

#### **4. PLANNING AND COMMUNICATION AND CONSULTATION WITH FAMILY**

4.1.1 Obviously the question of planning for Mr McKenna's future needs and how to meet them forms part of the circumstances leading up to the decision on the 31<sup>st</sup> of August 2000. The issue of consultation with Mr. McKenna's family in the process is also a central issue both in relation to St. Michael's House's initial decision and proposal and all that occurred between when that decision was made by St. Michael's House and Mr. McKenna's actual transfer. It is therefore an aspect of the circumstances leading up to the initial decision, the decision of the High Court and the final decision to transfer. The question of planning can also conveniently be considered together with the question of the communication with the family. As will be apparent, I also deal with issues arising from and resulting in contacts between St. Michael's House and the family under separate headings.

4.1.2 It is clear that St. Michael's House aspired to and prided itself upon its close relationship with clients' families and its partnership with them. That came across in conversations with a number of individuals from St. Michael's House. It was also made explicit in the Seven Year Plan referred to above. Paragraph 2.6 of the Plan stated:

"St. Michael's House is committed to implementing a structure which fully involves parents in decisions about services for their sons and daughters."

4.1.3 Paragraph 3.3.3 stated that it was an aim of St. Michael's House to:

"Create a structured process which fully involves parents in decision making."

## 4.2 CONSULTATION WITH THE FAMILY UP TO AND INCLUDING THE 31<sup>ST</sup> OF AUGUST 2000

4.2.1 I have dealt with the family's participation in the meeting on the 31<sup>st</sup> January, 2000 (i.e. shortly after the diagnosis of Alzheimers) above in paragraphs 2.2.17 – 2.2.20. The question of a possible transfer from Warrenhouse Road was discussed at that meeting. This appears to have been the family's only real involvement with this issue prior to the very end of August 2000 although there was undoubtedly some general or casual discussion of a transfer or the possibility of same during the Spring and Summer between the family and members of the Warrenhouse Road staff.

### Communication of proposal to transfer to Leas Cross and The Beeches

4.2.2 What is beyond doubt is that the first time that Leas Cross was mentioned to Mr. McKenna's family was on the 31<sup>st</sup> August. It does not appear to have been even raised as a possibility with the family prior to that date. I have certainly not seen any evidence that it was even raised with the family as a possibility and I do not understand St. Michael's House to be asserting that it was raised as such prior to 31<sup>st</sup> August, 2000. However, it is recorded in one of Mr. McKenna's brother's notes that on the 30<sup>th</sup> August, 2000 the Head of Unit of Warrenhouse Road told him on the telephone that "*As regards next stage in deterioration, St. Michael's House hope to keep Peter in their care but cannot guarantee this at this stage*"<sup>131</sup>.

4.2.3 In those circumstances, I am satisfied that Mr. McKenna's family believed at all times up to the 30<sup>th</sup> August, 2000 that when the time came when Mr. McKenna needed to be moved he would be transferred to The Beeches, a St. Michael's House facility. I also believe that Mr. McKenna's brother did not understand the Head of Unit of Warrenhouse Road in that telephone conversation to be notifying him that

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<sup>131</sup> Some of this sentence has been cut off in the copy which I have – I believe, but cannot be certain, that this quotation is correct

Mr. McKenna was going to be or was even likely to be transferred to an external facility.

4.2.4 As set out in paragraph 3.3.56 the consultant psychiatrist on the Warrenhouse Road team contacted Mr. McKenna's brother by telephone on the 31<sup>st</sup> August, 2000 and informed him that Leas Cross was being considered. This was the first time that the family were told (a) that the stage had been reached when Mr. McKenna would have to be moved from Warrenhouse Road, (b) that a decision (from St. Michael's House point of view) had been made that Mr. McKenna should be moved, and (c) that it was proposed to transfer him to Leas Cross.

4.2.5 Before considering this conversation, I believe it is important to emphasise that the previous day, Wednesday, the 30<sup>th</sup> August, 2000 Mr. McKenna's brother had been informed by the Head of Unit of Warrenhouse Road, where Mr. McKenna was still residing, that to her knowledge they were not at the stage of moving Mr. McKenna from Warrenhouse Road<sup>132</sup>. This was recorded in writing by the Head of Unit of Warrenhouse Road in which she noted:

"[Mr. McKenna's brother] asked if there were any discussions around moving Peter from Warrenhouse. I told [him] that to my knowledge we were not at that stage".

4.2.6 I return to this in greater detail below. The importance of this conversation in the present context is that when Mr. McKenna's brother was contacted by the consultant psychiatrist the next day, the 31<sup>st</sup> August, it is clear that he must have been taken completely by surprise (a) by the fact of any move and (b) by the reference to Leas Cross.

4.2.7 There is a level of disagreement between the consultant psychiatrist's recollection of her telephone conversation and Mr. McKenna's brother's memory of it.

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<sup>132</sup> Interview with the Head of Unit of Warrenhouse Road, the 31<sup>st</sup> March, 2008

4.2.8 There is a note of this conversation contained in the documents which were furnished to me by St. Michael's House in which the consultant psychiatrist records:

"Contact made with [...] Peter's brother, re proposal that he move to Leas Cross Nursing Home [...] from next week (he will go to The Beeches for the w/e). [Mr. McKenna's brother] will link with [the Head of Unit of Warrenhouse Road] re this. Will visit Leas Cross and convey the family's decision to SMH. [Mr. McKenna's brother] expressed his appreciation for all that SMH has done".

4.2.9 The consultant psychiatrist agreed with my understanding of this note that it meant that she contacted Mr. McKenna's brother on the 31<sup>st</sup> August, 2000 and informed him that the plan was that Mr. McKenna would be transferred to Leas Cross the following week and would be going to The Beeches for the weekend.

4.2.10 She explained that:

"I remember that I was asked to contact [Mr. McKenna's brother] and there was an amount of confusion around this time because I was initially contacted to say that Peter was going to The Beeches and I was asked to inform [Mr. McKenna's brother] of that and then I don't know how this came about but before I got to talk to [Mr. McKenna's brother] I was told he wasn't actually going to The Beeches, that he was going to Leas Cross. I also remember that I was going on annual leave just as all this was happening. I remember speaking to [Mr. McKenna's brother] and he said that he would go and see Leas Cross and then there was a contact the following day to say that they wished Peter to remain in St. Michael's House and I think it was also said that they were not happy with Leas Cross."<sup>133</sup>

4.2.11 The consultant psychiatrist later confirmed that the note of the 31<sup>st</sup> August was correct in recording that she had told Mr. McKenna's brother that Mr. McKenna was going to The Beeches for the weekend and then to Leas Cross<sup>134</sup>

<sup>133</sup> Interview with the consultant psychiatrist, the 5<sup>th</sup> February, 2008, p. 25

<sup>134</sup> Interview with the consultant psychiatrist, the 5<sup>th</sup> February, 2008, p. 30

4.2.12 I return to the consultant psychiatrist's reference to there having been a change in what she was being asked to communicate to the family below in the context of a consideration of the chronology of events. I also return to the question of how she came to be asked to make this phone call.

4.2.13 Mr. McKenna's brother's recollection of this telephone call is different to the consultant psychiatrist's in that he does not remember any mention of Mr. McKenna being moved to The Beeches for the weekend. His memory is that he was contacted by the consultant psychiatrist who asked whether the family would visit Leas Cross because there was a proposal to move Mr. McKenna there. He also recalls a sense of urgency in the request<sup>135</sup>.

4.2.14 Mr. McKenna's brother recounted his conversation with the consultant psychiatrist in the following terms:

"She asked us -- it wasn't a long conversation on the telephone, she asked us would we drop out and have a look at Leas Cross because there was a proposal to move Peter to Leas Cross. I said I would and she said 'when do you think you could go out there'. I said 'we will try and get out there tomorrow or the next day'. 'Could you make it quicker' she said 'because the proposal is that we should move him there tomorrow, as soon as possible'. And I thought there is an urgency about this. I don't believe she used the word urgency but that is the impression she got over to me."<sup>136</sup>

4.2.15 It is clear from this account and the reference to the proposal being to move Mr. McKenna to Leas Cross the next day that Mr. McKenna's brother's memory is that he was not informed of a proposal to transfer Mr. McKenna to The Beeches for the weekend.

4.2.16 Mr. McKenna's brother also said earlier that the consultant psychiatrist did not mention The Beeches at all. While he accepted that the consultant psychiatrist's

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<sup>135</sup> Interview with Mr. McKenna's brother, the 7<sup>th</sup> February, 2008, p.30

<sup>136</sup> Interview with Mr. McKenna's brother, the 7<sup>th</sup> February, 2008, p.30

recollection that she had informed him that the intention was that Mr. McKenna would move into The Beeches for the weekend and then go to Leas Cross the following week might be correct, he also said that:

"I wouldn't -- if you asked me, put me up against the wall I would have said no. The proposal was to send Peter to Leas Cross and not could we go out and see it, I took the bull by the horns and said I will go out and see it and she was taken aback by that and I knew she was taken aback by it. But I don't think then there was a case of he is going the following weekend or he is coming into The Beeches for the weekend and then going on there. There was an urgency about it certainly but I don't think there was a time put on it."<sup>137</sup>

4.2.17 However, he subsequently expressed the view that she must not have told him of the move to The Beeches because when he later discovered that Mr. McKenna was being moved to The Beeches he was horrified and surprised and would not have been if he had been told in advance of the move<sup>138</sup>. It is also important to note that the Chief Executive Officer, in a "Note for file" of a meeting between himself and Mr. McKenna's brother, has recorded Mr. McKenna's brother telling him as early as the 20<sup>th</sup> September, 2000 that the consultant psychiatrist had spoken to him about a move to Leas Cross but not about a move to The Beeches.

4.2.18 I am of the view that even if the consultant psychiatrist referred to a proposal to move Mr. McKenna to The Beeches for the weekend, Mr. McKenna's brother and, therefore, the family did not appreciate from the conversation that such a temporary move was proposed.

4.2.19 That is clear from both Mr. McKenna's brother's and his sister's accounts of their reaction when they realised that Mr. McKenna was in the process of being or had been moved to The Beeches.

