

Wednesday, 4 April 2018

(10.00 am)

LADY SMITH: Good Morning. Now, this morning is a Hearing of an application on behalf of 5 individuals on whom orders to provide written statements have been served and the application is that these orders should be revoked. I am going to begin this morning by inviting Mr MacAulay, Senior Counsel to the Inquiry to address them. Mr MacAulay.

MR MacAULAY: Good Morning my Lady, as your Ladyship has just said, this Procedural Hearing has been arranged to address applications made for revocation of section 21 notices served on 5 Sisters of the Sisters of Nazareth Order under the 2005 Act and Mr Denis Moloney appears today on behalf of each of each of those 5 Sisters and shortly Mr Moloney will have the opportunity of addressing your Ladyship in connection with the revocation application.

This Hearing has been necessary because on 23 March of this year, section 21 notices were sent to 5 Sisters of the Order requiring each of them to provide evidence to the Inquiry in the form of written statements and these are the notices that Mr Moloney seeks to revoke. Each individual notice, in an appendix, outlined the areas the Inquiry wanted to be addressed in the written statements, and can I make clear, any written statement could involve the Inquiry Team being directly involved in the taking of the statements but if not, no doubt, each individual Sister could be assisted by her solicitor.

Now by separate letters, in broadly identical terms, dated 26 March 2018, Mr Moloney on behalf of each individual Sister upon whom a section 21 notice had been served asserted that each Sister was unable to comply with her section 21 notice and that it would be unreasonable for her to comply with notice and in so doing, Mr

Moloney was in effect invoking both grounds for non-compliance set out in section 21(4) of the 2005 Act. The letters sent by Mr Moloney enclosed letters dated 25 March 2018 by Dr Maria O’Kane, a Consultant Psychiatrist who had been instructed on behalf of each of the Sisters, expressing the opinion that each of the 5 Sisters on whom section 21 notices had been served were and I quote “unable to participate in the Inquiry and in particular to undertake private interview or to provide written statements to the Inquiry.”. It is to be noted that these letters by Dr O’Kane post-dated the date of the section 21 notices that had been sent out on 23 March. So, my Lady, that is the immediate background to today’s Hearing.

Can I look at the broader background. By August of last year plans had been made by the Inquiry Team to interview around 22 living Sisters from the Order who had been identified as having had some involvement in the four Nazareth Houses run by the Order.

LADY SMITH: So that was 22 of them?

MR MacAULAY: 22, my Lady. Can I say that number increased somewhat over the ensuing months to about 24 or possibly 25.

LADY SMITH: That is inevitable as investigations continue.

MR MacAULAY: Indeed. On the 18 September last year, and this was at the request of the Superior of the Order, 2 members of the Inquiry Team attended a meeting with around 12 Sisters who had been identified by the Inquiry as potential witnesses. The purpose of the meeting, at the request of the Superior, was to explain the Inquiry process to those potential witnesses. Mr Moloney was also in attendance at that meeting which took place in Manchester. Even by then some interviews with Sisters had been arranged to take place and in particular dates in October had been identified for interviews. Can I say that was changed

subsequently to a proposed schedule of interviewing beginning in January 2018.

My Lady, it is the case that certainly from late September, Mr Moloney had indicated to the Inquiry that some Sisters had health issues and that he would be applying for and I quote “exemptions”: that they be excused from giving evidence. Thereafter there was a fairly protracted correspondence between the Inquiry and Mr Moloney and it was during that time that Mr Moloney arranged to have Sisters assessed by Dr O’Kane. Notwithstanding that, during that period from October towards the end of the year the Inquiry pressed for arrangements to allow the Sisters to be interviewed by the Inquiry Team. By letter dated 6 December last year and an email of 8 December, 19 medical reports were received by the Inquiry in respect of 19 Sisters. These were reports prepared and signed by Dr O’Kane. Of those 19, 15 Sisters were said by Dr O’Kane, and I quote from a number of reports, “not fit to take part in the proceedings of the Inquiry”, or “under a disability that renders it inappropriate for her to take part” or “unfit to take part in the Inquiry” and again “or unfit to attend” and in relation to one Sister in particular the focus was on her physical health in that she was too physically unwell to attend the Inquiry. Notwithstanding these reports, which did not appear to preclude the taking of statements from Sisters, the Inquiry continued its attempts to take statements from the Sisters and by letter dated 21 December to Mr Moloney the Inquiry stated that position. My Lady furthermore against that whole background the Inquiry decided to have a number of the Sisters examined by an expert on behalf of the Inquiry, the focus being on Sisters against whom allegations have been made by Applicants, and as a matter of fairness it was considered important that any Sister against whom an allegation was made should have the opportunity of responding to that allegation and, my Lady, can I also say

