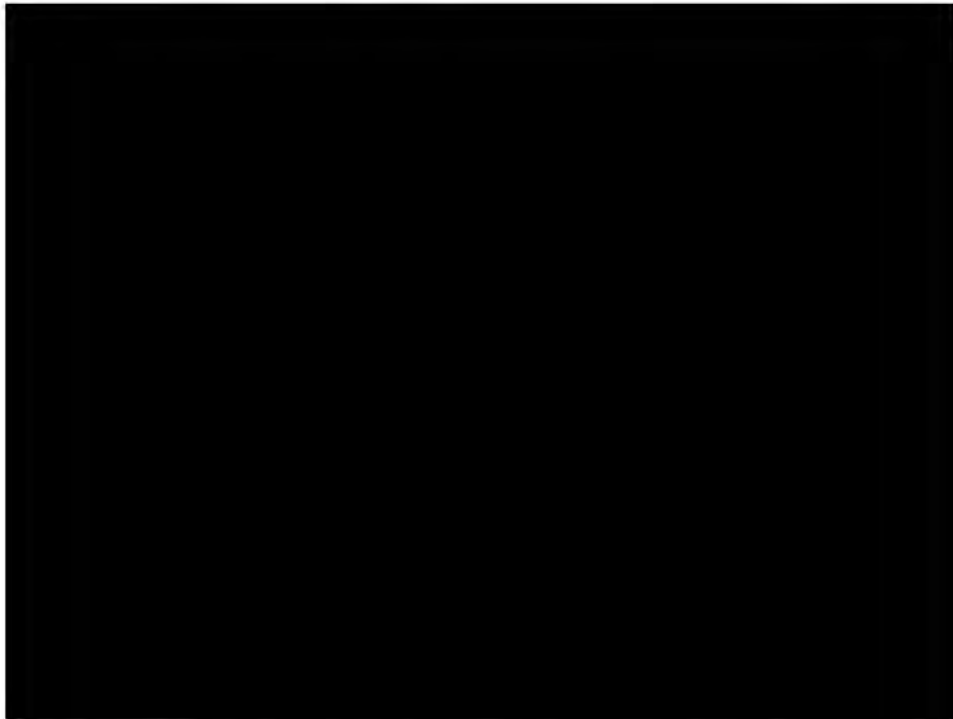
8           During the course of the present case study, the  
9           inquiry has heard evidence of the physical, sexual and  
10          emotional abuse of children who were pupils within  
11          residential care establishments run by the  
12          Marist Brothers at St Joseph's College, Dumfries, and  
13          St Columba's College, Largs.

14          Evidence has been provided to the inquiry that some  
15          of this abuse was reported to and thereafter  
16          investigated by the Crown Office and Procurator Fiscal  
17          Service, often shortened to COPFS. Indeed, the inquiry  
18          has heard evidence that prosecutorial action was  
19          subsequently taken by COPFS [REDACTED]

20          [REDACTED]  
21          Based on the evidence provided to the inquiry [REDACTED]

22          [REDACTED]  
23          [REDACTED] I submit on behalf of the Lord Advocate  
24          that the inquiry would be entitled to make the following  
25          findings in fact.

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█ that criminal proceedings were raised against a █ individual in respect of offences involving the sexual abuse of former pupils of St Joseph's College, Dumfries. Those proceedings were ultimately discontinued due to the ill-health of the accused.

My Lady, in conclusion, may I take this opportunity to reiterate the Lord Advocate's continuing commitment to, first, supporting the work of the inquiry and to contributing both positively and constructively to its work and, second, to ensuring the fair, effective and rigorous prosecution of crime in the public interest for all members of society, including the most vulnerable.

Those are my submissions, my Lady.

1 LADY SMITH: Thank you very much.

2 Can I now turn to representation for the Chief  
3 Constable of Police Scotland. Ms van der Westhuizen,  
4 when you're ready?

5 Closing submissions by MS van der WESTHUIZEN

6 MS VAN DER WESTHUIZEN: Thank you, my Lady.

7 My Lady, Police Scotland is grateful for the  
8 opportunity to make this closing statement in respect of  
9 the inquiry's hearing in relation to the  
10 Marist Brothers.

11 During the hearings into this aspect of phase 4, the  
12 inquiry has heard testimony from survivors who have  
13 experienced abuse within establishments operated by the  
14 Marist Brothers at St Joseph's College, Dumfries, and  
15 St Columba's College, Largs.

16 Both schools have previously been the subject of  
17 investigations by the legacy Dumfries & Galloway and  
18 Strathclyde Police forces and, more recently, by  
19 Police Scotland.

20 Police Scotland would like to acknowledge the extent  
21 and impact of the abuse experienced by those survivors  
22 and indeed all survivors of childhood abuse across  
23 Scotland.

24 Police Scotland would like to take this opportunity  
25 to reassure survivors, the inquiry and the people of

1 Scotland that it is fully committed to thoroughly  
2 investigating all forms of child abuse, regardless of  
3 when or where the abuse happened or who was involved.

4 During this part of phase 4, Police Scotland has  
5 assisted the inquiry by providing all relevant material  
6 relating to investigations into abuse within  
7 establishments operated by the Marist Brothers.

8 In addition, on Friday, 25 October 2019, the serving  
9 police officer Detective Inspector Lynsey Watters  
10 provided evidence to the inquiry regarding an  
11 investigation she conducted during 2015/2016 into the  
12 death of Aldo Moroni.

