

1 Wednesday, 21 October 2020

2 (10.00 am)

3 LADY SMITH: Good morning. As you know, yesterday I began
4 hearing the closing submissions in this case study, and
5 I am delighted to be able to move on today to the final
6 day of closing submissions.

7 I think we begin with the Aberlour Care Trust, is
8 that right, Ms Rattray? Yes, thank you.

9 Mr Love, I see you are here for Aberlour. Whenever
10 you are ready.

11 Closing submissions by MR LOVE

12 MR LOVE: Thank you very much, my Lady.

13 Aberlour is grateful for the ongoing opportunity to
14 participate in this Inquiry and to make this closing
15 statement. Your Ladyship will appreciate that given the
16 circumstances of Aberlour's engagement with this part of
17 the case study, no opening statement was made, so there
18 is nothing to cross-reference this statement with.

19 Your Ladyship has a document headed "Aberlour Child
20 Care Trust: Closing Statement for the Scottish Child
21 Abuse Inquiry, 20 October 2020". It runs to eight pages
22 and, with your Ladyship's leave, I don't intend to read
23 it at length but, rather, would propose to provide
24 a summary of the main points that are raised within it.

25 LADY SMITH: Yes, thank you. And thank you also for

1 updating your original closing statement, that is
2 helpful.

3 MR LOVE: Thank you, my Lady. It was certainly something
4 that was done having had access to the closing
5 statements for all parties and indeed having heard
6 Mr MacAulay's submission to the Inquiry yesterday.

7 As the Chief Executive Officer, Mrs SallyAnn Kelly
8 said in her evidence to the Inquiry on 1 October 2020
9 there were a number of things happening to children in
10 the early 1900s, including not just migration, but the
11 way children were expected to work in Scotland at the
12 time that would and should have been seen as
13 unacceptable. For the avoidance of doubt, that includes
14 the practice of the migration of young people and child
15 migration schemes.

16 On 2 October 2020, the day after she gave her
17 evidence to the Inquiry, Mrs Kelly made a public
18 statement on Aberlour's website, apologising
19 wholeheartedly to those who had been involved. That
20 unreserved apology is renewed and offered publicly to
21 those affected directly by overseas migration from
22 Aberlour and to their families.

23 Moving on. Aberlour adopts the content of
24 Mrs Kelly's evidence given to the Inquiry on 1 October,
25 and also the content of two Section 21 notices and the

1 spreadsheets that were provided in accompaniment to
2 those responses.

3 In her evidence, Mrs Kelly's explanation for the use
4 of the word "expectation" in the Section 21 response was
5 clear, and can be found at pages 42 and 43 of the
6 evidence on Day 194.

7 As Mrs Kelly advised in her evidence, the
8 information provided by Aberlour is the result of
9 detailed investigation of its records, covering the
10 period from 1900 to the present day. The records that
11 were reviewed included minutes of meetings of the
12 organisation's governing body and management committees,
13 the Aberlour Orphanage magazines for the period, the
14 organisation's ledger book and, in addition, individual
15 case records relating to children. In some cases there
16 is no information on Aberlour's records to explain the
17 circumstances of a child's or a juvenile's discharge
18 outwith the United Kingdom. The formal policies and
19 procedures relating to migration could not be found, and
20 there is no individual within the organisation who was
21 involved in the operation of the establishment at the
22 relevant times that can speak to any policies and
23 procedures that there might have been relating to child
24 migration.

25 Although no policies or procedures were found, that

1 is not to say that they never existed. All that can be
2 said is that if they did exist, they cannot now be
3 traced. It is, however, acknowledged without hesitation
4 that it is surprising that there is no reference to
5 migration in the minutes of meetings of Aberlour's
6 management committee. It is also accepted that there is
7 no positive evidence of any risk assessment or
8 pre-placement checks being made before young people were
9 sent abroad, and equally there is no positive evidence
10 of any engagement, supervision or aftercare once they
11 had moved abroad.

12 There was passing evidence that your Ladyship heard
13 from Mrs Kelly about a visit that the warden, **BLK**,
14 made to Canada, but the purposes of that visit are
15 unclear from the information that is available, and all
16 we really have are the entries in the orphanage
17 magazines.

18 LADY SMITH: So what are you saying, Mr Love? That you have
19 to accept that it may be open to me to infer in the
20 circumstances, particularly the absence of any reference
21 at all in the minutes which are available, that there
22 were no systems or policies written of the sort that
23 certainly nowadays one would expect to see if there was
24 some particular practice going on in relation
25 to children?

1 MR LOVE: I think that would be a very difficult concession
2 for me to make, in particular having regard to the clear
3 indications that were given in the evidence and from the
4 records of there being some system in place regarding
5 identification of those who might be migrated, and
6 particularly looking at juveniles, in the period after
7 1930. I don't think -- I will come on to deal with that
8 factor in the course of this closing statement, but
9 certainly it would be odd, it seems to me, and
10 I couldn't put it any more highly than that, that there
11 is no evidence at all of any practices or procedures
12 available and no references to any such practices or
13 procedures in the minutes.

14 LADY SMITH: So that what you have in mind there are the
15 criteria that were introduced about, for example, the
16 minimum height, age and weight of a child going to
17 Canada?

18 MR LOVE: Yes, that would be correct, my Lady. Whether or
19 not that was by virtue of a formal practice or procedure
20 cannot be demonstrated on the evidence that has been
21 recovered from Aberlour's records.

22 LADY SMITH: But was there anything more than that on the
23 recorded information available?

24 MR LOVE: There were views taken about suitability for
25 a juvenile to be adopted in terms of the Over-Seas

1 League practices. There was also consideration about
2 whether or not children under the age of 12 might be
3 party to other migration abroad.

4 So there is evidence within the records that some
5 thought was applied to the issue of child migration. As
6 I will come to towards the end of this closing
7 statement, the evidence of Professor Constantine looks
8 at the issue of consent and Aberlour's practices and
9 appears to concede, or state in terms, that there seems
10 to have been some consideration given by Aberlour to the
11 appropriateness of children, particularly young
12 children, being migrated abroad, albeit that the written
13 procedures and policies cannot be identified.

14 LADY SMITH: Thank you.

15 MR LOVE: What could be identified is that looking at
16 migration generally, it seems that in the period from
17 1900 to 1930 two distinct types of migration were
18 supported by Aberlour. Firstly, arrangements made for
19 children to join family members already overseas and,
20 secondly, emigration through colonisation schemes.

21 In the period to 1930, the ledger books and other
22 records provide evidence of 49 known and two unknown
23 children migrated to destinations outwith the
24 United Kingdom following discharge from Aberlour
25 Orphanage. All but four of the total number went to

1 Canada and, of that remaining four, three went to
2 South Africa and one to Brisbane, Australia.

3 After 1930 the ledger books and other records show
4 that a total of four children were discharged by the
5 organisation to destinations outwith the United Kingdom.
6 One went to Canada to join his stepfather at the
7 stepfather's request and another went to New Zealand to
8 join his mother at his mother's request. Of the
9 remaining two, one emigrated to New Zealand in 1931 to
10 join the New Zealand sheep owners' scheme as a direct
11 result of an application from the boy's father. The
12 other, a 15 year old boy, went to Kenya in 1951 for work
13 as an apprentice. For unknown reasons the placement in
14 Kenya wasn't successful, and having maintained contact
15 with the orphanage while in Kenya, the boy returned to
16 the United Kingdom with the orphanage indicating that he
17 would be welcomed back.

18 LADY SMITH: You make the point, and I remember it being
19 alluded to in the expert evidence, that this wasn't
20 a successful apprenticeship placement and he returned to
21 Scotland, being paid for by the estate owner. But
22 remind me, do we know how it was that Aberlour learned
23 that it was not successful and what the nature of the
24 lack of success of the placement was?

25 MR LOVE: There's absolutely nothing within the records to

1 confirm one way or the other. All we know is that
2 the placement was unsuccessful, the detail of that is
3 unknown.

