SECOND REVISED REPORT OF THE NON STATUTORY INQUIRY INTO THE TRANSFER OF MR. PETER MCKENNA TO LEAS CROSS NURSING HOME

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CONTENTS

REPORT OF NON-STATUTORY INQUIRY INTO THE TRANSFER OF MR. PETER MCKENNA FROM ST. MICHAEL'S HOUSE TO LEAS CROSS NURSING HOME

1. INTRODUCTION

1.1 SUMMARY

1.1.1 This Non-Statutory Inquiry was established by the Health Service Executive to inquire into the transfer of Mr Peter McKenna from St. Michael's House to Leas Cross Nursing Home.

1.1.2 Mr. McKenna became a client of St. Michael's House in the mid-1970's. He lived at home with his mother and attended St. Michael's House day facilities from that time until he became a resident of St. Michael's House in the mid 1990's. From that time until August, 2000 he resided in a residential unit in a house on Warrenhouse Road, Baldoyle. He attended a day unit on Seatown Road, Swords.

1.1.3 During the course of 1999 staff in St. Michael's House began to be concerned that Mr. McKenna might be suffering from Alzheimer's Disease. Mr McKenna was assessed on 2 occasions during 1999 and was given a probable diagnosis of that disease following an assessment in November of that year.

1.1.4 Mr. McKenna's family were informed of this diagnosis at a meeting on the 31st January, 2000. There was discussion at this meeting of the likely development of the illness. There was also some discussion of the possibility that as the illness developed and Mr. McKenna's needs changed and increased he would have to be moved from Warrenhouse Road because this unit was a normal residential placement and appropriate nursing care was not available in the house. Given the nature of Alzheimer's it was likely that Mr. McKenna would reach a stage where he would need such care. Another house, The Beeches, was mentioned as a probable

onward placement when Mr. McKenna reached that stage. The Beeches was a St. Michael's House unit in which appropriate nursing care was available.

1.1.5 Mr. McKenna's condition deteriorated in the months following this meeting and in Spring/Summer of 2000 he began to have difficulties attending his day unit. In early July, 2000 his day unit placement was changed from Seatown Road to The Beeches. By then it appears to have been envisaged by both St. Michael's House and Mr. McKenna's family that when the time came for a change in Mr. McKenna's residential placement he would be transferred to The Beeches.

1.1.6 That point, when Mr. McKenna had to be moved from Warrenhouse Road, came at the end of August, 2000. During that month Mr. McKenna's condition deteriorated further and by the final week of the month he was not weight-bearing, required a hoist and was fully dependent for basic needs. It was decided by St. Michael's House at the end of August that he had to be transferred as a matter of urgency as Warrenhouse Road could no longer cater for his needs or provide the type and level of care that he required. It was decided to transfer him to Leas Cross Nursing Home the following week and to The Beeches for the intervening weekend. It appears that the move to a private nursing home external to St. Michael's House was required because there was no suitable place available within St. Michael's House. In particular, The Beeches, where it had been envisaged that Mr. McKenna would be transferred to when such a transfer became necessary, was full. There was a place available in The Beeches for the weekend because one of the residents was going home for a few days. Mr. McKenna was moved to The Beeches on Thursday, the 31st August, 2000.

1.1.7 Mr. McKenna's family opposed the move to an external private nursing home and in particular to Leas Cross. The family expressed this opposition on Thursday the 31st August or Friday, the 1st September and at a meeting with St. Michael's House on the 4th September at which they expressly told St. Michael's House that they were not consenting to Mr. McKenna being moved to the nursing home. A few days later

they informed St. Michael's House in correspondence that Mr. McKenna was a ward of court and that any change in his living arrangements could only be effected with the approval of the President of the High Court.

1.1.8 As a result of this objection, Mr. McKenna was not moved from St. Michael's House to Leas Cross during the month of September and he remained in The Beeches during that period. There was contact between St. Michael's House, and in particular its Chief Executive, and the family from approximately the middle of September in attempts to reach an accommodation. There was also contact between solicitors acting on behalf of the parties and between the parties (and solicitors acting on their respective behalf) and the Wards of Court Office. While a degree of agreement was reached it did not prove possible to give effect to this agreement and St. Michael's House considered that it was still necessary to transfer Mr. McKenna to Leas Cross. St. Michael's House had previously applied to the President of the High Court in this regard. This application was then heard on the 6th October, 2000. The President ordered that Mr. McKenna should be moved to Leas Cross.

1.1.9 On the 9th October, before Mr. McKenna was transferred to Leas Cross, he developed retention of urine and had to be brought to the Accident & Emergency Department of Beaumont Hospital where a catheter was inserted. He was discharged back to St. Michael's House later that day.

1.1.10 He was then transferred from St. Michael's House to Leas Cross on the 10th October.

1.1.11 Mr. McKenna passed away on the 22nd October. The cause of death as stated on Mr. McKenna's Death Certificate is septicaemia 12 hours, Chronic Urinary Retention 3 months, Alzheimers Dementia, Downs Syndrome, Severe Mental Handicap, Mitral Incompetence, Aortic Incompetence, Heart Block .

1.1.12 As stated above, this inquiry was established to inquire into Mr. McKenna's transfer to Leas Cross from St. Michael's House.

1.2 TERMS OF REFERENCE

1.2.1 I was appointed to conduct the inquiry on the 12th September, 2007. The terms of reference for the inquiry are:

> "Bearing in mind the establishment of the Statutory Commission of Investigation into the management, operation and supervision of Leas Cross Nursing Home and its terms of reference, the terms of reference for the non-statutory inquiry into the transfer of Mr. Peter McKenna from St. Michael's House to Leas Cross Nursing Home until the date of his death shall be as follows;
>
> 1. To examine all documentation in the possession of the Health Service Executive, Beaumont Hospital and St. Michael's House in relation to the decision to transfer Peter McKenna and up to the date of his death.
> 2. To examine the circumstances leading to the decision to transfer Peter McKenna to Leas Cross nursing home.
> 3. To provide a report on findings of fact and make recommendations specific to this case, to the HSE nominated person within 3 months from commencement of the work of the Inquiry"

1.2.2 During the course of the inquiry it became apparent that it would not be possible to complete the work of the Inquiry within three months of that date and it was agreed with the Health Service Executive that the report would be furnished by the 1st July, 2008. However, due to a considerable delay in obtaining some documents (which proved very relevant) it was not possible to complete the work of the inquiry by that date. There were then subsequent delays in obtaining the assistance of two individuals which further delayed the completion of the inquiry. The volume of documentation, the number of individuals who had to be interviewed and the volume of information provided to the inquiry greatly exceeded what had been anticipated

which in turn meant that the work of the inquiry took far longer than had been anticipated.

1.2.3 During the early stages of the Inquiry, St. Michael's House expressed the view that the terms of reference should be amended so that the inquiry could also consider relevant documentation in the possession of Leas Cross Nursing Home. I was of the view that while the Terms of Reference did not require me to do so, they were nonetheless broad enough to permit me to do so if I believed that such documentation might be relevant. In those circumstances, I was of the view that it was not necessary to seek an amendment of the Terms of Reference. The HSE agreed with my view including that I had the power to examine those documents if I considered such examination to be necessary. I confirm that during the course of the inquiry I did in fact form the view that an examination of such documents was necessary and did consider documents which had been in the possession of Leas Cross Nursing Home in addition to all other documentation that was furnished to me. As referred to above, unfortunately the necessity to consider the Leas Cross documentation led to a considerable delay in the completion of the work of the inquiry because there was difficulty in identifying to whom I should direct my request for those documents and therefore a delay in obtaining those documents.

1.2.4 During those early stages, St. Michael's House also submitted that the inquiry should avail of medical expertise and that the Terms of Reference should be amended to permit this. I did not believe that it was necessary for the Terms of Reference to be amended and believed that I was entitled to avail of such expertise if same proved necessary. The HSE agreed with this view also. Indeed, the HSE had agreed on my request, and prior to this submission by St. Michael's House, to provide funding for such expertise if I considered same to be necessary. I confirm that I did in fact avail of such assistance.

1.3 METHODOLOGY

1.3.1 Following my appointment, the parties named in paragraph 1 of the Terms of Reference were requested to furnish the documentation specified in the same paragraph of the Terms of Reference. Documentation was received from Beaumont Hospital, St. Michael's House and the Health Service Executive following these requests. Documentation was also received from Mr. McKenna's brother. Following receipt of the said documentation I commenced preparatory work of a consideration of that documentation in order to identify in general terms the issues involved and the individuals who might be able to assist the work of the inquiry. Following that consideration, I arranged to hold interviews with those individuals who appeared from that initial examination might be of assistance to the inquiry.

1.3.2 As will be appreciated, this was a non-statutory inquiry with no powers of compellability. In those circumstances every individual or organisation who assisted the inquiry, either through the provision of documents and/or information or participation in interviews, did so voluntarily. I would like to formally express my gratitude to each individual and organisation who provided such assistance.

1.3.3 The work of the inquiry formally commenced with the first interview on the 5th February, 2008. It had previously been agreed with the Health Service Executive that the time limit specified in the Terms of Reference would start to run from the date of the first interview.

1.3.4 The broad methodology in relation to the interview stage of the inquiry's work was that each individual was interviewed once in what may be termed a first round of interviews. The focus of the interviews during this first round and in particular the early interviews was based on information gleaned from the documentation which had been furnished by the parties. As this round of interviews progressed, later interviews were also based on information which had been gleaned in earlier interviews.

1.3.5 Having largely completed this first round of interviews, I examined the transcripts of those interviews and re-examined all of the documents in the light of the information which had been given during those interviews before holding a second round of interviews.

1.3.6 The purpose of that second round was broadly two-fold:

(i) To seek clarification of matters which had arisen from the documentation and during the first round and to attempt to fill any gaps in my information, and

(ii) To provide individuals or organisations with an opportunity to address criticisms or comments which could be perceived as criticisms made in relation to them during the course of the interviews. In order to facilitate this latter purpose such individuals and organisations were provided with a copy of the transcript or extract of the transcript containing such criticisms or perceived criticisms.

1.3.7 It must be emphasised that in fact there was not a rigid demarcation between what I have called the first round and the second round of interviews. Those terms are intended to convey that there was a series of interviews based for the most part on the documentation and whose purpose was to flesh out what I had distilled from that documentation and then a series whose purpose was as set out in the paragraph 1.3.6 hereof. Indeed, I also found it necessary to have further interviews with some individuals.

1.3.8 I had the assistance of a stenographer for almost every interview.

1.3.9 Before, during the course of and subsequent to that interview process, I examined and continued to examine and re-examine all of the documentation. Following the interviews, my examination of the transcripts and further examination of the documentation, I prepared a draft report containing, inter alia, my proposed findings

of fact based on the information contained in the documents and the interviews and my proposed recommendations based on those findings of fact. The proposed findings of fact, the draft report or extracts therefrom were then circulated to any person who was identified in or was identifiable from those proposed findings or the draft report. The purpose of doing so was to provide those parties with an opportunity to make submissions and/or representations in relation to the proposed findings, the draft report and the recommendations.

1.3.10 I then finalised my report following my consideration of all of the matters set out above including any representations and submissions.

1.3.11 It was submitted by St. Michael's House that the finalised report should not contain the names of individuals. I do not believe that there was particular legal reason why names could not be included or that there was a legal imperative to remove names from the report. However, nor do I believe that it is necessary to use names or that any particular interest is served by doing so. While the report would be easier to read if names were used, I do not believe that this is a good enough reason to include names. In those circumstances the report does not refer to any individuals by name (other than Mr. McKenna) but rather refers to them by title or position.

1.3.12 I delivered my final report to the LHO of the Health Service Executive on the 17th July, 2009. Immediately after I had delivered the final report, I received a further (third) submission from St. Michael's House. I took the view that as I had given ample time for submissions and had delivered my final report, it would be inappropriate for me to consider this submission unless I was asked to do so by the HSE. I informed the HSE that I had received this submission and of my view that, having delivered my final report, I should not consider this submission unless requested to do so by the HSE. I also indicated that I was prepared to consider the submission if the HSE wished me to do so. I was requested by the HSE to consider this submission. I then did so and revised my initial final report and delivered my

revised report on the 9th October, 2009. I deal with this submission at the relevant points in this revised report.

1.13.13 I was contacted in November 2009 by Mr. McKenna's brother in which he, inter alia, sought an opportunity to make a further submission. I replied by letter dated 26th November, 2009 in which I explained, as I had done in relation to St. Michael's House's late submission, that it would be inappropriate for me to consider a late submission unless specifically requested to do so by the HSE and that I was, in principle, prepared to do so if so requested by the HSE. Following further correspondence, I informed Mr. McKenna's brother by letter dated the 19th January, 2010 that the HSE had requested me to consider such a submission and I invited him to make same. Mr. McKenna's brother made such a submission on his own behalf and on behalf of his sister.

1.13.14 I considered this submission and made such revisions as were necessary to my Revised Final Report of the 9th October, 2009. Many of the points raised in the submission had already been dealt with in the Final Report and the Revised Final Report. I deal with this submission at the relevant points of this Second Revised Report.

1.3.15 I must emphasise that my report was finalised before publication of the Report of the Statutory Commission of Investigation into Leas Cross Nursing Home and was delivered the day after the publication of that report. I have not revised my report by reference to the publication or contents of that report save insofar as same was necessary in light of the late submissions from St. Michael's House and Mr. McKenna's family.

1.4 INTERPRETATION OF THE TERMS OF REFERENCE

1.4.1 It is clear from the Terms of Reference for the inquiry which are set out at paragraph 1.2.1 above that the focus of the inquiry was to be (and was) the decision to transfer Peter McKenna, the circumstances leading to that decision and his transfer. It was not intended to be (and was not) an inquiry into the care that was provided to Mr. McKenna in Leas Cross Nursing Home after his transfer from St. Michael's House or into the cause of Mr. McKenna's death or the circumstances leading to his death. That is clear from the express contents of the preamble to the Terms of Reference and of the Terms of Reference themselves.

1.4.2 Firstly, the preamble to the Terms of Reference required me to bear in mind the "establishment of the Statutory Commission of Investigation into the management, operation and supervision of Leas Cross Nursing Home and its Terms of Reference". The Terms of Reference for the Statutory Commission of Investigation are:

- "To examine the role and responses of such relevant parties as the Commission may determine, including the Health Service Executive (and previously the relevant health boards) in relation to

  a) the establishment, ownership, operation, management, staffing and/or supervision of Leas Cross Nursing Home (hereinafter "the nursing home");

  b) complaints made by or in respect of residents or former residents of the nursing home; and

  c) the transfer of residents from medical and residential care facilities to the nursing home.

- To provide to the Minister for Health and Children an interim report on the matters examined by the Commission within 6 months and a final report within 12 months of commencement of the work of the Commission".

1.4.3 While, of course, it is a matter for the Statutory Commission to interpret its own Terms of Reference, and I do not presume to do so, it appears to me to be likely that the Statutory Commission will, in the context of its examination of the "*... operation, management, staffing ... and/or supervision*" of Leas Cross Nursing Home and

"*complaints made by or in respect of residents or former residents ...*", be examining the care which was provided to residents, including Mr. McKenna, in Leas Cross Nursing Home. In light of the fact that the Terms of Reference for this inquiry positively require me to bear in mind the establishment of the Statutory Commission of Investigation into Leas Cross Nursing Home and its Terms of Reference, it could not have been intended that I should inquire into an area which is likely to be the subject of investigation by the Statutory Commission and which I am not expressly required to inquire into by the Terms of Reference for this non-statutory inquiry.

1.4.4 Secondly, the preamble to this inquiry's Terms of Reference describes the inquiry as being an "*inquiry in to the transfer of Peter McKenna from St. Michael's House to Leas Cross Nursing Home*". [Emphasis Added]

1.4.5 Thirdly, paragraph 1 of the Terms of Reference themselves expressly limits the inquiry to examining documentation in relation to the decision to transfer Peter McKenna to Leas Cross Nursing Home and paragraph 2 expressly limits the inquiry to examining "*the circumstances leading to the decision to transfer Peter McKenna to Leas Cross Nursing Home*".

1.4.6 It seems to me that when these three points are taken together, it is clear that the focus of this inquiry is the decision to transfer Peter McKenna, the circumstances leading to same and the actual transfer itself and not the care or standard of care which Mr McKenna received subsequent to his transfer.

1.4.7 I have considered the meaning and import of the phrases "*until the date of his death*", which is used in the preamble, and "*up to the date of his death*", which is used in the Terms of Reference themselves. In my view, these phrases do not extend the focus of the inquiry or the matters which were to be the subject of the inquiry. I interpreted these phrases as meaning that I was required to examine the facts and documentation up to the date of Mr. McKenna's death, that is, subsequent to the decision to transfer and subsequent to the actual transfer, insofar as they may

be relevant to the decision to transfer him, the circumstances leading to same and to his actual transfer and a consideration of those issues.

1.4.8 It seems to me that this simply reflects the position that a consideration of the decision to transfer Mr. McKenna cannot in fact be divorced from a consideration of what happened following his transfer. For example, and I stress that I give this as an example only, one issue which I have had to deal with is a guarantee from St. Michael's House in the period leading up to Mr McKenna's transfer that full clinical backup would be provided to Mr McKenna by St. Michael's House following his transfer. I was entitled to consider whether such backup was in fact provided in the period while he was in Leas Cross i.e. up to the date of Mr. McKenna's death, not for the purpose of examining or making findings of fact in relation to the level of care which he received but for the purpose of examining the validity of the decision to transfer insofar as that decision was based on the intention and guarantee to provide such backup. I stress that this is given as an example only and I do not express any view in this regard at this stage.

1.4.9 Thus, while I have considered matters which arose after Mr McKenna's transfer and up to the date of his death, I have not made any findings in relation to them except insofar as they are relevant to the circumstances leading up to the transfer, the decision to transfer and the actual transfer itself.

1.4.10 As will be apparent from the summary of the background which is set out at section 1.1 above, St. Michael's House initially decided that Mr McKenna should be transferred from St. Michael's House to Leas Cross in or about the 31st August, 2000. The point was made on behalf of St. Michael's House that in fact the actual decision to transfer Mr. McKenna was made by the High Court (on the 6th October, 2000) and that St. Michael's House's decision of the 31st August, 2000 was a decision to propose Mr. McKenna's transfer to Leas Cross. I accept the distinction being drawn between a decision to transfer and a decision to propose a transfer. Nonetheless, I think it is clear that St. Michael's House's decision of the 31st August

was to the effect that from St. Michael's House's point of view Mr. McKenna should be transferred to Leas Cross and I therefore refer to the proposal/decision as a "decision".

1.4.11 Due to the opposition of Mr McKenna's family, he was not transferred for a number of weeks. On the 6th October, 2000 the matter came before the President of the High Court exercising his wardship jurisdiction who ordered that Mr McKenna should be transferred from St. Michael's House to Leas Cross Nursing Home. Mr McKenna was then transferred on the 10th October, 2000.

1.4.12 In those circumstances, and particularly in light of St. Michael's House's point that the actual decision that Mr. McKenna had to be transferred was made by the High Court, the Terms of Reference must be interpreted as requiring that the inquiry had to concern itself with the St. Michael's House's decision of the 31st August, 2000, the decision of the High Court of the 6th October, 2000 and the St. Michael's House decision of the 10th October to actually transfer Mr. McKenna to Leas Cross on that date (albeit with the authority of the High Court) and the circumstances leading to all three decisions. In fact those three events, i.e. the initial decision, the order of the President and the decision and actual transfer on the 10th October, 2000, must be seen as part of one decision-making process and decision. In my view, the decision was only finally made at the point when Mr McKenna was actually transferred. I believe that this view is supported by (a) St. Michael's House's own position that while during this period they had no alternative, they were nonetheless constantly considering Mr McKenna's case and how his needs should and could be accommodated, (b) the fact that St. Michael's House describe their decision of in or about the 31st August, 2000 as being a proposal that Mr McKenna should be transferred rather than a decision to transfer, and (c) the fact that St. Michael's House say that the decision to transfer was made not by St. Michael's House, but by the President of the High Court.