13 Aldo, who was a pupil at St Columba's School, Largs,  
14 died on 25 February 1980. The cause of death was  
15 recorded as septicaemia.

16 The creation of the single police service in  
17 Scotland provided an opportunity to consider the  
18 policing response to child abuse and enhance the policy  
19 coordination and operational response. Each of  
20 Police Scotland's local policing divisions has a public  
21 protection unit which contains officers trained and  
22 experienced in the investigation of recent and  
23 non-recent child abuse offences, whilst the National  
24 Child Abuse Investigation Unit provides additional  
25 support for complex investigations.

1           As your Ladyship is aware, officers from the  
2 National Child Abuse Investigation Unit are currently  
3 conducting investigations into the non-recent abuse  
4 within establishments operated by the Marist Brothers.

5           Police Scotland's engagement with survivor support  
6 groups and statutory partners has significantly informed  
7 the development of its information resources on  
8 reporting abuse to the police. For example,  
9 Police Scotland has recently launched the "Information  
10 for Adult Survivors of Childhood Abuse" animation film,  
11 which complements an existing information leaflet for  
12 adult survivors of childhood abuse and information on  
13 Police Scotland's website.

14           These resources aim to provide survivors with  
15 information and enable them to make an informed choice  
16 about whether or not they wish to report abuse to the  
17 police, whilst at the same time ensuring they are  
18 signposted to relevant support services.

19           In addition, Police Scotland will continue to work  
20 with survivors, survivor support services and statutory  
21 partners to continuously improve the services it  
22 provides.

23           Finally, while resource assignment, investigative  
24 practices and policies around the investigation of child  
25 abuse have advanced considerably over the years,

1 Police Scotland provides an assurance that it will apply  
2 the knowledge acquired and any lessons to be learned  
3 during the course of this inquiry to further enhance its  
4 organisational learning and service provision to  
5 survivors.

6 Unless I can be of further assistance, my Lady,  
7 that's the closing statement on behalf of  
8 Police Scotland.

9 LADY SMITH: That's very helpful. I have looked at the film  
10 on the website and would congratulate the police on  
11 putting it together. I hope that people do find it  
12 helpful; they should do.

13 MS VAN DER WESTHUIZEN: I'm grateful, my Lady.

14 LADY SMITH: I'd like to turn to the Scottish Ministers  
15 representation, please. Ms O'Neill, when you're ready.

16 Closing submissions by MS O'NEILL

17 MS O'NEILL: My Lady, the Scottish Ministers welcome the  
18 opportunity to make a closing submission. I would adopt  
19 the written submission that has been lodged with the  
20 inquiry.

21 Section 1 of that written submission describes the  
22 Scottish Ministers' interest in the inquiry, which has  
23 been represented to the inquiry before now. Section 2  
24 deals with the reasons why, as before, the  
25 Scottish Ministers do not actively participate in the



1 taking of evidence from witnesses or the putting of  
2 questions to individual witnesses. But section 2 also  
3 acknowledges, on behalf of the Scottish Ministers, the  
4 evidence that has been given by applicants of very  
5 serious physical, sexual and emotional abuse and neglect  
6 suffered by them as children in care.

7 The Ministers also acknowledge the evidence given by  
8 individual applicants as to the poor quality of the  
9 educational provision that was made for them.

10 Submissions have been made by me previously on  
11 behalf of the Ministers as to the approach that the  
12 inquiry may wish to take in due course in examining  
13 inspection regimes and the regulation of independent  
14 schools, including boarding schools, and those  
15 submissions apply equally to this case study as to the  
16 case study concerning the Benedictine Order.

17 Section 3 concerns the pre-legislative consultation  
18 exercise on redress. My Lady, it is perhaps  
19 unsurprising, given the particular timing of this case  
20 study, that evidence was heard from several applicants  
21 about their views on a future statutory redress scheme.

22 I confirm, my Lady, that the evidence of those  
23 applicants has been specifically drawn to the attention  
24 of those in the Scottish Government who are engaged  
25 in the pre-legislative consultation exercise on that

1 scheme.

2 Again, as has been discussed previously, the  
3 consultation period closes on 25 November, and no final  
4 decision has been made about the approach of the  
5 proposed bill on the scope of the proposed scheme or the  
6 eligibility criteria that will be applied.

7 My Lady, all those with an interest, including those  
8 who have already give evidence to this inquiry, are  
9 encouraged to make their views known during the  
10 consultation period and directly to those who are  
11 dealing with the consultation exercise.

12 LADY SMITH: Am I to take it from what you've just said  
13 that, so far as applicants who have given evidence,  
14 including their views on the proposed scheme are  
15 concerned, they don't need to separately make  
16 representations, but what they've said has been  
17 effectively conveyed to those collating responses?

18 MS O'NEILL: What they have said has been conveyed to those  
19 collating responses. I think, my Lady, if they were  
20 able to provide formal responses to the consultation  
21 exercise, that would assist those dealing with the  
22 consultation, but I emphasise their views have been  
23 conveyed to those who are dealing with the consultation.

24 LADY SMITH: Good, thank you.

25 MS O'NEILL: My Lady, the same questions arise about the

1 advance payment scheme and I'm very conscious that  
2 evidence has been given by applicants about the scope of  
3 the advance payment scheme. That evidence has been  
4 directly communicated to the Scottish Government team  
5 responsible for the scheme, and that evidence and the  
6 eligibility criteria are under active consideration.