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<sup>137</sup> Interview with Mr. McKenna's brother, the 7<sup>th</sup> February, 2008, p. 33

<sup>138</sup> Interview with Mr. McKenna's brother, the 7<sup>th</sup> February, 2008

4.2.20 Later the same day (i.e. the 31<sup>st</sup> August), following Mr. McKenna's conversation with the consultant psychiatrist during which he had agreed to visit Leas Cross, both he and his sister met the Head of Unit of Warrenhouse Road and the Residential Manager in The Beeches. This was by arrangement and was on their way to visit Leas Cross, as requested by the consultant psychiatrist. Both Mr. McKenna's brother and sister related to me their surprise (Mr. McKenna's brother referred to his horror and surprise) when they were in The Beeches and realised that Mr. McKenna was in the process of being moved to The Beeches. They both recall seeing his bed being moved into The Beeches while they were there with the Head of Unit of Warrenhouse Road. However, it appears that neither of them realised even when they saw his bed that he was being moved into The Beeches and it was only later, on their way home from having visited Leas Cross, that, as they put it, "the penny dropped" that he had been moved out of Warrenhouse Road. Mr. McKenna's brother described it in the following terms:

"Before we went out to visit Leas Cross my sister [...] and I went to The Beeches, I don't know for what reason we went to The Beeches but we did go to The Beeches. We saw his bed being delivered in there along with his few bits of clothing. The penny never dropped with us. It was only on the way back from Leas Cross in the car I looked at [my sister] and [she] looked at me and the penny dropped that his placement in Baldoyle was gone, right, but we never said so in The Beeches, we never thought that at that time. Because they were moving his bed into The Beeches, it would be logical we would think he was going to for the time being be in The Beeches."<sup>139</sup>

4.2.21 Mr. McKenna's brother later said:

"We made -- yes, [the Head of Unit of Warrenhouse Road] asked us to meet her in The Beeches. When we went to The Beeches we met [her] there, and while we were meeting with her a van pulled up and clothing and bedding was dropped into the hallway of the thing, and I think somebody said to us: "They are Peter's bedding." I think I met [the Residential Manager] there that day, and still the penny hadn't dropped with me; it really hadn't; do you know what I mean? We left Warrenhouse and we left [the Head of Unit of Warrenhouse Road] back to

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<sup>139</sup> Interview with Mr. McKenna's brother, the 7<sup>th</sup> February, 2008, p.30

Baldoyle and continued on to Swords.....Yes, and left [the Head of Unit of Warrenhouse Road] back to Warrenhouse in Baldoyle and [my sister] and I continued on to Swords. We did our inspection and there was silence in the car coming back, and then the penny dropped with us, well into the journey back, that they were Peter's bedding and clothes that we saw in The Beeches and that he had lost his place in Warrenhouse."<sup>140</sup>

4.2.22 Mr. McKenna's sister appears to have realised sooner than Mr. McKenna's brother that Mr. McKenna was being moved from Warrenhouse Road in that she explained that she realised that he was being moved immediately after the meeting in The Beeches. She said:

"When we came out of that meeting, I do not think given the enormity -- when I looked and I saw all Peter's clothes and his case in the hall, I think the enormity of it hit me then between the two eyes, he had lost his place in Warren House Road. Maybe it should have hit me beforehand, but it certainly did not. We had made arrangements inside that we would go out and see the nursing home. [The Head of Unit of Warrenhouse Road] was with us, we left her back to Warrenhouse Road and we went on then to the nursing home."<sup>141</sup>

4.2.23 If Mr. McKenna's brother and sister had understood that Mr. McKenna was being moved to The Beeches for the weekend they would not have been surprised at his bed and belongings being in The Beeches when they visited on their way to Leas Cross. I believe therefore that they did not appreciate that he was being moved to The Beeches for the weekend.

4.2.24 However, it is impossible to make a definitive finding whether this was because the consultant psychiatrist did not tell Mr. McKenna's brother about the move to The Beeches or that he missed this information during the course of his conversation with the consultant psychiatrist. On balance I believe that it is more likely that the consultant psychiatrist did in fact inform Mr. McKenna's brother of the move to The Beeches for the weekend but that, for very understandable reasons, the focus of the conversation and, indeed, of Mr. McKenna's brother's memory of the conversation

<sup>140</sup> Interview with Mr. McKenna's brother, the 15<sup>th</sup> April, 2008

<sup>141</sup> Interview with Mr. McKenna's sister, the 11<sup>th</sup> February, 2008, p. 15



was the new possibility of a transfer to Leas Cross. The reasons I think the consultant psychiatrist's memory of the conversation on this point is more likely to be correct are as follows; firstly, her note which is set out above at paragraph 4.2.8 appears to have been written contemporaneously and reflects her memory; secondly, according to the consultant psychiatrist's evidence she had initially been asked to contact the family to tell them of a move to The Beeches but that this request had been changed so that she was asked to tell them of a proposed move to Leas Cross the following week and to The Beeches for the weekend - in my view, this increases the likelihood that the consultant psychiatrist did in fact refer to a plan to move Mr. McKenna to The Beeches; thirdly, an arrangement was made for the family to meet the Head of Unit of Warrenhouse Road at The Beeches later on the 31<sup>st</sup> August - there would be no reason for this meeting to have occurred in The Beeches rather than Warrenhouse Road if Mr. McKenna had not been or was not being transferred to The Beeches. Mr. McKenna's brother does not appear to have queried why the meeting was taking place in The Beeches rather than Warrenhouse Road. This could be taken to suggest that there had been some mention during the conversation of a plan to move Mr. McKenna to The Beeches.

4.2.25 I believe that it can readily be appreciated that Mr. McKenna's brother may have missed that information. The news that there was a proposal or plan that Mr. McKenna was to be transferred to Leas Cross was new. It had not been mentioned before whereas the plan had always been that Mr. McKenna would be transferred to The Beeches. It is understandable that the news that St. Michael's House had decided that Mr. McKenna should be transferred to an external nursing home became the focus of Mr. McKenna's brother's attention.

#### **Failure to give adequate notice regarding The Beeches and Leas Cross and its effect**

4.2.26 The effect of this was that Mr. McKenna's brother and the family believed, rightly or wrongly, that the move to The Beeches was carried out without any notification, discussion or consultation with the family. I believe that this sowed a seed of distrust

of St. Michael's House on the part of the family which contributed to and featured strongly in the difficulties which arose between St. Michael's House and the family in the following days and weeks.

4.2.27 Even if Mr. McKenna's brother was told and/or appreciated that he was being told of the proposed temporary move to The Beeches in this phone call on the 31<sup>st</sup> August 2000, he and the family may still, justifiably, have felt that they had not been given any notice or had not been consulted in relation to that move given that it was to happen and did happen the same day.

4.2.28 It seems to me that if the only move in question had been the move to The Beeches, this lack of notice could not, in itself, have led to objectively understandable or justifiable tension between the family and St. Michael's House in circumstances where, as I have said above, The Beeches had long been identified as the likely onward placement. It was this lack of notice or perceived lack of notice arising from the family's understanding (whether correct or not) of the conversation with the consultant psychiatrist combined with (a) the shortage of notice in respect of the proposal to move Mr. McKenna to Leas Cross and the lack of advance consultation with the family in relation thereto and (b) the family's opposition to Mr. McKenna being moved to an external facility and to Leas Cross in particular that caused the break down in trust which the family had in St. Michael's House.

4.2.29 In this latter regard, as stated above, the telephone conversation with the consultant psychiatrist was the first indication that a move of any sort was being contemplated. Mr. McKenna's brother had been told the previous day that as far as the Head of Unit of Warrenhouse Road knew they were not at the stage of a move. It is difficult to understand how and why the family were not informed at an earlier stage that the point in time when a move would be required was approaching. Given my conclusions in relation to St. Michael's House's awareness that this point was approaching, I believe the family could and should have been told earlier in August or even earlier in the week leading up to the 31<sup>st</sup> August. There is no reason why

they were not told at least 2 days earlier when the Divisional Manager realised that the position in Warrenhouse Road could not be managed much longer that the time for a move had arrived. It is worth putting this in context and looking at the chronology during August 2000.

- 4.2.30 I have referred to and concluded that there was a growing awareness during August and, on the Clinical Director's account, in late July that the point was approaching when Mr. McKenna would need a type of care which could not be provided for him in Warrenhouse Road. The Head of Unit of Warrenhouse Road acknowledged that in hindsight that is correct. Of course, she also made the point that it is difficult to appreciate that "we're coming to the end of being able to provide" when you are "in the thick of" of trying to provide for Mr. McKenna's and other service-user's day-to-day needs<sup>142</sup>. However, this awareness was also shared by senior management in St. Michael's House. I have previously dealt with this above.
- 4.2.31 Notwithstanding this general awareness during August and possibly late July the family were not told that the point at which a move would have to occur was approaching.
- 4.2.32 Furthermore, notwithstanding this awareness and, indeed, the awareness amongst senior management of the residential crisis and the fact that there was no place available in St. Michael's House that could offer the type of care that was required or soon to be required by Mr. McKenna the family were not told of the possibility that Mr. McKenna may have to be transferred to an external facility. In addition, notwithstanding this awareness, there was no active consideration of or planning for Mr. McKenna's future needs and care. The point has been made that the decision was made in a crisis. The reason for this is that there was no consideration or planning at an earlier stage when that crisis did not yet exist. However, I am satisfied that there were no options available in the early and middle part of August 2000 which had subsequently become unavailable by the week of the 31<sup>st</sup> August and I

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<sup>142</sup> Interview with the Head of Unit of Warrenhouse Road, the 31<sup>st</sup> March, 2008

do not suggest that if the matter had been considered in early August a place within St. Michael's House would have been available. However, it is clear to me that the failure to plan for the future from early August onwards and to inform the family that the time was coming when Mr. McKenna would have to be moved meant that the eventual decision was made in the context of the crisis described by several people from St. Michael's House (particularly the Divisional Manager) and without the benefit of full consultation and communication between relevant team members and between St. Michael's House and Mr. McKenna's family.

4.2.33 As referred to above, one of the reasons advanced as to why there was no case conference or clinic team meeting was because it takes time to convene and assemble such a meeting or team and that the decision was being made in a crisis situation when the placement broke down during the week of the 31<sup>st</sup> August. If there had been active consideration and planning in respect of Mr. McKenna's future care in early to mid-August a case conference or team meeting could have been convened. St. Michael's House, in its submissions, accepts that there should have been a case conference before the psychologist on the Warrenhouse Road team went on maternity leave in July. The fact that the decision was made at a time of crisis arose purely because there was no active consideration in the earlier part of the month or possibly even July when the placement in Warrenhouse Road was coming towards an end, and has been acknowledged as such by St. Michael's House, but had not yet broken down.

4.2.34 The failure to consider the matter at this earlier stage and to inform and involve the family also led to a situation where (a) there could be, and was, no proper advance consultation with members of Mr. McKenna's family, (b) as a result the family believed that St. Michael's House had acted in a unilateral and high-handed manner<sup>143</sup>, (c) an environment was created where there was distrust (whether justified or not) of St. Michael's House on the part of the family which infected future discussions and made meaningful discussion and dialogue difficult and (d) deprived

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<sup>143</sup> Interview with Mr. McKenna's brother, 7<sup>th</sup> February, 2008, p. 32

both the family and St. Michael's House of an opportunity to explore any other options without the pressure of a dispute between them. For example, the physician told Mr. McKenna's family at the meeting on the 4<sup>th</sup> September, 2000 that "The hospice it could take you weeks, weeks to get in there, and the situation was that it was a crisis, it was an acute thing."