1.4.13 It seems to me that the Terms of Reference, properly interpreted, required a consideration of all of those events as they are, in my view, all part of the same decision and decision-making process.

1.5 FRAMEWORK

1.5.1 The general approach adopted in the report is chronological, beginning with Mr. McKenna's diagnosis with Alzheimer's Disease and following through to his actual transfer to Leas Cross and his death in Beaumont Hospital. However, the approach is not linear and the report frequently departs from the chronological framework and deals in detail with issues which arise. For example, when discussing the proposal that Mr. McKenna should be transferred to Leas Cross, a private external nursing home, I depart from the chronological approach to consider how St. Michael's House came to use private nursing homes and the existence of a debate within St. Michael's House about the appropriateness or acceptability of using private nursing homes in general.

1.5.2 Section 2 of the report is entitled "Background" and to a large extent sets the context within which the events the subject of the inquiry must be placed and are placed in this report. The section describes, in general terms, St. Michael's House and the services which it provides and how it was funded and Mr. McKenna's general background and his diagnosis with Alzheimer's. It concludes with a description of Mr. McKenna's condition during 2000 and specifically at the end of August, 2000. The section also deals with some specific issues which are significant to a full appreciation of the findings in this report. The grave funding and residential crisis which St. Michael's House faced throughout the 1990's and up to late 2000 and how St. Michael's House attempted to deal with same is considered and described. The section also deals with what plans were put in place for when Mr. McKenna's condition deteriorated to a stage when he needed to be transferred from Warrenhouse Road.

1.5.3 Section 3 deals with the decision which was made by St. Michael's House at the end of August that Mr. McKenna should be transferred from Warrenhouse Road to The Beeches for the weekend and to Leas Cross the following week. It identifies the context of and circumstances leading up to that decision (both in terms of St. Michael's House and Mr. McKenna's personal circumstances) including the process by which it was made, who made the decision and what was decided. This section, during the course of doing so, also considers the use of nursing homes by St. Michael's House in general and the debate within St. Michael's House in relation to same, and how specific nursing homes came to be used and to be considered as suitable by St. Michael's House.

1.5.4 Planning and communication and consultation with Mr. McKenna's family are considered in section 4. Communication and consultation are dealt with under a variety of headings which generally relate to specific time periods. For example, the section considers communication with the family prior to St. Michael's House's proposal that Mr. McKenna should be transferred to Leas Cross and then considers communication immediately following this proposal being made known to the family. The section also deals specifically with issues which arose during contacts and correspondence between the family and Leas Cross, such as an inspection of Leas Cross by Mr. McKenna's family, St. Michael's House's systems for providing clinical backup to its clients in private nursing homes and for monitoring and supporting the said nursing homes, and the provision of psychological and social work support to the family.

1.5.5 Section 5 deals with the Wards of Court hearing before the President of the High Court. It specifically deals with the documentary and oral evidence that was given to the Court and deals with an issue of particular controversy, that of the existence of previous complaints about Leas Cross.

1.5.6 While the Court on the 6th October ordered that Mr. McKenna should be transferred to Leas Cross, he was not actually transferred until the 10th October. Section 6 deals with the events and circumstances between the 6th and 10th October, including Mr. McKenna's attendance at Beaumont Hospital Accident & Emergency Department on the 9th October with retention of urine.

1.5.7 Section 7 deals with the actual transfer of Mr. McKenna to Leas Cross on the 10th October and certain issues which arise therefrom. It considers the handover of Mr. McKenna's care, his attendance at Beaumont Hospital Out-patients Department on the 12th October, his non-attendance at a further appointment there on the 16th October, the efficacy in Mr. McKenna's specific case of St. Michael's House's system of monitoring and supporting the private nursing homes which it used, St. Michael's House's assessment of the suitability of Leas Cross for Mr. McKenna and the question of whether Leas Cross was suitable for Mr. McKenna.

1.5.8 Section 8 summarises my principal findings of fact. This must not be read in isolation. My findings are properly read as part of the report as a whole and, indeed, the summary should only be read when the report as a whole has been read and considered because the report contains further secondary findings and the basis for the findings of fact which are set out in section 8.

1.5.9 Section 9 sets out my recommendations.

1.5.10 The above is simply intended to give a flavour of the format of this report and the areas which are covered in the different sections. The descriptions of the different areas are not intended to be exhaustive.

2. BACKGROUND

2.1 ST. MICHAEL'S HOUSE

2.1.1 St. Michael's House is a large service provider which provides services to persons with an intellectual disability. Those services include specialist clinical, educational, training, employment, residential, respite and recreational support services.

2.1.2 It operates according to a community-based model whose ethos is to enable persons with intellectual disability to live ordinary lives in the community. St. Michaels House formulated a "Seven Year Plan 1993-1999" which stated St. Michael's House mission to be:

> "St. Michael's House is committed to providing an environment where people with a mental handicap will be educated, will work and participate in leisure activities in community settings and will enjoy experiences, opportunities and lifestyle similar to their peers."

2.1.3 It was founded in the 1950's and has obviously grown very considerably. It currently employs in excess of 1000 people and provides services to approximately 1500 people ranging from very young babies to very elderly people. Its vision is to provide services to people "from cradle to the grave" or as was described to this inquiry "the organisation is focused on supporting all the different stages of the person with the disabilities in order to ensure that they can access a full life and realise their potential."[1].

2.1.4 The services provided by St. Michael's House broadly comprise day services, residential services and respite care. St. Michael's House has explained that of the 1500 people to whom services are currently provided approximately 400 are in residential care. Given that St. Michael's House is a community-based model residential care is provided, for the most part, in ordinary houses in the community

[1] Interview with the Chief Executive Officer and the Deputy Chief Executive Officer, 28th February, 2008.

which differ from their neighbours only in that they are sometimes adapted to cater for physical disabilities.

2.1.5 Originally, St. Michaels House relied on fundraising efforts to fund such services but funding is now provided by the State or State agencies such as the Health Service Executive. St. Michael's House is of the view that the funding it receives is insufficient to provide all the services that it would like or is expected to provide but in the course of our discussions pointed to the 1980's and 1990's as a period of acute lack of funds and resources which presented a crisis situation for St. Michael's House.

Resources and Residential Crisis

2.1.6 St. Michael's House has described the difficulties which it faced during the 1980's and into the 1990's. I do not propose to enter into the detail of the funding which was provided either to St. Michael's House or, indeed, to health service providers nationally during the 1980's. I do not think that there can be any serious dispute that health services in general faced a shortage of funding during that decade and, in particular, the latter part of the decade. This obviously presented difficulties for all health service providers during that period. I proceed on the basis that there was a shortage of funding provided to St. Michael's House at that time.

2.1.7 It appears that these difficulties were exacerbated in the case of St. Michael's House in that while it was an organisation which had initially only provided day services, by the 1980's it was also providing residential services.

2.1.8 This appears to have come about due to the aging population of St. Michael's House's service users and, indeed, their parents. As will be recalled, St Michael's House was founded in the 1950's. This meant that many of the people who came into the organisation in the early years were aging by the 1980's. More significantly from the point of view of the necessity for residential services is the fact that their

parents were also aging and, in some cases, dying. In some cases, this meant that the service users had no one to care for them and necessitated them being provided with residential care. This need for residential services had become so acute by 1993 that the Board of St. Michael's House was moved to state in its annual report for that year that:

> "Because of the current level of unfulfilled needs, there is extreme deprivation, suffering and frustration not only for the clients involved but also for their relatives and carers. The implementation of the plan will provide services for all of those on the waiting list for day services. However, St. Michael's House will be unable to meet all the requests for residential care and the top priority waiting list for residential care will grow from 168 people in 1993 to 220 people in 1999".

2.1.9 It is clear that even by 1993 St. Michael's House had identified that it faced severe difficulties in providing residential care for a large number of its service users who required such care. This statement was made in the context of the Seven Year Plan which was put in place in 1993.

2.1.10 This plan itself highlighted that even if the organisation were funded to open a residential house every 7 weeks for the plan period, this would not address the level of demand for residential care. The plan also outlined overwhelming demand for residential services from desperate families and stated that St. Michael's House needed urgent help from the Government and other agencies to resolve the situation.

2.1.11 I have been informed that St. Michael's House formally advised the Department of Health of this situation and of St. Michael's House's inability to address the level of demand for residential services by forwarding this Annual Report and the Seven Year Plan to the Department. I have also been informed that there was ongoing and constant lobbying of Government by St. Michael's House in the years following 1993 in an attempt to secure adequate funding. The fact of extensive lobbying is clear from the documentation which was furnished to the inquiry by St. Michael's House.

2.1.12 Notwithstanding these steps, the difficulties which were identified in 1993 continued to deepen throughout the 1990's and these difficulties presented what has been described by St. Michael's House as "*a residential crisis*" from 1993 onwards. St. Michael's House simply did not have sufficient residential places for the number of its service users who required such a placement and the number of new residential places for which it received funding during the 1990's did not come anywhere close to meeting this demand. For example, the 1993 Annual Report identified that there were 168 people urgently in need of residential care in 1993. I have been told that over the next 3 years, 1994 to 1996, the organisation received funding for 26 new residential places. At the same time, more people were added to the number who required residential placement and this included people who became "*out of home*" where, for example, their families could no longer cope or where both parents had died and there was no other carer available.

2.1.13 This led to St. Michael's House having to maintain a waiting list and, in fact, they have described operating two waiting lists, that is, a priority waiting list and a contingency waiting list. By 1997 there was a total of 493 people on the residential waiting list and, of those, 280 were on the priority waiting list but the organisation was also aware that there were some service users who were not on the residential waiting list but who could require to be given a residential placement at very short notice where, for example, their parents were very elderly.

2.1.14 These figures presented a severe and grave difficulty for St. Michael's House in seeking to address the "unfulfilled needs, extreme deprivation, suffering and frustration" referred to in the 1993 Annual Report. These difficulties were faced across the range of demand for residential services including from service-users who were developing or suffering from Alzheimer's Disease.

2.1.15 St. Michael's House had to attempt to address these difficulties across the range of demand for residential services in a variety of ways. Firstly, it sought to use its

internal resources in a flexible manner. In its submissions to this inquiry St. Michael's House identified the following steps as steps which were taken to address this residential crisis:

- Blocking respite beds. As there was a limited number of respite beds, when they were blocked this caused extreme tension for families looking for respite.
- Filling the bed of a client in a residential house who had gone home for the weekend.
- Putting beds on the floor in residential and respite houses on occasion.
- Development of short term adult fostering service.
- Expansion of break away short term children fostering service.
- Residential holiday camps in a range of areas during the summer months.
- Opening a weekend respite house midweek for emergency breaks.
- Getting staff to work late in their day services.
- Expansion and development of Link (St. Michael's House individual support service).
- Researched suitable nursing homes.
- Researched and utilised Tipperary – (private respite service)".

2.1.16 Some of these internal solutions created other difficulties for the organisation. For example, the use of respite beds as residential placements meant that the number of respite places was reduced which then meant that families could not avail of respite to the extent that they wished or needed. This in turn put extreme pressures on families and on occasions probably led to that family being unable to cope and to the particular service user then having to seek a residential placement.

2.1.17 St. Michael's House also used external services including private disability services and nursing homes and other services which could be called health board or statutory services.

2.1.18 I accept that St. Michael's House faced very great difficulties and that there was a "*residential crisis*" during this period which continued up to the period with which this inquiry is concerned.

2.1.19 I have been told that in the late 1990's an indication was given that greater provision for intellectual disability services would be made by Government. It appears that this led to an expectation in St. Michael's House that funding was going to become available for residential placements. It also appears that in the early part of 2000, St. Michael's House began gearing up to avail of the anticipated funding.

2.1.20 A consultant was appointed by the Department of Health to produce a report on the requirements of St. Michael's House. This report, which became known as the "*Harmon-Wolfe Report*", identified the demands which were being placed on St. Michael's House and the extreme shortage of funding which was being provided. I understand that part of the background to the *Harmon-Wolfe Report* was the proposed transfer of responsibility for funding for St. Michael's House from the Department of Health to the Health Board. I do not propose to deal with the details of the *Harmon-Wolfe Report* save to say that it identified very significant shortage of resources being experienced by St. Michael's House and recommended the provision of such resources.

2.1.21 St. Michael's House was provided with funding for 140 new residential places in the period 2000-2001. St. Michael's House put a huge effort into using this funding and opened a new residential unit approximately every 7 weeks during this period. This appears to have alleviated the crisis which had been experienced by the organisation through the 1990's. However, I accept that it had not alleviated that

crisis sufficiently by August-October 2000 and that during that period St. Michael's House continued to experience a severe shortage of residential placements.

2.1.22 St. Michael's House has informed the inquiry that at the relevant time, August, 2000, there were 20 clients out of home and 100 clients being rotated through 30 respite beds.

2.1.23 In my view, the issues and events the subject of this inquiry must be seen against the background of and in the context of this lack of resources and, in particular, the 'residential crisis'. This crisis meant that St. Michael's House's options were extremely limited when it had to make decisions in relation to Mr. McKenna in the period August-October, 2000.

2.2 PETER MCKENNA

General

2.2.1 Peter McKenna was born in 1940. According to his brother he was placed in a home in County Louth while he was still very young. However, his mother was dissatisfied with the conditions there and brought him home to care for him at home. Mr. McKenna's father had died shortly after his birth and until his mother remarried in 1944, she raised and cared for Mr. McKenna alone. After his mother's second marriage, he continued to be cared for at home as part of the new family and was reared with his siblings as they came along.[2]

2.2.2 In 1976, Mr. McKenna started attending day services provided by St. Michael's House. He initially attended Ophally Lodge in Harold's Cross.

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[2] Interview with Mr. McKenna's brother, 7th February, 2008, p. 6

2.2.3 In the middle 1990's Mr. McKenna became a resident of St. Michael's House. As referred to above, St. Michael's House is a community-based model which to a very great extent provides its services, including its residential services, in the community. For the most part those residential services are provided in ordinary houses in the community in which a small number of service users live with members of staff. Mr. McKenna became a resident of one such house on Warrenhouse Road, Baldoyle.

2.2.4 Initially he continued to receive his day service in Ophally Lodge until it was changed to Seatown Road in Swords. Mr McKenna continued to live in Warrenhouse Road and attend Seatown Road until quite shortly before his death.[3]

2.2.5 Mr. McKenna's brother has expressed the view that Mr. McKenna's family were delighted with the care Mr. McKenna had received from St. Michael's House while attending its day services from 1976-1995 and so they agreed when St. Michael's House offered Mr. McKenna a residential placement. Indeed, he said that the family "*were very pleased he would go to St. Michael's House*"[4]. As it transpired, the family were also very pleased with the care which Mr. McKenna received in his residential placement and, indeed, with the life which Mr. McKenna had there. He described Mr. McKenna's quality of life in very vivid terms when he said:

> "When he went into St. Michael's House as a resident the care he got was exquisite, exquisite. They gave him a new lease of life. He was now making decisions about his own lifestyle, what he would have for his dinner, the menu, what he liked and what he didn't like. He never got those things at home amongst ourselves. They used to ask him would he like to go to a play, would he like to go to the cinema. He never got those choices when he was at home. So they gave him a new lease of life and they treated him particularly well. We were really well, well pleased."[5]

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[3] He continued to attend Seatown until early July, 2000 and continued to live in Warrenhouse Road until 31st August, 2000.

[4] Interview with Mr .McKenna's brother, 7th February, 2008, p. 7

[5] Interview with Mr. McKenna's brother , 7th February, 2008, p. 8

"It was a terrific set up, a marvellous set up. He used to go out to the airport for drives. He had a great lifestyle out there".[6]

2.2.6 Mr. McKenna's sister, said:

"He absolutely loved the place. As I said, I must not say anything derogatory, he had a wonderful, wonderful life in St. Michael's House, absolutely, all it."[7]

2.2.7 Indeed, Mr. McKenna, appears to have thrived while living in St. Michael's House and appears to have been well-liked and popular. He has been described by various people in very fond terms. For example, one of the care workers in his residential placement, Warrenhouse Road, described him as:

".....probably one of the most entertaining, funniest people you would ever, ever come across. Great humour, great ways of engaging."[8]

2.2.8 The Residential Manager for Warrenhouse Road at the time, described Mr. McKenna in the following terms:

"Like Peter was a character and he got on very well with everybody. He tended to act, he would mime and he had a great sense of humour and he would focus on staff."[9]

Diagnosis and Prognosis

2.2.9 As a result of the manner in which the services within St. Michael's House were organised during the relevant period, that is, from when Mr. McKenna went into Warrenhouse Road to his death, two different clinic teams had an input into his care, the day unit team and the residential unit team.

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6 Interview with Mr. McKenna's brother , 7th February, 2008, p.11
7 Interview with Mr. McKenna's sister, 11th February, 2008, p. 6
8 Interview with care worker, 11th April, 2008, p. 8
9 Interview with the Residential Manager of Warrenhouse Road, 28th March, 2008, p. 14

2.2.10 It appears that during 1999 Mr. McKenna's family and staff in St. Michael's House began to suspect that Mr. McKenna may be developing dementia.

2.2.11 There had previously been a psychological assessment carried out by the psychologist who was responsible for Mr. McKenna in his day unit and the psychologist responsible for him in the residential unit, in September, 1997. My understanding is that this assessment was not carried out in response to any specific concerns about Mr. McKenna but rather was a routine assessment because of Mr McKenna's age.[10]

2.2.12 There was a further psychological assessment carried out by the psychologist responsible for Mr. McKenna in the residential unit on the 8th February, 1999. This assessment appears to have been in response to some concerns that people were raising. That psychologist said:

> "Then I assessed him in February 1999, and at that stage people were concerned about his memory and that he seemed to becoming somewhat disorientated. However, the assessment that I did didn't show up any major features, as far I could see."[11]

2.2.13 Notwithstanding this finding in February, staff concerns that Mr. McKenna might have Alzheimers were raised during the Summer, 1999. The consultant psychiatrist on the Warrenhouse Road team, noted on the 30th June, 1999 that there were concerns that Mr. McKenna might have Alzheimer's because of a general deterioration in his memory, his skills and general slowing down. The psychiatrist stated during the course of an interview that often *"with people with Down's Syndrome this diagnosis would be made over a period of some time of observation..."* and that *"....it is a diagnosis that is sometimes made over a series of*

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[10] Interview with the psychologist responsible for Mr. McKenna in his day unit, 25th March, 2008, p.15 and interview with the psychologist responsible for Mr. McKenna in Warrenhouse Road, 3rd June, 2008, p.6.

[11] Interview with the psychologist responsible for Mr. McKenna in Warrenhouse Road, 3rd June, p. 6

assessments from the time that somebody shows evidence of cognitive decline".[12] It is not surprising, therefore, that while the assessment in February, 1999 did not "*show up any major features*" concerns continued to be raised.

2.2.14 Mr. McKenna was further assessed by the same psychologist responsible for Mr. McKenna in Warrenhouse Road in November, 1999 and she prepared a psychological report dated the 16th November, 1999. She concluded in that report:

> "The purpose of the current assessment was to compare scores across a broad range of abilities and compare them with baseline scores established 9 months ago. The increased number of early and middle stage features of dementia as measured by the DSDS along with the presence of 5 cognitive signs suggest the presence of dementia. Mr. McKenna's memory has deteriorated with the [illegible] of autobiographical material which tends to be overlearned. With regards to adaptive abilities, Mr. McKenna's daily living skills have deteriorated the most, while his communication and social skills have deteriorated only slightly.
>
> Mr. McKenna's key worker, [.....], noted that he has been less anxious recently and felt this might be due to the fact that staff in the house have learned to accommodate Mr. McKenna's increasing difficulties within their routine.
>
> It is recommended that Mr. McKenna be continually assessed at 6 – 9 month intervals to track changes in his ability level.
>
> It is also recommended that a case conference be held with all relevant parties to discuss changes which may need to be made to Mr. McKenna's routine of care to accommodate his difficulties, particularly in the area of self care".