7 My Lady, the last item I wish to address is  
8 protection of vulnerable groups. On 4 October, the  
9 applicant John Christopher McCall referred in his  
10 evidence to the Protection of Vulnerable Groups Scheme  
11 and made certain criticisms of the scheme.

12 Again, the inquiry may be aware of this, but the  
13 Ministers would ask the inquiry to note that there is  
14 currently before the Scottish Parliament the  
15 Disclosure Scotland Bill. That bill was introduced  
16 in the Scottish Parliament on 12 June 2019 and is  
17 currently at stage 1 of its parliamentary passage.

18 The bill's provisions, if enacted, will make  
19 substantial changes to the legal regimes that regulate  
20 the disclosure of criminal convictions and the  
21 Protection of Vulnerable Groups Scheme. The inquiry may  
22 in due course wish to have further information about the  
23 bill's provisions and indeed the bill may be enacted  
24 before the inquiry concludes its work.

25 Those are the submissions for the Ministers.

1 LADY SMITH: Thank you very much.

2 I turn to the representation of Mr <sup>MFZ</sup> [REDACTED],  
3 Dean of Faculty.

4 Closing submissions by MR JACKSON

5 MR JACKSON: Thank you, my Lady.

6 My Lady has heard the evidence of Mr <sup>MFZ</sup> [REDACTED] and,  
7 of course, has the written submission and the last thing  
8 I want to do is simply repeat all of that to my Lady.  
9 What I do want to do is to emphasise one or two  
10 particular points.

11 Mr <sup>MFZ</sup> [REDACTED] position is perhaps a little unusual in  
12 proceedings of this kind because his clear position  
13 is that he has never, ever been at that particular  
14 school, and indeed, until much, much later, had never  
15 heard of it.

16 He has, of course, had almost a lifelong connection  
17 with the order and associated charity, and that is very,  
18 very clear, but his position is that that part of the  
19 order's estate was somewhere he had never, ever entered.

20 In that context, there are two things of some  
21 importance. One is his age at the time. He would have  
22 been more or less a university student aged 20. It is  
23 not entirely clear what reason he would ever have had to  
24 be in that particular school. More to the point perhaps  
25 is that there is no, as far as I'm aware, record of him

1           ever being there at any time.

2           My Lady has quite extensive records, daybooks,  
3           et cetera. One might have expected that somewhere in  
4           all of that his name would appear. It does not.  
5           I don't mean necessarily his name would appear in the  
6           context of the events which are being described or on  
7           those occasions, but he is portrayed as being a regular  
8           person who went into those premises. It would be  
9           expected that somewhere in all those records we would  
10          find his name and I think I am safe in saying that that  
11          does not happen at all.

12        LADY SMITH: I see entirely what you're saying, but  
13          of course we didn't have any evidence about the criteria  
14          that applied to what went into the daybook and what  
15          didn't; some of the comments are quite random.

16        MR JACKSON: I don't make too much of that, simply to say to  
17          my Lady that it is certainly noteworthy that we never  
18          find any record of him being in that place.

19          What is much more important, in my submission, is to  
20          look at the context in which he is said to be there.  
21          He is described as being the stepfather of Aldo Moroni.  
22          There is, I suggest to you, no basis for that. But in  
23          particular, that is in the consideration of the other  
24          witness who gave evidence under another name being the  
25          mother of that child. Mr MacAulay says -- and with this

1 I agree --

2 LADY SMITH: That's Barbara.

3 MR JACKSON: Yes, I'm sorry, my Lady, that's Barbara.

4 Mr MacAulay says, and with this of course, I agree,  
5 that is clearly wrong. His submission to you is, and  
6 you've heard her evidence, and I suggest she was a very  
7 impressive witness, that she was and could not be that  
8 mother.

9 I agree with that. But I ask the question: if  
10 that is so clearly wrong, why does that not apply  
11 equally to Mr <sup>MFZ</sup> [REDACTED] because they're both named in that  
12 particular context?

13 But the matter goes further and here I think there  
14 is a logical deduction which can be made. When one  
15 asks, as indeed I think was asked and common sense would  
16 ask, how does Mr <sup>MFZ</sup> [REDACTED] who was never there, get  
17 involved at all in this? One possibility is that that  
18 has happened because of a much later [REDACTED]

19 [REDACTED] as seems to have been the case, [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 is Barbara and that becomes the mother and stepfather.

23 The logical question to ask is: is that a coincidence,

24 that when they're naming him and that lady as the

25 stepfather and mother they are undoubtedly, fully

1           accepted, clearly wrong in that, in terms of at least  
2           the mother? It seems too big a coincidence that many  
3           years later, they should both [REDACTED]  
4           which has something to do with the Marist Brothers in  
5           a general sense and end up in this situation as being  
6           named in that way. That cannot simply be a coincidence.

7           It goes further: Aldo's actual parents were involved  
8           and, in particular, after he died. They were, so the  
9           records show, at his funeral, as one would expect, and  
10          as far as we can ever be aware, Mr <sup>MFZ</sup>[REDACTED] was not there.  
11          The death -- and you have this -- was registered by the  
12          actual father, so no doubt therefore that the link which  
13          is being made to Barbara and Mr <sup>MFZ</sup>[REDACTED] as mother and  
14          stepfather is wrong. That link is wrong.