that it is also considered to be fair to the Order itself that these particular Sisters who were identified by allegation should be given the opportunity of responding.

LADY SMITH: Because otherwise there is a prospect of them being called to give evidence and that being the first occasion on which they had to face questioning about the allegation, is that right? Whereas if it is discussed at one of the Inquiry's private interview sessions they are able to deal with it in a private and an appropriately supported environment?

MR MacAULAY: Indeed so, my Lady, and furthermore it would give the particular Sister the opportunity to respond to the allegation.

LADY SMITH: Indeed.

MR MacAULAY: So against that background Dr Alan Carson, who is a Consultant Neuro-psychiatrist, was instructed in the first instance and he examined 2 of the Sisters declared unfit by Dr O'Kane in London on 9 February 2018. He produced reports in respect of each of those Sisters and these reports are dated 5 March to the effect that both Sisters were fit to give evidence and can I say that during that period the Inquiry continued to try and arrange for more Sisters to be assessed by Dr Carson. Mr Moloney was informed of Dr Carson's position and copies of Dr Carson's reports were sent on the 6 March 2018. By email dated 7 March 2018 the Inquiry again informed Mr Moloney that we wished to interview these 2 Sisters in particular and if that could not be agreed that section 21 notices would be served requiring them to produce written statements. The response by Mr Moloney on 9 March was "we will arrange a mutually suitable dates, venues for our clients to be interviewed". Therefore as at that date it seemed that matters had been resolved and that real progress could be made.

LADY SMITH: That was arranging for them to be interviewed?

MR MacAULAY: Indeed.

LADY SMITH: Without medical examination?

MR MacAULAY: Indeed so.

LADY SMITH: Thank you.

MR MacAULAY: That was on 9 March 2018 when that view was expressed by Mr

Moloney by email. Thereafter there was correspondence between Mr Moloney and the Inquiry Team that focused on dates and venues for interviews and in particular on 12 March Mr Moloney proposed times and dates for interviews of the majority of the Sisters, not just the two but the majority of the Sisters. However, by email of 15 March, Mr Moloney intimated that interviews that had been planned for the following Saturday, that is Saturday 17 March and Monday, 19 March, both to be in Belfast, had to put on hold as I quote “because a serious issue has been drawn to our attention with regard to the medical evidence to date”, and in a telephone call to the Witness Support Team Mr Moloney seemed to indicate that the postponement was to allow him to seek further input from Dr O’Kane. This was followed by a lengthy email dated 16 March from Mr Moloney asking the Inquiry, and this is a quote, “to outline in depth and in detail your rational for accepting one set of medicals and unilaterally rejecting the other”. And the context here my Lady is that there were 19 reports prepared by Dr O’Kane but only of which 4 was said to be fit and 15 to be unfit but so far as the Inquiry was concerned it wasn’t a question of accepting it or rejecting Dr O’Kane it was simply the fact that no issue over the fitness of these 4 Sisters had arisen and therefore there was no need, as it were, to have reliance on Dr O’Kane’s reports.

LADY SMITH: I have not been required to make any decision on this issue thus far and I suppose one goes back to 9 March when there was an agreement that these people could be interviewed?

MR MacAULAY: Without exception, my Lady.

LADY SMITH: Yes indeed. Remembering that we are at the interview and statement gathering stage, that is what we are looking at, at the moment.