2.2.15 That psychologist said during the course of an interview that:

> " ... at that stage he appeared to have progressed very quickly indeed, and was indeed showing some middle stage features. At that point we made a definite diagnosis of the Alzheimer's disease, based on the deterioration shown."[13]

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12 Interview with the consultant psychiatrist on the Warrenhouse Road team on the 5th February, 2008

13 Interview with the psychologist responsible for Mr. McKenna in Warrenhouse Road, 3rd June, p. 8

2.2.16 She also said:

> "I would think even from the time he was diagnosed, and possibly even before in that I did an assessment in February 1999 and then the next assessment I did was on the 11th, that was only about less than ten months, and he had declined fairly rapidly at that stage, you know. That would be unusual even; very unusual to see that degree of decline."[14]

2.2.17 This diagnosis appears to have led to a meeting on the 31st January, 2001. This meeting is referred to in St. Michael's House's submissions to this inquiry and in a document which I understand was prepared by Mr. McKenna's brother shortly after the meeting. The St. Michael's House submission states:

> "On January 31st 2000 [.....] (Peter's brother and sister) met with the clinic team and were taken through the psychological report which diagnosed Peter's Alzheimers. The family advised the team they were aware of Peter's deterioration and had seen similarities with their mother who had died of Alzheimers disease".

2.2.18 Mr. McKenna's brother's document records that this meeting was attended by the said consultant psychiatrist, the psychologist, the head of unit of Warrenhouse Road and Mr. McKenna's brother and sister. This document records, inter alia, the following:

> "... Warrenhouse staff will become more flexible as regards his new needs and requirements, and so long as it is practical, feasible and beneficial to Peter, he will be left there among his little pals and familiar surrounds. Nursing care will be provided on pro-tem basis for Peter and other client ... In the event that assessment of nursing needs calls for full-time care, Peter will likely be transferred to The Beeches, Donaghmede, which is a suitably modified house (not hospital/nursing home or institution) with full scale nursing facilities ...".

[14] Interview with he psychologist responsible for Mr. McKenna in Warrenhouse Road, 3rd June, p. 17

2.2.19 Mr. McKenna's sister stated very clearly that she was not at this meeting[15]. None of the other parties who are recorded as having attended this meeting have a clear recollection of the fact of the meeting having taken place or of what was discussed at the meeting. Nonetheless, I am of the view that it is safe to conclude that the meeting did in fact occur. I have reached this view in circumstances where the meeting is referred to by St. Michael's House in their submissions as having taken place, where none of the parties who are recorded in the documents as having attended dispute that such a meeting took place or that they attended same (expect Mr. McKenna's sister), where I have been furnished with a note of the meeting which Mr. McKenna's brother has informed me was prepared immediately or very shortly after the meeting, and in particular where it seems to me that such a meeting would not be unusual, and indeed where the absence of such a meeting following a diagnosis of Alzheimers would in fact be unusual.

2.2.20 I have also had to rely on the documents submitted to the inquiry to ascertain the purpose and contents of that meeting. In summary, the documents (St. Michael's House submission and Mr McKenna's brother's note) taken together record that the family were informed that Mr. McKenna had been given a likely diagnosis of Alzheimer's and that they were advised of the likely course of the condition.

Planned Onward Placement

2.2.21 It is also recorded in Mr. McKenna's brother's note of this meeting that there was a discussion of an onward placement for Mr. McKenna if his needs became such that Warrenhouse Road could not cater for those needs. In particular, Mr. McKenna's brother's note records that:

> "In the event that assessment of nursing needs calls for full time care Peter will likely be transferred to The Beeches, Donaghmede, which is a suitably modified house (not hospital/nursing home or institution) with full scale nursing facilities."

[15] Interview with Mr. McKenna's sister, 1st July 2009

2.2.22 In light of the events that followed in August – October, 2000 and the impasse which arose between Mr. McKenna's family and St. Michael's House, this reference to The Beeches not being a "*hospital/nursing home or institution)*" is obviously of significance and suggests that even at that stage it was a matter of concern to the family that Mr. McKenna should remain within St. Michael's House.

2.2.23 It is unfortunate that none of the parties have a direct recollection of what was discussed at this meeting. However, I conclude on the basis of the documents that there was a discussion about where Mr. McKenna would be likely to move to in the event that his needs were such that Warrenhouse Road could no longer cater for them. I also find that The Beeches was identified as the likely onward placement. I am satisfied that it is safe to reach these conclusions for the following reasons.

(i) Firstly, it is natural and to be expected that there would be a discussion of how and where a person such as Mr. McKenna who has just been diagnosed with Alzheimer's might be cared for in the future.

(ii) Secondly, I am assured by Mr. McKenna's brother that his memo of this meeting was prepared immediately or very shortly after this meeting and I therefore believe that I can rely on it as a reasonably accurate account of that meeting, particularly where the substance of its contents have not been disputed by any individual from St. Michael's House.

(iii) Thirdly, a Regional Director in St. Michael's House, who at the time was Divisional Manager in charge of residential and respite services (referred to hereinafter as "the Divisional Manager"), while not a party to the early discussions with the family or to this meeting, volunteered that "*there was an indication that if there was a place suitable when the appointed time came that he might move to The Beeches*"[16].

[16] Interview with the Divisional Manager, 27th March, 2008

(iv) Fourthly, Mr. McKenna's brother and St. Michael's House have furnished notes of interactions between Mr. McKenna's brother and St. Michael's House which Mr. McKenna's brother says he prepared contemporaneously with these interactions. One note in March records that the Head of Unit of Warrenhouse Road was going to arrange a visit to The Beeches in order for the family to inspect it. Another note, from May 2000, records that The Beeches day unit would be starting up in mid July and that "*... as possibly that Peter will be ending up in The Beeches, it will be an opportunity for him to be acquainted with place*".

(v) Finally, and most importantly, subsequent events, including (a) an internal discussion within St. Michael's House as to whether Mr. McKenna should fill a vacancy in The Beeches in March/April, 2000 and (b) Mr. McKenna's transfer from Seatown Road Day Unit to The Beeches Day Service during the day (both of which I refer to in detail in below), indicate that St. Michael's House were proceeding on the basis that it was intended that The Beeches would be the likely onward placement should one be necessary. This is consistent with the record of the meeting of the 31st January, 2000 contained in the documents.

2.2.24 In those circumstances, I find that The Beeches was identified as the likely onward residential placement for Mr. McKenna. However, that intention or plan must have been subject to the availability of a place in The Beeches if and when it got to a stage where Mr. McKenna needed the type of care which was available in The Beeches. The identification of The Beeches as the likely onward placement by St. Michael's House, whether specifically at that meeting of the 31st January, 2000 or through St. Michael's House's conduct in discussing Mr. McKenna's transfer there in March, 2000 or changing Mr. McKenna's day unit from Seatown Road to The Beeches, can not be taken as having been a guarantee that a place would be available in The Beeches or that Mr. McKenna would definitely be transferred there

when the time came when he required nursing care. The intention or plan must have been subject to a place being available and in my view the expression of an intention that Mr McKenna would be accommodated in The Beeches could only be understood as meaning that he would be transferred there if a place was available when he reached the point of having to be moved from Warrenhouse Road. This point was implicitly made by the Divisional Manager. Although the Divisional Manager was not a party to these discussions with Mr. McKenna's family, I think his phraseology used in the quote above and his further statement that "*... It was hoped at that point that when Peter required a place that we would be able to accommodate him and the place that was named at that time was The Beeches...*"[17] is consistent with my understanding.

2.2.25 In my view this intention or proposal must therefore be seen in the context of the resources, both physical and financial, which were available to St. Michael's House at that time which I have dealt with in paragraphs 2.1.6 – 2.1.23.

2.2.26 Mr. McKenna remained in Warrenhouse Road during the Spring and Summer, 2000. He also continued to attend Seatown Road as his day unit through the Spring and early Summer although there were some difficulties connected with this. Mr. McKenna suffered from hallucinations and incontinence during the Spring but his condition, while deteriorating, appears to have been reasonably stable during that period.

2.2.27 As referred to above, I have learnt during this inquiry that a place in fact became available in The Beeches when one of its residents died in April, 2000[18]. I was informed that consideration was given at that stage to moving Mr. McKenna into The Beeches but that it was decided not to do so and to continue to care for him in Warrenhouse Road in light of the fact that his condition was stable and he had not deteriorated significantly. St. Michael's House emphasised that a guiding principle

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17 Interview with the Divisional Manager, the 27th March, 2008.
18 Interview with the Head of Unit of The Beeches, 2nd April, 2008

when dealing with an individual with Alzheimer's disease is stability and continuity and that the individual should be kept in familiar surroundings for as long as possible. This is reflected by the comments of a consultant in geriatric medicine, whose expertise I availed of following the submission by St. Michael's House that I should seek expert medical assistance and for whose assistance I am very grateful. That consultant made the point that moves from one placement to another "*are quite deleterious to patients with dementia*" and that "*in general a move in someone who is already going downhill tends to disorientate them an accelerates it*"[19].

2.2.28 It does appear that St. Michael's House was seeking to maintain Mr. McKenna in Warrenhouse Road at that stage. The Head of Unit of Warrenhouse Road told the inquiry that:

> "...our focus was really on trying to maintain Peter's independence and we would have been very aware of, you know, the whole idea of consistency and continuity...."[20]

2.2.29 Specific training in relation to managing Alzheimer's had been provided to staff in Warrenhouse Road in Spring 2000[21].

2.2.30 I can not identify precisely who considered whether to offer this place to Mr. McKenna and decided that it should not be offered to him. The Chief Executive of St. Michael's House, referred to the case conference team in Warrenhouse Road discussing it.[22] However, the Head of Unit of Warrenhouse Road does not remember being included in such a discussion [23]. The views of the Head of Unit of The Beeches in relation to this issue do not appear to have been canvassed. She stated that she had no recollection of any discussion in relation to Mr. McKenna moving into that bed in The Beeches[24]. It is clear that Mr. McKenna's family were

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19 Interview with consultant in geriatric medicine, 10th December, 2008, p. 12
20 Interview with the Head of Unit of Warrenhouse Road, 31st March, 2008, p. 7
21 Interview with Mr. McKenna's key worker, 23rd June, 2008, p. 6
22 Interview with the Chief Executive of St. Michael's House, 15th July, 2008, p. 101
23 Interview with the Head of Unit of Warrenhouse Road, 31st March, 2008, p.7
24 Interview with the Head of Unit of The Beeches, 2nd April, 2008, p.7

not consulted about this vacancy and whether Mr. McKenna should move to The Beeches[25]. The Residential Manager for both Warrenhouse Road and The Beeches, was not aware of these discussions[26].

2.2.31 There were good reasons why Mr. McKenna should not have been moved at that time. There was a valid and reasonable basis for that decision specifically referable to Mr. McKenna's condition at that time in that stability and continuity are important for people with Alzheimers disease.

2.2.32 Furthermore, I have been informed that there was another service user "*whose need was either greater or where a case conference decision was made in relation to the place*".[27] I accept that St. Michael's House must weigh the immediate needs of service-users and prioritise them for any available placements accordingly and that such an exercise is the preserve of St. Michael's House and should not lightly be second-guessed.

2.2.33 There can be no doubt that the effect of deciding not to move Mr. McKenna at that stage was to increase the very real risk, given the residential crisis which St. Michael's House was suffering at the time, that there would not be an appropriate placement available for him when he did eventually need nursing care.

Deterioration

2.2.34 During the Spring 2000 difficulties began to emerge in relation to Mr. McKenna's day placement in that he was finding the mini-bus transfer from Baldoyle to Swords tiring and trying. For a period Mr. McKenna was transferred by taxi[28]. Eventually, he was not able for the transfer, even by taxi.

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25 Interview with Mr. McKenna's brother, 15th April, 2008, p. 11
26 Interview with Residential Manager, 28th March, 2008, p. 12
27 Interview with the Chief Executive of St. Michael's House, 9th April, 2008, p. 9
28 Interview with the Head of Unit of Warrenhouse Road, 31st March, 2008, p.8 and interview with Mr. McKenna's brother, 7th February, 2008, p.18.

2.2.35 Ultimately, this led to Mr. McKenna being provided with a day service in The Beeches. This day service commenced in July 2000. The Beeches was in fact a residential unit and, as such, it was unusual to operate a day service in the unit. I understand that the provision of a day service in this unit came about following a discussion in March, 2000 involving the Head of Unit of The Beeches. She described a meeting, which she called "*a case conference kind of thing*", at which 2 residents of The Beeches who, due to their respective conditions could not go out to a day service, were being discussed. It was decided to set up a day service for these residents in The Beeches, their residential service. The Head of Unit of The Beeches described how:

> "During this discussion, it came about that there was a man, who, in turn, was Peter McKenna, who was in a house in Baldoyle who was not attending his day service, was having problems because he had been diagnosed with dementia, and there was another lady within another community house who couldn't attend her day service. So the idea was that we would set up a little group that all four could be together for the few hours during the day..."[29]

2.2.36 This service was set up in July, 2000. Mr. McKenna started in the day service in early July, 2000 following a case conference.

2.2.37 Mr. McKenna's condition deteriorated from the late Spring through the Summer 2000. He is noted by St. Michael's House in its submissions to have suffered rapid deterioration in July. He continued to deteriorate during August 2000 and his condition and its deterioration became particularly acute in the last week of August.

2.2.38 By the end of August his mobility was impaired, he was not weight bearing, he required full assistance for all personal care/hygiene needs and was agitated.

2.2.39 This deterioration necessitated the use of a hoist to provide for Mr. McKenna's needs. St. Michael's House stated in its submissions that during the period 25th

29 Interview with the Head of Unit of The Beeches, 2nd April, 2008, p. 6

August to 31st August, Mr. McKenna's brother was advised on a daily basis of the rapid deterioration in Mr. McKenna's condition and the difficulties being encountered by the staff in attempting to care for him.

2.2.40 It was at this time and against this background(set out in paragraphs 2.1.1 – 2.2.39) and in this context that a decision was made that Warrenhouse Road could no longer cater for Mr. McKenna and that he had to be transferred to another placement.

3. DECISION – AUGUST 2000

3.1 CONTEXT AND CIRCUMSTANCES

3.1.1 It was therefore decided, at the end of August, to move Mr. McKenna from Warrenhouse Road. That move occurred on Thursday, the 31st August, 2000. He was transferred to The Beeches on that date with the intention that he would be transferred to Leas Cross Nursing Home the following Monday. I have been informed that the proposal was to transfer Mr. McKenna to Leas Cross Nursing Home on the following Monday, the 4th September and to move Mr. McKenna into The Beeches for the weekend as one of the residents of that Unit was going home for the weekend.

3.1.2 Obviously, the context in which the decision was made and the circumstances leading up to it, including the process by which it was made, who made it, what was decided, and how the decision was executed are issues which are central to this inquiry. I have explored these issues at length with very many of the individuals who provided assistance to this inquiry.

3.1.3 There are 2 aspects to the context within which this decision was made and the circumstances leading up to this decision: firstly, the personal circumstances of Mr. McKenna, that is, the deterioration of his condition and the need to meet his needs appropriately, and secondly, as stated above, the funding and resources situation which St. Michael's House faced at that time. I have dealt with this second aspect in detail at paragraphs 2.1.6 – 2.1.23 above. The immediate relevance of this is that once it became necessary to transfer Mr. McKenna from Warrenhouse Road, St. Michael's House was extremely limited in its options.

Personal Circumstances

General deterioration and St Michael's House's awareness of need to transfer

3.1.4 As stated above, the general context leading up to and against which this decision was made was Mr. McKenna's deterioration during July and August 2000.

3.1.5 Mr. McKenna's condition deteriorated from the late Spring through the Summer 2000. St. Michael's House stated in their submissions to this inquiry that:

> "In July 2000 the records note rapid deterioration. Peter is screaming, shouting, anxious, hallucinating, talking to himself and is very clingy, especially in the evenings. By the 15th June his day service has broken down. His shouting, screaming and crying, especially at night, has increased ... In July 2000, he starts attending The Beeches for day service – 3 days a week. He is continuing to have periods of distress, he is anxious, clinging, screaming and shouting. He is still hallucinating. This often makes him fearful and disturbed".

3.1.6 This deterioration is apparent from the documents which were provided to the inquiry by St. Michael's House and the information which was given by members of staff of St. Michael's House. The Head of Unit of Warrenhouse Road described his condition earlier in the year as:

> "Some days he had really good days where he recognised everyone and then other days he could be quite confused and if he didn't see a familiar face, that would upset him quite a bit."[30]

3.1.7 She described his condition during August in the following terms:

> "I mean, as I said to you already, no two days were the same with Peter. I mean, some days he was very lucid and other days he was very confused and disorientated. Some days he could feed himself, other days he wasn't able to and you would feed him. And, I mean, I suppose it

[30] Interview with the Head of Unit of Warrenhouse Road, 31st March, 2008, p. 8

probably intensified more so in the month of August in that he seemed to be having more bad days than good days whereas I suppose prior to that it was much more balanced.

And certainly I recall that it was getting more difficult to -- I suppose we kind of shifted from trying to promote independence to actually just meeting basic need and primary care, i.e. kind of ensuring he was fed, washed, you know, and that was I suppose particularly towards the end of August that was becoming increasingly difficult."[31]

3.1.8 That Mr. McKenna's condition deteriorated during August is also apparent from what has been described to me of St. Michael's House's physician's involvement with Mr. McKenna during this month.

3.1.9 It had long been expected by St. Michael's House and, indeed, by Mr. McKenna's family that he would reach a point where he would have to be moved from Warrenhouse Road. Indeed, I have found that the possibility or perhaps the likelihood of a move from Warrenhouse Road was discussed at the meeting on the 31st January, 2000. That the family had an understanding that Mr McKenna would have to be moved is clear from a discussion I had with Mr. McKenna's brother about Mr. McKenna's day service in The Beeches where he said:

"He was getting feeble and they felt the journey from Baldoyle to Swords was too taxing for him and he was bucking against it, you know what I mean, and they were considering moving him on a daily basis into The Beeches and to get him acclimatised to The Beeches as well in the event he was going to be moving there. Not in the event but that was the plan at that stage".[32]

3.1.10 It is clear that St. Michael's House also understood that a point would be reached when Mr. McKenna would have to be moved. The Divisional Manager (for residential and respite services) said:

"He had been diagnosed as having Alzheimer's in November 1999, and the family had been met in January. There was an indication that if there was a place suitable when the appointed time

[31] Interview with the Head of Unit of Warrenhouse Road, 31st March, 2008, p. 12
[32] Interview with Mr. McKenna's brother, 7th February, p. 18

came that he might move to The Beeches, and what happened then is that around August his condition just deteriorated, and I suppose one of the things about Alzheimers is that it is, by its nature, unpredictable."[33]

3.1.11 The Head of Unit at Warrenhouse Road, said:

"I think the discussion then [April 2000] was that it was considered likely that Peter would end up in The Beeches at some stage in the future because there was no nursing support in Warrenhouse Road as I understand it, and there was consideration given to transferring him when that service user in The Beeches died even though he didn't need, you know, Peter didn't need the nursing care at that stage, but in anticipation that he would need it, consideration was given to moving him to The Beeches."[34]

3.1.12 In addition to St. Michael's House's general understanding that a point would be reached when Mr. McKenna would have to be moved, it is clear that there was a growing awareness amongst St. Michael's House staff during the month of August that this point when was approaching. This is not surprising given the deterioration in his condition.