4.2.35 The active consideration and decision-making actually occurred in what must have been a highly pressurised few days in the week of the 31<sup>st</sup> August and must have placed considerable pressure on the relevant people in St. Michael's House. I have set out above how Mr. McKenna was assessed by an occupational therapist and a physiotherapist on the 29<sup>th</sup> August, 2000. I have also set out how the Divisional Manager formed the view on that day when he received the verbal report of this assessment that "this was a serious situation that clearly could not be managed for much longer in Warrenhouse Road."<sup>144</sup> There is ample evidence that in fact this view had been formed much earlier in August but even assuming that it was only formed on the 29<sup>th</sup> August the family were not informed of the necessity or even impending necessity for a move. Indeed, the Head of Unit of Warrenhouse Road, notwithstanding that she had also formed the view after the OT and Physiotherapy assessment that Mr. McKenna would probably have to move, informed Mr. McKenna's brother the day after that view was formed that as far as she was aware they were not at the stage of a move. I fully accept that the Head of Unit had no knowledge of the same view having been reached by senior management. She explained that the reason she told Mr. McKenna's brother that as far as she knew they were not at that stage was:

"Because it wasn't my decision to make, do you know. It wasn't -- I didn't believe that it was my decision to move Peter. I certainly wouldn't have had any kind of power in that regard. I mean, I suppose ultimately that was a management decision and I wasn't at that level within St. Michael's House to make that decision. So my conversation with [Mr. McKenna's brother] was

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<sup>144</sup> Interview with the Divisional Manager, the 25<sup>th</sup> June, 2008, p. 11

around -- to my knowledge, management hadn't made a decision with regard to moving Peter because to my knowledge they hadn't."<sup>145</sup>

4.2.36 Mr. McKenna's brother then received the telephone call from the consultant psychiatrist on the 31<sup>st</sup> August, 2000. I have previously dealt with how it was out of the ordinary for a psychiatrist to be asked to make this phone call and why she was asked to do so. It will be recalled that one of the reasons was because she was the person who had the best relationship with the family and that the family trusted her<sup>146</sup>.

4.2.37 It is interesting to note that the Chief Executive Officer felt it was necessary to ask somebody who the family trusted to convey the information. This seems very sensible to me. It also seems clear from this that there was an appreciation at that point in time that the decision or proposal to transfer Mr. McKenna out of St. Michael's House had the potential to be controversial or at least difficult for the family. This appreciation proved to be very well-founded. To my mind it shows precisely why there should have been a greater degree of forward planning which in turn might have facilitated communication with the family or at least provided time for the family to have explored other options.

4.2.38 It is clear from all of this that there was no advance consultation with the family either in respect of the decision to move Mr. McKenna to The Beeches for the weekend or in respect of the decision to transfer him from St. Michael's House to Leas Cross.

4.2.39 In relation to the latter, I have previously noted that St. Michael's House have made the point that it would not be correct to describe this as a "decision" and that it was only a "proposal" because (a) the family still had to be consulted and (b) ultimately St. Michael's House could not make that decision as it was a matter for the High Court. In those circumstances it is necessary to consider what happened after St.

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<sup>145</sup> Interview with the Head of Unit of Warrenhouse Road, the 31<sup>st</sup> March, 2008, p. 19

<sup>146</sup> Interview with the Chief Executive Officer, 15<sup>th</sup> July, 2008, p.17

Michael's House informed Mr. McKenna's brother through the consultant psychiatrist of the decision/proposal to move Mr. McKenna to Leas Cross.

#### **4.3 CONSULTATION WITH THE FAMILY POST COMMUNICATION OF THE DECISION/PROPOSAL**

4.3.1 Following the consultant psychiatrist's telephone conversation with Mr. McKenna's brother, he and his sister visited Leas Cross and then reverted to St. Michael's House to express their opposition to the proposed move. There then followed contact between the family and St. Michael's House throughout the month of September and into October. I have treated these contacts as communications and a form of consultation and am therefore considering them in this section. However, it is necessary to treat different phases of these contacts separately and they are therefore dealt with under various headings.

##### **Family Reaction To Leas Cross**

4.3.2 Mr. McKenna's brother agreed to visit Leas Cross when he was contacted by the consultant psychiatrist on the 31<sup>st</sup> August. He and his sister did so on the same day following the meeting in The Beeches at which they saw Mr. McKenna's bed being moved into The Beeches.

4.3.3 Following their visit to Leas Cross they contacted St. Michael's House to inform it that they did not want Mr. McKenna to go to Leas Cross. Mr. McKenna's brother said that he contacted either the Head of Unit of Warrenhouse Road or the consultant psychiatrist and appears to believe that it was more likely to have been the Head of Unit of Warrenhouse Road<sup>147</sup>. However, she said that she has no memory of the family contacting her after their visit to Leas Cross<sup>148</sup>. There is a note

<sup>147</sup> Interview with Mr. McKenna's brother, the 10<sup>th</sup> June, 2008

<sup>148</sup> Interview with the Head of Unit of Warrenhouse Road, the 24<sup>th</sup> June, 2008

contained in the documents which were furnished to me by St. Michael's House and which appears to be initialled by the consultant psychiatrist that on the 1<sup>st</sup> September, 2000 there was:

"Contact from [Mr. McKenna's brother] to say that the family's wish is for Peter to remain in SMH. Contact made with senior management about this".

4.3.4 The consultant psychiatrist confirmed that Mr. McKenna's brother contacted her after his visit to Leas Cross<sup>149</sup>

4.3.5 I find that Mr. Moore contacted the consultant psychiatrist to express the wish that Mr. McKenna should not be moved to Leas Cross and should remain in St. Michael's House.

4.3.6 Both Mr. McKenna's brother and sister have given accounts of this visit and of why they did not want Mr. McKenna to go to Leas Cross. As stated at the outset, the focus of this inquiry is the decision to transfer Mr. McKenna from St. Michael's House to Leas Cross. It is not an inquiry into conditions in Leas Cross or the care that Mr. McKenna received there. In those circumstances it is outside the terms of reference of this inquiry to make any finding in relation to conditions in Leas Cross and it would be inappropriate to do so. I set out the accounts given by the members of the family because it is important to understand why the family opposed a move to Leas Cross and because I consider below St. Michael's House's reaction to these accounts and to the reason for the family's opposition to a move to Leas Cross, which in my view is relevant to the issue of dialogue and consultation with the family.

#### ***Family's general position regarding a move from St Michael's House***

4.3.7 I think it would also be helpful if I set out the family's initial position about the proposal to transfer Mr. McKenna from St. Michael's House before setting out these

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<sup>149</sup> Interview with the consultant psychiatrist, the 17<sup>th</sup> June, 2008, page 19



accounts. Initially, they were opposed to any move out of St. Michael's House. They believed, correctly, that the ethos of St. Michael's House was to provide care "from cradle to the grave". They also believed that a proposed transfer out of St. Michael's House was in breach of that ethos. They were opposed to a move to unfamiliar surroundings in circumstances where Mr. McKenna was in the last "vestiges of recognition"<sup>150</sup>. Indeed, Mr. McKenna's brother, and I take it the family, perceived the proposed move out of St. Michael's House as Mr. McKenna being "dumped" or his care being "subcontracted." Mr. McKenna's brother said:

" ... I didn't articulate it at the time, but what was bugging me really was that why, all of sudden, was he now going out to a third party? Why was his care being subcontracted..... Maybe it took me weeks afterwards to verbalise it, that he was being dumped; not to put a cloak on it; do you know what I mean?"<sup>151</sup>

#### 4.3.8 Mr. McKenna's brother also said:

"I came to the conclusion quickly that there wasn't a connection and, therefore, you know, low and behold, they're subletting or subcontracting Peter's care. And I thought you know that's a bit "Irish" of them. I thought it was highhanded of them."<sup>152</sup>

#### 4.3.9 He also said:

"If you are trying to get to the core of the issue at that particular time, my memory is that I was – prior to that meeting in Ballymun I did not like the fact that Peter's care was now being sub-contracted. I didn't make the argument that nursing homes were unsuitable for disabled people. Central to my disposition at the time was that Peter's care was being sub-contracted and I didn't want that."

#### 4.3.10 St. Michael's House was initially reluctant to accept that Mr. McKenna's care was in fact being sub-contracted but the Divisional Manager accepted that in circumstances

<sup>150</sup> Interview with Mr. McKenna's brother, the 7<sup>th</sup> February, 2008, p. 28

<sup>151</sup> Interview with Mr. McKenna's brother, the 15<sup>th</sup> April, 2008, p. 10

<sup>152</sup> Interview with Mr. McKenna's brother, the 15<sup>th</sup> April, 2008, p. 20

where they were receiving monies from the health board in respect of the care of Mr. McKenna and passing that care (or at least part of it) on to another body, i.e. Leas Cross, they could be said to have been sub-contracting Mr. McKenna's care<sup>153</sup>. It goes without saying that St. Michael's House did not and does not accept the pejorative manner in which Mr. McKenna's brother used the term "sub-contracting".

- 4.3.11 Following their visit to Leas Cross, the family continued to oppose a move to an external facility in general but their opposition quickly became significantly more focused on the move to Leas Cross in particular. Mr. McKenna's brother continued in the quote set out above to say:

".....Central to my disposition at the time was that Peter's care was being sub-contracted and I didn't want that. But after the visit to Leas Cross I was very adamant that the issue had changed, that Leas Cross was an abomination as far as I was concerned ... it then became the issue of Leas Cross certainly not suitable."<sup>154</sup>

- 4.3.12 Over the course of the following number of weeks the family appears to have come to an acceptance that Mr. McKenna would have to be transferred from St. Michael's House and to that extent their position of one of general opposition to a move from St. Michael's House appears to have abated and become focused on the move to Leas Cross.

#### ***Family's account of their visit to Leas Cross***

- 4.3.13 The account given by Mr. McKenna's brother of the visit to Leas Cross on the 31<sup>st</sup> August, 2000 is that when he and his sister arrived at Leas Cross they went to reception and introduced themselves to the nurse there as being the relatives of a person who may be coming to Leas Cross and that nurse then showed them around. Mr. McKenna's brother said:

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<sup>153</sup> Interview with the Divisional Manager, the 27<sup>th</sup> March, 2008, p. 45

<sup>154</sup> Interview with Mr. McKenna's brother, 10<sup>th</sup> June, 2008, p. 29

"....So I contacted [my sister] and the two of us went out I believe it was later that afternoon the two of us went out to Leas Cross. We announced ourselves when we got to Leas Cross and what we saw was dreadful. It was like a visit to Hades. People wandering around the place undressed amongst other things. A little Philippino nurse was showing us around and she opened one door to bring us into a place and she slammed the door, I can't show you in there'. One of the clients that I happened to know was wandering around the place with his pyjamas down around his ankles. These were in sort of exit ways or entrance ways and things like that. We didn't say anything there and then, [my sister] and I, it was in the car...."<sup>155</sup>

#### 4.3.14 Mr. McKenna's brother also said:

"But after the visit to Leas Cross I was very adamant that the issue had changed, that Leas Cross was an abomination as far as I was concerned. It's strong words but when you see people that you know walking around the place half naked and a lack of direction and care in the place, you become alarmed ...".

