

# Scottish Child Abuse Inquiry

PO Box 24085; Edinburgh EH7 9EA

e-mail: [solicitors@childabuseinquiry.scot](mailto:solicitors@childabuseinquiry.scot)

## SCOTTISH CHILD ABUSE INQUIRY

### DECISION

By

THE RT HON LADY SMITH, CHAIR

Re: APPLICATIONS UNDER SECTION 21(4)(a) AND (b) OF THE INQUIRIES ACT 2005 FOR REVOCATION OF SECTION 21 NOTICES

### Introduction

The following is the final section of the transcript of the Procedural Hearing on 4 April 2018 which was fixed to enable Mr Denis Moloney, solicitor for five Sisters of the Sisters of Nazareth order, to address the Chair on his application for revocation of statutory notices served on the Sisters requiring them to provide the Inquiry with written statements. The notices were served against a background of Mr Moloney having, throughout the period January to early March 2018, asserted repeatedly that the views of a psychiatrist (Dr O’Kane) who had examined the Sisters on his instructions, should be accepted without question and that they were, therefore, to be deemed as totally unfit to participate in the Inquiry.

### Decision

Before I rise I just want to record where we are at the moment. By notices dated 23 March 2018, 5 of the Sisters of Nazareth were ordered by me to provide evidence to this Inquiry in the form of written statements by no later than 20 and 30 April 2018. Section 21(2)(a) of the Inquiries Act 2005 empowers me to require any person to provide evidence in the form of a written statement. The orders were made under those powers. These Sisters are understood to have been posted within the period under investigation to at least one of the Nazareth Houses in Scotland to be the subject of an Inquiry at the case study hearings due to start on 24 April. The notices were sent to the Sisters’ legal representative in Belfast, Mr Denis Moloney, Solicitor.

The Sisters are not being ordered to provide evidence in a vacuum, the notices were accompanied by appendices clearly setting out 36 areas of interest to the Inquiry and the questions that arise in relation to each of them. Mr Moloney responded to the notices on behalf of the 5 Sisters a little over a week ago by applying for them to be revoked on the basis that sub-sections (a) and (b) of Section 21(4) of the Inquiries Act 2005 applied, that is, he responded by saying that his clients were unable to comply and it was not reasonable to require them to do so. It is to be inferred that he did so with the knowledge of and with instructions from his clients. The orders were issued after the Inquiry had tried without success to obtain the agreement of these 5 Sisters to being interviewed for the purpose of taking statements from them. These attempts date back to 21 December 2017 when two specific Sisters were asked to do so and Mr Moloney was told that the names of other Sisters who the Inquiry wished to interview would follow. The reasons why the Inquiry has sought to take these statements are as follows: to assist it in the discharge of its responsibility to carry out a full range of investigations into the organisation, systems and practices of and at the homes under investigation and into events that are said to have taken place there. It has also sought to do so in order to enable those Sisters against whom allegations have been made to be given fair notice and to have the opportunity to respond in a supported, private environment rather than being faced with questions about them for the first time at a public hearing. Separately, it considers that the Sisters of Nazareth Order is entitled to expect it to make these investigations given its substantial interest in these matters. Giving their statements at an interview with Inquiry staff also saves the witnesses the onerous task of providing written statements themselves which may of course involve them having to organise the necessary support of a secretarial nature. The process by which the Inquiry takes such statements is one which is respectful, careful, trauma informed and throughout which members of its trained and highly experienced team of witness support officers provide appropriate support. This was all explained to Mr Moloney in a letter dated 21 December 2017. To assist Mr Moloney and the Sisters to prepare for

interviews redacted copies of any relevant witness statements have also been provided.

I want to say something about the interviews that were arranged in the past. At one point on 9 March, Mr Moloney advised that he would arrange for the Sisters to be interviewed so that the Inquiry Team could take statements from them in accordance with previous requests and for them to do so without the Inquiry having had them examined by another doctor. That is, as at 9 March it was not, it seems, being suggested that Dr O'Kane had advised that they were unfit to attend interviews. The first interview was ultimately due to take place on 17 March. Mr Moloney advised, through his secretary, that the proposed location would not be convenient due to travel problems. The Inquiry offered to change the location so as to obviate the need for the Sister to travel and were advised that there would still be difficulties. On 13 March, it was agreed that the interview would take place on 16 March in Dublin. Later on 13 March Mr Moloney's secretary asked for it to take place in Belfast on 17 March. The Inquiry agreed to that. Other interviews for the week of 19 March were also arranged. Two days later on 15 March, Mr Moloney contacted the Inquiry and said that the interview due to take place on 17 March must be put on hold as "a serious issue has been drawn to our attention with regard to the medical evidence to date and unfortunately we will have to put on hold the interviews for Saturday and Monday and early next week". No cogent reason for that volte-face on 15 March has to date been given. Mr Moloney was advised that Section 21 Notices would be served. When he indicated that his clients would attend interviews for their statements to be taken and went ahead with making arrangements for them to do so beginning on 16 March it is to be inferred (a) that he had his clients instructions that they felt both able and willing to attend and (b) and that he was satisfied on his professional responsibility that it was appropriate for him to proceed to make the necessary arrangements. In these circumstances to cancel the arrangements so soon after confirming them and so close to the agreed dates without a full and proper explanation for doing so seems redolent of an

intention to be uncooperative. Yet a public inquiry is entitled to expect genuine cooperation by all those from whom it seeks to gather evidence in the public interest and in particular from their legal advisors. The provisions of Section 35 of the 2005 Act, which make it an offence to do anything intended to prevent evidence being given or provided to the Inquiry confirm that.

This Hearing today was fixed to allow Mr Moloney to address me on his application to have the Section 21 orders revoked. Whilst he was addressing me, I was made aware for the first time that it was now accepted that the 5 recipients of my orders could attend interviews for their statements to be taken this week and next week so the interviews are on again, apparently. It is to be inferred that it must also be accepted that these Sisters would in fact be fit to provide written statements, the subject of my Section 21 orders. To be faced with a volte-face for a second time is nothing short of astonishing. Just as it is nothing short of astonishing that, this apparently being possible, Mr Moloney took no steps before today to let us know these arrangements could be agreed thereby enabling today's hearing to be postponed and avoiding the time, trouble, expense and inconvenience, as it turns out, of having the hearing. All members of the Inquiry Team involved in today's hearing have been diverted from other valuable work as a result.

I am driven to saying that I have never before experienced such a display of unprofessional behaviour on the part of a solicitor. The question of reasonableness, the reasonableness of my orders was raised in Mr Moloney's response to them but what is unreasonable here is that dealing with his yo-yo approach to these arrangements has been challenging where these are in fact simple and straight forward matters and it has involved an inordinate amount of time and effort on the part of members of the Inquiry's Legal Team, its Witness Support Team and its Statement Taking Team. No other legal representative with whom these teams have liaised on Inquiry business has caused such problems. They could all have been avoided if a proper, responsible, professional approach had been adopted. I have already made reference to the offence provisions of the 2005 Act that is set out in

Section 35 and I wish to record that it is in my view very difficult to avoid the inference of an intention to prevent evidence which would form a legitimate and significant part of the Inquiry's investigations being provided to it.

At this stage I will take no further steps under Section 35 but I expect the arrangements intimated to me today to be fully complied with in every respect and as I have already indicated I am not revoking my orders in the meantime.

That is all. We will now adjourn.

The Rt Hon Lady Smith

4<sup>th</sup> April 2018