3.1.13 I teased out the issue of the awareness that the time for a transfer was approaching with the Head of Unit of Warrenhouse Road. I indicated to her that my impression based on her description of Mr. McKenna's condition during August was that a move from Warrenhouse Road was no longer something which was going to happen at some stage in the future but rather was something which was going to happen in the short term. Her very frank and, it seems to me, reasonable response given the staff's focus on caring for Mr. McKenna was that this was a fair way of describing the situation "*on reflection*" but that:

"...when you're in the thick of it and trying to do the day-to-day and manage day-to day and ensure that you're meeting the needs of all other service users, at the time I don't know that I was in a position to be able to stand back and kind of say I think we're coming to the end of

[33] Interview with Divisional Manager , 27th March, 2008, p. 10
[34] Interview with the Head of Unit of Warrenhouse Road, 31st March, 2008, p. 7

being able to provide. I think it was just we were kind of running on empty and it was like just you do what you have to do and make sure that Peter is as comfortable as we can possibly have him, at the same time ensuring that the other four service users – I suppose we were kind of conscious of the fact that it was just wasn't primary care needs that we needed to be meeting with the other four people in the house. I mean, they had stuff going on in their lives and we needed to be facilitating that.

So I don't know whether I was as detached as to be able to look in and kind of say I actually think that, you know, we can't do this anymore or we're really struggling here even though I knew we were really struggling. But I don't know that I was detached enough to be able to kind of say actually this isn't going to work any more."[35]

3.1.13 I do not believe that I could safely conclude that St. Michael's House was consciously aware that the time for a move was rapidly approaching solely on the basis of the Head of Unit of Warrenhouse Road's agreement with my impression. However, the information which is contained in the documents and which was provided by other individuals also leads me to this conclusion.

i. Firstly, while the Head of Unit of Warrenhouse Road does not think that she had a conscious awareness of this at the time, there is a note in the documentation provided to me by St. Michael's House with their submissions to which I am required to have regard which records that she advised an individual (who is identified by St. Michael's House in their submissions as the Residential Manager) who was responsible for Warrenhouse Road on the 11th August, 2000 that "*staff are asked to take on more than they are capable of - not trained to take on the medical challenges*". When this note was put to the Head of Unit of Warrenhouse Road she explained that this referred to the combination of needs presented by the service users in Warrenhouse Road. The Residential Manager agreed that this was the case[36]. I accept that the Head of Unit of Warrenhouse Road was not referring solely to the challenges presented by Mr. McKenna when expressing the view that the staff were being asked to

35 Interview with the Head of Unit of Warrenhouse Road, the 31st March, 2008, p. 14
36 Interview with the Residential Manager, the 25th June, 2008

take on more than they were capable of but I also find that Mr. McKenna's needs were part of the mix that was putting this pressure on the house. That is clear from the Head of Unit's subsequent acknowledgement that the pressures or difficulties eased when Mr. McKenna was moved from Warrenhouse Road. It seems to me that it is implicit in this note that St. Michael's House (or at least the Head of Unit and the Residential Manager) were aware that something would have to change in the unit.

ii. Secondly, the Head of the Social Work Department said that she was aware through the Summer that the staff in Warrenhouse Road were not able to cope.

iii. Thirdly, the Clinical Director of St. Michael's House said that the St. Michael's House physician, discussed Mr. McKenna's placement with him on several occasions throughout August. He said:

> "Now, that posed a problem for [the physician] because she was emphasising to me on several occasions throughout August, that she really wasn't happy where he was. She felt that it was too much of a risk leaving him with untrained staff. "[37]

He also said that Mr. McKenna was well on the way to being a serious medical problem by the end of July, 2000[38].

iv. Fourthly, the physician agreed that "at least through August 2000...it had become clear that Mr. McKenna was going to need a placement with nursing care"[39].

v. Fifthly, the then Director of Services said that he was sure that the prospect of a move to Leas Cross or somewhere outside St. Michael's House was discussed with him some time before the 31st August[40]. He had earlier told me that he had at least two meetings with the Divisional

37 Interview with the Clinical Director of St Michael's House, 2nd July, p. 8
38 Interview with the Clinical Director of St Michael's House . 27th March, 2008, page 46
39 Interview with the physician, 11th July, 2008, page 40
40 Interview with the Director of Services, the 25th June, 2008, page 45-47

Manager during August. He described these meetings as routine meetings but stated that the Divisional Manager raised the unsuitability of Warrenhouse Road and described these conversations as:

> "It would have been much more saying "we will have to be looking at options." I mean the options that we had around there were, around that time, was to see is there was a vacancy in one of the very small number of existing nursing houses we had, or to look at somebody moving into one of our respite houses, which all had nursing staff, or to look at an external nursing home as an option."[41]

3.1.15 This general deterioration (and the significant further deterioration in the final week of August) meant that Mr. McKenna needed nursing care and, indeed, that his primary need was for nursing care. Warrenhouse Road was not a nursing facility.

3.1.16 The general context and circumstances for the decision on the 31st of August 2000 were Mr. McKenna's deterioration during July and into August, 2000 and St. Michael's House's growing awareness during August and probably even earlier that the time when Mr. McKenna would have to be moved in order to be provided with that nursing care was approaching.

Significant Deterioration at end of August

3.1.17 The specific context for the decision at the end of August was a significant deterioration in Mr. McKenna's condition which occurred in the number of days leading up to the move from Warrenhouse Road on the 31st August, 2000.

3.1.18 Mr. McKenna deteriorated yet further during the final week of August, 2000. At that stage he had a number of falls, could not weight bear and was for the most part confined to bed. He was also dependent on staff in Warrenhouse Road for basic needs and primary care. A hoist was installed. The Warrenhouse Road notes for

[41] Interview with the Director of Services, the 27th March, 2008, p.10

this period record that on the 25th August, 2000, Mr. McKenna's mobility was impaired, that he required full assistance with two staff for all personal care/hygiene needs, that he was incontinent during the night and that night staff had great difficulty manually handling him. The notes for the 26th August 2000 record that he was not weight bearing, was experiencing difficulty with personal care needs, that he was agitated at this time and shouting a lot and that he fell out of bed. The notes for the 27th August 2000 record that he was not weight bearing and required the assistance of two staff for all personal care needs. They also record that he appeared agitated during the night requiring night staff to remain in the bedroom with him. The Head of Unit of Warrenhouse Road's description of Mr. McKenna's condition given in the second paragraph of the quote in paragraph 3.1.7 above clearly relates to this period. She also describes the situation as follows:

> "...I suppose we had a particularly bad few days with him and at that stage I would have got the physios and OTs back out. I mean, they would have been involved really from the outset around kind of feeding aids and all that kind of stuff to try and maintain independence. But, I mean, I suppose when it came to – we were really struggling to meet basic needs, the physios and OTs would have done a further assessment and I suppose really kind of from that it was evident that – I mean. It was taking three to four people to actually get him from bed to chair and, you know, we didn't necessarily or all the time we wouldn't always have three people to do it..."[42]

3.1.19 As stated by the Head of Unit of Warrenhouse Road, this deterioration caused a physiotherapy and an occupational therapy assessment to be carried out on the 28th August, 2000 and it, together with a further event to which I refer below, appear to have been the catalyst which caused the decision to move Mr. McKenna to be made. The Warrenhouse Road notes for the 28th August 2000 records that:

> "[Physiotherapist and Occupational Therapist] assessed Peter in the afternoon and reported to [the Residential Manager], that they believed we were unable to meet Peter's personal care need at this time".

[42] Interview with the Head of Unit of Warrenhouse Road, 31st March, 2008, p. 14

3.1.20 I did not meet with this physiotherapist as part of this inquiry. However, I did furnish her with the relevant extracts from the draft report and invited her to make submissions if she wished to do so. By letter dated the 3rd June, 2000, she confirmed that she assessed Mr. McKenna's physical condition. She also indicated that to the extent that the impression is given that she was a regular visitor to Warrenhouse Road by the use of the phrase "*.... we had a particularly bad few days with him....*" that impression is incorrect.

3.1.21 The significance of this assessment is clear from the accounts given by the Head of Unit of Warrenhouse Road and the Divisional Manager. The Head of Unit of Warrenhouse Road explained that while she was aware that meeting Mr. McKenna's needs and the needs of the other service users in the house was an issue, "*the penny [meaning the realisation that Mr. McKenna was going to have to move] probably finally dropped with me after the physio and the OT.*"[43]

3.1.22 The Divisional Manager explained that:

> "...The breaking point, as I would have seen it at the time was, the report back from the 2 clinicians, which was a verbal report back to [the Residential Manager]and that was [the occupational therapist] and [the physiotherapist] who was the head of Physio. When they reported back, and they were asked to go out and assess his physical condition and they reported back that he was stuck on the chair. He could not move. He was soiled. It took 4 of them to physically move him.
>
> I suppose at that point going back on my own experience of working front-line on Alzheimer's units, I would have become aware that this was a serious situation that clearly could not be managed for much longer in Warrenhouse Road, given the environment and the conditions of the house ..... efforts had been made to sustain Peter in Warrenhouse Road. He had gone to The Beeches day service. There were all sorts or interventions that were introduced, like the bringing in of hoists, adaptations in as much as we could do that, to actually maintain him in his residential placement....."[44]

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43 Interview with the Head of Unit of Warrenhouse Road, the 31st March, 2008

44 Interview with the Divisional Manager, the 25th June, 2008, p. 11

3.1.23 The physiotherapist has made it clear in her letter of the 3rd June, 2009 that she has no recollection of Mr. McKenna being soiled, stuck on a chair or of helping him to move. She also explained that it would not have been normal practice for her to help with Mr. McKenna's toileting. However, she does acknowledge that some of these details would be difficult for her to recall at this remove. The occupational therapist, explained in a letter dated the 2nd June, 2009 that she does not specifically remember visiting Mr. McKenna on the 28th August. She stated clearly that she would not use the phrases "stuck on his chair", "He was not able to move. He was soiled. It took four of them to physically move him" to describe the status of a service user. I did not and to not understand the Divisional Manager to have been purporting to quote the physiotherapist or occupational therapist when using those phrases.

3.1.24 The Divisional Manager went on to say:

> "So every effort was being made, had been made by the local clinic team, by the local staff to try and maintain him in Warrenhouse Road, but when I heard that report from the 2 senior clinicians coming back on the Tuesday, I just realised at that point, given my own experience, I just realised that this was I suppose you might say that it was irretrievable..."[45]

3.1.25 I understand that the Divisional Manager was told of the conclusions of the physiotherapy and occupational therapy assessment on Tuesday, the 29th August 2000.

3.1.26 The second event which appears to have acted as a catalyst leading directly to the decision to move Mr. McKenna from Warrenhouse Road was when the Head of Unit of Warrenhouse Road told the Divisional Manager on the 31st August, 2000 that they could not cope and that they had no staff for the coming weekend. The Divisional Manager described this meeting as occurring in St. Michael's House in

[45] Interview with the Divisional Manager, the 25th June, 2008, p. 12

Ballymun. He described the Head of Unit of Warrenhouse Road as telling him that the situation had broken down and could not be retrieved.

3.1.27 By this point Mr. McKenna's medical and nursing needs had become predominant. As the St. Michael's House physician put it:

> " ... his medical nursing needs would have overtaken everything else, his huge care needs"[46]

3.1.28 The consultant psychiatrist assigned to Warrenhouse Road said:

> "In this case, his medical needs were of total importance. They were the significant issue to be discussed. To a lesser extent, his mental needs".[47]

3.1.29 I accept that the decision to move Mr. McKenna from Warrenhouse Road (and the interrelated decisions as to where he should be moved) were made in these circumstances and in the context of Mr. McKenna's deterioration, his consequential need for nursing care, and St. Michael's House's lack of resources and, in particular, of residential placements.

3.2 DECISION

3.2.1 At this time it was decided to (a) move Mr McKenna from Warrenhouse Road, (b) move him to Leas Cross Nursing Home the following Monday and (c) move him to The Beeches for the weekend.

3.2.2 It would be incorrect to treat these as 3 separate and distinct decisions. Once it had been decided that Mr. McKenna should be moved out of Warrenhouse Road, it had to follow that a decision as to where he would go had to be made.

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46 Interview with the St. Michael's House physician, 27th March, 2008, p. 12
47 Interview with the psychiatrist on the Warrenhouse Road team, 17th June, 2008, p. 52

3.2.3 The first element of the decision was that Mr. McKenna should be transferred from Warrenhouse Road because his condition had deteriorated to such an extent that the physical layout of Warrenhouse Road was not suitable and he needed full-time nursing care which was not available in Warrenhouse Road.

3.2.4 The second element of the decision was where Mr. McKenna should be moved to in order to meet his nursing needs. It was decided that he should be transferred to Leas Cross Nursing Home because there were no places with adequate nursing care available within St. Michael's House.

3.2.5 These 2 elements of the decision appear to have been made together, in that the decision-makers were aware that there were no appropriate places available within St. Michael's House, so once they decided that Mr. McKenna had to be moved to obtain nursing care, it followed that he had to be moved to an external facility. However, for the purposes of this consideration it is necessary to deal with them separately.

Decision to Move Mr. McKenna from Warrenhouse Road

3.2.6 I accept that in the context and circumstances set out in the preceding section the decision to move Mr. McKenna from Warrenhouse Road was a reasonable one and I see no basis for criticising the reasonableness, validity or merits of the actual decision to move him from Warrenhouse Road. I accept that matters had reached a point where Mr. McKenna's needs could no longer be properly met in Warrenhouse Road. The decision to transfer him from there in those circumstances is, to my mind, a reasonable and justifiable decision.

3.2.7 It has been suggested during this inquiry that steps could have been taken to render Warrenhouse Road physically suitable. This has been suggested particularly by former members of the Warrenhouse Road staff. I have been told of conversations

between staff after Mr. McKenna had been moved during which members of staff discussed how they felt the physical arrangements within Warrenhouse Road could have been reconfigured to accommodate Mr. McKenna's needs[48]. Indeed, one such member of staff, in her submissions to the inquiry after the extracts from the draft report were circulated, expressed the view that an extra-sitting room close to Mr. McKenna's bedroom in Warrenhouse Road could have been used without the necessity for "much structural change". The staff's desire to continue to care for Mr. McKenna is commendable and their sadness and regret at him having been moved from Warrenhouse Road is understandable. Several individuals who assisted the inquiry spoke of the bonds between service-users and staff and, indeed, spoke of the house in which a service-user lives as being his or her home. However, I understand these discussions between colleagues to have simply been general and informal conversations (described by one former member of staff as "localised conversation"[49]) and I do not understand them to have considered in detail issues such as planning permission for any structural changes, if any, which may have been necessary.

3.2.8 Perhaps more importantly, however, is the apparent universal recognition that at the time of Mr. McKenna's move from Warrenhouse Road he required nursing care. As set out above, Warrenhouse Road was not a nursing house as such although I understand that it had an agency nurse on duty at night during the relevant period. In order to cater for and properly meet Mr. McKenna's needs nursing staff would have had to have been recruited or agency nurses engaged. St. Michael's House has emphasised that the decision to move Mr. McKenna was made in an emergency and in urgent circumstances. I deal with how the decision came to be made in crisis circumstances below and am critical of St. Michael's House. However, irrespective of how the decision came to be made in a crisis situation, the fact is that they were the circumstances at the time and I accept that it would have been impossible to recruit staff in such a short timeframe. The relevance of this is that there was no time

48 Interview with a care worker, the 11th April, 2008
49 Interview with a care worker, the 11th April, 2008

to recruit staff. St. Michael's House has also explained the difficulties which the organisation was facing in obtaining nursing staff around that time. Indeed, while no detailed evidence was given to me in relation to the national nursing situation at that time I am aware (and I do not believe that it could be seriously disputed) that there was a shortage of nurses in the country at that time. I have no doubt that this would have made it difficult, if not impossible, for St. Michael's House to have recruited and employed a nurse or to have been sure from day to day of having an agency nurse even if the decision had not been made in an emergency situation. I therefore accept that even if the physical arrangements in Warrenhouse Road could have been configured appropriately, Mr. McKenna's need for nursing care made it impossible for St Michaels House to have left Mr. McKenna in Warrenhouse Road.

3.2.9 For those reasons I do not believe that the substance of St. Michael's House decision to move Mr. McKenna from Warrenhouse Road can fairly be criticised.

Decision to Move Mr. McKenna to Leas Cross

3.2.10 Once it had been decided that Mr. McKenna could no longer be cared for in Warrenhouse Road and that he had to be moved, St. Michael's House then had to decide on an onward placement. They decided that he should be moved to Leas Cross Nursing Home.

Use of private nursing homes and debate within St Michael's House as to their appropriateness

3.2.11 The practice of using private nursing homes came about because of the residential crisis which is described in section 2.1 above. This residential crisis forced St. Michael's House to explore different ways of addressing the shortage of residential places and the consequential pressure on and shortage of residential services. I have set out some of the ways that these issues were addressed in paragraphs 2.1.15 – 2.1.17 and they include the use of private nursing homes.

3.2.12 The practice of using such homes appears to have started with the use of a nursing home which was adjacent to St. Michael's House. However, the use of that home came to an end in or about 1997 and from about 1998 the two private nursing homes which were principally used by St. Michael's House on an ongoing basis were Leas Cross and a nursing home on the southside of Dublin.

3.2.13 It has been explained to me that the way in which Leas Cross Nursing Home originally came to be used by St. Michael's House was that the mother of a service user who was desperately seeking respite care and who was familiar with Leas Cross approached one of the senior social workers in St. Michael's House and suggested that they use Leas Cross. There appears to have been some discussion within the social work department in relation to this suggestion because (a) it would obviously have budgetary ramifications and (b) it was felt that if St. Michael's House agreed to use the nursing home in this case there would be pressure to use it or other nursing homes for other service users requiring respite.[50]

3.2.14 The respite was provided in Leas Cross in that case. At that time and, indeed, during the entire period under consideration in this report Leas Cross was a relatively small nursing home with 38 beds. It appears that when Mr. McKenna was transferred there 35 of those beds were occupied. As anticipated once the decision was made to use Leas Cross in that case other service users and social workers began to request that respite be provided in a nursing home. I have been informed[51] that shortly after that the nursing home on the southside of the city was identified by another social worker who happened to visit the home one evening and suggested to St. Michael's House that it might be used.

3.2.15 The use of private nursing homes by St. Michael's House and the appropriateness of same was the subject of ongoing and, it appears, vigorous debate within St.