15          Of course, I'm aware of one other legal principle.  
16          Witnesses, particularly children, speaking to events  
17          long ago, can get some things wrong and yet still be  
18          getting some things correct. That is the inevitable  
19          principle of our law. But the interesting thing -- and  
20          I emphasise this -- is that a number of witnesses make  
21          this erroneous link. That adds weight to the suggestion  
22          that this starts with the later [REDACTED] and then  
23          tragically acquires a life of its own.

24          Had it only been one child, only one mention of the  
25          erroneous link as stepfather, which I suggest cannot be

1           tenable, then that might have been one thing. But in  
2           a strange way, it is, in my submission, strange that  
3           that is mentioned a number of occasions. Why would that  
4           wrong link be made on a number of occasions if it's not  
5           because of the link which I have suggested?

6           So this is not a matter -- and I know the inquiry  
7           often and very properly will accept very clearly the  
8           evidence of those who have been abused and that is  
9           entirely right, but where the context of the evidence is  
10          clearly erroneous, then there should be the greatest  
11          hesitation in accepting that other part of it as being  
12          accurate.

13        LADY SMITH: Of course there was only one witness, whose  
14          statement was read in, who mentioned Barbara as being  
15          the person who was Aldo's mother. Nobody else mentioned  
16          her.

17        MR JACKSON: But the question still arises: where would that  
18          come from at all, when it is clear, as I think this  
19          inquiry will accept, that whatever else is true in this  
20          case, Barbara is not Aldo's mother? That's quite clear.

21        LADY SMITH: Mr MacAulay made his position quite clear on  
22          that, but separately quite a number of witnesses have  
23          said that the [REDACTED] man that they have  
24          a recollection of attending at St Columba's was

25        [REDACTED] MFZ [REDACTED]



1 MR JACKSON: Indeed, and I have got no reason to dispute  
2 that there was a [REDACTED] man attending there on  
3 occasions. That is quite possible.

4 LADY SMITH: I can see that and, from what we have seen,  
5 that might be the answer to this conundrum, if conundrum  
6 it be.

7 MR JACKSON: Well, I say it is certainly a conundrum it be.  
8 Clearly I am not saying who was there and who wasn't  
9 there, but I'm saying that the link to <sup>MFZ</sup> [REDACTED] as  
10 the person who was there cannot be accepted and there  
11 can certainly be, at the very least, no positive finding  
12 of that standing, as my Lady has put it, the conundrum.

13 Because Mr <sup>MFZ</sup> [REDACTED] -- and I know people of all  
14 backgrounds do terrible things, but he is a professional  
15 man who's never been otherwise accused of anything like  
16 this, of any behaviour of this nature. He is, and I say  
17 this, but it's stating the obvious, devastated by it,  
18 absolutely devastated.

19 This inquiry, in my submission, and this is in our  
20 submission, should not leave any cloud hanging over him  
21 whatsoever because, in my submission, there is  
22 absolutely no basis to do that when the evidence is  
23 analysed -- not just witnesses say it, but when it's  
24 analysed in the context of what is clearly an erroneous  
25 link, not just with him but with Barbara, which we all

1 accept could not be a proper link.

2 So on that basis, the written submission, and  
3 I emphasise it, is to make it clear that there is no  
4 basis for this individual having a cloud hanging over  
5 him because of these very, very serious allegations.

6 I hope that's a very clear submission, my Lady. It  
7 just focuses what's in our written submission and if  
8 I can help any further then of course I will try to do  
9 that.

10 LADY SMITH: That's very helpful. I have no other  
11 questions. Thank you.

12 Can I now turn to representation for the order, for  
13 the Marist Brothers. Mr Brown, I think you're going to  
14 present that.

15 Closing submissions by MR BROWN

16 MR BROWN: Thank you, my Lady.

17 My Lady has a relatively detailed written submission  
18 and I don't propose to cover all of the ground that's  
19 set out in that or to read it out, but I would formally  
20 adopt it as part of what is submitted.

21 May I begin by repeating what was said in my opening  
22 statement, which is to say publicly and unequivocally  
23 that it is accepted that abuse of a horrific kind  
24 occurred at both of these schools. It is accepted that  
25 the response contemporaneously was inadequate. It is

1           accepted that there must have been signs of at least  
2           something untoward that were not acted on, whether  
3           because it was a different, a more innocent time,  
4           whether it was because, as Brother Brendan said of his  
5           own experience of hearing a contemporaneous account  
6           about <sup>AKV</sup> [REDACTED], it was felt not to be appropriate  
7           for him to take it further.

8           As my Lady observed in response to Mr MacAulay,  
9           there plainly was a chilling or a silencing effect and  
10          it plainly wasn't easy for these boys to come forward.

11          It is beyond doubt that in all of these, there are  
12          failings and they're failings of a significant nature.  
13          They are compounded by being repeated across both  
14          schools. Finally, it is acknowledged, as the written  
15          submission says, that however well-intentioned was the  
16          more recent engagement with victims, in some cases it is  
17          quite clear that's been a source of further distress,  
18          and for that and for all of these failings, I repeat  
19          publicly and formally the profound apology that has been  
20          tendered.