#### 4.3.15 Mr. McKenna's sister gave the following account:

"We went in and we waited and eventually this nurse came. We said why we were there and then she decided to show us around. We turned the corner and there was this elderly gentleman standing there with his trunks down around his ankles, just standing there. The poor man, obviously, in Alzheimer's. It seemed nearly the natural way of things out there because the nurse did not take any immediate action, you know what I mean. Then when we turned down another corridor another man met us with a nappy, all it. I said, 'I don't believe this'. Then she went to show us into some other room or whatever and she said; 'cannot show you in there it is dirty', closed the door. I said; 'I don't believe this'. They were all small rooms from what we saw and I said; 'this is not for Peter', you know what I mean, in his present situation. Whatever about him going into an open environment and somebody to look after him particularly somebody with no communication case skills and particularly since he went into the Alzheimer's or it, whatever. He could communicate with those who knew him but after that then".<sup>156</sup>

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<sup>155</sup> Interview with Mr. McKenna's brother, the 7<sup>th</sup> February, 2008, p. 23

<sup>156</sup> Interview with Mr. McKenna's sister, the 11<sup>th</sup> February, 2008, p. 17

4.3.16 An issue subsequently arose about whether or not Mr. McKenna's brother and sister had introduced themselves when they went to Leas Cross or whether they simply looked around themselves. This was also raised with me during the course of the inquiry. For example, the Divisional Manager said that he spoke with the Matron of Leas Cross and that she was clear that the family had not introduced themselves<sup>157</sup>. Similarly, the Chief Executive Officer said:

"....I was aware from [the Divisional Manager] that they had visited, and I was aware that they hadn't introduced themselves and that the matron was upset that she hadn't had the opportunity to actually speak to them and explain to them what the situation was in relation to Leas Cross.....And if they had any concerns that she could have allayed them. But she was concerned that she hadn't been given the opportunity."<sup>158</sup>

4.3.17 Mr. McKenna's brother and sister are both very clear that they did present themselves at reception. Mr. McKenna's brother went on from the passage quoted above to say:

"..... it was alleged later on that we went around and looked at the place without telling anyone, that was not the case. We announced ourselves at reception and the same Philippino nurse that was at reception brought us around the place..... I said 'I am [Mr. McKenna's brother] and my brother Peter was coming here and I just wanted to have a look at it before he came'. There was absolutely nothing surreptitious about the visit, even though it as alleged later on that there was, there was not."<sup>159</sup>

4.3.18 While I understand why Leas Cross, or any nursing home, would be anxious to have an opportunity to show visitors around the nursing home rather than having visitors walking around unannounced, I do not think the question of whether or not Mr. McKenna's brother and sister announced themselves or were shown around by a nurse is relevant to this inquiry. As stated above, I am not making any finding in relation to conditions in Leas Cross. My focus is on whether these accounts, be they

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<sup>157</sup> Interview with the Divisional Manager, the 27<sup>th</sup> March, 2008, page 15

<sup>158</sup> Interview with the Chief Executive Officer, the 15<sup>th</sup> July, 2008, page 148

<sup>159</sup> Interview with Mr. McKenna's brother, the 7<sup>th</sup> February, 2008, p. 24

correct or not, were passed on to St. Michael's House and how St. Michael's House reacted to and dealt with them because it seems to me that how St. Michael's House dealt with these accounts is very significant to the question of the nature of the consultation with the family and therefore the decision to transfer Mr. McKenna to Leas Cross.

4.3.19 The impact of this visit on Mr. McKenna's brother and sister and on their position in relation to the proposal to move Mr. McKenna appears to have been significant. As stated above, it seems to have operated to shift their focus away from a general opposition to any move from St. Michael's House to opposition to a move to Leas Cross.

4.3.20 As stated above, it is clear that Mr. McKenna's brother reverted to St. Michael's House following this visit and told them that the family did not wish Mr. McKenna to go to Leas Cross. A meeting was arranged for the following Monday, the 4<sup>th</sup> September to deal with the entire issue.

4.3.21 As indicated above, I consider the question of whether the family gave these accounts or explained why they were opposed to Leas Cross to St. Michael's House to be important. Mr. McKenna's brother is adamant that when he reverted to St. Michael's House he told them what he and his sister had seen. He described it as giving them "chapter and verse of [their] visit to Leas Cross." He also said in response to my question as to whether he gave St. Michael's House the details or just simply said that they did not like Leas Cross:

"... you can take it that they were given the full details. I don't actually remember the conversation at this stage eight years later, I really don't. But you can take it that they were given the full details of our visit to Leas Cross, and the details that I gave them because I do remember that it was put to us that we had visited the place surreptitiously, we most certainly did not."<sup>160</sup>

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<sup>160</sup> Interview with Mr. McKenna's brother, the 10<sup>th</sup> June, 2008, p. 19

4.3.22 I cannot confirm whether Mr. McKenna's brother did in fact convey these details to St. Michael's House when he first reverted to them. However, the visit appears to have had such an impact on Mr. McKenna's brother that it seems to be highly unlikely that he would have spoken to someone in St. Michael's House shortly thereafter to tell them that the family did not want Mr. McKenna to be transferred to Leas Cross and not mention something about the reasons why they were opposed to Leas Cross. In any event, as set out below, I am satisfied that the family subsequently, at the meeting on the 4<sup>th</sup> September, did tell St. Michael's House why they were opposed to Leas Cross.

### **Meeting of 4<sup>th</sup> September**

4.3.23 Following the communication of the family's opposition to the proposed move to Leas Cross a meeting was arranged for the 4<sup>th</sup> September. St. Michael's House, in its submissions following the circulation of the draft report, identified this meeting as the commencement of the consultation with the family. This meeting was attended by the Divisional Manager, the physician, Mr. McKenna's brother, Mr. McKenna's sister and Mr. McKenna's other brother who I will refer to as "MM".

### ***Purpose of the Meeting***

4.3.24 The purpose of this meeting from St. Michael's House's point of view was to consult with the family in relation to the proposed transfer. The Divisional Manager described the purpose of the meeting as being:

"to explain medically where Peter was at, and obviously then the recent developments."<sup>161</sup>

4.3.25 He also described his expectations for the meeting (and I equate expectations with purpose in this context) in the following terms:

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<sup>161</sup> Interview with the Divisional Manager, the 27<sup>th</sup> March, 2008, p. 42

"So, my expectation of that meeting, coming into the meeting, was that it was going to be a collaborative type meeting where we would present the reality of the situation that we now found ourselves in, and that the move of Peter to The Beeches was very very much in Peter's interest ..."<sup>162</sup>

4.3.26 I believe that it can be inferred from these statements that this meeting was intended by St Michael's House as a form of consultation with the family. This is confirmed by the contents of St. Michael's House's submissions which are referred to in paragraph 4.3.23. I asked the Divisional Manager whether his belief was that the decision to transfer Mr. McKenna to Leas Cross was the reasonable and appropriate decision and that the family, once they had met with St. Michael's House, would see sense. The Divisional Manager agreed. His answer indicates to my mind that the meeting of the 4<sup>th</sup> September was seen by St Michael's House as consulting with the family. He said:

"What I would say is that our experience, to that point, had in general been that when -- I mean one of the things about St. Michael's House is that people have, you know, people using St. Michael's House services and ourselves have -- I mean people start off very young and go to old age and all of that. So, there is a strong sort of relationship there between St. Michael's House, and the families, and the service users. Over the years people come up against options or things they need to consider, i.e., whether, and I made reference to it earlier, whether somebody might more appropriately move say from, like if they are leaving school into service A, or service B, or service C, and there is a consultation process involved in that, and you know people look at the options, and they consider what is going to work best. That is the norm, I suppose, in terms of consultation. My expectation certainly was that the family would be able to see the, and in fairness the family recognised, and publicly recognised, the huge efforts that had been made up to that point to meet Peter's needs. It wasn't that St. Michael's House was now going to renege on that, you know, like that commitment over that length of time..."<sup>163</sup>

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<sup>162</sup> Interview with the Divisional Manager, the 27<sup>th</sup> March, 2008, p. 45

<sup>163</sup> Interview with the Divisional Manager, the 27<sup>th</sup> March, 2008, p. 50

4.3.27 The physician described the purpose of the meeting as being to "explain why the precipitous move had taken place."<sup>164</sup>

4.3.28 She later said, in the context of empathising with the feelings of the family, that:

"....They came into that meeting for [the Divisional Manager], as the Residential Manager, to try and explain what had happened and why we were in that situation. My situation was to explain the medical issues, that what had come about now and his overwhelming medical care needs, and the projected, you know, prognosis on what would happen with dementia....."<sup>165</sup>

4.3.29 Obviously the type of consultation that was envisaged was limited. It is clear from these quotes that both the physician and the Divisional Manager envisaged that they would explain why St. Michael's House had made the decisions it had made and that the family would understand and hopefully agree with the decision. This is obviously a limited form of consultation. It is perhaps understandable why it was limited. St. Michael's House was of the view, a view which I accept, that it had no alternative placement within St. Michael's House and that it therefore had no option but to transfer Mr. McKenna to an external facility. In those circumstances there was limited scope for two-way consultation, at least in relation to the need for a move from St. Michael's House.

4.3.30 The purpose of the meeting from the family's point of view was to dissuade St. Michael's House from transferring Mr. McKenna outside of St. Michael's House by outlining the options which the family believed were available within St. Michael's House. Mr. McKenna's brother explained to the inquiry that the family had done a good deal of preparatory work in identifying possible options for this meeting. It is clear from the accounts of this meeting which are contained in the documents with which I have been furnished and the accounts which were given verbally during the course of the inquiry that the family did lay these options before the meeting.

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<sup>164</sup> Interview with the physician, the 27<sup>th</sup> March, 2008, p. 24

<sup>165</sup> Interview with the physician, the 27<sup>th</sup> March, 2008, p. 25



### **Contents of the Meeting**

4.3.31 The Divisional Manager prepared a memorandum of this meeting following the meeting. There is broad acceptance that this memorandum is generally reflective of what occurred at the meeting. There is also broad similarity between this memorandum and a shorter handwritten memorandum prepared at the time by Mr. McKenna's brother. I believe that in those circumstances it is worth quoting in full from both memoranda although I must stress before doing so that while both documents broadly reflect the contents of the meeting there is one topic (the family's account of what they had seen in Leas Cross) which it is agreed was raised at the meeting but which is not recorded in either memorandum. I also feel that the documents, perhaps understandably, do not fully reflect the tone and mood of the meeting.

4.3.32 The Divisional Manager's memorandum recorded that the physician, the Divisional Manager and Mr. McKenna's brothers and sister were present at the meeting on the 4th September and continued:

"Peter had been moved temporarily to The Beeches on 1<sup>st</sup> September 2000 for the weekend only. He was occupying the bed of a client who was away for the weekend.

The meeting opened with [Mr McKenna's brother] making some opening comments. Initially he stated that Leas Cross was totally unacceptable to the family. He referred to Peter being transferred out to a "sub-contractor". He asked what all the talk over the years about a "cradle to grave" service was about. He said that it had been volunteered to him two years ago when the initial diagnosis was made that Peter would live out his years in St. Michael's House. He spoke about Peter being "dumped" by St. Michael's House. He mentioned the key worker in Warrenhouse as being a crucial element of Peter's life and that this had not been referred to in any discussion. He said that we were moving Peter from a service where they were trained to look after Alzheimers (St. Michael's House) to a service that was not (Leas Cross).

[The physician] explained the progression in Alzheimers to the family. She said that Peter was at the "late middle" to "early late" stage of the disease. She had seen Peter in The Beeches as recently as Saturday 2<sup>nd</sup> September. At this stage she felt that Peter needed to be in a location

where he could receive his complete service rather than having to be transported to and from a day service. [The physician's] preference would be to access a nursing facility in St. Michael's House but at this point such a service does not exist.