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50 Interview with the senior social worker, the 18th April, 2008
51 Interview with the senior social worker, the 18th April, 2008

Michael's House as a whole and within individual departments. The discussion within the social work department has been described to me in the following terms:

> " .... one of the social workers stopped on her way home one day outside the other nursing home that we use.....and she went in and talked to the owner and his partner there and came back and said, 'will you go and look at this place because I need this break for person X on my case load'. So [the Head of the Social Work Department] and I went together and we looked at that particular place and that was the other nursing home we used a lot.
>
> But the same social worker would be really distressed about the fact that we were using the nursing home. We had these lengthy, lengthy debates and it caused conflict in the social work department. And then there were people, I suppose, outside the social work department in the other disciplines, who weren't struggling with finding roofs to go over people's heads but who also felt very strongly that we shouldn't be in nursing homes at all....."[52]

3.2.16 Another social worker, who took over responsibility for the liaison between St. Michael's House and Leas Cross in and about June 2000 (with which I deal below), said that this discussion was on the agenda all the time. She said that some people (particularly some of the people who were not working in adult services):

> "took the position of: 'oh, this is a disgrace. We should not be doing that'. But others, including myself, we were thinking: 'what else are we supposed to do?' We did not have residential places at the time, we were not being funded by the Government to provide residential places and there was not a great end in sight. And meanwhile, families are telling you that they just cannot keep doing it." [53]

3.2.17 The same debate took place within the psychology department. It has been suggested to me that the psychology department "*en masse objected to the use of nursing homes on principle.*"[54] I believe that this is probably a fair reflection of the general feeling of individual psychologists, and perhaps even of the majority of the psychologists within the department but to the extent that it suggests that the

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52 Interview with the senior social worker, the 18th April, 2008, p. 10
53 Interview with the other senior social worker, the 16th April, 2008, p. 7
54 Interview with the psychologist who was responsible for Mr. McKenna in his day unit, the 25th March, 2008

department took a particular position or even that the individual psychologists were uniform in their views I do not believe that it reflects the correct position. There appears to be little doubt from the psychologists that I have spoken to[55] that nobody believed that the use of private nursing homes was ideal and to the extent that the ideal should be strived for the use of such nursing homes was therefore objectionable. However, there was a spectrum of views, ranging from the position that private nursing homes should never be used through the position that while they were not ideal there were no alternatives at the time and therefore they had to be used to the position that each case should be looked at individually and the needs and available resources balanced.[56] I asked the former Head of the Psychology Department (referred to hereinafter as "the Head of Psychology") whether a consensus was reached or whether there were opposing viewpoints and he replied:

> "There was one particular exponent of the idea that they shouldn't be used at all.....The more prevalent viewpoint would have been this is a necessary evil, if you want to put it that way and that is not a nice way to put it....That needs must, we just had to sort of do it, you know"[57]

3.2.18 The existence of a debate within departments and within St. Michael's House as a whole is accepted by St. Michael's House. The Chief Executive Officer stated that:

> "...We obviously wanted people to be in our own services. The three of us, the senior group, were constantly under question from our colleagues, from our social work colleagues, and indeed from other departments. A lot of social workers were very unhappy about our using them so they would question it and have us questioning it..."[58]

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55 I spoke with four psychologists about this issue.
56 For example, interview with psychologist, the 26th March, 2008
57 Interview with Head of Psychology , the 11th June, 2008
58 Interview with the Chief Executive, the 9th April, 2008

St. Michael's House's view of the appropriateness of private nursing homes in general

3.2.19 It has also been accepted by St. Michael's House that private nursing homes were and are not appropriate places for people with intellectual disability. The Chief Executive Officer said:

> "A nursing home in my opinion isn't an appropriate place for a person with an intellectual disability. But unfortunately today I can bring you to nursing homes where there are people with intellectual disabilities.....So there are people living in nursing homes right up to today and I don't believe it is appropriate..."[59]

3.2.20 He also said:

> "...The ethos of St. Michael's House is about opening up the community, opening up opportunities for people. Putting people into nursing homes is totally alien to our whole ethos. It's not what we want to do at all."[60]

3.2.21 The Chief Executive does not come from a clinical background. I take it, however, that he was speaking on behalf of St. Michael's House including the clinicians employed by St. Michael's House. In any event, similar views, though not in such clear terms, were expressed by clinicians from St. Michael's House who assisted the inquiry. The Clinical Director of St. Michael's House agreed that private nursing homes are not appropriate for people with an intellectual disability[61], although he emphasised that they are appropriate for people with an intellectual disability who have nursing needs and he specifically referred to "*people at the terminal stage of their lives..*"[62]. I think it is safe to say that the Chief Executive's comments referred to individuals with intellectual disability who did not have nursing needs and that he would share the Clinical Director's view that they are not as inappropriate when the

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59 Interview with the Chief Executive, the 9th April, 2008, p. 55
60 Interview with the Chief Executive, the 9th April, 2008, p. 56
61 Interview with the Clinical Director, the 27th March, 2008
62 Interview with the Clinical Director, the 27th March, 2008

individual has nursing needs. In my view the Clinical Director's opinion of the general inappropriateness of nursing homes is also evidenced by his remark that:

> "...We were driven, in exceptional circumstances, to place people in there, but we tried to minimise it by, you known, literally letting them sleep there, and everything else was provided by St. Michael's."[63]

3.2.22 A psychologist agreed that the issue was a source of discussion amongst psychologists. She said:

> "...It was an ongoing discussion. From very early back it was an ongoing discussion when we didn't use nursing homes as to how we were going to provide respite and residential care for our service users....So it certainly would have been a discussion at that time in relation to nursing home placements for our service users as being the least evil, as it were, we were not happy about it, but certainly I remember discussions in relation to particular individuals whether that was a necessary support needed at the time."[64]

3.2.23 It is therefore common case that as a matter of general principle private nursing homes are not appropriate for individuals with intellectual disability. There is a dispute as to whether this means that such individuals should never be placed in such a nursing home. Given the very clear and emphatic language used by some people who assisted the inquiry, including the Chief Executive, it is easy to see how the view could be held that they should never be used for individuals with intellectual disability. However, it is clear that there was not a uniformity of views amongst clinicians. On the one hand the view has been expressed to me by a committed and passionate professional that such placements are not appropriate and should therefore never be countenanced. On the other hand, St. Michael's House holds and expresses the view that while such placements are inappropriate they had no choice but to use them in circumstances where there was absolutely no other placements available and that they can be used when the individual has nursing needs. This

63 Interview with the Clinical Director, the 27th March, 2008, p. 38
64 Interview with psychologist, the 26th March, 2008, p. 26

view is shared by equally committed clinicians. I do not believe that it is possible for this inquiry to resolve this debate of general principle or, indeed, that it is the role of this inquiry to do so, although it will be necessary for the inquiry to reach conclusions as to St. Michael's House's assessment of the suitability of the particular nursing home for Mr. McKenna and I do so towards the conclusion of this report.

3.2.24 In light of St. Michael's House's own view that such placements are, in general, inappropriate St. Michael's House should have used and should only use such placements where it is absolutely necessary. I am told by St. Michael's House that during this period the use of nursing homes was absolutely necessary and that it was absolutely necessary for Mr. McKenna. They have described the pressures and demands being placed on the organisation and its resources during this period and I have set those out in section 2.1 above. They have also described the very understandable and human demand by families for residential and respite services during this period and the difficulties which St. Michael's House had in meeting those demands. Put simply, St. Michael's House maintains that from its point of view it had absolutely no alternatives other than to use private nursing homes during this period. I understand that the use of private nursing homes came to an end relatively shortly after this period because St. Michael's House were opening new residential houses on the basis of the funding which was being or was to be provided by the State. St. Michael's House also opened its own designated Alzheimers Unit in 2002.

3.2.25 I cannot, at this remove, make a definitive finding of fact that there were alternatives to using private nursing homes which St. Michael's House could have used but did not. To do so would require me to conclude either (a) that the individuals from St. Michael's House who assisted the inquiry on this issue, many of whom are professionals, were not doing their jobs properly and did not explore the existence of alternatives properly or with sufficient diligence, or (b) were consciously not acting in the best interests of the service users of St. Michael's House because they were aware of the existence of alternatives but did not use them notwithstanding the inappropriateness of nursing homes or (c) are not being truthful about the situation

that pertained during this period. I do not believe that there is any information to support any of these conclusions and I do not make such findings. There may or may not have been alternatives to the use of private nursing homes but I accept the information that has been given to me of the efforts that were taken to identify such alternatives and of the considered and genuine opinion or belief that there were none.

Assessment of general suitability of specific nursing homes

3.2.26 Apart altogether from the general principle of whether a nursing home should ever be used for a person with an intellectual disability, it seems to me that a central consideration for St. Michael's House when deciding whether to use a particular nursing home must be whether that nursing home is as suitable or appropriate as possible (albeit with the limitation that such a nursing home can never be ideal) both for persons with intellectual disability in general and also specifically for individuals who it is proposed to place there.

3.2.27 I spent a considerable amount of time during the inquiry exploring with individuals from St. Michael's House precisely how it came to select the particular nursing homes that were used and how it came to be satisfied with their suitability in a general sense for persons with intellectual disability.

3.2.28 I have set out above how Leas Cross was initially identified and came to be used. There was no assessment of its suitability prior to its initial use. This was implicitly confirmed by the Head of the Social Work Department who stated:

> "If my memory serves me, the family had already decided that is what they wanted. We would have said 'You have made that decision so you are choosing it and we will pay for it".

3.2.29 I have been told that after it had been used for respite on a few occasions one of the senior social workers visited Leas Cross. This visit appears to have come about

because the nursing home had been used a number of times and it was felt that St. Michael's House should see what it was like. The Head of the Social Work Department said:

> "When we made the decision we would use it further, [the senior social worker] would have gone out and made a connection with – there was a matron before [the person who was matron at the relevant time] whose name I can't remember. She would have made a connection" [65]

3.2.30 This visit was described by the senior social worker in the following terms:

> " And we knew that it had been accredited by the Eastern Health Board at that time. And so I went out and I met the matron -- I went twice, I met matron the first time and then the matron had changed and it was this woman ..... who had quite a lot of experience. She understood what I was talking about, she had experience with intellectual disability and I think she had actually done some agency shifts in some of our units in the past. Now, I met her and she showed me around and she showed me the bathrooms and there were hoists and she showed me what the bedrooms were like. We talked about the level of staffing that was there in the day and at night, and they had no team [sic][66] program and all that kind of thing. And, you know, she said, 'okay, there is a menu for people who have tube feeds[67]', they knew about the tube feeding and she said if I needed to see the nursing notes for people I would be able to. I felt within the, I suppose, overall situation that it was a nursing home for older people, rather than a community-based house for people with intellectual disabilities and if you accepted that situation, that it seemed to me a reasonable facility."[68]

3.2.31 I initially concluded that it was fair to describe this visit as a general review of the nursing home rather than as an assessment of its general suitability for people with intellectual disability or its suitability for any particular individual. However, in her submissions to the inquiry dated the 27th May, 2009 after the extracts of the draft report had been circulated, the senior social worker made the point that she did in fact inquire into the areas referred to in the above quote with the care needs of

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65 Interview with the Head of Social Work Department, the 9th April, 2008, p. 15

66 This should read "an OT program"

67 The senior social worker clarified in her submissions dated the 27th May, 2009 that she stated "diabetes" rather than "tube feeds" so that this quote should read "'okay, there is a menu for people who have diabetes"

68 Interview with the senior social worker, the 18th April, 2008, p. 9

people with intellectual disability very much in mind. In those circumstances, I accept and believe that it is more accurate to describe this visit as a general review of the nursing home for the purpose of deciding whether to continue using it for people with intellectual disability.

3.2.32 I also discussed this issue of how specific nursing homes were selected with the Divisional Manager of St. Michael's House. In particular I inquired about the "*criteria by which a nursing home is deemed to be appropriate for St. Michael's House purpose.*" It is worth setting out in full the exchange on this point:

> "Q. Now, I understand how Leas Cross came to be selected, but when you say carefully selected, I mean what is the selection process? What are the criteria by which a nursing home is deemed to be appropriate for St. Michael's House purpose?
>
> A. Well, as I explained, I think that how at that time, I would say that initially it was a confidence building process between St. Michael's House and the respective nursing home. I suppose one of the things that we would have considered at the time was whether or not a nursing home was going to be amenable to people like social workers going in knocking on the door and asking questions, because you know, I suppose it was difficult at the time to find nursing homes that would, that were welcoming of people with learning disabilities in the first instance. Secondly, then, to find a nursing home where people were open, and transparent, and were prepared to communicate and sit down and discuss, and you know, were flexible. So, I think that they were significant elements in terms of looking at suitable nursing homes.
>
> In terms of the nursing homes themselves, there is an inspection regime within nursing home which I know that it has been questioned and it is under review, but it was accepted that nursing homes, because they were taking clients not only from say St. Michael's House, but from Beaumont Hospital, and the Mater Hospital for step down, and all the other agencies and hospitals around, that they were legitimate entities and that they were nursing homes.
>
> Q. So there is no, if we can use this word, active St. Michael's House assessment of the nursing homes? There seems to have been three things; the fact that it was registered by the HSE, or the Health Board at the time. That it was used by other large acute hospitals, and the third issue is that you had social workers visiting once a month or so to assess individual clients?

A. Well, I think that -- no -- but perhaps the significant piece there is that they were welcoming of people with intellectual disability. I mean I recall visiting one nursing home with [the Head of the Social Work Department], you know, and we had a list of nursing homes we were going through, and I remember walking into it and we just walked out of it five minutes later because under no circumstances would we have considered that this was a place that was going to be welcoming or receptive, or that even had the basic standards in terms of amenities for anybody who was in crisis within St. Michael's House. Like I recall some of the visits to [the nursing home on the southside] where, as I said, efforts were being made not only to provide accommodation in a safe environment but also efforts were being made to create occupational therapy type, without using necessarily that clinical term, but occupation, suitable occupation for the people who were using the service.

Q. Okay. I am just trying to get a clear grasp of it in my own mind? ... What it seems to be is that you find a nursing home that is willing, and prepared, and welcoming of people with learning disabilities, you then require to be satisfied that it is registered by the HSE or the Health Board, and I am going to back to this period now, I know I am saying it in the present tense, but you are satisfied that the acute, the large acute hospitals are using it as a step down facility?

A. Well, I think that that was actually secondary in a sense, because the needs were actually quite different. Many of the people that we were looking for accommodation for didn't have maybe acute needs, you know.

Q. So I am kind of trying to list them in what I perceive as being the order of importance from your point of view is; firstly that they are welcoming. Secondly, that the Health Board have registered it. So, it is a registered certified nursing home. Thirdly, that the acute hospitals are using them, and if they are using them, presumably they are of a certain standard but...

A. I think perhaps that that was more an observation than anything else. I don't think that that was necessarily a standard. I think that that was an observation that perhaps that other organisations may have been using them at the time, but that certainly wasn't a criteria.

Q. I suppose, let me put it this way to you, I get the feeling, subject to correction, that it was almost an instinctive, or instinctual view of the nursing home that lead to the decision to use it, or to continue using it might be a better way of putting it. Once it had those minimum requirements of being registered, for example, by the Health Board, if they were welcoming of the nursing home and you got an alright feeling from it, it was used, or could be used; is that it?

A. Well, I think it was about building confidence, it was about -- like the fact, I suppose, that we only used a very small number of them meant, or would indicate that they were, that people didn't just use a nursing home it was a nursing home."[69]

3.2.33 The Divisional Manager also said:

"... [The Head of the Social Work Department] and myself would have gone and visited a small number of nursing homes, but essentially what we were looking for was, and it was difficult to find, was a nursing home where we could establish a relationship, where people like the senior social workers, would be welcome to come in and make regular contact and all of that with the proprietors and it was not always possible, but we would have individual service users in a number of nursing homes. There was also the issue, I suppose, that people with a learning disability, it was not necessarily easy to find places within nursing homes for them. So it was not the case that we started on a certain date with nursing homes. It was the case that we finished up -- I think it was correct to say that in 2000 that with the advent of all of the additional places, that there was no longer a requirement to provide long-term care for people in nursing homes, but up to that point we were taking whatever opportunities arose in terms of nursing homes that were prepared to work with us."[70]

3.2.34 I find, based on the information which has been given to me, that there was no detailed, in-depth or formal assessment or consideration of the suitability of Leas Cross to cater for the needs of the service users of St. Michael's House either before or shortly after St. Michael's House started using the home. There was certainly no formal assessment. This is evidenced by the descriptions of the process set out above and the fact that no member of the St. Michael's House staff has been able to provide the formal criteria by which a home would be assessed. Indeed, the Divisional Manager did not identify any such criteria nor have I been given any formal evaluation of the suitability of Leas Cross or any nursing home.

3.2.35 Paragraph 2.9 of St. Michael's House Seven Year Plan stated that "St. Michael's House will have a formal documented process for evaluating the effectiveness and

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69 Interview with the Divisional Manager, the 27th March, 2008, p. 36

70 Interview with the Divisional Manager, 25th June, 2008, p. 51

efficiency or all areas of service...." There was certainly no "formal documented process for evaluating the efficiency" of Leas Cross.

3.2.36 I find it surprising that there was no such formal criteria or evaluation. In circumstances where St. Michael's House's view was that private nursing homes are not appropriate placements for people with intellectual disability and are certainly not the ideal, I would have expected that there would be a formal evaluation so as to ensure that a particular nursing home is at least as appropriate as possible.

3.2.37 However, the following must be emphasised: I acknowledge the point that has been forcefully made by St. Michael's House that the absence of a formal evaluation must be balanced against the involvement of two highly experienced and qualified social workers. This point was raised in the context of my questions about the evaluation of nursing homes. It was also raised on many occasions when the monitoring of the nursing homes and the clinical backup given by St. Michael's House were being discussed and I think it would more conveniently be dealt with in that context. I therefore return to this in section 8.5 below.

Need for assessment of suitability of nursing home for the individual

3.2.38 In order for a decision to use a particular nursing home to be valid in a particular case St. Michael's House must also have taken steps to satisfy itself and be satisfied that the particular nursing home was as suitable as possible for the individual whom it was proposed to accommodate in the nursing home. This is not as significant an issue where Leas Cross was being used by St. Michael's House for short respite breaks. However, where it was proposed to transfer an individual for an indefinite and possibly extended period of time it seems to me that it is essential that there be an assessment of suitability of the nursing home for that individual. The only such decision which I am concerned with in this inquiry is the decision to transfer Mr. McKenna to Leas Cross. I deal with this in section 8.5 below.

3.2.39 In a document which I was given by St. Michael's House, St. Michael's House identify 9 grounds for considering that Leas Cross was suitable both in general and for Mr McKenna:

1. It was inspected and accredited by the NAHB.

2. It had been used by St. Michael's House for respite and longer placements from 1998 to 2000 for clients with significant medical needs.

3. A client with Alzheimers disease and Down Syndrome had had good care from there from August 1999 to her death in August 2000.

4. Another client was successfully placed there for 9 months from 1999 to 2000.

5. The matron of Leas Cross had 11 years experience of working with people with learning disability.

6. The service to St. Michael's House clients was monitored by monthly visits by a senior social worker.

7. Leas Cross was visited regularly by St. Michael's House staff from the day or residential units from which the clients came.

8. The level of complaints about Leas Cross was relatively low.

9. Both the Mater Hospital and Beaumont Hospital regularly referred patients to Leas Cross.

3.2.40 However, these are reasons why St. Michael's House believed and could believe that Leas Cross would be suitable rather than as a result of a formal assessment or

evaluation process. I accept that they are grounds upon which St. Michael's House could have been optimistic that Leas Cross would be able to cater for Mr. McKenna's needs but they can not replace a formal assessment or evaluation. For example, I do not accept that the fact that Leas Cross had provided good care for a St. Michael's House client with Alzheimer's and Downs Syndrome from August, 1999 to August, 2000 can in itself amount to an indorsement of Leas Cross' suitability for Mr. McKenna whose health and care needs were undoubtedly different to those of other service users.

Decision to Transfer to The Beeches for the Weekend

3.2.41 The other aspect of the decision that was made on the 31st August 2008 was to transfer Mr. McKenna to The Beeches for the weekend. The decision to transfer him to The Beeches appears to have come about because once St. Michael's House had decided that he should be transferred to Leas Cross arrangements had to be made, Leas Cross had to be contacted and the family had to be consulted. In light of the crisis situation in relation to Warrenhouse Road Mr. McKenna could not stay there so he needed alternative accommodation until those arrangements for his transfer to Leas Cross could be made[71].