4 LADY SMITH: So we don't know whether the initiative was
5 taken by Aberlour or by the estate owner?

6 MR LOVE: Or by perhaps even the boy himself.

7 LADY SMITH: It might have been difficult for him.

8 MR LOVE: I fully accept that, my Lady, but I don't think it
9 would be appropriate for me to speculate as to the
10 circumstances.

11 LADY SMITH: We don't know.

12 MR LOVE: We really don't know.

13 A review of the records suggests that from
14 Aberlour's perspective, the aim of migration was to
15 secure a positive destination for those leaving the
16 orphanage and to allow them to make a better life for
17 themselves. The intentions were good; the records show
18 a very clear view that children were going abroad to
19 build colonies and become colonial residents. It is
20 possible to identify certain common practices which may
21 well have been underpinned by formal policies or
22 procedures and a suggestion of an adherence thereto.

23 To give some examples: according to an article in
24 the 1927 Orphanage magazine, the Canadian Pacific scheme
25 was limited to Aberlour boys, as your Ladyship said, who

1 were over 5 feet tall and weighed over 100 pounds.
2 Records suggest the scheme was only used from 1927 and
3 for boys over the age of 14. According to another
4 Orphanage magazine, the warden went to Canada in 1928 to
5 visit all the boys already working on farms there and
6 travelled with the next group of boys and was present at
7 the time of their first arrival in Canada.

8 Aberlour ceased to participate in the migration of
9 boys to Canada after 1930. A 1938 record provides
10 evidence of Aberlour rejecting a scheme involving
11 emigration of children under the age of 12. In 1948
12 Aberlour received an application from the Royal
13 Over-Seas League regarding a potential adoption of
14 a boy. One application was withdrawn in the absence of
15 parental consent, another was withdrawn upon Aberlour
16 finding, on the basis of a psychological assessment,
17 that the boy was not a suitable candidate for adoption.
18 And there is no evidence in the records that have been
19 reviewed of girls migrating from Aberlour Orphanage
20 other than as part of a family group.

21 Aberlour has considered and takes no issue with the
22 findings of Professor Constantine at paragraphs 13.58 to
23 13.64 of his report where, among other things, he says:

24 "In brief, limited surviving Aberlour records for
25 the years 1900 onwards oblige us to pick up clues about

1 selection from fragmentary sources but perhaps
2 sufficient to indicate Aberlour's commitment to select
3 only juveniles 14 or over for migration, except for
4 younger ones accompanying or following older siblings or
5 travelling to join parents overseas, and all seem to
6 have had to pass medical examinations to satisfy
7 authorities overseas. As for consent, with still less
8 on which to make a judgment, there are nevertheless
9 grounds for accepting that none were sent without the
10 consent of the child and a responsible family member
11 and, in one case, the Secretary of State."

12 In fact I have nothing to add to that statement
13 beyond simply saying that there is information available
14 on the Aberlour website as to how any former resident
15 can go about recovering records or information held in
16 relation to them as well as seeking and securing
17 support.

18 Unless I can assist your Ladyship further, I don't
19 have anything to add.

20 LADY SMITH: Thank you very much, Mr Love. Thank you.

21 Now, could I next turn to the Church of Scotland.

22 I see, Ms Dunlop, you are with us this morning.

23 Whenever you're ready, I'm ready to hear you.

24 Closing submissions by MS DUNLOP

25 MS DUNLOP: Thank you, my Lady.

1 This submission is presented on behalf of
2 CrossReach, the social care arm of the Church of
3 Scotland. All responses submitted in writing on this
4 topic and the oral evidence of Mrs Vivienne Dickenson
5 given on 2 October proceed on the basis of research of
6 written material, including in the National Archives of
7 Scotland. This is necessarily so as there is no one in
8 the organisation today who has an actual recollection of
9 the Church's actions concerning the migration of
10 children.

11 The first involvement the Church had in migration of
12 young people appears to have been in the period between
13 1910 and 1932. In 1907, Cornton Vale, which later
14 became a prison for women, opened as a rehabilitation
15 and training centre for destitute men run by the Church
16 with the aim of training them in farm work and helping
17 with the transition from institutional care or
18 homelessness to independent living.

19 In 1910, emigration to Canada from Cornton Vale
20 began. Those who travelled appear to have been over the
21 age of 18 with the only known exception being one young
22 man, ■■■, who was aged 16 and who arrived in Nova Scotia
23 in ■■■■ 1927. It is possible that others under the age
24 of 18 also travelled from Cornton Vale, and we reference
25 the research which the Church has carried out in our

1 case study at pages 1 to 4.

2 The Church had further involvement in migration,
3 this time of children, in 1948, and then again for
4 around six years from 1950, and on further occasions in
5 1960, 1961 and 1963. This related only to Australia.
6 The circumstances, so far as uncovered by the research
7 referred to, are set out in the CrossReach response,
8 part C, at answer 4.11.

9 The arrangements whereby the Church organised
10 migration to Dhurringile Training Farm in Victoria from
11 1950 onwards appear to have proceeded from personal
12 connection. In 1950, Reverend Andrew Boag visited
13 Scotland from the Presbyterian Church of Victoria.
14 Reverend Boag had himself been an assisted migrant to
15 Australia in 1926 and we reference that. He seems to
16 have been convinced of the benefits of such migration.
17 It is likely that he was also well received personally
18 in Scotland coming, as he did, from another Presbyterian
19 church.

20 As part of the establishing of the scheme to send
21 boys to Dhurringile, it was necessary for there to be
22 a committee in the United Kingdom. The rationale for
23 this appears to have been that once regulations were
24 made in the UK to govern such arrangements, there would
25 need to be a body on whom duties under the regulations

1 were enforceable. Dr Lewis Cameron, Reverend Andrew
2 Buchan and Miss Mari Cumming were willing to facilitate
3 migration by forming the necessary committee. They
4 began its work in 1950; its establishment within the
5 Church's Committee on Social Service was ratified at the
6 General Assembly in 1951. As your Ladyship observed at
7 the hearing on 2 October, it would have been difficult
8 for such ratification to have been withheld since the
9 work had commenced and the first boys had been sent
10 under the auspices of the committee on [REDACTED] 1950.
11 From that point, the committee was the sole
12 representative in Scotland of the Presbyterian Church of
13 Victoria in relation to the migration scheme.

14 Turning to the question of consent. The Church's
15 response makes reference to the annual report of the
16 Committee on Social Service to the General Assembly in
17 1952, in particular the statement that "The boy's own
18 wish to emigrate is the starting point ...". There is
19 also, within the papers, evidence of agreement from
20 a boy of 14 being recorded.

21 A child's wish to participate would seem to be
22 a necessary part of any arrangement for him to be sent
23 to Australia in that it is unthinkable for a child to be
24 sent contrary to his will. The Church does not,
25 however, make any submission suggesting that such

1 an expression of will by a child could ever constitute
2 valid consent in law to such a far-reaching change of
3 situation. In this regard, the Church makes no
4 challenge of the legal analysis presented by
5 Professor Norrie on 2 April 2019. Even the consent of
6 a parent for a boy under 14 to emigrate would not appear
7 to be legally valid.

8 With regard to conditions in Dhurringile, there were
9 reports to positive effect, including favourable
10 comments apparently made by the Moderator of the
11 General Assembly following a visit in 1951. On the
12 other hand, comments made by John Moss recorded in the
13 "rough note" from his visit to Australia in 1951 to 52
14 refer to the difficulty in preventing the home becoming
15 "rather institutional" and the likelihood of its being
16 "exceptionally cold in winter".

17 The findings of John Ross, following his visit in
18 1956, were considerably more damning. From
19 contemporaneous material, it appears that the detail of
20 the Ross Report was not shared with the Church of
21 Scotland. A certain amount of diplomatic activity
22 appears to have been generated by these comments, which
23 probably contributed to the decision to withhold the
24 documents.