[The Divisional Manager] explained the background to the sudden but temporary move of Peter to The Beeches. He said that [the Head of Unit of Warrenhouse Road] had come to him on Thursday 31<sup>st</sup> August to say that the staff could no longer look after Peter's needs. He was sitting in a chair all day afraid or unable to move. They were no longer able to attend to his incontinence. This was compounded by a situation where they had no suitable staff for the forthcoming weekend. It was in this context that [the Divisional Manager] organised the temporary move.

[The Divisional Manager] explained that St. Michael's House only uses a small number of nursing homes which are carefully selected. In each case a close relationship exists with St. Michael's House staff. Historically we have always had to use nursing homes. [The Clinical Director] was quoted as having a close relationship for example with Highfield Nursing Home over the years. We were at the planning stage of developing an Alzheimer unit but this would not be completed for another year. To emphasise the limited care that can be offered in a community house [the Divisional Manager] instanced where clients in residential houses would sometimes have to move temporarily into a nursing home for recuperation after hospitalisation, before moving back to their residential unit.

[Mr. McKenna's other brother, MM] asked if we could discuss options within St. Michael's House. He asked why we could not make a bed available in Coolfin. [MM] said that an arrangement of this kind had been put in place in the past. [The Divisional Manager] explained that Coolfin was a respite house. He stated that The Beeches was not an Alzheimer unit but a halfway house. He explained that even if there was a vacancy in The Beeches that [the Head Social Work Department] had a number of families living in dire circumstances who would have a call on such a bed. [The Divisional Manager] explained that a policy decision had been taken not to continue with the blocking of beds. Mr Moore also mentioned about twenty five Philippino nurses starting shortly.

[The Divisional Manager] refuted the suggestions made by [Mr. McKenna's brother] that in some way we were renegeing on a responsibility to Peter. He further refuted the suggestion that Peter was being "dumped".

[Mr. McKenna's sister] spoke very little during the meeting. She suggested later in the meeting that they needed to take a break. [Mr. McKenna's brother] at this stage said that St. Michael's House did not have their permission to move Peter. He said that he was saying this very clearly. He asked if we understood what he was saying. They then left the meeting and the building.

#### **Postscript (1)**

[The Head of Unit of Warrenhouse Road], in a telephone conversation, explained that Peter is their half brother, thus the different surname of [.....]. [The Head of Unit of Warrenhouse Road] describes [Mr. McKenna's brother] crying uncontrollably on visits to Warrenhouse Road. It also emerges that their mother died of Alzheimers three years ago.

#### **Postscript (2)**

I spoke with [the Head of Unit of The Beeches] on 5<sup>th</sup> September. She has ten clients in The Beeches. The two bedrooms on the ground floor are occupied for the foreseeable future. Peter's temporary occupation of the sitting room as a bedroom is untenable given the number and diversity of clients. Even if there was a vacancy and he was to be considered [the Head of Unit of The Beeches] states that it would be very unsafe for him to occupy an upstairs bedroom given his condition. She could not guarantee his safety."

4.3.33 I have also been furnished with a handwritten memo of this meeting by Mr. McKenna's brother which records:

"We commenced by giving full background to crisis and how we unanimously reject [the consultant psychiatrist's] proposal re Leas Cross Nursing Home.

[The physician] gave medical reasons for transfer and its rapidity. She visited Peter on Sat. (illegible).

No regrets or apologies about non-consultation re unpermitted move from Warrenhouse.

[MM] tried to explore Coolfin, Beeches and other Health Board names/venues. No joy, these were not places for long care Alzheimer treatment; were respite or half way houses; and furthermore policy is to have outside nursing care when it is required.

No choices, no options.

Meeting concluded with me making explicit statement that they had not my permission to remove Peter from St Michaels House care, and that we feel let down badly after years and years of first class care, service and family support."

### ***The parties' respective views of this meeting***

4.3.34 The meeting took place in the St. Michael's House premises on Ballymun Road. The family have raised a number of points about this meeting. At the heart of those points is the complaint that St. Michael's House were not really interested in hearing from the family or their views and were, therefore, not consulting with the family in any meaningful way.

4.3.35 Firstly, while MM described the meeting as being "polite, maybe a little strained"<sup>166</sup>, Mr. McKenna's brother said the St. Michael's House representatives were barely polite and were contemptuous of the family. As an example of this he pointed to the location and nature of the room in which the meeting was held which both he and Mr. McKenna's sister described as not being a proper meeting room and being little more than a cubby-hole. Mr. McKenna's brother said:

"The meeting was held in a small cubby hole under stairs in headquarters. This was to show -- it wasn't even held in a proper meeting room, they were showing their, if don't mind me saying so, their contempt for us."<sup>167</sup>

4.3.36 This suggestion was refuted by St. Michael's House. The physician said:

"He talked about contempt and that we weren't polite. Now I really was very upset and I really want that refuted ... then I looked at the whole thing and I said well you know their memory of this is completely unclear. He said that we held the meeting in a small cubbyhole under the

<sup>166</sup> Interview with MM, the 16<sup>th</sup> April, 2008, p. 10

<sup>167</sup> Interview with Mr. McKenna's brother, the 7<sup>th</sup> February, 2008, p. 37

stairs in the head quarters. We actually held the meeting in the medical consulting room. There are two really nice rooms here; one for the adult doctors, the adult physicians, and one for the paediatricians. I actually think we should go down and look at them."<sup>168</sup>

4.3.37 The Divisional Manager echoed these comments in saying:

"[Mr. McKenna's brother] spoke about a small cubby-hole under the stairs, which he said showed what they understood to be contempt for the family. They described stonewalling. They were saying that we were discourteous and that we were barely, barely polite, that we were automatons. What I would say is that I would strongly refute all of these suggestions. The actual room in which we met with the family is on the ground floor, and it is commonly used to meet with families. It is a clinic room, but space downstairs is at a premium. It certainly was not a cubby hole. It is the same meeting room that we would regularly invite families to attend, to attend and meet in. In terms of personally -- I think that in terms of the stonewalling, they may have experienced that in terms of the suggestions that they were putting forward, ie., about the additional nurses and Coolfin. I suppose from our point of view, they were not viable solutions. So it is unfortunate that they would have experienced that as stonewalling, but certainly that we went out of our way to try and explain what we were attempting to do, ie., trying to find a solution for Peter".

4.3.38 I cannot make a finding in relation to the demeanour or manner of the St. Michael's House representatives at this meeting. I do not believe that I could safely do so at this remove in any event but I can particularly not do so where that demeanour has been described in different terms by two members of the family who attended the meeting.

4.3.39 I have been shown the room where this meeting took place by the physician and told by her that it was frequently used as a meeting room. It is a clinic room on the ground floor of the St. Michael's House premises in Ballymun. Mr. McKenna's brother described it as not being a "proper meeting room." It is certainly not a meeting room per se. However, nor is it a cubby hole. While it may not be an ideal location for a meeting and particularly a meeting attended by 5/6 people I do not

<sup>168</sup> Interview with the physician, 11<sup>th</sup> July, 2008, p. 15

believe that there is any basis upon which I could infer that the use of it as a location for a meeting is indicative of contempt or any lack of respect.

- 4.3.40 The second issue raised by the family as being indicative of contempt or a failure to consult the family is the belief of the family that there was no movement or willingness on the part of the St. Michael's House representatives to consider the options being suggested by the family. The St. Michael's House representatives were described as "stonewalling" the family. Mr. McKenna's brother said:

".... No matter what suggestion we made they were stonewalling us. There was no give in them whatsoever. They didn't want to explore anything whatsoever..."<sup>169</sup>

- 4.3.41 I am satisfied that it was the belief of the family that they were being "stonewalled" by St. Michael's House. However, objectively, I do not think that one can conclude that St. Michael's House were "closed" or were "stonewalling" the family merely because they rejected the family's suggestions as being realistic or viable options. Obviously, if St. Michael's House were not prepared to consider the family's suggestions, they could be correctly described as "closed". However, if the suggestions of the family had previously been considered and were not viable options, it would not be correct or accurate to describe St. Michael's House as "closed" merely because they did not or could not adopt those suggestions.

- 4.3.42 As I understand it the family raised the possibility of Mr. McKenna being accommodated in Coolfin, a St. Michael's House facility, or in Warrenhouse Road or The Beeches in the context of the arrival of a large number of Philippino nurses in St. Michael's House.

- 4.3.43 I have been told<sup>170</sup> and indeed it is reflected in the memorandum of the meeting quoted above, that St. Michael's House did not consider Coolfin to be an option

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<sup>169</sup> Interview with Mr. McKenna's brother, the 7<sup>th</sup> February, 2008, p. 37

<sup>170</sup> Interview with the Divisional Manager, the 25<sup>th</sup> June, 2008, p. 29

because it was a respite house and was therefore unsuitable for Mr. McKenna. I was also told by the Divisional Manager why a respite house was not suitable for Mr. McKenna:

"From the point of view of somebody with Alzheimer's, that having strangers and having change consistently going on around them is the last thing that somebody with Alzheimer's needs. In fact, they need familiarity, consistency, all the other things. So being in a house where they might have children, teenagers, young adults, who are not necessarily even familiar with the respite house themselves coming in on a Monday or a Thursday and all the change going on and staff trying to adjust. Staff in respite houses will actually say that taking in a new group of service users is almost as detailed and complex as setting up a new house, because you have to get all the information in relation to the individual service users, what their likes, dislikes, medications, the whole lot, all within a short space of time. The other thing is that the staff are not either skilled or equipped to manage people with Alzheimer's."<sup>171</sup>

- 4.3.44 St. Michael's House's submissions to this inquiry also dealt with this issue and gave details about having previously cared for a client who needed palliative care in a respite house. The placement had not been successful and had led to the closure of the respite house for a week for debriefing and had led to a formal complaint to the Board by the client's family.
- 4.3.45 It seems to me that the view by St. Michael's House that Coolfin, as a respite house, was not a suitable or viable option for Mr. McKenna, was a reasonable view. Perhaps even more importantly, the lack of properly trained or experienced staff also raised legitimate concerns about the use of Coolfin.
- 4.3.46 The memorandum does not record St. Michael's House's response to the point about the arrival of 25 Phillipino nurses. However, it was explained during the inquiry that these nurses had to undergo 12 weeks training in a general hospital before they could be registered in Ireland and therefore before they could take up their positions in St. Michael's House. The Chief Executive Officer explained that

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<sup>171</sup> Interview with the Divisional Manager, the 25<sup>th</sup> June, 2008, p. 34

while he could not be certain, he believed that the 25 nurses who had been recruited in the Phillipines had arrived at the end of August but that:

".... They had to do 12 weeks in either the Mater or Beaumont Hospital in order to be accredited. So I wasn't going to get those nurses until late November or early December. Now, once I got those nurses, there was then the possibility of me being able to open nursing houses again...."<sup>172</sup>

4.3.47 I can understand and accept St. Michael's House's rejection of the suggestion by the family that some of these Phillipino nurses could have been assigned to The Beeches to provide the extra staff cover required by Mr. McKenna in circumstances where the nurses were not yet available to St. Michael's House.