3.2.42 I believe that a decision to transfer him permanently to The Beeches could not fairly be criticised and, indeed, I do not understand anyone to be suggesting that such a decision would be open to criticism. However, the decision that was in fact made was to transfer Mr. McKenna to The Beeches for the weekend only. This would have meant that there would be two moves in very rapid succession. As it transpired, there were 2 moves in a 6 week period. St. Michael's House has emphasised the importance of continuity and stability for a person with Alzheimer's. As previously stated, the consultant in geriatric medicine who assisted the inquiry shared the view that moves are not good for people with Alzheimer's (although he also

[71] Interview with the St. Michael's House physician, the 11th July, 2008, page 39

acknowledges that there may be no choice in a particular case). He also expressed the view that two moves in a 6 week period of time "don't help"[72].

3.2.43 While it was certainly not desirable that Mr. McKenna should have to move twice in the space of either 3 days or even 6 weeks, the decision was justifiable if St. Michael's House had no alternative on the 31st August, 2008. I have previously found that Warrenhouse Road could no longer cater for Mr. McKenna. However, that was in relation to Mr. McKenna's ongoing and continuing care rather than his temporary care for the weekend.

3.2.44 It appears that the breakdown in the Warrenhouse Road placement led to the decision that Mr. McKenna should be transferred to Leas Cross but that same could not be effected immediately.

3.2.45 I explored with the Head of Unit of Warrenhouse Road the difficulties which Warrenhouse Road faced for that weekend which in the Divisional Manager's view meant that Mr. McKenna had to be moved immediately. The Head of Unit of Warrenhouse Road said:

> "It's like for us to keep Peter we will need extra staff from the point of view that it was now taking three to four people to look after his personal care needs when we would have only ever had two staff on duty plus awake and night (as heard). But even at that, at nighttime we would have difficulties should Peter wake up and if he needed any kind of intimate care or whatever. So it would have been – to staff that particular weekend would have meant that we needed extra resources. It wouldn't have been a case of we can't do this. We wouldn't have been able to do it with the existing staff levels."[73]

3.2.46 The Head of Unit of Warrenhouse Road went on to refer to the virtual impossibility of getting staff around that time.

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72 Interview with consultant in geriatric medicine, the 10th December, 2008, page 35
73 Interview with the Head of Unit of Warrenhouse Road, the 31st March, 2008, page 20

3.2.47 I have not been given any information to the effect that efforts were made to secure extra staff for Warrenhouse Road over that weekend before the decision was made to transfer Mr. McKenna.

3.2.48 I expect that the relevant people in St. Michael's House, including the Divisional Manager, knew whether it was possible to secure such staff without making any specific inquiries. If they had that knowledge or made such efforts but could not get extra staff the decision, in the circumstances in which St. Michael's House found itself on the 31st August, 2000, was justifiable on the basis that it would have been inappropriate to have left Mr. McKenna in Warrenhouse Road for the weekend. However, if on the other hand they did not have this knowledge and did not make such efforts the decision to transfer Mr. McKenna to The Beeches for the weekend urgently and without notice to the family was unwise and caused difficulties possibly for Mr. McKenna and certainly for the relationship between the family and St. Michael's House.

3.3 DECISION-MAKING PROCESS AND DECISION-MAKERS

3.3.1 They are the 3 aspects of the decision that was made on the 31st August 2000. I believe that it is important to identify the process by which, and the persons by whom, that decision was made in order to assess whether the decision was made in accordance with St. Michael's House's normal decision-making procedures.

Normal Decision-making Processes

3.3.2 It is first necessary to establish precisely what the St Michael's House normal decision-making processes were at that time.

3.3.3 The phrase "*case conference*" gained currency during the course of the inquiry in discussions about the process by which decisions concerning service users were made within St. Michael's House. One of the reasons for this is that in a submission

which St. Michael's House made to the Inquiry on the 22nd February, 2008 at my request it was stated:

> "The Planning and Delivery of clinical services at local unit/centre level was organised through the 'Case Conference Team' system.
>
> A complete case conference team was comprised of;
>
> - The Head of Unit\Centre
> - Social worker
> - Clinical Psychologist
> - With the support of Psychiatry, Medical Practitioner, Physiotherapy, Speech and Language Therapy and Occupational Therapy as needed.
>
> If the clinic case conference team wanted to move service users in or out of the centre, or change the programme, staffing levels or budget, such matters would have to be referred to the Divisional Manager for decision-making."

3.3.4 Indeed, during the course of the inquiry I came across several instances of decisions which were made by case conference: there was a reference to the decision about the establishment of the day unit in The Beeches which was actually established in July 2000 being discussed at a case conference in The Beeches; a report of the Clinical Director of the 15th September, 2000 which was prepared for the Wards of Court Office referred to a case conference discussing and deciding that Mr. McKenna's day unit should be changed from Seatown Road to The Beeches; there is also a memo recording that the decision to change Mr. McKenna's day unit placement from Seatown Road to The Beeches was made by case conference; the Chief Executive of St. Michael's House referred to the case conference team in Warrenhouse Road discussing whether Mr. McKenna should be moved to The Beeches when the vacancy arose there in April 2000; the report of November 1999 prepared by the psychologist responsible for Mr. McKenna in Warrenhouse Road in which it was concluded that Mr. McKenna was likely suffering from Alzheimer's Disease recommended that "*a case conference be held with all relevant parties to*

discuss changes which may need to be made to Mr. McKenna's routine of care to accommodate his difficulties, particularly in the area of self-care."

3.3.5 However, I was informed by St. Michael's House that case conferences were not always convened to make even significant decisions about service-users. The submission referred to above also went on to say that "between 1995-2000 the clinic was unable to provide full 'case-conference teams' to a number of St. Michael's House services including Warrenhouse Road", a point I return to below. So while the formal decision-making system was that of case conferences, that was not always adhered to in practice.

3.3.6 There were also several references during the inquiry to the role of multi-disciplinary or clinic teams in making decisions. For example the Head of Unit of The Beeches when discussing 'case conferences' equated them with "a meeting with what would be called your clinic team."[74]; the Director of Services explained that decisions on proposals to move individuals would normally be made "*in combination between the clinical team for, where the person was already receiving a service, the manager for the service. Sometimes, very often if people were being moved, there was a particular issue.*" [75] He also described a full team as being a psychiatrist, physician, psychologist , social worker, occupational therapist, physiotherapist, speech and language therapist but he went on to clarify that in residential units (of which Warrenhouse Road was one) "*....the team was never bigger than a psychiatrist, physician, psychologist, and social worker. The therapists would always have been consulted if needed. There were never therapists on the team for residential.*"[76] A senior social worker explained that ideally at case conferences there would be a full complement of clinical people but that at times and for various reasons there could be absentees. She said that "*depending on the nature of the subject and who was being discussed, people would have more or less input into it. So you could have an occupational therapist, for example, that was critical to be at the discussion of a*

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74 Interview with the Head of Unit of The Beeches, the 23rd June, 2008, page 11
75 Interview with the Director of Services , the 27th March, 2008
76 Interview with the Director of Services, the 27th March, 2008

particular person because he is a wheelchair user or because there is an issue about his mobility or dexterity and for the next person they could say: 'I will absent myself from this now, I will go, because I cannot contribute at all to this one.' But generally the core team would have been psychology and social work and medical."[77]

3.3.8 I understand that the way the decision-making system was supposed to work and did in fact work on occasion was for the core clinic team, with the input of other clinicians if necessary, to discuss the particular case in question and make a decision. Ideally, this discussion would take place at a "*case conference*" but this would not always happen.

3.3.9 The consultant psychiatrist on the Warrenhouse Road team touched on the same issue where she said:

> "A case conference isn't set in stone as to who makes the decisions. A case conference just says a case is being discussed. A case conference team is something different, it is usually the team that discusses a case, but the core clinicians vary as to the case discussed."[78]

3.3.10 The purpose of this multi-disciplinary clinic team approach (whether it happens in a structured case conference or not), as I understand it from my discussions during this inquiry, is to allow the relevant experts to make their contribution. The St. Michael's House physician agreed with me when I explained that my understanding "*that the reason for case conferences and particularly multidisciplinary teams or case conferences is that everybody has something to bring to the table and it can be discussed*".[79]

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77 Interview with senior social worker, 16th April, 2008, p. 47
78 Interview with consultant psychiatrist on the Warrenhouse Road team, 17th June, 2008, p. 52
79 Interview with the St. Michael's House physician, 27th March, 2008, p. 15

3.3.11 A senior social worker dealt with this during the interview stage[80] and explained in submissions dated the 25th May, 2009 that:

> "Obviously everybody wants their information to be considered and sometimes, one professional might suggest an intervention that might seem, at that time, to be very aspirational and maybe even unrealistic to another. For example, a psychologist might suggest that a behavioural programme might work for a particular family, but the social worker, who perhaps knows the family dynamics better and is aware of additional stresses and strain that the family may be under at that time, could suggest that a different approach might be more successful. He or she might suggest, for example, that rather than look to the family to support an intervention, the day staff could be asked to become more involved and to take on more responsibility; while the family is getting back on their feet.
>
> So every clinician brings their own knowledge of the service user and his/her present circumstances to the case conference. Then all the relevant information is discussed, with a view to seeing how best the service can support the service user and the family at that time."

3.3.12 It may well be that in a particular case one or more experts would not make a contribution but the multi-disciplinary or clinic team system is designed to provide an opportunity for them to do so and for the other specialities to benefit from same, if any. I believe that it is clear from the above quotes, and in particular the physician's quote, that this understanding is correct.

3.3.13 The normal decision-making process in St. Michael's House was the case conference or multi-disciplinary clinic team. That is clear from the submission dated the 22nd February 2008 from which the quote at paragraph 3.3.3 is taken.

3.3.14 In its submissions to the inquiry after the draft report had been circulated St. Michael's House explained that the decision-making process in cases of crisis or irretrievable breakdown is (and, presumably, was at the relevant time) that the relevant Executive Manager takes responsibility for managing and resolving the crisis in close consultation with the relevant clinician(s). St. Michael's House

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80 Interview with senior social worker, the 16th April, 2008, p.47

described this as an established decision-making process in times of crisis or irretrievable breakdown. In other words, that there is a normal decision–making process in cases where there is no crisis and an alternative normal decision-making process in cases of crisis. That latter process is, according to St. Michael's House's submissions, that (i) the relevant Executive Manager in consultation with the Executive Management Committee and in close consultation with the relevant clinicians takes responsibility and makes the necessary decisions; (ii) where there is conflict of clinical opinion, the process will result in an emergency case conference being held; (iii) the normal process is that the decision is made and executed by the Executive Management Committee and clinicians working together with or without a case conference taking place; (iv) in all cases significant attempts are made to contact all the key clinical people involved, advise them of what is happening and afford them the opportunity to influence the outcome.

3.3.15 As referred to in paragraphs 3.3.3 and 3.3.13 above by letter dated the 25th January 2008, I asked St. Michael's House to explain the decision-making structures in St. Michael's House. When St. Michael's House replied by submission dated the 22nd February, 2008 there was no mention of an established crisis decision-making process or as described by St. Michael's House, an established decision-making process in times of crisis or irretrievable breakdown. Nor was there any express mention of there being such a process during the interview stage although it must be said that the descriptions of how the decision was made largely accord with the process set out in paragraph 3.3.15. The reference to an established decision-making process in times of crisis or irretrievable breakdown was therefore somewhat surprising. This is particularly so when one considers that I questioned individuals from St. Michael's House at length as to why there appeared to have been no case conference or clinic team decision and several explanations or reasons were given but no individual said that it was because there was an established alternative decision-making process which did not require a case conference or the involvement of the clinic team. These explanations are set out in paragraph 3.3.51 below.

3.3.16 Given the contents of St. Michael's House's submissions in this regard, I consider whether the decision was made in accordance with St. Michael's House's normal decision-making process and/or the normal (crisis) decision-making process as described above. As will be seen below, I find that the normal (non-crisis) decision-making process was not followed.

Whether the decision was made in accordance with the normal processes

3.3.17 It has been somewhat difficult to identify precisely when the decisions around this time were made and to identify precisely who actually made those decisions. However, it is clear to me that the decision-making process did not follow the normal decision-making process in non crisis situations. The Chief Executive was not one of the people who were directly involved in the making of the decisions but he said on behalf of St. Michael's House that there was no formal meeting "*where everybody sat down and discussed it and came to a conclusion and minuted it. That wasn't the way it worked...*"[81] This is reflected in the information given by the physician and the Divisional Manager about how the decision was made. Both individuals described it as a "*process*". As stated above, the physician emphasised the fact that the decision-making was a process. Indeed, I understand her to say that it was a broad process because the use of Leas Cross was not new for St. Michael's House. She explained:

> "I am going about this in a roundabout way. I suppose it came about because this wasn't a new thing, we were actively looking for beds, we had sourced here, there, everywhere. Peamount, Cheeverstown, whatever, and the only places we had, we had our respite beds, which we were not putting somebody with dementia into a respite bed. It had happened before, there were huge complaints from the family, and it is totally unsuitable. The other two options were nursing homes, and they were nursing homes that we were using ongoing; Leas Cross and ..... nursing home. They had been sourced by the Social Work Department, they had been visited, we had patients in there, and most importantly, we had had a very good experience with a woman with similar, with Alzheimer's dementia and Down's Syndrome, and she had been

[81] Interview with the Chief Executive, the 9th April, 2008

placed there for, she was there nearly a year before she died. Everybody was very happy with it. The family were very happy, and in point of fact this girl's brother was a Consultant Pathologist, he was a medic, where this woman had come from, a respite house, were very happy, and it had worked very well. So, it was a process, and I suppose you could say "well, why did you pick Leas Cross?". Well, because based on evidence we had used it, we were happy with it, we had a similar type of person going there and it had worked out very well. But can I give you the time and date that we said "oh, we will go to Leas Cross?" No. I can say that we knew it worked out very well. There was a bed available, they could take Peter McKenna, and it was the only option at that time."[82]

3.3.18 The Divisional Manager explained, in response to a question as to who was involved in making the decision from St. Michael's House's point of view [83] to transfer Mr. McKenna from St. Michael's House to Leas Cross, that:

" .....my experience of it as I have said, is that there were a number of people who were obviously very concerned about the fact that Peter needed, at that point, total nursing care, and we didn't have a facility to actually provide that for him. Those people like at that point, particularly [the Physician], myself, the staff in the unit, would have felt that he needed 24 hour nursing care. It was a process, I suppose, rather than an actual – I don't recall an actual group of people sitting down. Now, which is not to say it didn't happen, but I don't personally recall a formal decision that he would actually now move to Leas Cross."[84]

3.3.19 I find that the Chief Executive is indeed correct that there was no formal meeting. It is clear therefore that there was no formal case conference per se. I deal with the reasons why there was not a formal meeting or case conference below.

3.3.20 In order to assess whether the decision, while not made by a case conference, was made in accordance with the normal decision-making process, that is by the relevant clinic team, it is necessary to identify how and by whom the decision was made.

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[82] Interview with the St. Michael' House physician, 27th March, 2008, p.10

[83] The reason why the question was phrased in this way was because of the point made by the Divisional Manager that the decision was in fact made by the President of the High Court

[84] Interview with the Divisional Manager, the 27th March, 2008

3.3.21 I find that the first decision, that is, that Mr. McKenna should be moved from Warrenhouse Road to Leas Cross after the weekend was made by the physician, the Divisional Manager, and the Head of the Social Work Department who at the time was covering as social worker for Warrenhouse Road in St. Michael's House. I am satisfied that the issue was discussed with other people in St. Michael's House before or around the time that the decisions were made and that they were also involved in the process after the move to The Beeches had occurred but the core group who actually made the decision consisted of those three individuals. It would not be accurate to describe this group as a committee but they were the decision-making group. The decision that Mr. McKenna should be moved to The Beeches occurred once the decision was made that Mr. McKenna should be transferred to Warrenhouse Road and therefore the same people were involved in that decision although the Divisional Manager made the final call in relation to that aspect.

3.3.22 I reach this conclusion in light of the information provided by the Chief Executive, the Director of Services, the Divisional Manager, the physician and the Head of the Social Work Department.

3.3.23 The Chief Executive explained that:

> "... You are kind of looking to see was the meeting held at three o'clock on a Wednesday where everybody sat down and discussed it and came to a conclusion and minuted it. That wasn't the way it worked. [The consultant psychiatrist on the Warrenhouse Road team] had seen him [Mr. McKenna] within a couple of days. [The physician] had seen him. The physiotherapists.....had been out. They had been involved in trying to get him out of the bed. All of these people are involved at a level where they come into the house, they give advice and they disappear again. But the people who are the left hanging on to Peter McKenna, or whoever the service user is, are the direct staff involved. And that would have fallen to [the Divisional Manager] as the manager of those direct staff. So he would have taken all of that together and would have discussed it with various people at various stages. I believe himself and [the physician]

ultimately would have come to me and said 'we have no choice'. I know it would be lovely if I could say to you that the meeting happened but didn't."[85]

3.3.24 The Director of Services said in response to the question whether he was involved in the decision:

"I suppose I was involved to the extent that I would have agreed to it, but the decision would have been made – [the Divisional Manager] would have come to me and the decision would have been made by [the physician], and [the Divisional Manager], and [the Head of the Social Work Department]. She was the Head of Social Work, and because there was no social worker working with that house, she was covering in terms of social work for that..... So, that is what I was told, that that was the – but the, if you like, there were two primary elements to the decision, and one was medical and his needs, and the other then was the actual placement. So, I suppose the primary people in the decision making, if you like, would is been [the physician] and [the Divisional Manager]."[86]

3.3.25 It is clear from these accounts that the Chief Executive and the Director of Services believe that the physician, the Divisional Manager and the Head of the Social Work Department to a lesser extent made the decision that Mr. McKenna had to be moved. Given that the Chief Executive and the Director of Services were not directly involved in actually making the decisions (although it appears that they had a role after the decisions were made) I could not rely solely on their information to make the finding as to who made the decision but their accounts are supported by others.

3.3.26 The physician told me of discussing the question of where Mr. McKenna should go with the Divisional Manager and the Head of the Social Work Department on the 31st August. While she also stated that prior to this discussion she had spoken to the Clinical Director it is clear that she considers the actual decision to have been made in that discussion with the Divisional Manager and the Head of the Social Work Department. The physician stated:

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85 Interview with the Chief Executive, the 9th April, 2008 page 81-82

86 Interview with the Director of Services , 27th March, 2008, p. 12

"I certainly remember, I remember, think it was the Thursday because I was here, [the Head of Unit of Warrenhouse Road] was coming in to meet [the Divisional Manager] for the – you know, that the situation had broken down and I remember [the Divisional Manager], myself and [the Head of Social Work Department] discussing it. Now, I can't remember was it sitting down at a formal meeting, but it was what are we go to do. And, you know, the only situation, the only thing available that could have been available would be Leas Cross. And in view of the experience we had with Leas Cross with our patient with dementia before, and whereas [the other nursing home] wouldn't be suitable, we said that was it, Leas Cross. But before we could do that, we would have to get on to Leas Cross to see whether they could take him and discuss it with the family there was an available, somebody was going home for the weekend in The Beeches and he went in there, because it was literally a crisis."[87]

3.3.27 It is appropriate to repeat the point at this stage, given the reference in that quote by the physician to discussions with the family, that St. Michael's House emphasised on a number of occasions during interviews that it is not correct to say that a decision was made by St. Michael's House to transfer Mr. McKenna to Leas Cross in advance of discussing the issue with Mr. McKenna's family. Indeed, the point has been made that in fact St. Michael's House did not make the decision to transfer Mr. McKenna to the nursing home and that this decision was actually made by the President of the High Court. For the purpose of the present section I am referring to what St. Michael's House describes as a "*proposal*" to transfer Mr. McKenna as a "*decision*" because I think it is a more convenient way of discussing same but also and, more particularly, because I do not think it can be gainsaid that a decision was made that from St. Michael's House's point of view Mr. McKenna would have to be transferred both **from** Warrenhouse Road and **to** Leas Cross.