MR MacAULAY: That same day, 17 March, Mr Moloney forwarded soul and conscience letters again signed by Dr O’Kane in respect of the 15 Sisters who she had said in her earlier reports were unfit, now saying (I quote from the letters) “they were unfit to attend the Inquiry”. So again the focus at that point was on attendance. Thereafter by email dated 20 March, Mr Moloney invited a response to his earlier point and some explanation for why one set of Dr O’Kane’s reports had been accepted and the others had not, and we have already dealt with that: no issue of unfitness arose in relation to the 4 Sisters that had not been declared unfit. In that email of 20 March, Mr Moloney went on to say that there was “absolutely no need to serve” what he referred to as Article 21 notices and that necessary arrangements for statements to be taken would be made. So this therefore appeared to be a possible return to the previous position.

LADY SMITH: What date was that?

MR MacAULAY: That was on 20 March. To the previous position that Sisters were in fact able to provide statements to the Inquiry. However, as this had also been the previous position and that position apparently had changed, it was decided to proceed with the section 21 notice procedure as time was marching on with hearings due to start on 24 April, and by email dated 20 March, Mr Moloney was informed of that position and in the first instance section 21 notices dated 23 March

were served on the 5 Sisters. My Lady I mentioned at the outset in his email of 26 March seeking revocation of the section 21 notices, Mr Moloney also sent 5 letters in respect of the 5 Sisters on whom section 21 notices have been served, again signed by Dr O’Kane and again I quote to the effect that each Sister was “unable to participate in the Inquiry and in particular to undertake private interviews or provide written statements to the Inquiry.”. These letters were dated 25 March. So against that whole background my Lady this Hearing has been fixed to allow Mr Moloney to address your Ladyship on the individual applications made on behalf of the 5 Sisters for revocation of the Section 21 notices.

LADY SMITH: Just going back to the 5 letters from Dr O’Kane dated 25 March, am I right in thinking that there has been no indication that she had seen these 5 Sisters before writing those letters, that is a weekend, there wouldn’t have been time to do that.

MR MacAULAY: Maybe Mr Moloney can explain.

LADY SMITH: There has been no indication to us, I see nothing in writing to that effect and indeed if one goes back to her original reports from last Autumn nothing to indicate that when she was examining the Sisters and writing those reports she had been asked to consider separately their fitness for the procedure of attending a private meeting to be interviewed or a private meeting, which wouldn’t even be with a member of the Inquiry Team, a private meeting if necessary to provide a written statement or sitting down quietly themselves to provide a written statement.

MR MacAULAY: There is nothing about these matters in her report. Of course one can’t say to what extent she was advised of the whole Inquiry process that involved these different stages.

LADY SMITH: I rather read her reports as indicating that what she had in mind was a criminal trial.

M MacAULAY: As your Ladyship is aware she relies upon a criminal trial test that is relevant South of the border.

LADY SMITH: It doesn't apply in Scotland.

MR MacAULAY: No it doesn't. In any event my Lady Mr Moloney now has the opportunity to address your Ladyship on why each of the 5 Section 21 notices should be revoked. Can I say, my Lady, it would also be helpful to hear from Mr Moloney as to why he apparently adopted contradictory positions in relation to the ability of the Sisters to give evidence and in particular as I have indicated, Mr Moloney in his email dated 9 March....

LADY SMITH: That is to provide evidence at an interview session?

MR MacAULAY: Yes and that suitable dates and venues would be agreed for his clients to be interviewed. It certainly seems to me to make such a statement he would need to obtain instructions to that effect from his clients and therefore satisfy himself as to the fitness of his clients to participate in such a process. So these are my submissions but perhaps Mr Moloney would clarify for the Inquiry. Unless I can be of any further assistance at this stage my Lady that is all I propose to say.

LADY SMITH: Thank you very much Mr MacAulay. Mr Moloney.

MR MOLONEY: Good morning my Lady and first of all could I say sincere thanks for facilitating this court appearance, this appearance in front of you this morning.

LADY SMITH: It is an Inquiry Hearing, not a Court Hearing.

MR MOLONEY: At the Inquiry this morning. We specifically would be obliged if we could put this matter in its context before addressing you on the specifics.

My learned friend is quite right, my Lady, in outlining the first time that we were instructed in this matter was on 18 September last year when as I say we were instructed on behalf of the individual Sisters as opposed to on behalf of the congregation, who are separately represented.