4.3.48 However, I do not understand the other points which are recorded as having been made by St. Michael's House<sup>173</sup> that The Beeches was not an Alzheimer unit but a halfway house and that even if there was a vacancy in The Beeches the Head of Social Work Department had a number of families living in dire circumstances who would have a call on such a bed. These points were not made to me by anyone during the interview stage of this inquiry and only arise from the report of the meeting of the 4<sup>th</sup> September which was authored by the Divisional Manager more or less contemporaneously with the meeting (or very shortly thereafter). This seems to suggest that even if there had been a place available for Mr. McKenna in The Beeches someone else may have been offered that place rather than Mr. McKenna. This may or may not be a legitimate decision or deployment of resources by St. Michael's House but even if it was it is difficult to understand why it was offered as a reason why Mr. McKenna was not kept in The Beeches at the meeting of the 4<sup>th</sup> September but not during the course of this inquiry.

4.3.49 In circumstances where St. Michael's House has given a reasonable explanation as to why they considered the family's suggestions not to be viable, St. Michael's

<sup>172</sup> Interview with the Chief Executive Officer, the 9<sup>th</sup> April, 2008, p. 14

<sup>173</sup> As recorded in the report of the meeting of the 4<sup>th</sup> September, 2001



House can not objectively be described as "stonewalling" the family or closed. Therefore, I do not find that St. Michael's House were contemptuous of Mr. McKenna's family or were stonewalling them.

4.3.50 However, the question of perception is very important in this context. In my view there is no question but that the family believed at that stage that St. Michael's House had decided to move Mr. McKenna without consulting with them and regardless of their views and that an element of distrust had entered the relationship between the family and St. Michael's House as a result. This undoubtedly occurred by reason of the events of the previous week which I have dealt with fully above including Mr. McKenna's brother being told on the 30<sup>th</sup> August 2000 that things were not at the stage of Mr. McKenna having to move and then Mr. McKenna being moved to The Beeches the very next day without advance notice to or consultation with the family, and the introduction of a move to an external private nursing home. The Divisional Manager himself touched on this issue of distrust when he said:

"I suppose the meeting itself, from the outset at the meeting it appeared that they were probably distrustful of us, that is the sense I had from them. I accept that they were desperate in terms of trying to maintain Peter in St. Michael's House. I suppose we were also desperately trying to maintain the situation for Peter as well. I suppose what came across was it appeared that they believed from the outset that we were maybe not acting in Peter's best interests."<sup>174</sup>

4.3.51 Following the circulation of the draft report St. Michael's House made submissions in relation to the cause of the family's distrust of St. Michael's House and submitted that it cannot be totally attributed to the lack of consultation.

4.3.52 St. Michael's House made the points that in 1993 the family had previously agreed to Mr. McKenna being placed in a private service outside of St. Michael's House and that he had remained there for a year, that Mr. McKenna's files clearly show that he had an extremely high level of supports and that the family had 26 years of excellent

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<sup>174</sup> Interview with the Divisional Manager, the 25<sup>th</sup> June, 2008, p. 28

care of Mr. McKenna from St. Michael's House and that in all of those circumstances the said distrust could not have been caused solely by the said lack of consultation.

- 4.3.53 St. Michael's House furnished the inquiry with a confidential file in respect of Mr. McKenna. I reviewed that file and considered its contents. I do not believe that it would be appropriate or that it is necessary to discuss the contents of this file in this report. It was suggested to me during the interview stage that issues arising from the matters which are detailed in that confidential file gave rise to tension between a member of the family and St. Michael's House previously. If I understand St. Michael's House's submissions correctly it is implicitly submitted that the break down in trust at the end of August beginning of September, 2000 is at least partly attributable to these previous tensions.
- 4.3.54 St. Michael's House also submitted that "the distrust that emerged on the 4<sup>th</sup> September, is related to the complexity of this relationship, **and must ask the Inquiry to take this into account when reaching its conclusion**" [emphasis added]. For the purpose of completeness it should be recorded, as it is in sections 1 - 3 above, that I examined and considered all documentation and information that was given to the inquiry and have indeed taken same into account.
- 4.3.55 I raised the suggestion that there had been previous tensions between a member of the family and St. Michael's House with that member and he denied same.
- 4.3.56 Whether previous tension existed and was a contributing factor to the break down in trust or not, I remain of the view as expressed in the draft report and in paragraph 4.3.50 above that the said lack of consultation was, if not the only cause, then an important cause of the break down of trust **at that time**.
- 4.3.57 This sense of distrust and of lack of belief that St. Michael's House were acting in the best interests of Mr. McKenna was undoubtedly heightened by the family's perception of St. Michael's House's reaction to the family's preparatory work where

they identified a number of options which they believed St. Michael's House could employ to keep Mr. McKenna in St. Michael's House. As they had identified what they believed were options between their visit to Leas Cross and the meeting on the 4<sup>th</sup> September they naturally must have wondered why one or more of these options were not being employed by St. Michael's House and concluded that they were not being employed because St. Michael's House had resolved to transfer Mr. McKenna irrespective of the availability of internal options. This could only have added to their distrust or scepticism going in to the meeting on the 4<sup>th</sup> September. The Divisional Manager went on in the passage quoted above to say:

"One of my concerns about the meeting was that they appeared to be relying on partial information. That we were at that meeting trying to genuinely explain the difficulties we were in and we were pointing out that there was no internal solution? ..... Yes, the partial information, and what I mean by that is that [Mr. McKenna's brother] states that they had done considerable work leading up to the meeting and they had obviously sourced the information in relation to the Filipino nurses. They had sourced information in Coolfin, ....., but the people that they were talking to were not in management roles and they were of the opinion, I think, that these were realistic solutions to Peter's dilemma..... I think that they were desperately trying to find a solution for Peter, and there was probably a presumption that if St. Michael's House management were so minded, that a solution could have been found was the impression that I would have got at the meeting."<sup>175</sup>

4.3.58 In light of this distrust it appears to me that the family or members of it perceived issues such as the location and nature of the room where the meeting was held to be a slight on them and indicative of contempt and perceived St. Michael's House's refusal to adopt any of the family's suggestions as St. Michael's House being "closed". I accept that they did indeed believe that they were being treated impolitely and contemptuously and that St. Michael's House were "closed" but I

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<sup>175</sup> Interview with the Divisional Manager, the 25<sup>th</sup> June, 2008, p. 28. During the course of the interview the Divisional Manager suggested a possible source of the family's information. However, in its submissions St. Michael's House explained that the Divisional Manager now believed that the facts upon which he had based that information were incorrect. I have therefore not included that portion of the quote. Nothing turns on it and I therefore do not believe that it is necessary to include same.

cannot and do not make a finding that they were in fact being treated in such a manner or that St. Michael's House were "closed".

***Inadequate consultation during and after the meeting***

4.3.59 However, it does not necessarily follow from this that I believe that the family's views were fully or properly considered. In my view the process of consultation both during and after this meeting was deficient in that no proper consideration was given to what the family had to say about what Mr. McKenna's brother and sister had seen when they visited Leas Cross.

4.3.60 Both Mr. McKenna's brother and the Divisional Manager's memoranda record the fact that Mr. McKenna's brother made it clear that the family were unhappy with and opposed to a move to Leas Cross. Mr. McKenna's brother noted that they "commenced by giving full background to crisis and how [they] unanimously reject the consultant psychiatrist's proposal re Leas Cross Nursing Home". The Divisional Manager reported that:

"The meeting opened with [Mr. McKenna's brother] making some opening comments. Initially he stated that Leas Cross was totally unacceptable to the family..."

4.3.61 However, most surprisingly, while both documents record that the family expressed their opposition to Leas Cross, neither document records that the family told the meeting why they were opposed to Leas Cross or that the family were asked why they were opposed to the proposed move. This would seem to suggest that the family did not explain why they were opposed to the proposed move and more particularly that they did not tell the meeting what Mr. McKenna's brother and sister had seen when they visited Leas Cross 3 days earlier.

4.3.62 The conclusion which would have to be drawn from a reliance on the documents alone is that the family did not tell the meeting what they had seen. The only note of

a reason for the family's opposition contained in these reports states that Mr. McKenna's brother *"....referred to Peter being transferred out to a "sub-contractor". He asked what all the talk over the years about a "cradle to grave" service was about. He said that it had been volunteered to him two years ago when the initial diagnosis was made that Peter would live out his years in St. Michael's House. He spoke about Peter being "dumped" by St. Michael's House."* There is also a note that Mr. McKenna's brother suggested that Leas Cross was not trained to deal with Alzheimers.

4.3.63 However, it became clear during this inquiry that in fact the family did give some account of what they had seen when they visited Leas Cross. I asked Mr. McKenna's brother whether they gave details of what they had seen at Leas Cross and he stated that they went into the minutiae and that they described what they had seen in detail<sup>176</sup>. Mr. McKenna's sister confirmed that they had described what they had seen in vivid terms to the meeting<sup>177</sup>.

4.3.64 The physician stated that:

"I think they might have mentioned saying they saw somebody with their incontinence pad."<sup>178</sup>

4.3.65 She also stated that:

"They did talk about visiting Leas Cross and they mentioned that the first thing they saw was a man with his pants down around his ankles or his knees or something and they really didn't want it at all. They didn't, as far as I can remember and it was eight years ago, I can't remember what else they spoke about, but that came out very clearly."<sup>179</sup>

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<sup>176</sup> Interview with Mr. McKenna's brother, the 7<sup>th</sup> February, 2008 and the 6<sup>th</sup> June, 2008

<sup>177</sup> Interview with Mr. McKenna's sister, the 11<sup>th</sup> February, 2008

<sup>178</sup> Interview with the physician, the 27<sup>th</sup> March, 2008, p. 26

<sup>179</sup> Interview with the physician, the 11<sup>th</sup> July, 2008, p. 10

4.3.66 It is clear, therefore, both from what Mr. McKenna's brother and sister told me and from what the physician told me at interview, that there was at least some information given at the meeting as to what the family had seen in Leas Cross.

4.3.67 In addition to there being no note of this information being given, there is no note of St. Michael's House's response or reaction to the information. I explored this issue with the various parties. Mr. McKenna's brother did not recall specifically what the response was at that meeting. He described the general reaction of St. Michael's House (presumably in the following weeks) as that they:

“... place people in nursing homes selectively chosen by Saint Michael's House, and what I had seen was totally out of character with what they had experienced. And they questioned my bona fides, and I am not too concerned about my bona fides I can assure you, but they questioned about what I had seen out there and had I made an appointment to go out there or had I landed there surreptitiously or was this part of my imagination.”<sup>180</sup>

4.3.68 Mr. McKenna's brother's reference to St. Michael's House questioning his bona fides and whether he had “landed there surreptitiously” arises from the issue which is touched on in that quote as to whether Mr. McKenna's brother and sister presented themselves to the staff in Leas Cross when they visited the nursing home at the request of the consultant psychiatrist. I have dealt with this in paragraphs 4.3.16 – 4.3.18.

4.3.69 Similarly, Mr. McKenna's sister does not recall the reaction at the meeting. When I asked her whether the St. Michael's House representatives expressed any view she said that she could not remember it. She went on to say that St. Michael's House told the High Court that they were very pleased with Leas Cross<sup>181</sup>.

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<sup>180</sup> Interview with Mr. McKenna's brother, the 10<sup>th</sup> June, 2008

<sup>181</sup> Interview with Mr. McKenna's sister, the 20<sup>th</sup> June, 2008

4.3.70 As stated above, the physician recalls that:

"They did talk about visiting Leas Cross and they mentioned that the first thing they saw was a man with his pants down around his ankles or his knees or something and they really didn't want it at all. They didn't, as far as I can remember and it was eight years ago, I can't remember what else they spoke about, but that came out very clearly"<sup>182</sup>.