3.3.28 While accepting the physician's point about the decision being part of a process (which is referred to above), I think it is also apparent from the information which she has provided that when that process came to a head it was herself, the Divisional Manager and the Head of Social Work Department who actually made the decision. I asked the physician who actually made the decision and she replied:

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87 Interview with the physician, 11th July, 2008, p.34

"Well, part of that process, because at that stage it would have come -- I mean his medical nursing needs would have overtaken everything else, his huge care needs. There was, obviously the Head of the Unit to begin with, because she was strongly saying they couldn't look after him any more. The Residential Manager?. The Head of Social Work, and myself as the medical doctor. That would be -- in other cases too, they would come to me and they would say "well, you know, [.....] has bad epilepsy and whatever, she needs to go into residential. What does she need? Does she need nursing? Can she go into a house where the staff are asleep at night?", and I would give a medical opinion."[88]

3.3.29 The Divisional Manager also identifies himself, the physician and the Head of Social Work Department as the decision-makers. As stated above, the Divisional Manager said that after he had heard the report of the occupational therapist and physiotherapist who had visited Warrenhouse Road on the 28th August and had been told by the Head of Unit of Warrenhouse Road on the 31st August of the difficulties which the house faced over the weekend, he:

"... was very clear at that point that the situation had broken down, and I would have consulted with, I think at that time [the physician] and [the Head of Social Work Department], and I would have also spoken at that time to, I think [the Director of Services], or possibly the Chief Executive, but I ultimately, I suppose, decided that the situation was irretrievable, based on my own experience of the situation, and contacted The Beeches to see if they could accommodate him for the weekend."[89]

3.3.30 The Divisional Manager also described it as a "*collective decision*"[90].

3.3.31 The Head of Social Work Department's memory is not as clear as the Divisional Manager's or the physician's. The Head of Social Work was identified by the Chief Executive, the Director of Services and the physician as having been involved in the

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88 Interview with the physician, the 27th March, 2008, p.13
89 Interview the Divisional Manager, the 27th March, 2008
90 Interview with the Chief Executive, the 27th March, 2008

general discussions and as having been involved in the discussion on the 31st August, 2000 which led to the decision being made.

3.3.32 She acknowledges that it would have been usual practice that she would have been involved in those kind of decisions and that she did indeed have some discussions about Mr. McKenna's deteriorating condition and the difficulties this was posing for Warrenhouse Road but she does not remember specifically the details of her involvement in this case[91]. She said that while she remembered some discussion where she would have disagreed with a move to The Beeches for the weekend because she would have been afraid that Mr. McKenna would be left there, she does not remember a meeting or a definite decision about a move to Leas Cross. However, she also went on to say that she has "*no reason to say that she didn't agree with the decision.*"[92]

3.3.33 In circumstances where the physician and the Divisional Manager have given clear information of her involvement and she herself has not disputed having such involvement, I find that the Head of Social Work Department was in fact involved in making the decision although the physician and the Divisional Manager were the primary decision-makers.

3.3.34 During the course of discussions about who was involved in the decision reference was made to a variety of other individuals; these include occupational therapists and physiotherapists, the Head of Unit of Warrenhouse Road, the Chief Executive, the Divisional Manager, the consultant psychiatrist on the Warrenhouse Road team and the Clinical Director.

3.3.35 I do not understand anybody to be saying that the occupational therapist, physiotherapist, or the Head of Unit had a direct input into the decision-making. My understanding is that they, and the information which they provided, fed into the

91 Interview with Head of Social Work Department, the 9th April, 2008
92 Interview with Head of Social Work Department, the 9th April, 2008

decision-making but that they did not participate in the decision-making itself. I find that to be the case.

3.3.36 There is no information to suggest that the Chief Executive, the Director of Services or the Clinical Director were directly involved in making the decision at this stage although the Chief Executive and the Clinical Director subsequently became centrally involved. The nature and extent of the Chief Executive's and the Director of Services' involvement at this stage was that they indorsed the decision which had been made by the Divisional Manager, the physician and the Head of Social Work Department when their indorsement was sought. The extent of the Clinical Director's involvement at this stage appears to have been a number of conversations with the physician.

3.3.37 There appears to be little doubt that the consultant psychiatrist responsible for Mr. McKenna in Warrenhouse Road was involved in discussions about Mr. McKenna during August and in particular during the final week of August leading up to the 31st of the month. However, it appears to be equally clear that she was not involved in actually making the decision to move Mr. McKenna from Warrenhouse Road and to Leas Cross in the same way as the physician, the Divisional Manager and the Head of Social Work Department. The consultant psychiatrist herself said, in response to my question whether she "*was involved in firstly the decision that Mr. McKenna had to be moved from Warrenhouse Road?*", that she "*was aware of it rather than... remember being directly involved over there on those dates but was certainly aware of it.*"[93] When asked whether she was involved in the decision that the time had come that Mr. McKenna had to be moved to a placement with high nursing support she replied "*No, but I would probably have accepted it. Having been informed I would have agreed with it.*" When I asked her whether she was involved in the decision-making to send Mr. McKenna to Leas Cross, she said "*No, I wasn't.*" She also said "*I am not sure how that decision was arrived at.*"[94]

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93 Interview with the consultant psychiatrist, the 5th February, 2008
94 Interview with the Consultant psychiatrist, the 5th February, 2008

3.3.38 The Divisional Manager confirmed that the consultant psychiatrist was not involved in the decision-making process even to the extent of whether Mr. McKenna should be moved from his then placement (Warrenhouse Road) to another placement[95].

3.3.39 It is important to note at this stage that the Divisional Manager, and indeed others, also made the point that the consultant psychiatrist was aware of the situation and the decision. The physician said that she kept the consultant psychiatrist:

> "informed about the crisis and about The Beeches and Leas Cross and I also know that, I suppose, over the proceeding [sic] time she knew and I knew things were going to deteriorate and, you know, it was highly unlikely Warrenhouse Road would be able to look after him."[96]

3.3.40 The consultant psychiatrist herself, as recorded above, acknowledges that she was aware of it. However, she stated in her submissions to the inquiry after the draft report had been circulated that while the physician kept her informed about Mr. McKenna's deterioration during the last weeks of August and his likely need to be moved from Warrenhouse Road, she was not aware of Leas Cross as a possible option until the 31st August. This is relevant to my findings about the decision and decision-making process and I deal with it below.

3.3.41 Notwithstanding the fact that the consultant psychiatrist was kept informed, it is implicit from the passages quoted above, in paragraphs 3.3.26 and 3.3.29, where the physician and the Divisional Manager refer to discussions between the two of them and the Head of Social Work Department that the consultant psychiatrist was not involved in actually making the decision. It is also clear from the express statements of the consultant psychiatrist and the Divisional Manager referred to in paragraphs 3.3.37 and 3.3.38 respectively.

3.3.42 It is fully accepted by all concerned that there was no psychological involvement in this decision-making process. I deal with the reasons advanced for this in greater

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95 Interview with the Divisional Manager, the 25th June, 2008

96 Interview with the Physician, the 11th July, 2008, p.56

detail below. At this stage, it should be noted that the psychologist responsible for Mr. McKenna in Warrenhouse Road had gone on maternity leave in or about the 10th July[97]. This psychologist was not replaced while she was on maternity leave. In those circumstances there was no psychologist assigned to Mr. McKenna in Warrenhouse Road at the relevant time.

3.3.43 In all of the circumstances, as stated above, I find that the decision that Mr. McKenna should, from St. Michael's House point of view, be moved from Warrenhouse Road and to Leas Cross was made by the physician, the Divisional Manager and the Head of Social Work Department and that this decision was indorsed by the Chief Executive and the Director of Services .

3.3.44 It seems to me that a number of conclusions can be drawn from all of this. Firstly, I find that there was no case conference or clinic team meeting to decide (a) to transfer Mr. McKenna from Warrenhouse Road to The Beeches on the 31st August or (b) to transfer Mr. McKenna from St. Michael's House to Leas Cross Nursing Home. I believe that this conclusion follows logically and inevitably from my finding as to who made the decisions and from the express acknowledgement by the Chief Executive that a meeting did not happen[98], the fact that two of the specialities on the clinic team, psychiatry and psychology, were not involved in the decision and from the descriptions of the decision-making as a process. Indeed, the Divisional Manager expressly said:

> "I don't recall an actual group of people sitting down. Now which is not to say it didn't happen but I don't personally recall a formal decision that he would actually now move to Leas Cross"[99]

3.3.45 I accept that there will not always be a formal (or even an informal) meeting at which a decision is made at a specific point in time. While the ideal is clearly that there should be such a meeting or meetings, the real world does not always operate in

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97 Interview with the psychologist responsible for Mr. McKenna in Warrenhouse Road, 3rd June, 2008, p. 15
98 Interview with the Chief Executive, the 9th April, 2009
99 Interview with the Divisional Manager, the 27th March, 2008

such a compartmentalised or formalistic manner, particularly when resources and services are under the extreme pressure which St. Michael's House was experiencing at this time. It may well be that what is referred to as a case conference or even a clinic team discussion/meeting may happen over the course of a series of conversations or even telephone conversations. However, even allowing for such informality, the concept of a case conference or clinic team decision is that the clinicians all input into the process which leads to a decision. It seems to me that, if such input is considered desirable, systems should ensure that such input is made possible, and the point at which the decision is made, the persons who made the decision and the basis of that decision are identifiable. The value of a meeting is that it allows for these things to happen.

3.3.46 The clinic team for Mr. McKenna in Warrenhouse Road was the psychiatrist, the psychologist, the physician, and a social worker[100]. I also accept the service manager would be involved.

3.3.47 I have concluded that the decision that Mr. McKenna needed to be and should be transferred from St. Michael's House to Leas Cross was taken by the physician, the Divisional Manager and the Head of Social Work Department. I also accept that the issues were discussed with the Clinical Director both in advance of the decision and subsequent to the decision being made but I find that the discussions prior to the decision were only of a general nature and could not properly be described as part of the formal decision-making process. I also accept that the decision was discussed with the Director of Services and the Chief Executive but these discussions were more in the nature of seeking sanction to give effect to the decision rather than for the purpose of making the decision in the first place. I also accept that the consultant psychiatrist was aware of the issues and, indeed, of the decisions that were being or had been made. However, it is clear both from the information which she has given and the information given by the Divisional Manager and the physician that she did not participate in making the decision. The point has been made to me that the

[100] I base this on the information provided by the Director of Services , the 27th March, 2008

consultant psychiatrist could and would have intervened if she had objected to the proposed decision or the decision itself. I do not accept that this amounts to participation in the process but I do accept that it is something which calls for consideration and I consider its significance below. Psychology was not involved as the psychologist was on maternity leave and had not been replaced.

3.3.48 It is clear, therefore, that of the core clinic team of 4, a psychiatrist, physician, psychologist and social worker, only 2 were involved in actually making the decision, that is the physician and the social worker. The Divisional Manager was also involved. The decision was therefore not made by the clinic team.

3.3.49 In all those circumstances I find that the decision was not made by a case conference or by the relevant clinic team as the decision-making group did not include all of the members of the clinic team. The decision-making process therefore did not accord with the normal St. Michael's House decision-making i.e. the process by which decisions were meant to be made by St Michael's House in non-crisis situations.

3.3.50 It follows from my finding as to who was involved in making the decision that the decision was made largely in accordance with the decision-making process which St Michael's House described in its submissions as operating in crisis or irretrievable breakdown situations in that the decision was made by the relevant Executive Manager (in this case the Divisional Manager for residential services) in consultation with some of the relevant clinicians. I have previously concluded that the involvement of the consultant psychiatrist did not amount to consultation and can therefore not conclude that she was consulted. I comment below on the reasons why the decision had to be made in a crisis situation.

Explanation for No Case Conference or Clinic Team Discussion

3.3.51 Because the existence of a specific alternative decision-making process for situations of crisis had not been made known at or during the interview stage, I discussed with a number of individuals the question of why there had not been a case conference to make this decision or why the full core clinic team was not involved and a number of explanations were given on behalf of St. Michael's House. The simple answer would have been that there was an established alternative decision-making process which was used in Mr. McKenna's case as it was a crisis. For the sake of completeness I consider these explanations. I also consider them because some of them seem to me to also be explanations as to why St. Michael's House believed that it was necessary to use this alternative process. These must also be the explanations as to why there is a crisis decision-making process and why it was used:

(i) Firstly, I have been told that there was not a full case conference clinic team available at the relevant time. Indeed, it has been made clear to me that it was not an unusual occurrence that a house or service user would not have a full team[101]. I accept that this was the case and I also accept that at the relevant time service providers such as St. Michael's House faced significant difficulties in filling teams and keeping them filled. Those difficulties arose from inadequate funding and a shortage in the relevant specialities. The absence of a full team must be seen in this context.

However, that is not an explanation as to why the consultant psychiatrist, who was available, was not part of the decision-making.

Furthermore one of the reasons given for the absence of a full team in respect of Mr. McKenna is that the psychologist who was assigned to Mr. McKenna in Warrenhouse Road was on maternity leave from the 10th July[102]

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[101] See Interview with senior social worker, 16th April, 2008, p. 52, Interview with the consultant psychiatrist, 17th June, 2008, p. 55, Interview with the physician, 11th July, 2008, p. 40 and Interview with the Director of Services , 27th March, 2008, p. 55

[102] Interview with psychologist, 3rd June, 2008, p. 15

and she had not been replaced. I expressed the view in the draft report that I saw no particular staffing reason why a psychologist could not have been assigned to Mr. McKenna's case for the purpose of participating in the decision-making process in relation to his move from Warrenhouse Road and more particularly the decision in the week of the 31st August to move him from St. Michael's House. In its submissions following the circulation of the draft report, St. Michael's House disagree that it would have been possible to appoint a psychologist at short notice. Specifically, St. Michael's House state that the psychology department at the time were unable to provide psychology cover for many units/centres in St. Michael's House. They state that approximately 30% of the posts in the psychology department were vacant at the time and so psychology services were at a premium and experience showed that a request for emergency cover from the psychology department could take up to three weeks to be agreed and allocated. While this addresses my comment that I saw no "*particular staffing reason why a psychologist could not have been assigned*" and I accept that St. Michael's House would have faced difficulties in this respect, I remain of the view that there were no staffing reasons why a psychologist was not assigned. Indeed, as will be seen below, St. Michael's House was able to assign a psychologist to assist the family later in September. St. Michael's House pointed out in its submissions that this was unusual. It may have been unusual but it shows that it was possible. Therefore, I do not believe that the absence of the particular psychologist on maternity leave at the specific time is in itself a convincing reason why there could not have been a case conference or full clinic team decision. However, this can not be seen in isolation from the events on the ground. One of the other reasons given for the absence of a case conference or clinic team decision is that St. Michael's House was dealing with a crisis and that there was no time to assemble or convene a case conference. This is relevant to why another psychologist was not assigned. Obviously, such an appointment would have taken time. I

return to this explanation that St. Michael's House did not have time to assemble a case conference below.

(ii) The second explanation that was given is that Mr. McKenna's condition had deteriorated to such an extent that his needs had become primarily nursing and medical and that the key expert in those circumstances was the physician. I am using the word "primarily" because I think that encapsulates the description as a whole but it should be noted that the Clinical Director went so far as to say that Mr. McKenna's needs were "purely nursing". He said:

> "I was listening very closely to [the physician] , I had to, because she was our expert in dementia, and she was telling me very clearly that his needs were not psychological, were not mental state, were not social, they were purely nursing. Now, you can garnish it with all the others, but the core need was being met in a nursing and medical capacity."[103]

It was agreed by everybody who was asked to deal with this point that Mr. McKenna's needs were, at the time the relevant decision was made, primarily of a nursing or medical nature and I find that to be the case.

Implicit in this explanation is that the other areas of expertise had nothing to offer and that therefore there was little or no point in them being involved in the decision-making process and there was therefore little or no point in holding a case conference or a clinic team meeting or discussion.
I do not accept that it follows that the decision making structures which are considered to be the ideal and which are identified as the structures which were intended to normally be in operation (i.e. in non-crisis situations) in St. Michael's House should not be followed. My understanding of the case conference or clinic team system is that the various specialities discuss the

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[103] Interview with the Clinical Director, 27th March, 2008, p. 47

particular case in question; that it is an opportunity for the specialities to bring their expertise to the table. It may well be that a particular specialty will have no role or contribution to make in a given case; for example, it may be the case that psychology or psychiatry has nothing to offer or may even be of no relevance in a specific case. If so, the psychologist or psychiatrist can choose not to attend or can choose to indicate that the specialty has nothing to offer. Alternatively, it may be that the specialist has a contribution to make but that where that does not accord with the views of the expert in the field where the client's needs primarily lie, the specialist's views will not be adopted. In other words, one of the purposes of the case conference or clinic team meeting is to see what the various specialties have to offer. To the extent that reliance is placed on this explanation, it is clear that what occurred in this case is that a decision was made that some of the specialties would have nothing to offer and that there was therefore no point in having a case conference or full clinic team input. That seems to me to put the cart before the horse. It must also be remembered that there are other issues surrounding a proposal to transfer other than simply whether it should or should not occur; for example, how to support the family or what, if anything, needs to be put in place to support the non-nursing needs, if any, of the service-user in the proposed new placement.

This is not simply an academic discussion. The Head of Psychology in St. Michael's House expressed the view, when I put it to him that it had been suggested that "there was very little input or contribution that a psychologist or psychiatrist could make to a case conference" where the service user's needs were medical nursing needs, that:

> "the major needs are medical and nursing, but I do think he still was a person who experienced fear, he obviously had feelings and so on even if he was deteriorating

> rapidly. I suppose my sense of it would be that it would be useful to have somebody just look at another angle on it as well, but maybe that is an ideal position."[104]

The Head of Psychology also said that he believed that it was appropriate to support the family with a psychologist and to have an assessment carried out. He was referring to a point in time after the decision had been made to move Mr. McKenna but I think it is indicative of his view that psychology had a role to play. He said such an assessment:

> "... would be an assessment of his needs really in terms of if he was going to a nursing home, what sort of situation should be adapted for him, if at all possible. He had big difficulties moving around, difficulties communicating and so on, so maybe to try and make the best setting for him as possible, that would have been the objective."[105]

Indeed, the Head of Psychology appointed a psychologist during September to support the family and to carry out an assessment of Mr McKenna's needs. I deal with this in greater detail below in paragraph 4.3.133. It is clear, therefore, that the Head of Psychology believed that psychology had a role to play and that the fact that a service user's needs are primarily medical/nursing in nature does not mean that psychology has nothing to offer.

It is undoubtedly very likely that the medical expert would have the final say in the event that the clinic or case conference team could not reach a consensus. That is entirely different to saying that all of the members of the team should not be involved in the discussion in the first place.

(iii) The third explanation that has been given is that St. Michael's House had no options as to how to accommodate Mr. McKenna other than to transfer him to an external nursing home and that therefore no purpose would have been served by having a case conference or clinic team meeting. The situation was

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104 Interview with the Head of Psychology, the 11th June, 2008
105 Interview with the Head of Psychology, the 11th June, 2008

contrasted with the situation in July when there was a case conference in relation to the proposed change of Mr. McKenna's day unit from Seatown Road to The Beeches[106]. I have found that St. Michael's House had no alternative placements available to it. However the case conference or clinic team would not just discuss and decide upon a move. It would also discuss and consider issues such as the management of the move and communication with and support for the service user and his or her family. It would also discuss, as the Head of Psychology suggested, "*what sort of situation should be adapted for him*".