21          In relation to my Lady's general approach to the  
22          evidence, I find myself in entire agreement with  
23          Mr MacAulay. It is a matter for my Lady the extent to  
24          which she finds it necessary to go into every piece of  
25          evidence and make specific findings. The

1 Marist Brothers take the position, for reasons connected  
2 with the wider purpose of this inquiry, that they will  
3 not question any victim's direct account, because to do  
4 so would be entirely inconsistent with their own  
5 approach to these matters of trying, however belatedly,  
6 to bring some closure, and would be counterproductive to  
7 the work of the inquiry.

8 Clearly, there are abusers here. [REDACTED]

9 [REDACTED]  
10 [REDACTED] there is evidence which is, relatively  
11 speaking, overwhelming. It's beyond doubt, for example,  
12 that, were Germanus alive, he would be prosecuted and  
13 convicted. It is beyond doubt, I think, that the same  
14 is true of Damien.

15 No doubt there's a sliding scale. It is  
16 invidious -- and the reason I made no mention of  
17 specific examples in the written submission is that it  
18 is invidious to pick some out lest there be an  
19 unintended implication that others are not to be  
20 believed. So the Marist Brothers simply say it's  
21 a matter for your Ladyship, but they acknowledge, as  
22 they must, the compelling nature of passages of the  
23 evidence.

24 The one exception to that is the Aldo Moroni  
25 chapter. Again, as I foreshadowed in the opening

1 submission, and the reason a different position is taken  
2 on that, is because it's perceived as being harmful to  
3 allow the erroneous belief to be perpetuated.

4 There may be strands to this, and I'll come back to  
5 perhaps the less dramatic --

6 LADY SMITH: When you're talking about an erroneous belief,  
7 what are you talking about? The evidence that Aldo was  
8 physically and emotionally abused or the suggestions  
9 that his death was attributable to a Marist Brother or  
10 Brothers?

11 MR BROWN: The latter, my Lady, and particularly the  
12 suggestion that he was in some way beaten to death.

13 I'll come back to the former point if I may,  
14 my Lady, but in relation to that, I have set out for  
15 my Lady in the numbered sub-paragraphs at paragraph 9 of  
16 the written submission the fine detail of the  
17 documentary evidence.

18 The dates and times are beyond dispute. The  
19 contemporaneous recorded findings are beyond dispute.  
20 I emphasise that there isn't even a medical theory here.  
21 There isn't even a medical theory that if there had been  
22 this sort of an injury inflicted by violence, then this  
23 would be the mechanism of death.

24 What we do have is the volvulus or loop in the  
25 intestine which, so far as the retrospective report

1 indicates, which could very clearly have caused the  
2 whole presentation. One can see how it could be  
3 misinterpreted as appendicitis, an appendectomy  
4 indicated the appendix was, it seems, was normal, and  
5 then there seems to be have been a very sharp  
6 deterioration and the onset of septicaemia.

7 LADY SMITH: There was also evidence of a viral infection --

8 MR BROWN: Indeed so, my Lady.

9 LADY SMITH: -- ongoing. The little boy must have felt  
10 very, very ill before he died.

11 MR BROWN: Yes. And there's reference to certain other  
12 injuries, I think to the oesophagus, but at least the  
13 hypothesis is that those were agonal and incurred in the  
14 course of death.

15 So clearly, he was gravely ill. What we have of the  
16 contemporaneous or recorded history from the first  
17 post-mortem report recounts a history consistent with  
18 that, of him being unwell, intermittent abdominal pain,  
19 pyrexia, anorexia -- not having eaten over the course of  
20 about a fortnight -- into Inverclyde on 25 February,  
21 reasonably and understandably appendicitis being the  
22 working theory, surgery following, and a sharp decline  
23 and an emergency transfer to Yorkhill.

24 In general, I think all of our collective experience  
25 is that the conspiracy is less likely than the cock-up,

1 but taking them both in order, it respectfully seems to  
2 me to be vanishingly unlikely that all of these doctors,  
3 from a general practitioner, presumably, on an  
4 outpatient basis, first of all, because we're told that  
5 he was prescribed penicillin from Inverclyde Hospital,  
6 and certainly to Yorkhill, where they see the sickest  
7 children on a daily basis, and where they must be taken  
8 to be acutely aware of the signs of non-accidental  
9 injury, which tragically we see regularly enough in the  
10 courts -- it's vanishingly unlikely that there was  
11 something there that was missed.

12 LADY SMITH: Well, they missed the volvulus, it would seem,  
13 at Inverclyde.

14 MR BROWN: Indeed so, my Lady, but that's not something that  
15 would necessarily be apparent on non-surgical  
16 investigation. Clearly, having performed the  
17 appendectomy, what seems to be a reasonable working  
18 hypothesis --

19 LADY SMITH: He did undergo surgery.

20 MR BROWN: He did, my Lady.

21 A little knowledge is perhaps more dangerous than  
22 none. I'm certainly not in a position to say that one  
23 would expect to observe that in the course of an  
24 appendectomy. And one can see in the particular context  
25 of appendectomy that it is seen as a surgery more often

1 attempted on a precautionary basis because the loss of  
2 a appendix doesn't cause any detriment and a burst  
3 appendix can be fatal. One can see from what we know of  
4 the classic symptoms of appendicitis that the pyrexia  
5 and the abdominal pain might indeed give a false  
6 positive for that.

7 What we don't know is what was the gap in time  
8 between the end of the appendectomy, the sharp decline,  
9 and what seems to have been really just a futile attempt  
10 to save him at Yorkhill.