25 There does appear to have been migration of one boy

1 early in 1957, but then the Church committee were
2 "inactive for a very long time" until they made
3 arrangements for 11 boys from Quarriers to emigrate to
4 Dhurringile at the beginning of [REDACTED] 1960, and then
5 a further five boys in [REDACTED] 1961. For this
6 to have occurred without involvement from the relevant
7 government departments in the UK appears to have been
8 contrary to arrangements made in 1957, on the strength
9 of the negative reports from John Ross. Had these
10 findings been shared, that might have reduced the
11 chances of the errors being made in 1960 and 1961.

12 In conclusion, CrossReach accepts that it played
13 a part in facilitating migration of children to homes in
14 Australia, both from its own homes and by making
15 administrative arrangements for other organisations.
16 Trauma and suffering was undoubtedly caused to children
17 because of this. We reiterate the apology which was
18 issued at the conclusion of oral evidence from
19 Mrs Dickenson on 2 October 2020 in recognition of the
20 reality that children were sent into harsh and
21 unfamiliar conditions and suffered when there.

22 LADY SMITH: Ms Dunlop, thank you for that. That is very
23 helpful.

24 Could I turn now to the closing submissions for
25 Scottish Ministers, Ms O'Neill.

1 Closing submissions by MS O'NEILL

2 MS O'NEILL: My Lady, I will adopt the written submissions
3 that the Inquiry has although I may not speak to the
4 entirety of those.

5 In the submissions made for the Scottish Government
6 at the opening of this phase of the Inquiry's work
7 I said the following:

8 "The applicants who gave evidence in this phase of
9 the Inquiry were Scotland's children. They were
10 entitled to the care and protection of the state,
11 including public authorities in Scotland who
12 facilitated, by active complicity or by turning a blind
13 eye, their migration and abuse and the
14 Scottish Government is extremely sorry for the suffering
15 they experienced."

16 That remains the position of the
17 Scottish Government. The suffering experienced by
18 Scottish children through the very fact of being
19 migrated as a result of the circumstances in which that
20 migration was given effect, and in the abuse they
21 suffered after their migration, has been well spoken to
22 by applicants who gave their evidence to the Inquiry.
23 That evidence was frequently harrowing. It is not
24 quoted from at length in these submissions, but that
25 omission should not be taken as indicating any lack of

1 regard for survivors or that their evidence did not have
2 significant impact on those listening to it.

3 To take only one example, the account given by Johno
4 of his experiences in March of this year was rightly
5 recognised by Mr MacAulay QC as being likely to be of
6 significant importance to the Inquiry. He described
7 eloquently and with dignity the serious physical,
8 emotional and sexual abuse suffered by him and by many
9 other boys in the care of the Christian Brothers in
10 Australia, the cruelty of the environment in which he
11 and other boys lived and the lifelong impact of his
12 experiences, not at least the impact of a wholly
13 inadequate education.

14 His evidence and that of many others also speaks to
15 the deprivation of dignity and selfhood that resulted
16 from the way in which children were selected for
17 migration and from the way in which they were
18 subsequently treated both as children and as adults. As
19 he put it when describing the regimented removal of each
20 child's own clothes on arrival, "Suddenly all our
21 self-worth was gone, just stripped off us, and
22 everything was taken away".

23 A common theme was the sense amongst migrant
24 children that each was a "nobody", a term used by Johno
25 and by many others. Lack of self-worth persisted

1 throughout migrants' lives, not least because of the way
2 in which they continued to be mistreated as young and
3 older adults. However, an important counterpoint to
4 that very real experience was spoken to in the evidence
5 of Anna Magnusson when quoting from her book, "The
6 Quarriers Story", the words of a former migrant,

7 [REDACTED], that:

8 "Canada was fortunate indeed to receive such future
9 citizens; it was Scotland's loss that they were sent
10 away."

11 And the Scottish Government agrees with
12 [REDACTED]: no child was or is the property of
13 Scotland or of any other country, and indeed neither
14 were they "commodities", as the language was used by
15 Mr Scott yesterday. But as I said in my opening
16 submissions, the applicants who gave evidence in this
17 phase were Scotland's children, and the government
18 readily acknowledges, as it was put by Ms Magnusson in
19 her evidence, the sort of sadness and the kind of slight
20 anger there about it was Scotland that lost by sending
21 great people like that away.

22 I also explained in my opening submissions that
23 while the devolved Scottish Government did not exist in
24 the period during which the child migrant programme
25 operated, the Scottish Government nevertheless fully

1 endorsed the apology given by the Prime Minister in
2 2010. Equally, the Scottish Government agrees with the
3 stance of the UK Government, articulated by Mr Davies in
4 his evidence, that there should be no attempt to defend
5 the policy of supporting child migration, and that
6 policy has properly been accepted as wrong.

7 My Lady, in response to a Section 21 notice issued
8 by the Inquiry, the Scottish Government prepared and
9 lodged with the Inquiry a report in November last year
10 dealing with a number of matters relating to its
11 engagement with former child migrants. The report was
12 updated in September of this year to reflect changes
13 that had taken place in the period since the lodging of
14 the original report, for example, in relation to
15 the number of former migrants who have accessed the
16 Scottish Government's advance payment scheme.

17 Two government officials, Mr Henderson and
18 Mr MacDougall, gave oral evidence in October of this
19 year in relation to the matters covered by the report.
20 I invite the Inquiry to have regard to the report in its
21 entirety when making any findings about the response of
22 the Scottish Government to former migrants and I would
23 make the following limited observations on the matters
24 covered by the report.

25 First, section 2 of the report describes

1 Scottish Government's communication with individual
2 survivors and with survivors' support groups elsewhere
3 in the world. Mr Henderson's oral evidence was that he
4 was surprised that Scottish Government had not received
5 greater correspondence from former child migrants and
6 with the Scottish Government. This relative absence may
7 be explained by the focus of former child migrants
8 inquiries being on the UK Government and the FCO but
9 that, my Lady, is only speculation.

10 Although not discussed with him in his oral
11 evidence, the applicant Mr Booth made reference in his
12 statement to having sent three emails to the
13 First Minister's office without having had a reply from
14 her although it is not clear from the statement when the
15 emails were sent. I am conscious, my Lady, and as set
16 out in the written submission, this was not the subject
17 of questions with Mr Henderson or Mr MacDougall, but
18 I have included in the written submission information
19 about the searches that were undertaken to try to check
20 whether those emails were received, and no information
21 about those emails was able to be found.

22 My Lady, I move on to the issue of financial redress
23 which begins at paragraph 2.10 of the written
24 submission. The report briefly describes the advance
25 payment scheme and explains that the purpose of the

1 scheme is to provide redress to individuals who
2 experienced abuse in care in Scotland and that
3 the scheme does not offer financial redress to
4 individuals in respect of their migration abroad as
5 children or abuse suffered post-migration. From the
6 Scottish Government's perspective, the advance payment
7 scheme sits alongside the UK Government's payment scheme
8 for former British child migrants and the redress
9 schemes made available by countries to which Scottish
10 children were migrated and the different schemes serve
11 distinct purposes.

12 Your Ladyship raised with Mr Henderson whether, in
13 the context of the discussion about the advance payment
14 scheme, whether thought had been given to how the scheme
15 should respond if the Inquiry was to make a finding that
16 the fact of migration constituted abuse. Mr Henderson's
17 reply was to the effect that it was understood that
18 the Inquiry might make recommendations that would have
19 a material impact on Scottish Government's activity in
20 this area. Thereafter, exchanges followed between
21 Mr Henderson and your Ladyship about the proposed effect
22 of the redress bill currently before the
23 Scottish Parliament, when that bill is implemented and
24 assuming that it is indeed passed by the
25 Scottish Parliament. And as was noted in the evidence,

1 the advance payment scheme will be superseded when the
2 bill's provisions are implemented.