4.3.71 I asked whether this caused any concern on the part of St. Michael's House. The physician answered:

"No, because if you look at it in the whole context of dementia confusion in elderly people unfortunately there are times that they may strip or they may come out of the toilet with their trousers down or whatever and that is not unexpected. Certainly one of the units I work in now has people with dementia and there could be three or four staff there including myself and you could turn around and somebody has stripped off. My gut feeling was, my God, the poor man, and I know from..... looking after a [person] with dementia again you could literally answer the door and turn around and see this person practically stripped down. So, no, it is not it can happen so quickly. Now if they said there were ten people walking around with their nappies down or woman walking with no tops on I would have said, oh, my God that sound dreadful, but yes, it is an unfortunate thing that they saw it, but it could have been something that happened just like that. It could happen here and it can happen anywhere. It could happen in a hospital, on a corridor in a hospital".<sup>183</sup>

4.3.72 I then asked whether it gave the physician "*pause for thought*" or whether she thought "*maybe we should be looking into the nursing home*". She explained:

"No, because I think, you know, again there is this sort of -- I just sort of felt from reading this there was this undercurrent I think that, you know, we have no places so we just 'oh, we have no places, terrible, we will have to send them off', and, you know, I want people to appreciate the amount of work that was done by [the Head of Social Work Department], [the Divisional Manager], people like that sourcing out alternatives for looking after our people with this residential crisis we had. So we had used Leas Cross, there was a very good relationship going

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<sup>182</sup> Interview with the physician, the 11<sup>th</sup> July, 2008

<sup>183</sup> Interview with the physician, the 11<sup>th</sup> July, 2008

on, people were in and out. I know subsequently people said that there were a few complaints, but they were actually very minor complaints. But if there was something coming out that people were going in and coming out with broken legs or they were coming out and they were sent on buses back stripped naked or whatever I would have very concerned. But no, we had put a system in where things were being checked very closely”<sup>184</sup>.

4.3.73 I asked the physician whether she or anybody else at the meeting, i.e. the Divisional Manager, explained that what the family had seen could happen anywhere. The physician explained:

“You see the problem was it was a very unsatisfactory meeting. It was very difficult. A crisis had arisen, he was moved out of what they had perceived his home and I mean it was awful for them. Now usually what happens in those meetings the families come in and usually -- I mean it wasn't a usual thing that happened. They would be very cross and whatever, which they were. They had obviously done some work and they had raised options that we could discuss. But all the options they had raised were things that we had gone in to over the years, what are the alternatives? I mean the hospice, I remember looking for somebody to go in to the hospice, it wasn't done. The generic, geriatric services would not take anybody unless they were over 65. The issue about Filipino nurses I mean [the Divisional Manager] was au fait with that, they had to go to be registered. I think they had brought up about putting them in a respite home which there had been a difficulty with a similar patient that had actually gone to the Board and there was no way people with dementia were going into respite home. What else did they bring up? They were the main ones. It was if -- this wasn't something knew [sic] that we never had looked at. It was all things that had been explored before. I mean this was just -- we were dealing with it daily. I think I have said it to you before how difficult it was at that time. It was just so difficult. Usually with meetings like that you would go through this and basically what happened was they brought up these options and then [Mr. McKenna's brother] stood up and he said, 'I am telling you we are not giving you permission to move Peter from St. Michael's House', and he repeated it again and he said, 'do you understand?' With that the family walked, got up and walked out. So therefore we didn't come to the stage of saying, well, look, this is what we are dealing with, these are the options, is there anyway we could move on from here and working together with the family. And, you know, it went off, that was it. I suppose we were talking about people complaining, you know, the doctor, the residential manager, you are seen as the face, it is you, it is all your fault. It is not, it is the system and the system actually was the funding from the

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<sup>184</sup> Interview with the physician, the 11<sup>th</sup> July, 2008



ERHA. I mean everybody knew the crisis that was there, the Harmon Woulfe Report, you know, we lived with it."<sup>185</sup>

4.3.74 What emerges from these accounts is that St. Michael's House did not expressly react at that meeting to what the family told them they had seen on their visit to Leas Cross. It is also clear that the reasons for this absence of a reaction are that (a) in the physician's experience what the family described was not out of the ordinary in the context of dementia and could happen in the best-run facility and (b) that there was no opportunity to react to same because the meeting came to an abrupt end when the family walked out.

4.3.75 In relation to the first point, I believed and expressed the view in the draft report which was circulated that it was an inadequate response for St. Michael's House's decision-making system to hear such a description but to proceed without any proper inquiry into or consideration of what the family had described. It must be noted that the Divisional Manager describes himself as "very taken aback at how strident the family were."<sup>186</sup> Notwithstanding this surprise there does not appear to have been any consideration of the reasons for this strident opposition. I reached this view with deference to the physician's experience and expertise and her view that these type of things happen in nursing homes and, indeed, in other settings, including the home and hospitals. However, incidents such as those described by Mr. McKenna's brother or even the one incident that the physician recalls Mr. McKenna's brother describing could be suggestive or indicative of poor standards and should give rise and in this case should have given rise to consideration or further inquiry. St. Michael's House appears to have simply operated on the basis that these incidents or this incident were just one of those things that happen in nursing homes. That may be true but it is difficult to understand how they could be satisfied of that without inquiring further into the accounts given by the family. It was my view that such further inquiry should have happened, not just so that St. Michael's House could attempt to allay the concerns of the family, but so that St.

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<sup>185</sup> Interview with the physician, the 11<sup>th</sup> July, 2008

<sup>186</sup> Interview with the Divisional Manager, the 27<sup>th</sup> March, 2008, page 45

Michael's House itself could be satisfied that there was no reason to be concerned about standards in Leas Cross. There is no evidence of any such inquiries having been carried out. No inquiries were made of the family.

4.3.76 In relation to that second point, I expressed the view in the draft report that I was not convinced that the absence of a reaction can properly be ascribed to an absence of an opportunity to react. It seems clear that the family gave their account at the beginning of the meeting so there was time to react to their description but it is apparent that the rest of the meeting was taken up with the options being suggested by the family. In addition to that, there was no express reaction given to the family in the days or weeks that followed. Furthermore, it must be borne in mind that Mr. McKenna's family did not have the experience of St. Michael's House. It could not be assumed that they would be aware that these types of incidents occur in nursing home and other care settings. It seems to me that witnessing such incident(s) in a nursing home to which it was proposed a member of their family was to be transferred must have caused anxiety and distress and a belief that it was not appropriate that their sibling should be transferred there. The fact that it was not explained to the family that these incidents were not out of the ordinary and should not be seen as indicative of poor care meant that their fears were not allayed. I fully appreciate the physician's point that the meeting came to an abrupt end when the family walked out. This of course may mean that St. Michael's House did not get an opportunity to attempt to give this reassurance or to make inquiries of the family in relation to these incidents at the meeting itself. However, there is no evidence that further inquiries were made during the following weeks or that any attempt was made to reassure the family. Of course, it is possible that the family would not have accepted any such explanation or attempted reassurance given the breakdown in their trust (whether justified or not).

4.3.77 St. Michael's House submitted after the draft report had been circulated that the conclusion that there had been an inadequate response by St. Michael's House to these descriptions by the family as set out at paragraph 4.3.75 is unfair. Having

considered those submissions and the grounds upon which it was submitted the conclusion was unfair, I remain of the view that the absence of a reaction cannot be ascribed to an absence of an opportunity to react and that it was an inadequate response for St. Michael's House's decision-making system to hear such a description but to proceed without any proper inquiry into or consideration of what the family had described.

4.3.78 The grounds upon which St. Michael's House submitted that these conclusions are unfair are:-

- (i) The tightness of the time frame in that the meeting with the family took place within one working day of the emergency move and that a letter from the family reiterating that Mr. McKenna was a Ward of Court and could not be moved without the Court's sanction arrived within 4 working days of that meeting.

I accept that this, together with the breakdown in the relationship with the family made it difficult to raise such inquiries with the family and made it difficult to raise inquiries with Leas Cross in those few days. However, there is no evidence that such inquiries were raised with either the family or Leas Cross at any later stage;

- (ii) The meeting of the 4<sup>th</sup> September, which was cut short by the family, did not afford either the family or St. Michael's House the opportunity to fully explore the family's concerns in relation Leas Cross. I have previously dealt with this at paragraph 4.3.76 above;
- (iii) Because there was contact between the psychologist who was later appointed to support the family in seeking to identify an alternative nursing home and the family and that the psychologist, at the request of the family, inquired with the senior social worker whether there had been concerns or

complaints in relation to Leas Cross, it is inaccurate to state that there was no inquiry made.

The conclusion that there was inadequate inquiry made relates to the adequacy of the inquiries made by St. Michael's House in relation to the descriptions given to St. Michael's House by the members of the family following their visit to the nursing home on the 31<sup>st</sup> August. Whether or not inquiries were made as to whether there had been previous concerns or complaints does not impact on this conclusion;

- (iv) There were significant attempts by the Chief Executive Officer to resolve matters with the family including telephone calls and meetings with Mr. McKenna's brother.

I deal in detail with these contacts including that the CEO offered to pay for any nursing home of the family's choice (which offer remained open up Mr. McKenna's death) later in this section. I do not believe that the mere fact of these contacts and attempts is relevant to the conclusion as to the adequacy of St. Michael's House's inquiries. I accept that Mr. McKenna's brother had an opportunity to outline in detail what had been seen in Leas Cross when he met with the Chief Executive Officer but is recorded as having been reluctant to go into detail. It is unfortunate that Mr. McKenna's brother did not go into detail. However, I do not believe that the fact that Mr. McKenna's brother did not go into detail at the meeting on the 20<sup>th</sup> September renders the conclusion that St. Michael's House's inquiries were inadequate unfair or invalid.

- (v) A social worker and psychologist were appointed to assist the family in the task of finding an alternative nursing home, in circumstances where such supports were scarce and in high demand within the organisation. I deal with these appointments in detail at paragraphs 4.3.131 – 4.3.134 below. I do not

see the relevance of such appointments for those purposes to the issue of the adequacy of St. Michael's House's inquiries into what the family reported arising from their visit to Leas Cross on the 31<sup>st</sup> August 2000.

4.3.79 What I believe should have happened when St. Michael's House received the family's account of what they had seen in Leas Cross is that the family should have been told that such incidents are not unusual and may not in themselves necessarily be indicative of a lack of care or of poor standards but that St. Michael's House would inquire into the incidents. St. Michael's House should then have inquired into the incident by seeking all of the information from the family and making inquiries with Leas Cross. In my view this should have happened both so that St. Michael's House could satisfy themselves that there was no reason to be concerned and to attempt to address and allay the concerns of the family.

4.3.80 Following this meeting, the Divisional Manager sent a memorandum to the Director of Services dated the 6<sup>th</sup> September in which the question of the proposed move was discussed. The said memorandum reads, inter alia:

"I spoke with [.....]Matron of Leas Cross on 6<sup>th</sup> September. I explained the reluctance of the family in relation to Peter's transfer to a nursing home. She has been to see Peter in the Beeches. I mentioned that [Mr. McKenna's brother]had been out to see Lea's Cross but it appears he may not have introduced himself to staff there. [The Matron of Leas Cross]concern was that she or her staff were unable to offer him any reassurance or to describe the service."