11 But the point I make, my Lady, is that if this was  
12 a traumatic injury, if this was the result of a beating  
13 to death, which is how it's being characterised, then  
14 it's vanishingly unlikely, I suggest, that all of these  
15 doctors missed all of the signs of that.

16 I do draw particular attention --

17 LADY SMITH: I don't need to work out the particular process  
18 between symptoms of acute appendicitis, which actually  
19 proved not to be acute appendicitis at all, when the  
20 twisting of the intestine, the volvulus, actually  
21 happened, but it's pretty plain from the report that was  
22 obtained in 2016 that, whilst those two expert  
23 paediatric and perinatal pathologists would go so far as  
24 offering -- I think it's really being offered as  
25 a likely course of events, it was an initial volvulus,



1           mechanical obstruction, abdominal pain, vomiting and the  
2           tearing of the oesophagus during vomiting, possibly  
3           because it was so violent, I think, would explain the  
4           entirety of the presentation, all exacerbated by a viral  
5           infection.

6       MR BROWN:  Indeed so, my Lady.

7           It's not necessary, as my Lady observes, for there  
8           to be very detailed forensic findings, unless my Lady  
9           thinks it would be appropriate.  For my purposes it's  
10          sufficient to say what it's not, which is the  
11          consequence of a beating to death.

12       LADY SMITH:  But I can't ignore the evidence of what I've  
13          already referred to broadly as bruising, previous  
14          bleeding into the skin, which is stated to be such as to  
15          be traumatic in origin.

16       MR BROWN:  Of course it could, my Lady, and what we're not  
17          given, understandably, is any real feel for what sort of  
18          bruising it was, where it was.

19       LADY SMITH:  No.

20       MR BROWN:  Of course one would get bruising in the  
21          colloquial sense from, for example, the taking of blood.

22       LADY SMITH:  Well, I don't think we'll start speculating  
23          about that, Mr Brown.  We can go as far as identifying  
24          that a skin biopsy was taken and it showed  
25          haemosiderin-laden macrophages, which in ordinary speak

1           are signs of bruising.

2       MR BROWN: Indeed, my Lady.

3       LADY SMITH: It may be that we're not told exactly where  
4           because that's not been recorded at the time, but the  
5           details of the biopsy and the results of the biopsy are  
6           still available.

7       MR BROWN: My Lady asked, and I said I would come back,  
8           which I now do, about the evidence that there was  
9           certainly ill-treatment of this boy.

10           The two are not inconsistent. It's entirely  
11           possible that he was hit by Germanus in the manner  
12           described and then contemporaneously in time, but  
13           without any causal connection, suffered the medical  
14           process that we've been discussing.

15           So it doesn't follow that because the wider theory  
16           is debunked that there's nothing in any of it. My Lady,  
17           as is always the case, has to follow the evidence and  
18           has to consider what is acceptable and reliable and  
19           what's not. There is a body of evidence to that effect,  
20           that there was certainly some sort of an incident.

21           As I've observed in the written submission, it seems  
22           quite unlikely there would be no trace of something as  
23           dramatic as was described, of him being carried out with  
24           a blanket over his head and the doctor attending.  
25           There's no record of that from anywhere. But that

1 doesn't mean that the essential truth of perhaps there  
2 being some sort of disturbance and some sort of physical  
3 chastisement couldn't be true. Certainly, given the  
4 evidence of other witnesses, it wouldn't be seen as  
5 something that was surprisingly out of character for  
6 Germanus.

7 So my Lady has that evidence and if she is persuaded  
8 by it, then an appropriate finding would follow. And  
9 really, for my part, all I'm anxious to do is to try to  
10 dispel this deeply held belief -- and I acknowledge how  
11 deeply held it is -- that something far more sinister  
12 happened here.

13 As my Lady will be aware, there's guilt and shame  
14 enough for many lifetimes for what was clearly and  
15 provably done here. So the extent to which there's any  
16 marginal reputational benefit to the Marist Brothers on  
17 this is perhaps questionable, but it does seem to them,  
18 having thought about it carefully, that this is harmful  
19 and it's harmful to those who believe it. I have drawn  
20 attention to the evidence of Edward, who said he'd been  
21 haunted by the belief or the guilt that if only he'd  
22 spoken out about Germanus, from his experience in the  
23 1960s, Aldo Moroni might be alive.

24 I venture to suggest that guilt is misplaced. It's  
25 not for me to speak to what would be helpful to Edward,

1 but I think being told that nothing that he could have  
2 done could have had any impact because of what the  
3 evidence actually shows may be helpful, and if we're  
4 going to get at the truth, we should get at the truth.

5 More importantly, one has to consider the impact on  
6 [REDACTED] I don't represent her and nor do the  
7 Marist Brothers, but she is alive, and to have this  
8 alternative history perpetuated and published that no  
9 doubt her dearly loved and much missed child was in fact  
10 the victim of a hideous child murder that's been covered  
11 up all these years cannot but be hurtful.

12 If it were the case that that had happened or might  
13 have happened, then [REDACTED] feelings to that effect  
14 are beside the point, but if it can clearly be said to  
15 be a mistake, a conflation of a series of other events  
16 but without the necessary links in the chain, then I do  
17 suggest that the inquiry would meet its public functions  
18 by saying that.