3 As your Ladyship may be aware, section 16 of the
4 bill sets out the key eligibility criteria for access to
5 a redress payment. It provides that a person may apply
6 for a payment if the person or, in the case of
7 an application for a next of kin payment, the person in
8 respect of whom the application is made, was abused
9 while a child and, secondly, while resident in
10 a relevant care setting in Scotland.

11 Scottish Government's view is that the second limb
12 of this test, that abuse must have occurred in
13 a relevant care setting in Scotland, would exclude from
14 the scheme applicants whose abuse consisted in the fact
15 of having been migrated. The bill seeks to avoid
16 duplication and the possibility of creating parallel
17 routes to claim compensation for the fact of migration.

18 If, contrary to the Government's view of the proper
19 interpretation of that provision, which is of course
20 a matter for the courts, if section 16 of the bill was
21 interpreted so as to make survivors of child migration
22 eligible for a redress payment in respect of their
23 migration or aspects of it, the panel appointed to
24 determine that survivor's application would need then to
25 consider whether section 41 of the bill applied, and

1 section 41 concerns deductions from redress payments to
2 reflect the fact that the applicant has received
3 payments in respect of abuse from other sources,
4 including statutory and ex gratia schemes.

5 Equally, however, as the policy memorandum
6 accompanying the bill makes clear, payments received by
7 former child migrants under the UK redress scheme should
8 not be deducted from any payment made under the bill's
9 scheme precisely because the two schemes are intended to
10 compensate in respect of different harms. And, my Lady,
11 I am aware that similar, though not identical, measures
12 to avoid duplication of compensation in relation
13 to child migration are contained in the Historical
14 Institutional Abuse (Northern Ireland) Act 2019.

15 LADY SMITH: There is probably little point in agonising
16 over what might be the outcome because it will very much
17 depend on the final wording of this legislation, if it
18 is passed. But you are right to make these
19 observations, Ms O'Neill. I think whatever happens, if
20 there is legislation, I would be very surprised if there
21 weren't long debates over what exactly it means in real
22 terms for the people who seek to access the scheme,
23 particularly if they already have payments from
24 elsewhere, and particularly if what they are relying on
25 is the fact that decisions about them to migrate them

1 were made while they were in care by the organisation,
2 for example, these cases where the Mother Superior was
3 signing the consent, and seek to advance the argument
4 that that of itself was fundamentally abusive to them.

5 MS O'NEILL: My Lady, your Ladyship makes the very important
6 point, which I know was made in evidence, which
7 of course is the bill remains subject to Parliament's
8 view of its eventual terms and therefore, to a degree,
9 there is speculation on our part.

10 I also do not want to pre-empt Ms Towers'
11 submission, but I am conscious, I think, that her
12 written submission refers to the intention of the
13 UK Government to ensure that all former child migrants
14 are able to access the UK scheme as it stands.

15 LADY SMITH: Yes, thank you.

16 MS O'NEILL: My Lady, in addition, in the course of
17 Mr Henderson' evidence, there was also a wider
18 discussion about the redress bill, including provision
19 for the payment of costs of legal advice for applicants,
20 considering accepting payments under the proposed
21 scheme. And again, simply for noting at this stage,
22 currently sections 88 to 90 of the bill make provision
23 for the payment of legal fees. And the final point is
24 simply, as I have noted, that is subject to Parliament's
25 final say.

1 My Lady, I then turn to other forms of help and
2 support that are available for former child migrants.
3 The Scottish Government's report describes other forms
4 of support that are available, including access to
5 Future Pathways funding.

6 Mr MacDougall's oral evidence was that, and I am
7 quoting:

8 "The idea of Future Pathways was to create
9 a person-centred support to survivors who were in care
10 in Scotland but wherever they might be in the world. So
11 as part of that, child migrants who were originally in
12 Scotland would form part of that scope."

13 He noted that it was not until early 2019 that
14 individuals who were clearly identifiable as former
15 child migrants began to receive support from
16 Future Pathways, but that former child migrants may have
17 accessed such support at an earlier stage but without
18 disclosing that background. And former child migrants
19 are able to access Future Pathways in the same way as
20 other survivors of childhood abuse.

21 In my submission, Mr MacDougall's evidence
22 illustrated clearly the positive contribution that
23 Future Pathways has been able to make to survivors of
24 abuse, not least in the flexible way in which it has
25 delivered practical benefits, and through the mechanism

1 of allocating each survivor a support co-ordinator to
2 assist in understanding survivor needs and the support
3 that might best respond to those needs.

4 My Lady, in conclusion, as in earlier stages of this
5 Inquiry, the Scottish Government wishes to acknowledge
6 to courage of all the survivors who gave evidence about
7 their experiences of being migrated as children and
8 about the impact of migration on their future lives, and
9 to record its gratitude to them for contributing to the
10 Inquiry.

11 My Lady, unless I can assist further, those are my
12 submissions.

13 LADY SMITH: I have no further questions, Ms O'Neill. Thank
14 you very much for that.

15 Could I now turn to submissions for the
16 UK Government, already alluded to by Ms O'Neill, and
17 that is for you, Ms Towers, whenever you are ready,
18 thank you.

19 Closing submissions by MS TOWERS

20 MS TOWERS: Thank you very much, my Lady.

21 These submissions are prepared on behalf of the
22 Secretary of State for Health and Social Care who
23 represents the UK Government in this matter, and the
24 UK Government extends its continued regret for the
25 policy and practice of supporting child migration and

1 their effect on child migrants and their families.

2 I don't plan to read paragraph 2 because it is
3 effectively setting out the way the various
4 responsibilities have passed through various
5 departments, which is a complex issue, but it does
6 indicate where we are nowadays, and reaching the
7 conclusion that the Department of Health and Social Care
8 are now the body who are looking after this matter.

9 LADY SMITH: Thank you for setting it out in a single
10 paragraph. You are absolutely right, it's a bit of
11 a spider's web to find your way through.

12 MS TOWERS: It is indeed.

13 In preparation for the Inquiry, DH has worked with
14 other UK Government Departments, including the
15 Home Office and the Foreign and Commonwealth Office, and
16 as a result of this work, DH has provided extensive
17 documentation to the Inquiry relevant to the remit.

18 They have also drawn on departmental files and on
19 those held in the National Archives. There is no one in
20 the Civil Service today who has any personal involvement
21 in the migration schemes, and any analysis of the
22 documentation available is necessarily broadly
23 circumstantial as to the aims, motives, reasoning and
24 outcomes so far as these are not apparent from the
25 minutes, reports and documents available to the Inquiry

1 in the departmental files.

2 In addition, Mark Davies, Director of Population
3 Health, has given more contemporaneous evidence on
4 behalf of DH and in particular in connection with the
5 Child Migrants Trust, the Family Restoration Fund and
6 the redress scheme. Mark Davies, however, was careful
7 to confirm that he has no personal knowledge of the
8 events at the time when child migration took place and
9 has provided his views on the basis of his
10 interpretation of the documents that were made available
11 to the Inquiry. He has no special knowledge of events
12 or decisions taken at the time.

13 However, the UK Government has also had the huge
14 benefit of considering the report to the SCAI prepared
15 by Professors Constantine, Harper and Lynch and it
16 recognises that the professors have had the benefit of
17 access to a wide range of materials to help establish
18 the facts, so far as that has been possible, and the
19 UK Government does not seek to dispute any of the
20 findings in the professors' report.

21 Child migration has been a feature of UK social
22 policy since the 17th century and continued until around
23 1971, and surviving British child migrants were sent to
24 Australia, New Zealand, Southern Rhodesia, Zimbabwe and
25 Canada. Within the context of a policy that has now

1 been accepted as wrong, the UK Government fully accepts
2 there were also shortcomings in the implementation and
3 oversight of that policy.