LADY SMITH: We know they have separate representation, Mr Moloney.

MR MOLONEY: So we were, my Lady, invited to attend to represent the Sisters and met for the first time on 18 September as my learned friend pointed out. At that particular meeting it became very apparent to us that how helpful Christina Priest and the team were with regard to arrangements that were going to be made and it became very apparent to us, my Lady, on that occasion that in discussions with some of the Sisters that there were issues with regard to capacity and I don't need, my Lady, to quote the chapter and the law to you with regard to that but for example, my Lady, it became very apparent when one considered, for example, our dealings with the Historic Inquiry in Ireland under Mr Justice Hart dealing with the same issues that my Lady is dealing with that when we were instructed on behalf of individual Sisters then that it became apparent to us because of age profiles, because of the routine in which they were living that issues of confusion, issues of capacity, issues of memory, and I can only quote Mr Justice Horner who in Ireland said that when you are dealing with mature people, issues of memory are issues and I have said no further than that.

LADY SMITH: Mr Moloney.

MR MOLONEY: Yes.

LADY SMITH: I and others in this Inquiry have long experience in court practice and indeed Inquiry practice we do know about dealing not just with elderly witnesses but with vulnerable witnesses.

MR MOLONEY: Indeed.

LADY SMITH: Of all types. You don't need to lecture me on the particular caution one needs to adopt in the case of such witnesses.

MR MOLONEY: It wasn't my Lady, it was drawing to your attention that it came to our concern the issues that we would be presented with and in those circumstances we immediately instructed Dr Maria O'Kane, who was the Consultant Psychiatrist who was instructed and provided the medical evidence to the Irish Inquiry under Mr Justice Hart. And my learned friend is quite correct that throughout October and November Dr O'Kane consulted with the Sisters concerned and provided the necessary medical reports that were there. Those medical reports were delivered to the Inquiry as my friend has said on 17 December and it is quite correct there were several that Dr O'Kane ... Sisters who were deemed fit and quite a number of them were deemed unfit. Now, when Dr O'Kane....

LADY SMITH: Mr Moloney, I noted reading the reports that have been provided to me from Dr O'Kane that it is interesting when she interviewed Sisters she was able to recall in close typed script, several pages of them informing her very clearly about their personal history, their religious history and in the case of some what they could tell her about their own medical history and certainly able to give clear accounts.

MR MOLONEY: Yes, well Dr O'Kane, my Lady, did spend some considerable time with the Sisters to obtain the best possible reports for the assistance of the Inquiry and they were provided. Now, my Lady, they went in from December into

January, the Inquiry - my friend is quite correct - that interviews started to take place and to date 8 statements have been obtained from various Sisters all of whom were deemed fit by both Dr O'Kane and very comprehensive statements are already in and with the Inquiry Team.

LADY SMITH: Are you talking about statements taken in interview sessions carried out by members of the Inquiry Team?

MR MOLONEY: Members of the Inquiry Team my Lady.

LADY SMITH: Yes I know about that.

MR MOLONEY: And they have all arrived. Now throughout that period of January and February, my friend is quite correct - interviews were being conducted. We would have had further discussions with the Sisters and arrangements were set up for interviews to take place. In discussions with...

LADY SMITH: So you would have had further discussions? Did you or didn't you?

MR MOLONEY: Oh yes we would have had.....

LADY SMITH: Well, did you or didn't you?

MR MOLONEY: Yes indeed.

LADY SMITH: If somebody says they would have done it doesn't seem to be telling me.

MR MOLONEY: No but throughout the period of time there would have been regular discussions.

LADY SMITH: Oh, were there.

MR MOLONEY: There were my Lady, yes, and interviews were in the process of being set up and I can tell my Lady that in further discussions with Dr O'Kane we sought further clarification whether or not these soul and conscience

letters and her interpretation of her instructions were the appropriate ones for interviews or statements to be made. And Dr O’Kane felt and instructed by her that she felt that they would not be in a position to fully give the best possible statements. Now it is quite clear.....