(iv) Finally, a number of individuals from St. Michael's House explained that the situation during the week of the 31st August, 2000 was a crisis and there simply was no time to convene and assemble a team. Following on from the physician's response to my suggestion that the cart had been put before the horse, she said:

> "Because the issue, and we need to go back, this became a total emergency. If you look at the week up to, coming up to the 31st, there were huge issues with him, physical issues of him become immobile, and falling, and the physio going out and then bringing him into casualty to see was he injured, had he fractured, or whatever. So, what was happening was, it had become huge dependency needs, but also the problem was, overriding the whole thing what happened was, the Head of the Unit basically came in and said on a Thursday, I cannot remember whether it was the morning or afternoon "we cannot look after him any more. End of story. We cannot look after him." So, in an emergency like that, first of all there was no full case conference team, but to organise everybody to come in and discuss or whatever, that could take up to about a week or so."[107]

These remarks were reflected by the Clinical Director who was not directly involved in the decision-making, when he said when discussing the decision to transfer Mr. McKenna out of Warrenhouse Road that:

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106 Interview with the Divisional Manager, the 25th June, 2008
107 Interview with the physician, the 27th March, 2008, p. 16

"case conference is an unwieldy object. It takes time to get the people together, and we were faced before a weekend with an untenable situation. It was untenable."[108]

While the Chief Executive was not directly involved in the decision-making he assisted the inquiry at length. I obviously could not rely solely on information provided by him in relation to things or events about which he does not have direct knowledge, but his comments about why there was no case conference reflect those of the Clinical Director and the physician. He contrasted the situation surrounding the change of Mr. McKenna's day unit with the decision to change his residential placement in the following terms:

"I suppose the answer to that is because his move from Seatown Road to The Beeches wasn't an absolute crisis.

It wasn't a situation where people were saying 'Christ, we have to move him within the next couple of hours'. It was a situation where people were saying, 'Look, I think he would be better off if he went to The Beeches'. So, yes, we all had the time to nicely sit down, have a meeting, discuss it and a decision was made."[109]

The Chief Executive subsequently confirmed that he meant that there was no case conference about the move from Warrenhouse Road because it was urgent. He also said that it was because the key clinician at that stage with decision-making power was the physician:

"A psychologist or a social worker could have gone to a case conference and say 'I totally disagree with the decision to move Peter McKenna'. But the person who had the decision-making power at that stage was [.....], because his needs were clearly medical and she would have out-ruled them, if I may put it that way. And there have

108 Interview with the Clinical Director, the 27th March, 2008, p. 30
109 Interview with the Chief Executive, the 9th April, 2008, p. 83

been many occasions when that has had to happen. It seems to me that what occurred here."[110]

It is during this type of conversation at the interview stage that I would have expected a reference to there being an established crisis decision-making process. I have no difficulty in accepting that the situation had become urgent in the days leading up to the 31st August, 2000 and I can understand why it was felt that a formal case conference could not be assembled and convened in sufficient time, particularly in circumstances where that would have involved the assignment of an acting psychologist although it must be noted that in its submissions in relation to the existence of an established crisis decision-making process, St Michael's House referred to the ability of any of the relevant clinicians to call an emergency case conference even in cases of crisis.

The urgency does not explain why the members of the case conference team or clinic team who were active and available (the consultant psychiatrist) were not all involved in the process.

Furthermore, I see absolutely no reason why such a meeting could not have been called and held at a much earlier stage. As has been acknowledged, Mr. McKenna's condition had worsened during August and there was a growing awareness during August and perhaps even July that the point was approaching when he would have to be moved from Warrenhouse Road. St. Michael's House in its submissions following the circulation of the draft report accepts that there should have been a case conference in July before the psychologist on the Warrenhouse Road team went on maternity leave to examine options as it was known that The Beeches was full and would probably only have a place available if a resident died. I deal with this in detail under the heading "Communication with family" (Section 4).

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[110] Interview with the Chief Executive Officer, the 9th April, 2008, p. 84

(v) A further point was made by St. Michael's House in relation to this case conference issue. The Chief Executive Officer explained that the management team of St. Michael's House had agreed a new discharge policy in June, 2000. This was not communicated to the organisation until the end of November, 2000. The Chief Executive Officer described the new policy as being that:

> "The discharge must be agreed by the relevant team. The recommendation of the team must be agreed by the Divisional Manager for Residential Services. The discharge must then be agreed by the Director of Services, who will make a recommendation to the CEO. The CEO may then sanction the discharge. The service user may not be discharged or withdrawn from the service until this has been sanctioned by the CEO.' That was agreed by the management team in June. It is minuted in June and was ultimately distributed to the whole organisation on 29th November. It hadn't been distributed to the whole organisation on 31st August or 6th October but it had been agreed by the management team."

The Chief Executive Officer then went on to explain the relevance of this to Mr McKenna's case. He said:

> "The people who would have been there that are relevant are myself, [the Clinical Director], [the Divisional Manager] and [the Director of Services]. So four of the management team were involved in Peter McKenna and were aware of this discharge policy. I suppose part of the reason why I am saying it to you is because it says: 'The discharge must be agreed by the relevant team'. It doesn't say by the case conference, it says by the relevant team.....The relevant team at that time was [the Divisional Manager], [the physician], [the Clinical Director] and myself because [the Director of Services] had gone on holidays. They were the relevant team."[111]

To the extent that this is proffered as a reason why there was no case conference or clinic team meeting to decide on Mr. McKenna's residence, I do not find it convincing.

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111 Interview with the Chief Executive Officer, the 9th April, 2008, p.69

Firstly, the policy had not become effective because it was not communicated as a change in policy or procedure to the organisation until almost 3 months after the decision to transfer Mr. McKenna and a month and a half after effect had been given to this decision.

Secondly, the Chief Executive Officer conflates the reference to the "relevant team" in the first sentence of the new policy with the management personnel or positions that are referred to in the second and third sentences. The Chief Executive Officer, the Divisional Manager and the Director of Services cannot be considered part of the "relevant team" which is referred to in the first sentence because the policy in its terms required the recommendation of that team to be agreed by the Divisional Manager and by the Deputy Chief Executive Officer and then to be sanctioned by the Chief Executive Officer. The offices which are required to agree and/or sanction the recommendation of the team can not possibly be said to also be that team or part of the team. It is clear to me that the team referred to in the first sentence is separate and discrete from the management positions referred to in the policy. I therefore do not accept that the "relevant team" could have been the Divisional Manager, the physician, the Clinical Director and the Chief Executive Officer.

Thirdly the Clinical Director has already stated that he was not directly involved in the decision making process. Both the Chief Executive Officer and the Director of Services said that they were involved in the process only to the extent of approving the decision that was made.

3.3.52 I must conclude, therefore, that the normal (non-crisis) decision-making processes within St. Michael's House were not followed and that the decision was in fact made in accordance with what was described in St. Michael's House's submissions following the circulation of the draft report as an established decision-making

process in cases of crisis or irretrievable breakdown. This meant that there was no case conference or clinic team discussion.

Consequences Of No Case Conference Or Clinic Team Discussion

3.3.53 However, I believe that it is important to emphasise that it is extremely unlikely that a formal (or even an informal) case conference or clinic team meeting or discussion would have made a different substantive decision or that the normal decision-making processes would have led to a different substantive decision being made. I am of this view for the following reasons.

3.3.54 I have identified the specialties which would have been on such a case conference or clinic team. The consultant psychiatrist is the only member of that team who was present and involved in Mr. McKenna's care who was not involved in the decision-making process. The psychologist on the Warrenhouse Road team was on maternity leave and therefore would not have been involved in the decision-making. I return below to what may have happened if another psychologist had been assigned to act in relation to what should happen to Mr. McKenna at this time.

3.3.55 The consultant psychiatrist has stated that at the time she would have placed great reliance on the physician and that she placed great confidence in the opinion of the physician[112],

> "I fully agree that his medical and nursing needs were entirely to the fore and that the physician looked after that very well and that I really valued her opinion."[113]

3.3.56 It will be seen later under the heading "*Communication With The Family*" that the consultant psychiatrist telephoned the family to inform them of the proposed move to Leas Cross Nursing Home.

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112 Interview with the consultant psychiatrist, 17th June, 2008, p.75
113 Interview with the consultant psychiatrist, 17th June, 2008, p. 62

3.3.57 I was somewhat surprised upon reading the documents which were furnished to me that it was the consultant psychiatrist who made that telephone call given that she did not appear from the documents to have actually been involved in making the decision which was being communicated and that it struck me that such a contact would normally be made by a social worker.

3.3.58 As set out above, it is accepted that the consultant psychiatrist was not involved in making the decision. The point has been made on a number of occasions by people on behalf of St. Michael's House that the consultant psychiatrist was aware of the decision and that if she had any objections to it she would have voiced those objections. This point has been emphasised by reference to the consultant psychiatrist having made that phone call, that is, that not only was she aware of the decision but that she was the one to relay the decision to Mr. McKenna's family and that if she had objections to the decision she could have voiced those objections and, indeed, refused to contact the family. The Chief Executive Officer in particular said:

> "... So if [the consultant psychiatrist] didn't agree with that decision, there was no way she would have rung the family. [She] was a consultant psychiatrist, and I think I explained to you the last time I was here that consultant psychiatrists don't exactly report to the Chief Executive. They have a relationship with you but it isn't really a reporting one. So if [she] had felt that that was inappropriate or whatever, I am sure she would have said so very clearly. But she actually rang the family and told the family. So I was very clear that [she] was more than aware of this proposal."[114]

3.3.59 In light of this point and my understanding that such a phone call would not normally be the responsibility of the consultant psychiatrist, particularly one who had not been directly involved in making the decision, I explored how and why the consultant psychiatrist was the one who came to make this call. The consultant psychiatrist's own memory of how she came to make the call was that she was initially asked to

[114] Interview with the Chief Executive Officer, the 9th April, 2008, p. 19

telephone the family by the Residential Manager to inform the family of the move to The Beeches but that before she actually spoke with a member of the family she was then contacted by, she thinks, the physician to be told that in fact Mr. McKenna was going to be transferred to Leas Cross[115]. She expanded on this in a second interview at which she said:

> "My memory of it is that I was sitting in my office and I took a call from [the Residential Manager] about Peter moving to The Beeches, as I have described before, and I put in a call to [Mr. McKenna's brother] and that after that that [the physician] came to my office and said that he wasn't going The Beeches, that there had been some confusion about that, and that he was instead going to a nursing home called Leas Cross."[116]

3.3.60 The consultant psychiatrist repeated in her submissions that she had no awareness of the proposal to transfer Mr. McKenna to Leas Cross until she was contacted for the second time on the 31st August.

3.3.61 The Residential Manager was quite clear when I interviewed him on the 28th March, 2008 and the 25th June, 2008 that he had not contacted the consultant psychiatrist. The physician was equally clear when I interviewed her on the 11th July, 2008 that she had not requested the consultant psychiatrist to contact the family[117]. The physician was also clear in her belief that it was the Director of Services who asked the consultant psychiatrist to contact the family. The Chief Executive Officer recalls asking the Director of Services to "get [the consultant psychiatrist] to ring the family in relation to the issue."[118] The Director of Services told the inquiry that he asked the consultant psychiatrist to phone the family to tell them that it was proposed to move Mr. McKenna to Leas Cross.[119] The consultant psychiatrist does not recall being contacted by the Director of Services and felt that it would not have been him

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115 Interview with the consultant psychiatrist, the 5th February, 2008, p. 27
116 Interview with the consultant psychiatrist, the 17th June, 2008, p. 21
117 Interview with the physician, the 11th July, 2008, page 6-7
118 Interview with the Chief Executive Officer, the 9th April, 2008, p. 19
119 Interview with the Director of Services, the 27th March, 2008 p. 15

because he was on leave[120]. However, according to the Director of Services he only went on leave for 3 weeks on the 10th September[121] so he would have been on duty at the relevant time.

3.3.62 The Chief Executive Officer subsequently said that the information that he asked for the consultant psychiatrist to pass on was about the move to Leas Cross and not The Beeches[122]. It therefore still remains unclear as to who asked the consultant psychiatrist to contact the family in relation to the move to The Beeches.

3.3.63 The consultant psychiatrist explained that the job of contacting the family would ordinarily have fallen to the Social Worker and her understanding of why she was asked to do so was:

> "I suppose it was because I had known the family for a long time.....sometimes things like that fell to you if you were around for a long time and probably convenience."[123]

3.3.64 The Divisional Manager, who I do not understand to have asked the consultant psychiatrist to contact the family, advanced her familiarity with the family as a reason that she was asked to make the contact[124]. The Chief Executive Officer, who asked for the consultant psychiatrist to contact the family, also cited her familiarity with the family when he said:

> "My understanding was that the person who had the best relationship with the family was [the consultant psychiatrist]. [She] had worked with the family and I had been told by [the physician], that she was the acting psychiatrist, and she was a person who had a good relationship with the family. So it was as simple as that. Finding someone that they trusted and knew and getting them to impart the information. I didn't have a Machiavellian plan in my head that, well, we will

120 Interview with the consultant psychiatrist, the 17th June, 2006
121 Interview with the Director of Services, the 27th March, 2008, p. 48
122 Interview with the Chief Executive Officer, the 11th June, 2008/ 15th July, 2008, p. 17
123 Interview with the Consultant psychiatrist, the 5th February, 2008, p. 26
124 Interview with the Divisional Manager, the 25th June, 2008, p. 9

involve [the consultant psychiatrist] in that in order to make sure. It was simply she was the right person to do it, because simply she was the person who had the relationship with the family."[125]

3.3.65 The consultant psychiatrist later protested at having been asked to make this telephone call and took issue with it with the Chief Executive Officer at a meeting on the 25th September[126] but as far as I can ascertain she did not expressly object to making the phone call at the time. Furthermore, the reason for the consultant psychiatrist's subsequent objection was that she felt that making such a call was a social work task rather than a psychiatrist's task and not that she objected to the move in principle.

3.3.66 It seems to me from all of the foregoing that while the consultant psychiatrist was not happy at having to ring the family, that unhappiness principally stemmed from the fact that it was unusual for a consultant psychiatrist to be asked to make this sort of phone call rather than from an objection to the proposed move.

3.3.67 On balance, therefore, it seems to me that while the consultant psychiatrist was not happy at being asked to make the phone call to the family, it is likely that she at that time would have supported the proposed transfer if she had been invólved in the decision-making. She had opportunities to express opposition to the decision or proposal to transfer Mr McKenna and did not express such opposition. I think it can be safely deduced from that that while she may not have been particularly happy with the decision, she would not have actually opposed it at that time.

3.3.68 I cannot say with the same degree of confidence that the consultant psychiatrist would not have opposed the move once Mr. McKenna's family's views became known. In this regard she said:

"Well I wasn't in any way part of the assessment as to the suitability of Leas Cross and therefore I didn't know whether it would be suitable or not. I suppose I was concerned when the family

125 Interview with the Chief Executive Officer, the 15th July, 2008, p. 17
126 Interview with the Chief Executive Officer, the 15th July, 2008, p.138

found it unsuitable because families are a great protector of clients and their needs and I think their views can be very, very important. So I was concerned. I would have been concerned."[127]

3.3.69 However, this arose a number of weeks after the initial decision was made. the consultant psychiatrist went on holidays on the 2nd September, 2000 and events had moved on by the time she came back to work.

3.3.70 It is very difficult and, indeed, may be impossible to know what the views of a psychologist may have been if one had been appointed to act in the decision-making process at this time. It may be futile to speculate on this point but as stated above there was ongoing debate in the psychology department about the suitability of private nursing homes per se for persons with intellectual disability. I have dealt with this general debate above. It is undoubtedly the case that there were psychologists who firmly held the view that private nursing homes could never be appropriate for persons with intellectual disability and expressed those views clearly to St. Michael's House. That is not in dispute. There were other psychologists who would have preferred that private nursing homes were not used but accepted that there were no other options at that time. It has been suggested to me that there were some psychologists who were opposed to the use of nursing homes in any circumstances but who did not express those views for fear of being seen to be difficult. What is clear is that there was no general consensus reached and it is therefore impossible to speculate on what position may have been taken by a psychologist if one had been appointed. It should be noted that the psychologist who was later appointed to support the family in September, had accepted the necessity for nursing home care but she also expressed the following views to this inquiry:

"Well, I would have been happier if, you know, he could have stayed in St. Michael's House, but I was realistic enough to realise that he couldn't from a medical point of view. That was clear that we didn't have palliative care services. I wouldn't have been in a position to make that decision as to whether he had or he hadn't, but I would have had a general idea that providing palliative care was a problem. I was also aware that there wasn't a specific place in The Beeches. So I

[127] Interview with the consultant psychiatrist, 17th June, 2008, p. 35

did feel it was a dilemma. I was aware that St. Michael's House had to take the responsibility in terms of his care and that medical care was a priority. But I would have been happier, in view of the family's objections, because I trusted the family's judgment, if we had had time to find another nursing home that they were happier with and that possibly could have met Peter's needs ....., from a psychological point of view, I can't make any comment from a medical point of view."[128]

3.3.71 In submissions to the inquiry after the circulation of the draft report this psychologist explained that she had no formulated view in respect of Leas Cross at that time but that she would only have agreed with the proposal in relation to Leas Cross if no concerns had arisen and that one can only speculate on what matters may or may not have arisen during a decision-making process such as a case conference. She also expressly stated in her submissions that in circumstances of disagreement on the team which meant that a decision could not be made the matter would have been referred to management. She went on to say that if a psychologist had been asked to be involved in communicating the final decision to the family it is likely that the psychologist might have visited Leas Cross prior to meeting with the family. She stated that such a visit would have led to the psychologist noting the matters which the family subsequently observed and raising them with the team. She concludes that in those circumstances it cannot be concluded that she personally would have ultimately agreed that Leas Cross was an appropriate placement for Mr. McKenna.

3.3.72 It is also the case that there appears to be universal acceptance that Mr. McKenna's needs around the time of the decision were primarily medical/nursing needs. The physician has said:

".....at that stage [around the time of the decision] it would have come -- I mean his medical nursing needs would have overtaken everything else, his huge care needs."[129]

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[128] Interview with the Psychologist appointed to support the family, 26th March, 2008, p. 37. She indicated that the removal of some words would mean that the quote would better reflect her views. In those circumstances I believe that it is appropriate to include the quote with those words removed.

[129] Interview with the Physician, the 27th March, 2008, p. 12

3.3.73 A psychologist who assisted this inquiry and who was forthright and passionate in his opposition to the use of private nursing homes for persons with intellectual disability both at the interview and indeed within St. Michael's House at the relevant time also accepted that Mr. McKenna needed nursing care. In response to my question "Am I right to say that you wouldn't dispute that he needed nursing care?" he answered "Absolutely."[130] It should be noted that this psychologist did not expressly say that Mr. McKenna's needs were primarily medical/nursing because he was not asked that question but I believe that it is clear from our entire discussion that he considered them to be amongst Mr. McKenna's most pressing needs at the time.

3.3.74 I refer above to how, if a consensus can not be reached at a case conference or team meeting, the view of the expert in the area most relevant to the service-user's needs prevails. It is clear that even if there had been a case conference or team meeting in respect of Mr. McKenna it is the physician's views which would have prevailed if a consensus was not reached given that Mr. McKenna's need were primarily nursing and medical.

3.3.75 It seems to me, therefore, that while the decision was not made by a case conference or the full clinic team, this in fact most probably did not impact on the gravamen of the decision as either the team would have reached a consensus that Mr. McKenna should have been moved (which is very likely) or if a consensus was not reached the physician's view that Mr. McKenna had to be moved to Leas Cross would have prevailed or been determinative. Of course, the importance of psychiatric or more importantly psychological input may not have been in relation to the core issue of whether Mr. McKenna should be transferred but around issues such as support for Mr. McKenna and support for and communication with his family in relation to the move.

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[130] Interview with psychologist , the 25th March, 2008