4 The Inquiry heard evidence about the tension between
5 policies of different departments of the UK Government.
6 One example of this was spoken to by Mark Davies. He
7 considered documentation from 1947, which I think was
8 the Miss Maxwell papers which were referred to by
9 counsel, which indicated a difference in approach at
10 that time between the CRO and the HO. Commonwealth
11 Relations Officers appear to have approached child
12 migration from the perspective of rebuilding overseas
13 nations, in particular Australia, after the war, whereas
14 the Home Office approached child migration with the
15 welfare of the children at the heart of their work.

16 Internal tensions between departmental policies can
17 arise within any government and there is limited
18 evidence in this case on which to base any findings
19 about these tensions in relation to child migration and
20 there are no witnesses with personal knowledge of the
21 time period being considered. However, it is accepted
22 that this evidence does provide some context to one
23 aspect of the operations of the UK Government at that
24 time.

25 The Curtis Report, which was published in 1946, did

1 not apply to migrant children but it seems to have been
2 accepted by the UK Government and the voluntary
3 associations as describing a suitable standard of care
4 of children in the UK looked after by local authorities,
5 and the voluntary and church organisations, and could
6 have been used as guidance for the standards of care for
7 children sent overseas to be looked after. I think it
8 was anticipated that this guidance would be used for
9 children overseas. The Emigration of Children
10 (Arrangements by Voluntary Organisations) Regulations
11 1982 applied certain of these recommendations although
12 it is accepted that by the time the regulations were
13 finally made, child migration from the UK had
14 effectively ceased.

15 There is evidence that between 1944 and 1947
16 a Mr Garnett -- and I say "a" on the basis we have two
17 Mr Garnetts which is very confusing -- from the office
18 of the High Commissioner, was aware of concerns being
19 raised in relation to the quality of care in certain
20 establishments caring for migrated children during the
21 war and the post-war years. He appears to have drawn
22 these concerns to the attention of various officials in
23 the UK Government in London. Professor Lynch's evidence
24 was that, in his view, the UK High Commission also felt
25 that it was overstretched in terms of being able to

1 carry out direct inspections of receiving bodies in
2 Australia due to the size of the country and the
3 geographical difficulties this posed.

4 It is clear that there were pressures coming from
5 Australia for children to be migrated overseas, and
6 Home Office officials apparently noted that they were
7 uncomfortable with this as a reason for child migration,
8 but their approach was different from that of the
9 Commonwealth Relations Office.

10 The Moss Report, published in 1953, provided what
11 may now be seen as an unjustified sense of well-being
12 around establishments caring for migrated children,
13 accepting that there were some limited criticisms, which
14 was at odds with the Ross Report of only a couple of
15 years later. This in addition meant that the
16 UK Government was making decisions on the basis of
17 information which did not reflect the situation on the
18 ground.

19 The Ross Report in 1956 was commissioned as
20 a fact-finding mission in view of the expiry of the
21 Empire Settlement Acts in 1957. These Acts had been
22 regularly renewed until 1967 and they provided authority
23 for the UK Government to make payments towards the cost
24 of migration of children overseas. These Acts were not
25 authority to migrate children, and not all institutions

1 to which children were sent sought or received
2 UK Government funding. I have set out in detail there
3 the persons who comprised the mission, which was
4 a high-level submission, and also set out its terms of
5 reference in the context of the Inquiry.

6 LADY SMITH: It is probably also important to remember, in
7 relation to that comment, Ms Towers, that children
8 weren't specifically sent to a particular institution,
9 but I see what you are saying. You're saying if, as
10 a matter of fact, they ended up in, for example,
11 a Christian Brother institution, then they didn't
12 necessarily receive that funding. But as far as the UK
13 was concerned, the children were sent to Australia.

14 MS TOWERS: I accept that, my Lady.

15 LADY SMITH: And the decisions about where exactly they were
16 going were made at the other end.

17 MS TOWERS: That is something which I will come on to later
18 in looking at the involvement of the UK Government at
19 various levels.

20 LADY SMITH: Yes.

21 MS TOWERS: As the experts have indicated to the Inquiry, it
22 was unfortunate that Mr Ross was unable to visit all of
23 the relevant sites where migrated children were living
24 and this made it difficult for the UK Government to
25 understand the full extent of the issues in responding

1 to the Ross Report. The UK Government was required to
2 balance the information within the report which was made
3 public, the confidential reports, and the ongoing
4 relationship with Australia. The confidential reports
5 were not made available by the UK Government to
6 individual voluntary and church organisations, but
7 appear to have been given to the Australian authorities.

8 It is clear that concerns were taken on board at
9 a UK Government level and undertakings sought before
10 children were migrated to certain of the establishments,
11 but it is accepted that the undertakings given by
12 receiving bodies were not followed up, or confirmed by
13 the UK Government in sufficient detail, before further
14 children were migrated, despite many of the undertakings
15 by those receiving bodies not in fact being fulfilled.

16 The Moss Report did result in the beginning of the
17 process to consider draft regulations based on the
18 Curtis Report, although it was a further period of
19 30 years before they were made. The UK Government
20 seemed to be of the view that it had no jurisdiction to
21 make regulations that govern the standard and conditions
22 in Australia, and the UK Government attempted to
23 regulate the future position by means of voluntary
24 agreements with the voluntary and church organisations.
25 No doubt that will be a matter which your Ladyship may

1 well wish to consider on the efficacy of that approach.

2 LADY SMITH: Of course, when you are talking about voluntary
3 agreements, you are talking about voluntary agreements
4 within the UK.

5 MS TOWERS: Indeed.

6 LADY SMITH: The societies here, the churches here. There
7 was never any attempt to make agreements with the
8 churches or voluntary associations operating in
9 Australia.

10 MS TOWERS: None at all.

11 When considering child migration, we are considering
12 activities that occurred some time ago, and section 9 of
13 the experts' report to this Inquiry sets out what the
14 expected standards of care towards children were at the
15 time of the child migration programmes and the
16 UK Government accepts that this is the appropriate
17 standard against which treatment of the child migrants
18 should be measured. It is accepted that these standards
19 were not always met in the UK or in the countries which
20 received them. The Inquiry has heard evidence about the
21 relevant standards at various points in time and the
22 UK Government's approach to standards and reference is
23 made below to some of that evidence.

24 Post-war, there is evidence that some local
25 authorities were reluctant to arrange for children in

1 their care to be migrated overseas. This was due to
2 concerns about the welfare of the children, the
3 standards of care they would receive, and whether
4 migration would benefit the children they cared for. By
5 the 1950s, the Home Office also had concerns about
6 the conditions for migrated children in Australia,
7 leading to the Ross Report being commissioned.

8 By 1946, the Curtis Committee had recommended that
9 the standards in the receiving country for the care of
10 children should be comparable to the standards the
11 committee proposed for the United Kingdom, and following
12 the Curtis Committee report there was an ambition within
13 the Home Office to improve the quality of children's
14 services within the UK. The Children Act 1948 was
15 enacted, and the UK Government tried to implement what
16 they considered appropriate standards of care based on
17 previous reports on an informal basis with the voluntary
18 and church organisations in the United Kingdom. These
19 were reinforced at various times, including during the
20 consultation period on the proposed Section 33
21 regulations. The UK Government seems to have made clear
22 to the voluntary and church organisations the standards
23 of childcare that they expected to operate within the
24 UK.

25 When referring to a period in 1954, Professor Lynch

1 explained:

2 "Sending organisations in this country were being
3 given quite a clear steer about the standards that the
4 Home Office would expect that they would practice in
5 relation to their work, and as we saw with the case of
6 Barnardo's with their inspection regime, there was no
7 reason in principle why the voluntary organisations
8 couldn't have adhered to those standards, even if they
9 weren't introduced as formal regulations, and certainly
10 the idea that the voluntary societies wouldn't have been
11 aware of Home Office expectations about good practice
12 doesn't seem very plausible."

13 The Home Office's expectations in this regard were
14 communicated to the voluntary and church organisations
15 through correspondence and in the document entitled
16 "Emigration of Children who have been Deprived of
17 a Normal Life".