LADY SMITH: Further discussions with Dr O’Kane to which you refer, are these the ones that took place over the weekend after the section 21 notices had been served?

MR MOLONEY: No my Lady. There had been discussions throughout January and February with regard to all the Sisters.

LADY SMITH: You didn’t make us aware of any further information from Dr O’Kane, not that I know of.

MR MOLONEY: The letters that were provided with regard to soul and conscience were to clarify her position with regard to her statements that she had provided already.

LADY SMITH: We have had the reports from Dr O’Kane that arrived at the beginning of December 2017 and then we had from you after the service of the section 21 notices the 5 very brief letters from Dr O’Kane addressed to me saying that she intended the reports to be on soul and conscience and that was clearly the import of them and separately she didn’t consider the 5 Sisters who are the subject of these notices to be fit to attend interviews or fit to provide written statements, or fit to provide written statements?

MR MOLONEY: My Lady, Dr O’Kane suggested that she come and address you today.

LADY SMITH: No, I want to hear from the representative of these 5 Sisters on whom the orders have been served and that is you, Mr Moloney. She doesn't represent them.

MR MOLONEY: My Lady I can tell you that arrangements have now been made, clearly made for and made this morning with dates and times for those statements to be made.

LADY SMITH: Just a minute, are we talking about all 5 Sisters on whom section 21 notices have been served?

MR MOLONEY: All 5 Sisters, yes.

LADY SMITH: And when you say dates and times have been arranged for interviews, are you talking about interviews at which the Inquiry Team, members of the Inquiry Team will attend?

MR MOLONEY: Yes.

LADY SMITH: And there are no conditions to this?

MR MOLONEY: No conditions to this.

LADY SMITH: Tell me what the dates are please.

MR MOLONEY: Tomorrow morning.....

LADY SMITH: Tell me what the dates are, the dates, tomorrow 5 April?

MR MOLONEY: Tomorrow, my Lady, 5 April.

LADY SMITH: Time?

MR MOLONEY: 5 April, Manchester 9.30

LADY SMITH: Manchester 9.30. Next?

MR MOLONEY: Thursday, 2 Sisters will be interviewed tomorrow in Manchester.

LADY SMITH: 2 interviews in Manchester tomorrow, the first at 9.30, the second when?

MR MOLONEY: The second: Cheltenham.....

LADY SMITH: No, tomorrow. You say 2 Sisters will be interviewed in Manchester.

MR MOLONEY: Yes.

LADY SMITH: We will interview them one at a time, not together. The first one will be at 9.30, when is the second one being told that she will be there?

MR MOLONEY: 12.30

LADY SMITH: 12.30. Next: Thursday?

MR MOLONEY: 6 April, Miss Conway will attend..

LADY SMITH: Where?

MR MOLONEY: Cheltenham and will see, there were to be 3 Sisters.

LADY SMITH: I just want to know what is being committed to, please.

MR MOLONEY: 9.30.

LADY SMITH: 9.30

MR MOLONEY: And 12.30

LADY SMITH: And 12.30. And what about the fifth one?

MR MOLONEY: That is Friday in London. 9 o'clock in Finchley.

LADY SMITH: So shortly, Mr Moloney, is the position now that there is no need to consider the obligation of these Sisters to see to it that written statements are provided themselves because it is now accepted that it is appropriate for them to attend private interviews with members of the Inquiry and for statements to be provided?

MR MOLONEY: That is correct.

LADY SMITH: Would you just sit down a minute, please. Mr MacAulay, did you know about any of this?

MR MacAULAY: I understand that this morning that Mr Moloney has spoken to the Witness Support Team, I wasn't given detailed information but I understand that these matters were raised. Now, we will have to be careful about this in a number of respects. First of all, I would certainly want confirmation that the focus here is on the 5 Sisters and not any other Sisters but secondly it seems to me that what Mr Moloney's position now is, is that he is not insisting on his revocation application if in fact his position is that the 5 Sisters that we are interested in can be interviewed. The third point is that one would have to be sure that the Witness Support Team is in a position...

LADY SMITH: I was wondering about that.

MR MacAULAY: ...to respond promptly to what is now being proposed.