19 LADY SMITH: Well, Mr Brown, I wonder how far you could take  
20 this. As you say, you don't act for her, but it could  
21 be deeply distressing for a mother to learn that when  
22 her child was away from home in a residential  
23 institution, he was being physically and emotionally  
24 abused and she hadn't realised that. I don't imagine  
25 you're saying to me I should hold back from making

1           appropriate findings if I'm satisfied that that did  
2           happen to Aldo --

3       MR BROWN: No, of course, my Lady.

4       LADY SMITH: -- because of the distress it could cause her.

5       MR BROWN: No, my Lady, of course not. But really, it's  
6           almost the point in reverse: that if my Lady is  
7           satisfied that the wider linkage isn't made out, there's  
8           a public interest in saying that. That's the highest  
9           I put it.

10      LADY SMITH: Thank you.

11      MR BROWN: If I may turn, my Lady, to the wider context, and  
12           really just touch upon what was said by Brother Brendan  
13           in his evidence about redress and the Marists'  
14           experience in other jurisdictions.

15      LADY SMITH: Just before you go there, Mr Brown, do I take  
16           it from -- I'm saying this because your written  
17           submissions are silent on this. So far as all the other  
18           brothers who have been mentioned by Mr MacAulay as being  
19           brothers who abused children in different ways are  
20           concerned, your submission is simply it's accepted that  
21           that happened or what?

22      MR BROWN: I don't think I can properly go as far as to say  
23           it's accepted.

24      LADY SMITH: Well, can you help me understand exactly what  
25           the order's position is regarding each of these named

1           brothers? There was one, of course, that Mr MacAulay  
2           pointed out might be wrongly identified as being the  
3           perpetrator, albeit that the abuse may have happened.  
4           Without going through the list again, you know who they  
5           are.

6       MR BROWN: Yes, I do, my Lady.

7           For my part, I can say this, my Lady. My Lady can  
8           be in no material doubt about certainly Germanus,  
9           AKU ██████████, Damien, MLS ██████████ and MFI ██████████.

10          I wouldn't want it to be thought that the Marists  
11          are --

12       LADY SMITH: What about Brother MFJ ██████████

13       MR BROWN: I take him as a slightly different category,  
14          my Lady, just because he's not really accused of sexual  
15          wrongdoing, but overwhelmingly --

16       LADY SMITH: Well, you know my remit goes much wider than  
17          sexual abuse.

18       MR BROWN: Of course I do, my Lady.

19          Overwhelmingly the evidence in respect of him is  
20          consistent and it certainly speaks to harsh physical  
21          punishment going beyond, I think -- certainly going far  
22          beyond what would ever be acceptable nowadays, but  
23          whether and to what extent standards were different in  
24          those days perhaps is a more difficult question.

25          But I don't think --

1 LADY SMITH: Sorry, what are you saying about that?

2 MR BROWN: It's really just the observations which have been  
3 made by courts in the past that, for example, what we  
4 might call routine corporal punishment was prevalent  
5 across society.

6 LADY SMITH: Mr Brown, I'm not looking at whether or not  
7 civil liability would arise.

8 MR BROWN: Of course not, my Lady.

9 LADY SMITH: I am deciding whether, properly assessed,  
10 what was happening to children in the cases I'm looking  
11 at was abusive. That may involve me determining that  
12 practices that society appeared to accept were okay were  
13 actually abusive practices.

14 MR BROWN: For my part, my Lady, I would accept that  
15 characterisation, that we ought to look at abuse as  
16 we would define it today.

17 LADY SMITH: Thank you.

18 MR BROWN: I'm sorry if I've taken my Lady off on a tangent.  
19 All I'm alluding to is there may be a distinction  
20 between what was societally commonplace and which  
21 parents may be taken to have supported or approved,  
22 which was intermittent or occasional minor use of  
23 corporal punishment to maintain discipline on the one  
24 hand and, on the other hand, arbitrary, capricious,  
25 inconsistent and overwhelming use of the same sorts of

1 punishment shading into abuse or, alternatively, things  
2 like belting on the bare buttocks, which I venture to  
3 suggest would never have been acceptable societally,  
4 even in the 1950s or 1960s. So that's really the point  
5 I make, my Lady.

6 But there's a school of thought I think,  
7 respectfully, that would say that the belting of primary  
8 schoolchildren is abusive, full stop --

9 LADY SMITH: Thank you.

10 MR BROWN: -- and I wouldn't seek to dissuade my Lady from  
11 that perspective.

12 But beyond saying to my Lady that she shouldn't take  
13 it that there's any attempt to dissuade her from any  
14 finding about any brother, there is a long-standing  
15 policy decision by the Marist Brothers that they do not  
16 seek to question the validity or the veracity of  
17 victims' accounts because their perception is that  
18 that is harmful in itself and makes the abuse worse.

19 All I think that can be said is that, as the Dean of  
20 Faculty mentioned, people get things wrong, particularly  
21 children remembering in adulthood events of their  
22 childhood. Things get conflated.

23 It would be more surprising if there weren't  
24 inconsistencies and gaps, and it is a matter for  
25 my Lady, who heard all the evidence, both to determine



1 what is persuasive and also to determine how much detail  
2 in terms of findings is necessary. But the evidence  
3 certainly supports all that Mr MacAulay submitted to  
4 my Lady and I wouldn't seek to suggest otherwise.

5 If I can turn finally, my Lady, just to the question  
6 of redress. There is, of course, a practical or  
7 resource issue here, because the Scottish Ministers, as  
8 I understand it, will be looking at a scheme primarily  
9 for those who were, as it were, in the care of the  
10 state, and there might be a respectable policy view that  
11 where there is an existing entity, such as those  
12 responsible for a boarding school, that entity should be  
13 the body providing redress for these wrongs.