18 There were differences in the approach to obtaining
19 consent to migrate children depending on whether
20 children were being cared for by voluntary and church
21 organisations or by a Local Authority. The
22 UK Government did not provide consent or make decisions
23 in relation to individual children being emigrated by
24 voluntary and church organisations. The Home Office
25 provided such organisations with general guidance as to

1 matters of selection and aftercare but did not have
2 specific input into individual cases.

3 The Secretary of State was required to consent to
4 the emigration of children from Local Authority care.
5 This was a statutory duty set out in the Children Act
6 1938. However, other than consenting to the migration
7 of these children, there is no indication that
8 the Home Office had any involvement in the selection of
9 the specific children.

10 In Scotland, consent for children in Local Authority
11 care was obtained from the Scottish Home Department
12 which was representing the Secretary of State for
13 Scotland, and the Secretary of State would only consent
14 to migration of children in Local Authority care in very
15 particular circumstances. There are examples of this
16 consent being refused when the Secretary of State
17 determined that migration was not in the interests of
18 the future well-being of the child.

19 However, given that only a small number of children
20 were migrated from Local Authority care, consent from
21 the Secretary of State was not required for the vast
22 majority of children who were migrated from Scotland.
23 Instead, the UK Government relied on the voluntary and
24 church organisations to satisfy the requirements for
25 consent to migration.

1 The Ross Report recommended in 1956 that the
2 Secretary of State's approval be obtained for children
3 in the care of voluntary and church organisations. The
4 UK Government decided not to implement this
5 recommendation but instead established the voluntary
6 arrangements which I mentioned earlier. This was
7 achieved in 1957 with the co-operation of the voluntary
8 and church organisations, and the Home Office set out
9 the UK Government's expectations as to how the selection
10 of children would be carried out and how they would be
11 treated overseas. However, the voluntary arrangements
12 did not include routine oversight by the Home Office of
13 the children who were selected for migration by the
14 voluntary and church organisations. The Home Office
15 expected that the only children who should be selected
16 for migration by local authorities or by the voluntary
17 or church organisations were those who were mentally and
18 physically suitable, who wanted to go, and had no real
19 prospect of having a home life in Britain.

20 In respect of vulnerable children, the Home Office
21 repeatedly made clear to the voluntary and church
22 organisations that it was important that the selection
23 of children was carried out by experienced and trained
24 social workers who understood the children who had been
25 identified as potentially suitable for migration and the

1 environment to which they would be migrated. Thus, as
2 well as the children being physically fit and able, it
3 appears the Home Office wanted, but was not able to
4 require, the voluntary and church organisations to take
5 steps to ensure the children who were selected were
6 emotionally robust and prepared.

7 The UK Government, as I have said at the beginning,
8 and as we said in the opening statement, apologises for
9 the policy of child migration and acknowledges the
10 experience of child migrants and the effect of the
11 migration programmes on them. The UK Government first
12 made a public apology in 2010 and, in the years that
13 have followed that apology, Prime Ministers Cameron
14 and May reiterated annually the sentiments of that
15 apology and those sentiments are reiterated here today.

16 The National Apology was made in Parliament on
17 24 February 2010 by the then UK Prime Minister
18 Gordon Brown. He apologised on behalf of the nation for
19 child migration and expressed his regret for the
20 misguided child migration schemes.

21 The next excerpt is from his evidence to this
22 particular Inquiry:

23 "My oral statement to the House ... was thus to
24 apologise for successive UK Governments who had
25 supported child migration schemes and to say on behalf

1 of the nation that I was truly sorry that these children
2 had been let down."

3 Then he refers to:

4 "... the statement did also acknowledge that 'when
5 they arrived overseas, all alone in the world, many of
6 our most vulnerable children endured the harshest of
7 conditions, neglect and abuse in the often cold and
8 brutal institutions that received them'.

9 "My apology at the subsequent event in Westminster
10 Hall did acknowledge the testimonies of individuals that
11 'many of your stories tragically speak of cruelty and of
12 neglect, of the physical, sexual and emotional abuse in
13 uncaring and brutal institutions'."

14 At the time of the National Apology, the
15 UK Government had engaged with the child migrants and
16 those representing them to ensure their needs were at
17 the forefront of the response by the UK Government and
18 that the apology was appropriately framed. The Child
19 Migrants Trust had suggested to the Department of Health
20 officials that the main issue for former child migrants
21 was to receive an apology rather than financial
22 reparation, and that some form of joint apology with the
23 Australian Government would be welcomed.

24 As well as making a formal apology in 2010, the
25 UK Government also committed to the continued funding of

1 the Child Migrants Trust. The continued funding was
2 intended to help further with support and services
3 alongside a new £6 million Family Restoration Fund to
4 support families who wished to reunite. Both these
5 sources of funding were intended to help former child
6 migrants and their families in a practical way. And
7 prior to the Family Restoration Fund being set up the
8 UK Government had, following the report of the Health
9 Select Committee in 1998, established a £1 million
10 Travel Fund for child migrants and the fund was separate
11 to the funding that had been provided to the Child
12 Migrants Trust.

13 Following the National Apology, the UK Government
14 increased its funding to the Trust and established the
15 Family Restoration Fund. In addition, the UK Government
16 felt it was very important to recognise the tireless
17 work of the CMT, and in particular
18 Dr Margaret Humphreys, for championing and fighting for
19 child migrants and their families. In 2011
20 Dr Margaret Humphreys was awarded a CBE for services to
21 disadvantaged people.

22 More recently, in 2016, the UK Government fully
23 implemented the recommendations of IICSA by establishing
24 a redress scheme for all former British child migrants.
25 The figures set out below are of funding provided up to

1 and until October 2020 and the UK Government is happy to
2 provide updated figures at such future time should
3 your Ladyship wish to request that.

4 LADY SMITH: Thank you.

5 MS TOWERS: From 1989 until October 2020, the UK Government
6 has provided more than £9.5 million in grant funding to
7 the CMT under section 64 of the Health Services and
8 Public Act 1968 and section 70 of the Charities Act 2006
9 with more than £7 million of that funding having been
10 provided from 2010 to date.

11 This funding is distinct from the funding the
12 UK Government provided for the Family Restoration Fund
13 which could only be used to facilitate family reunions
14 and, separately, under a commercial contract, the
15 UK Government provided the CMT around £200,000 to meet
16 the costs, the administrative costs, of administering
17 the application process for the former British child
18 migrants payment scheme, that is the redress scheme.
19 This grant funding has been provided to assist the CMT
20 in carrying out their functions in providing specialist
21 support to former British child migrants.

22 The Family Restoration Fund was established after
23 the National Apology in 2010 to facilitate former child
24 migrants being reunited with their families to include
25 the cost of travel and expenses. The fund started with

1 £6 million of funding and was later "topped up" with
2 a further £2 million and the fund can be used by both
3 former child migrants who wanted to fly to the UK and
4 family members from the UK who wanted to fly to meet
5 their relatives. From July 2010 to date, the fund has
6 helped around 700 former child migrants to be reunited
7 with their families and to travel to family events.

8 In December 2018, the UK Government announced that
9 it would accept the recommendation of IICSA in its
10 investigation report and that the redress scheme should
11 be established. The redress scheme is available to any
12 former British child migrant, irrespective of the UK
13 nation from which they were sent, that was alive on
14 1 March 2018 and meets the eligibility criteria, or to
15 their descendants if they died on or after that date.
16 And the redress scheme pays the sum of £20,000 to
17 eligible former British child migrants irrespective of
18 whether the individual suffered harm or abuse, which has
19 been separately identified.