LADY SMITH: I think what I am going to do is, I am going to adjourn and enable Mr MacAulay and Junior Counsel to consult with Witness Support Team and our Statement Taking Team and no doubt you can speak to the Inquiry solicitor, Mr Moloney, to talk about these arrangements. In the meantime, the orders for the provision of written statements remain in place and even if it is confirmed to me that these interviews can go ahead I am not revoking the orders at the moment whatever you say because they need to stay there as a back-up. And I will not consider doing so until I know that these interviews have taken place and that statements have been obtain. How long do we need? Half an hour, an hour? I want this to be sorted out today, Mr MacAulay.

MR MacAULAY: I think half an hour would be appropriate. Can I say, it does now seem to be the case that Mr Moloney is accepting that these

Sisters are fit to be seen and are in a position to give instructions to him that they can be seen.

LADY SMITH: Well I can only infer that that is the case.

I am going to adjourn just now.

RECONVENED

LADY SMITH: Mr MacAulay.

MR MacAULAY: My Lady I can say that the adjournment has been productive.

LADY SMITH: Good.

MR MacAULAY: The position is that this week on the 5 and 6 April 5 Sisters will be seen by the Inquiry Team.

LADY SMITH: This is the 5 Sisters who were the recipients of my Orders?

MR MacAULAY: 3 of those were recipients of the Section 21 notices, 2 were not and they are to be seen respectively in Manchester, London and Cheltenham.

It has also been agreed that 2 Sisters will be assessed by Professor Connelly, who is a Consultant Neuro-Psychiatrist, in Belfast on Monday 9 April.

LADY SMITH: So is that the other 2 of the group 5 of were the recipients of the Order?

MR MacAULAY: It is. Friday, 6 April. So that is 2 Sisters, the other two Section 21 notice recipients, who will be seen by Professor Connelly in Belfast on Friday, 6 April.

LADY SMITH: That is in Belfast?

MR MacAULAY: Yes and thereafter those 2 Sisters will be seen by the Statement Takers and the Witness Support Team on 9 April in Belfast. That will mean by then all the Section 21 recipients will have been seen.

LADY SMITH: For interviews?

MR MacAULAY: For interviews, yes. Of course Professor Connelly will be assessing those 2 Sisters not just in relation to their capacity for an interview but on a much broader basis.

LADY SMITH: And of course, if his advice was that they were not even fit to give interviews they wouldn't be expected to attend for the interviews. And will he separately consider their ability to provide their own statements?

MR MacAULAY: Yes, he has been instructed to cover all these issues and as I said it is expected that he will be in a position to give us a verbal report before those Sisters are seen on the 9th.

LADY SMITH: That is very helpful. Thank you.

MR MacAULAY: And the only other point, my Lady: dates and locations have been put forward by Mr Moloney in connection with other Sisters and we now need to establish that the team can accommodate these dates and locations so as I have said my Lady the process has been a productive one in that we know where we stand and we are making progress.

LADY SMITH: Well we have to because this case study starts on 24 April.

MR MacAULAY: Indeed so my Lady.

LADY SMITH: This work needs to move ahead and time has been lost with what has been happening other the last few months with arrangements being made, cancelled and so on.

MR MacAULAY: Hopefully we now have a clear path ahead.

LADY SMITH: Thank you very much, thank you.

Mr Moloney is that right? We have got these dates agreed?

MR MOLONEY: Those dates are agreed my Lady and will be adhered to.

LADY SMITH: And they will be adhered to? You have instructions that they will be adhered to?

MR MOLONEY: They are my instructions and we have made the necessary phone calls this morning and they will be adhered to.

LADY SMITH: Very well. As I indicated earlier I am not minded in the meantime, to revoke these orders – which are for the least onerous way forward in terms of engaging with the Inquiry - although in many ways people find it of assistance to have the Inquiry do the work of writing up their statement and organising the gathering of the information from them - the orders for the 5 nuns to provide written statements will stay in place but I will revoke them one by one when it is confirmed to me that the interviews which you have said will now take place have not only taken place but the statements have been gathered, written up and signed.

MR MOLONEY: Indeed.

LADY SMITH: Very well. 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.