14 All that can be said from the perspective of the  
15 Marist Brothers is that, for the reasons gone into in  
16 Brother Brendan's evidence, they have found the  
17 experience of dealing with the matter through  
18 conventional civil litigation to be profoundly  
19 unhelpful. They've had conflicting and inconclusive  
20 advice about their duties in terms of not settling  
21 claims where there couldn't be legal liability because  
22 of proscription, for example, and they have found the  
23 process adversarial and they've had very clear  
24 perception that it's aggravated the distress.

25 By contrast, they have found the experience of the

1 redress schemes on the continental jurisdictions to be  
2 more positive, more helpful, and their perception at  
3 least is that victims have welcomed that.

4 Of course, the devil is in the detail, but for their  
5 part they would invite my Lady to the view that  
6 universality is an appropriate objective. For example,  
7 the distinction between pre-1964 and post-1964 abuse,  
8 while understandable in the context of the civil law and  
9 the conceptual distinction between proscription and  
10 limitation, is insupportable at a policy level, and to  
11 say that the victim of abuse in 1963 is not to be  
12 compensated but the victim in 1965 is ...

13 So a more widely drawn scheme and one that had the  
14 minimum of avoidable formality and delay, it is thought  
15 at least, would be the best way of dealing with this, at  
16 least in the experience of the Marist Brothers, for what  
17 that may mean.

18 LADY SMITH: Are you talking about the government scheme or  
19 are you talking about a scheme that the Marists will  
20 operate themselves?

21 MR BROWN: The difficulty, my Lady, I think, is that for the  
22 Marists alone to operate a scheme when others may do or  
23 may not do or may do so differently is not going to meet  
24 the objective. What might be a solution is  
25 a government-administered scheme that might require

1 funding for it to come from those who had responsibility  
2 for these institutions.

3 But what the Marists would see as the optimum is  
4 a scheme that's of universal application, that would  
5 have a window of a few years from inception --

6 LADY SMITH: Sorry, when you say "universal", you mean all  
7 those coming forward from being in care seeking redress  
8 as opposed to universal amongst those who were in the  
9 care of the Marists?

10 MR BROWN: Yes, my Lady.

11 LADY SMITH: Thank you.

12 MR BROWN: I'm not distinguishing between those who, for  
13 example, were placed by their parents on a fee-paying  
14 basis on the one hand and those who were placed by the  
15 state on the other.

16 There may not be equally a principled basis to  
17 distinguish those abused in residential settings and  
18 those abused in non-residential settings. But  
19 of course, this is enormously difficult to devise, but  
20 they can only speak from their experience across the  
21 jurisdictions and they've found it to be less divisive,  
22 less damaging to the victims and more readily to try to  
23 bring some sort of conclusion where that has been the  
24 case.

25 LADY SMITH: Thank you.

1 MR BROWN: Beyond that, my Lady, there's nothing else that  
2 I had in mind to say, unless my Lady thinks that there's  
3 anything I can help with.

4 LADY SMITH: No, I have no other questions, thank you very  
5 much.

6 Housekeeping

7 LADY SMITH: That completes the submissions to be made at  
8 this session of hearing closing submissions today.  
9 Could I just thank everybody who has participated in  
10 this case study and brought forward their contribution  
11 to it.

12 Before I rise, there are three things I want to say.  
13 This means that we have now finished the third of three  
14 case studies looking into provision by male religious  
15 orders. Those of you who have been here throughout may  
16 remember that we started with the Christian Brothers,  
17 then we went on to the Benedictines, and of course we've  
18 just finished the Marists.

19 I will, now we've finished these three, be  
20 publishing in due course three separate sets of case  
21 study findings. That will be done in the usual way as  
22 soon as possible, but please bear with us; the  
23 preparation and publication of case study findings is  
24 not a speedy process.

25 That takes me to the second matter I want to mention

1 today and that's the case study findings in relation to  
2 the Quarriers, Aberlour and Barnardo's case study, which  
3 was a composite case study that finished a little  
4 earlier this year.

5 It has been a substantial piece of work, as I'm sure  
6 those of you who were involved in it will appreciate.  
7 The findings are very well advanced. The whole of the  
8 publication procedure is now underway. It has many  
9 parts to it, and I won't bore you with the details, but  
10 please bear with us, it's not a fast process, but we're  
11 pushing it along as fast as we can. They will be  
12 available soon and, I promise you, it'll be as soon as I  
13 can get them out because I know people will be keen to  
14 read what's in them.

15 That takes me to where we go next and that's the  
16 child migration case study, which begins on Tuesday,  
17 3 December with opening submissions that day. We'll  
18 start at the usual time of 10 o'clock, and perhaps I can  
19 quote Ms MacLeod, who reminded me this morning, we will  
20 be starting the usual time that day, but I'm afraid  
21 there will be some earlier starts some of the other days  
22 because of video links, as we have already done, to take  
23 evidence in advance of this case study from witnesses  
24 whose evidence we've had to gather at that earlier  
25 stage.

1           But that's all I have to say today. Thank you all  
2           very much. I'll rise now until 3 December.

3           (12.50 pm)

4           (The inquiry adjourned until 10.00 am on  
5           Tuesday, 3 December 2019)

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