20 Applications to the redress scheme are managed by
21 the CMT which receives funding for this work through the
22 contract with the Department of Health and Social Care.
23 Since the redress scheme started making payments on
24 1 April 2019, over 1,660 former child migrants have
25 received a payment, and to date 142 payments have been

1 (11.20 am)

2 Closing submissions on behalf of The Catholic Bishops'

3 Conference of England and Wales (read)

4 LADY SMITH: Ms Rattray, when you are ready.

5 MS RATTRAY: Yes, my Lady. We finish today with the closing
6 submissions from the Catholic Bishops' Conference of
7 England and Wales. I should say, my Lady, that, in
8 addition to the closing submissions, the Conference have
9 provided a note in relation to the matter of consent,
10 which is there for the assistance of the Inquiry but
11 I will not be reading out that note. It will be the
12 closing submissions.

13 LADY SMITH: Thank you.

14 MS RATTRAY: "The Catholic Bishops' Conference of England
15 and Wales ..."

16 Which, my Lady, I will now refer to as "the
17 Conference":

18 "... is grateful to Lady Smith, the Inquiry Chair,
19 for affording the Conference the opportunity to make
20 written closing submissions in light of the COVID-19
21 pandemic. As a preliminary observation, the Conference
22 is mindful of its status as a party granted leave to
23 appear.

24 "It is with reference to the evidence it has been
25 asked to provide on the role of the Catholic Child

1 Welfare Council, CCWC, in child migration. CCWC was an
2 umbrella body for diocesan societies in England and
3 Wales involved in the administration of child migration,
4 albeit with a wider child welfare remit, absent of any
5 supervisory or regular role. The Conference is,
6 therefore, able to provide limited assistance to the
7 Scottish Child Abuse Inquiry ..."

8 Which I will refer to now, my Lady, as "the
9 Inquiry":

10 "... in matters concerning the migration of children
11 from Scotland, in contrast to that relating to those
12 children migrated under the auspices of Catholic
13 organisations in England and Wales.

14 "This is partly as a consequence of the
15 institutional arrangements with CCWC membership limited
16 at the relevant time to diocesan agencies in England and
17 Wales and not those from Scotland or the religious
18 orders, for example, the Sisters of Nazareth and
19 Good Shepherd Sisters, and the concomitant paucity of
20 archival material relating to the apparently limited and
21 informal role of CCWC in co-ordinating as opposed to
22 organising the migration of children from Scotland.
23 None of the Catholic diocesan agencies were themselves
24 involved in migration Scotland.

25 "As the Inquiry will have observed, a number of

1 the Catholic agencies involved in the UK Government's
2 child migration programmes no longer exist. CCWC is one
3 such organisation, having ceased to operate in 2002.
4 The involvement of CCWC, and indeed all Catholic
5 involvement, in the child migration programme
6 significantly pre-dated this, with the last children
7 migrated in 1956.

8 "Owing to the passage of time, none of the
9 individuals from Catholic organisations involved in the
10 child migration programmes and decision-making are alive
11 and, as such, our understanding derives from archival
12 information, which we accept is incomplete.

13 "Nonetheless, the Conference remains committed to
14 assisting the Inquiry where it is able to do so and has
15 endeavoured to ensure that all relevant information is
16 before the Inquiry.

17 "As part of the immediate background to the
18 Conference's assistance to the Inquiry, the Conference,
19 under the auspices of the Catholic Council for the
20 Independent Inquiry into Child Sexual Abuse ..."

21 Which, my Lady, I will now refer to as "the
22 Catholic Council for IICSA":

23 "... provided full support to IICSA, providing in
24 excess of 23,500 pages of archival documents to IICSA as
25 well as witness evidence.

1 "A significant body of documents came from CCWC
2 archival records among other Catholic organisations and
3 this forms much of the underlying source material
4 contained within the expert report of Professors
5 Constantine, Harper and Lynch to the Inquiry in relation
6 to the involvement of Catholic organisations.

7 "Turning to the role of CCWC and the migration of
8 Scottish children, much unfortunately remains unclear.
9 It is the Conference's understanding from the evidence
10 of Mary Gandy and Rosemary Keenan, drawing on a database
11 created over twenty years ago to assist in family
12 tracing and reunification, that approximately 102
13 children were migrated from Catholic institutions in
14 Scotland between 1939 and 1956. Of these,
15 contemporaneous records of CCWC point to the involvement
16 of CCWC in the migration of two children in 1947 and
17 then 14 children between 1954 and 1956.

18 "It appears that in the interim period between
19 roughly 1946 until around 1954 the administration of the
20 child migration scheme was undertaken by the
21 Catholic Council for the British Overseas Settlement for
22 Scotland and Northern Ireland."

23 Which I will now refer to as "CCBOS for Scotland and
24 Northern Ireland":

25 "This accords with the archival documentation held

1 by the Catholic Bishops' Conference of Scotland
2 consisting of correspondence between Brother Conlon of
3 the Australian Catholic Immigration Committee and
4 Father Quille, the apparent secretary of CCBOS for
5 Scotland and Northern Ireland, dating from 1946, the
6 subsequent agreement between the Catholic Hierarchy of
7 Australia and CCBOS for Scotland and Northern Ireland
8 signed on 8 May 1947 and the closure of CCBOS for
9 Scotland and Northern Ireland in 1954.

10 "From 1954, the administrator of CCWC signed the
11 relevant LEM3 forms for the 14 children migrated from
12 Scotland. Combined with a review of the Scottish case
13 files this may indicate that CCWC primarily played
14 a role in child migration from Scotland after the
15 closure of CCBOS for Scotland and Northern Ireland in
16 1954. However, it remains unclear as to the extent of
17 CCWC's involvement, how it operated in practice, whether
18 it performed a purely administrative or logistical
19 function or what the understanding was in relation to
20 responsibilities (if any) for the children migrated from
21 Scottish institutions. Similar considerations apply to
22 CCBOS for Scotland and Northern Ireland, about which
23 little is known, including its relationship to its
24 counterpart in England and Wales.

25 "It will also be recalled that a number of children

1 in England and Wales were migrated outwith the auspices
2 of CCWC, with the Australian Catholic representatives
3 circumventing CCWC involvement.

4 "The Inquiry has heard evidence of similar direct
5 recruitment in Scotland of child migrants from religious
6 orders. This unfortunately makes the picture more
7 complex.

8 "With regard to what is known about child migration
9 under the auspices of CCWC in England and Wales, the
10 Conference stand by the acceptance before IICSA of
11 significant failings in the administration of the child
12 migration programme. These include the inability of
13 CCWC to achieve a system of annual reporting or
14 aftercare, which was a significant lost opportunity, or
15 to undertake inspections. Instead, reliance was placed
16 on individual assurances from Australia which were taken
17 at face value on the basis of trust as between the
18 institutions despite the repeated unease about the lack
19 of information coming from Australia.

20 "The Conference has made observations in writing on
21 the expert report and the Inquiry's attention is drawn
22 to those, along with the appended closing submissions of
23 26 July 2017 and further submissions of 31 July 2017 of
24 the Catholic Council for IICSA to IICSA which addresses
25 the various issues raised in detail.

1 "We submit that, as in IICSA, the Inquiry ought not
2 to have regard to the opinions of Professors Constantine
3 and Lynch because they lack relevant expertise on the
4 prevailing childcare standards and practices, including
5 the social mores and legal framework applicable. This
6 includes opinions on selection, consent and legality.
7 It barely needs saying that it is vital for continued
8 public confidence in the Inquiry that the findings
9 should be recorded as robust and defensible based on the
10 adequate and relevant evidence available to it. It is
11 in that context that we say the issue of expert evidence
12 is critical.

13 "In a letter dated 19 July 2017 from IICSA to
14 Kingsley Napley LLP the solicitors to IICSA confirmed:

15 "'The concern of the Catholic Council for IICSA and
16 the Sisters of Nazareth is that the expert evidence
17 given to date in relation to standards is not as full or
18 as accurate as it should be. It is accepted that the
19 relevant expertise of Professors Lynch and Constantine
20 is not in childcare and, as a result, they will not be
21 asked by the Inquiry counsel to give evidence on Friday
22 21 July 2017 as to their opinion on what the relevant
23 standards of the day were; nor will they be asked to
24 adduce their opinion on the 'constructive knowledge'
25 issue. However, the experts are entitled to assist the

1 Panel with the results of their historical research that
2 bears on this topic ...'

3 "The Panel's conclusions on the issue are set out
4 from page 17 of IICSA's Child Migration Programmes
5 Investigation Report, the Inquiry's approach to the
6 standards issues to which the Inquiry's attention is
7 respectfully drawn. In reaching its conclusion the
8 Panel states at paragraph 32 on page 24 that:

9 "'We make it clear that these are our own findings
10 on the issues based on all the evidence we have
11 considered. We have not had regard to the opinion of
12 Professors Constantine and Lynch on these matters:
13 rather, we have considered the historical and research
14 material they have placed before us, alongside the
15 extensive archive material the Inquiry obtained from HMG
16 and the sending institutions.'

17 "The observations we make on the expert 'opinion'
18 evidence are quite separate from the ability of the
19 Inquiry to draw its own conclusions from the material
20 placed before it, including that found in the expert
21 reports."

22 LADY SMITH: You obviously won't be able to help me with
23 this, Ms Rattray, but I am left at something of a loss
24 as to why, if the Conference wish to make the points
25 about how, as they saw it, there were problems with the

1 experts' report that was put to IICSA, they haven't
2 drawn attention to what particular parts of that report
3 troubled them. Our report was written for us, for our
4 purposes, it is not a copy of the report that went to
5 IICSA, and I am very puzzled as to why they think that
6 it is appropriate to drop this into their closing
7 submission here.

8 MS RATTRAY: Indeed, my Lady.

9 LADY SMITH: But there it is. They are not here and I can't
10 ask them directly.

11 MS RATTRAY: "The Conference has also provided the Inquiry
12 with an historical narrative setting out its
13 understanding of Catholic involvement in the child
14 migration programme which was prepared following
15 consideration of all archival material available to the
16 Catholic Council for IICSA at that time.

17 "In addition, the Inquiry has heard evidence from
18 Mary Gandy, former General Secretary of the CCWC between
19 1992 and its closure in 2002, and Rosemary Keenan, Chief
20 Executive Officer of the Catholic Children's Society
21 (Westminster) covering a range of topics.

22 "This included discussion of relevant
23 contemporaneous material encompassing (i) the CCWC
24 minutes within which it is noted that assurances on the
25 standard of care received by child migrants in Australia

1 were sought, along with concerns raised regarding the
2 lack of reporting or aftercare and overall increasing
3 disquiet, (ii) the general absence of references to
4 abuse in the minutes of the child migration files, (iii)
5 historical documents relating to Scotland and (iv) the
6 relevant contemporaneous reports, for example, the
7 Ross Report and Moss Report.

8 "Both also provided evidence of the subsequent
9 response of Catholic institutions following the
10 existence of the child migration programmes coming to
11 national prominence in the late 1980s and early 1990s
12 and the substantial efforts made to assist former child
13 migrants. Their evidence spoke to (i) the establishment
14 of tracing, family reunion and support services,
15 including the Australian Child Migrant Project, (ii) the
16 establishment and completeness of the child migration
17 database, (iii) the co-operative role of the Sisters of
18 Nazareth in both sharing and checking source material
19 and financing the Australian Child Migrant Project and
20 other support services and (iv) an analysis of
21 the database with regard to demographics and what is
22 known about the child migrants.

23 "The Inquiry will also no doubt note the evidence of
24 the contributions made to other inquiries and
25 investigations, both in the UK and overseas. It is

1 hoped that the Inquiry will be assisted in its important
2 task by the documentation and evidence provided on
3 behalf of the Conference and other Catholic agencies.

4 "Although these events are now at some remove, the
5 Conference acknowledges that they remain very present
6 for those affected, with the consequences still being
7 felt by former child migrants and reverberating through
8 generations.

9 "The Conference wishes to conclude its closing
10 remarks by apologising unreservedly to all former child
11 migrants. In doing so, it seeks to reiterate previous
12 apologies, culminating most recently in the apology made
13 at IICSA by Bishop Marcus Stock, the Bishop of Leeds and
14 Vice-Chair of National Catholic Safeguarding Commission,
15 in which he expressed his sincere regret for the
16 inexcusable suffering of children, including in many
17 cases as a result of abuse, and the deep wounds that
18 abuse has left as adults.

19 "This apology, previous apologies and expressions of
20 regret are not limited and go to all aspects of child
21 migration. The Conference recognises the profound sense
22 of loss, including of kinship and identity, that many
23 former child migrants experienced.

24 "We pay tribute to those former child migrants who
25 have conducted themselves with such dignity in these

1 proceedings.

2 "As previously communicated to the Inquiry,
3 Bishop Stock would welcome the opportunity to meet
4 privately with any former child migrant who wishes to do
5 so. Both he and the Conference appreciate that some may
6 feel it is too little, too late or some may feel they do
7 not wish to have anything further to do with the
8 Catholic Church of England and Wales. Those views are
9 understood and respected, but he and the Conference
10 remain open to listening and learning.

11 "It is in that spirit that the Conference will
12 carefully consider the findings of the Inquiry and
13 lessons learnt as part of its commitment to learning
14 from the past and taking all appropriate steps for the
15 future to protect children from abuse."

16 My Lady, that concludes the submissions from the
17 Catholic Bishops' Conference of England and Wales, and
18 indeed concludes the submissions and evidence for this
19 hearing.

20 LADY SMITH: Thank you. I should perhaps just say something
21 about the note on the validity of consents that they
22 have offered, "they" being the Catholic Bishops'
23 Conference of England and Wales. Whilst noting that
24 I sought from organisations, including them, views on
25 the validity of consent to child migration, specifically

1 under reference to whether sending organisations, or
2 others including the Catholic Child Welfare Council,
3 could give valid consent, their answer is, put shortly,
4 that it is legally complex, they have not been able to
5 reach a concluded view, so I am left not knowing one way
6 or the other whether they accept that those consents
7 that were signed by the Child Welfare Council amounted
8 to valid consent or not.

9 I should perhaps add, in fairness to them, that they
10 do of course at the end, under reference to something
11 that IICSA said, accept that a child selected for
12 migration under any process, even where the appropriate
13 consent was given, would not thereby be protected from
14 being abused, which is of course a highly pertinent
15 observation.

16 Thank you for that, Ms Rattray.

17 It simply remains for me to thank everybody who has
18 participated in these hearings on this important case
19 study for coping with them, having started so many
20 months ago, having to be paused, and then restarting in
21 difficult circumstances in the middle of September.
22 Thank you for bearing with us, bearing with us through
23 the glitches in the technology, and thank you for all
24 the care and hard work that I can see has been put into
25 your participation.

1 We pause now, and the plan is that we resume
2 hearings on 17 November. Those will be a set of
3 hearings to examine the actions of Scottish Government
4 in relation to matters arising out of non-recent abuse
5 of children in care. My expectation is that we should
6 be able to complete those hearings by early December.
7 I'm not going to give you a specific date because it is
8 always difficult to know exactly when, and of course we
9 are having to make allowance for the possibility of
10 other COVID contingencies arising. But that is
11 the plan, so that is about four weeks from now we will
12 be back in the hearing room. Until then, I wish you all
13 well, and thank you again.

14 (11.40 am)

15 (The Inquiry adjourned)

16
17
18
19
20
21
22
23
24
25

INDEX

1	
2	
3	Closing submissions by MR LOVE1
4	
5	Closing submissions by MS DUNLOP10
6	
7	Closing submissions by MS O'NEILL16
8	
9	Closing submissions by MS TOWERS26
10	
11	Closing submissions on behalf of The45
12	Catholic Bishops' Conference
13	of England and Wales (read)
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	

- 1
- 2
- 3
- 4
- 5
- 6