4.3.81 While it certainly appears from this that the family's account was given to the Matron of Leas Cross it is also clear from this memorandum that the matter was not raised as an inquiry or a concern. Furthermore, the fact that Mr. McKenna's brother "may not have introduced himself to staff there" and that therefore Leas Cross "were unable to offer him any reassurance or to describe the service" appears to have been the end of the matter.

4.3.82 I conclude from this failure to deal with the issue which was raised by the family at this stage that there was no proper or meaningful consultation with the family.

### **Stalemate**

4.3.83 As is clear from the Divisional Manager's report and Mr. McKenna's brother's memorandum which are contained at paragraphs 4.3.32 and 4.3.33 respectively (and indeed the information which was given during the course of the interview stage of the inquiry) the meeting concluded with the family withdrawing from the meeting. In doing so they (Mr. McKenna's brother) expressly told the Divisional Manager and the Physician that St. Michael's House did not have permission to move Mr. McKenna.

4.3.84 There is no doubt that this presented St. Michael's House with a dilemma: it had no suitable facility for Mr. McKenna but did not have the permission of Mr. McKenna's family to move him. This meant that it either had to accommodate him within St. Michael's House or request the family to take Mr. McKenna out of St. Michael's House. I should emphasise that the situation and choice facing St. Michael's House immediately after that meeting was not expressed in those terms by St. Michael's House. Indeed, it is not even clear whether St. Michael's House formulated the situation in those terms but it seems to me that the choice had to be as stark as that unless there were further developments. It was clear to me during the course of the inquiry that St. Michael's House and its staff were extremely conscientious and committed to the care of their service-users. Asking a family to withdraw a service-user would, it seems to me, have gone completely against the grain for St. Michael's House, be contrary to its ethos and would have been anathema to it and its staff. This was touched upon by the Divisional Manager when he told me that:

"The other thing I would say is that in terms of my years in St. Michael's House, I had never witnessed a service user being moved to the care of another organisation without the express permission of the family..."<sup>187</sup>

4.3.85 I asked him whether this meant that if Mr. McKenna had not been a ward of court (thereby allowing the decision to be made by the President of the High Court) St. Michael's House would not have been able to move him. The Divisional Manager explained that he did not know but that he was not aware of any other service-user being moved without the permission of his or her family in his 13 years experience within St. Michael's House<sup>188</sup>. In this particular case, Mr. McKenna was not moved until after the President of the High Court had given his sanction for such a move notwithstanding that a bed was booked in Leas Cross from the 4<sup>th</sup> September.

#### **Post 4<sup>th</sup> September, 2000 meeting**

4.3.86 Mr. McKenna's family wrote to the Divisional Manager by letter dated the 8<sup>th</sup> September which was couriered on that day and appears to have been received the following Monday, the 11<sup>th</sup> September (the 8<sup>th</sup> being the Friday).

4.3.87 St. Michael's House were informed by this letter that Mr. McKenna was a ward of court and that he could not be moved without the High Court's approval. The text of the letter, which was addressed to the Divisional Manager and copied to the Chief Executive Officer reads:

"After our meeting in Ballymun last Monday I would like to set out clearly that as a family we adjudge Peter's twenty three years as a client and nearly six years as a residential client, as periods of superb care, especially by the team in Warrenhouse and the management in Ballymun.

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<sup>187</sup> Interview with the Divisional Manager, the 25<sup>th</sup> June, 2008

<sup>188</sup> Interview with the Divisional Manager, the 25<sup>th</sup> June, 2008, page 35

The outcome of the meeting was unproductive and warranted my stating clearly at the end, that it was our clear wish that Peter should remain within the care of the St. Michael's House team, and this is still our position.

Our annoyance that Peter was removed from Warrenhouse without consultation or our knowledge was expressed but we have moved on from this and we are now keen to jointly plan Peter's future with you.

As you might well be aware, Peter is a Ward of Court, and any material change to his lifestyle or circumstances would require the High Court's approval.

I am available at [telephone number] during Monday up to 4.00pm and I look forward to hearing from you so that we can both make progress on Peter's future."

4.3.88 This appears to have been the first time that the management of St. Michael's House became aware that Mr. McKenna was a ward of court although I have been told by Mr. McKenna's key worker that he was aware that Mr. McKenna was a ward of court and had been so aware from early on when working as Mr. McKenna's key worker<sup>189</sup>.

4.3.89 The documents which were furnished to me by Mr. McKenna's brother contains a letter dated the 8<sup>th</sup> September, 2000 to the Chief Executive of St. Michael's House from solicitors acting for the family. It is not clear whether this letter was actually sent to St. Michael's House. There is no mention of the letter in the submissions which were made by St. Michael's House and a copy of it was not given to me by St. Michael's House. The contents of this letter were broadly similar to the contents of Mr. McKenna's brother's own letter to the Divisional Manager of the 8<sup>th</sup> September.

### ***St Michael's House's application to the Wards of Court Office***

4.3.90 I have been told through St. Michael's House's submissions to this inquiry that when they were informed that Mr. McKenna was a ward of court they sought advice from

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<sup>189</sup> Interview with Mr. McKenna's key worker, the 23<sup>rd</sup> June, 2008, page 29



their solicitors. I have also been told that the solicitors contacted the Wards of Court Office on the 15<sup>th</sup> September, 2000. I have been furnished with what appears to be an internal communication from one person in St. Michael's House's solicitors to another which records that the solicitors attended at the Wards of Court Office on the 15<sup>th</sup> September, 2000.

4.3.91 My understanding of St. Michael's House's submission is that this was the first contact with the Wards of Court Office in relation to Mr. McKenna. A document from the Wards of Court Office furnished to me by Mr. McKenna's brother records that the St. Michael's House solicitors visited the office late that week but does not specify a date. A further letter from the Wards of Court Office to the family's solicitors, dated the 19<sup>th</sup> September stated that "The placing of this matter before the Judge dealing with Wardship matters was initiated by the attendance at this office of a Solicitor from the St. Michael's House solicitors late last week." This all seems to suggest that the first contact which St. Michael's House had with the Wards of Court Office was indeed through their solicitors. However, a medical report dated the 15<sup>th</sup> September which was prepared by the Clinical Director of St. Michael's House to support the application to the High Court records that he had a conversation in relation to Mr. McKenna with an Assistant Registrar, Office of the Wards of Court, on the 14<sup>th</sup> September. There is no express mention of this particular contact between St. Michael's House and the Wards of Court Office in the submissions from St. Michael's House or indeed in any documents from the Wards of Court Office that I have seen. The Clinical Director, at interview, did not deny that he had had a conversation with the Assistant Registrar on the 14<sup>th</sup>, although he did say that he did not have any recollection of same<sup>190</sup>. The St. Michael's House solicitors' internal communication does record that the person from that office who attended the Wards of Court Office was told that the Wards Office "*had spoken with a number of people in St. Michael's House and also Mr. McKenna's [brother, ...]*". It is impossible to reconcile these two accounts other than to say that it may well be that the Clinical Director contacted the Wards of Court Office on the 14<sup>th</sup> September, as recorded in

<sup>190</sup> Interview with the Clinical Director, the 27<sup>th</sup> March, 2008, page 18

his report, but that same was not treated by the Wards of Court Office as a formal application. The Clinical Director speculated at our first interview that he may have contacted the office for "some guidance....on how to progress"<sup>191</sup> and said at our second interview that: "I didn't know what report they wanted so I asked the medical secretary to find out was it to be long, extremely detailed report or was it something that was literally about his mental state. And out of the blue I got a phone call from the Registrar, which was unusual. He said 'This is the nature of the report we request.'<sup>192</sup> It is possible that the Wards of Court Office treated that contact as an inquiry or request for guidance.

4.3.92 I have been told through submissions that the St. Michael's House's solicitors were told by the Wards of Court Office that St. Michael's House would have to make a formal application to the office but that in the meantime Mr. McKenna could be moved if it was necessary in the interests of safety and that the move would be subject to review by the President. I have also been informed through submissions by St. Michael's House that the office advised those solicitors that such application must include a detailed description of the proposal, a full medical history, an up to date medical report, and details as to the level of care needed for him and the level of care St. Michael's House was able to provide. I have also been informed in those submissions that the St. Michael's House solicitors were advised that there would have to be a hearing before the President of the High Court and that the President may appoint an independent medical assessor to advise in relation to the proposed move. I have been furnished with a note by Mr. McKenna's brother (which I understand he obtained from St. Michael's House) which appears to me to be a solicitor's note of this conversation with the Wards of Court Office. While the contents of this note are not as detailed as the submission made by St. Michael's House in respect of this conversation, it largely accords with St. Michael's House's submission other than that it records that "*It would be preferable if [St. Michael's*

<sup>191</sup> Interview with the Clinical Director, the 27<sup>th</sup> March, 2008, page 18

<sup>192</sup> Interview with the Clinical Director, the 2<sup>nd</sup> July, 2008, page 30

*House] could hold off on that action [the proposed move] until the court has adjudged an outcome."*

4.3.93 Despite St. Michael's House being informed by the Wards of Court office that they could move Mr. McKenna immediately, they did not do so, presumably partly because the Wards of Court Office had said that it would be preferable not to do so prior to the President deciding on the matter. It also seems very possible that St. Michael's House did not wish to do so without the agreement of the family or alternatively the express sanction of the President. Indeed, the Chief Executive Officer said at an interview that "*[St. Michael's House] was offered the option to move Peter by the Wards of Court Office before the court case but we waited in deference to the family's wishes.*"<sup>193</sup> I also sense that this situation was new to St. Michael's House and that there was a degree of uncertainty as to how to proceed. To the extent that it might be suggested that the failure to move Mr. McKenna at this stage is evidence that St. Michael's House did not actually consider his move to be as urgent as they were stating, I would not accept that suggestion.

#### ***Contact between the family and the Wards of Court office on the 15<sup>th</sup> September***

4.3.94 It appears that the family were contacted by the Wards of Court Office on the 15<sup>th</sup> September and this led to the family's solicitors contacting the Office on behalf of the family on the same date. I gain this understanding from a letter dated the 18<sup>th</sup> September from the Wards of Court Office to that solicitors firm in which the Office refers to a telephone conversation with the firm on the 15<sup>th</sup> September and from what appears to be a draft letter from that solicitors firm to the Wards of Court Office in which reference is made to "*...the writer's earlier telephone discussion on the 15<sup>th</sup> September with [the Assistant Registrar]*". It is important to note that this was the first time that the family became aware of St. Michael's House's contact with the Wards of Court Office. They had not been notified by St. Michael's House that the latter intended applying to that office. This subsequently became an issue which I

<sup>193</sup> Interview with the Chief Executive Officer, the 9<sup>th</sup> April, 2008, page 78

return to below. The letter from the Wards of Court Office summarised the position that St. Michael's House were of the view that due to Mr. McKenna's condition and the lack of any alternative suitable facilities within St. Michael's House Mr. McKenna should be transferred to Leas Cross. The letter also stated:

"St. Michael's House did obtain a placement in Leas Cross Nursing Home which in their view has the necessary nursing support (I enclose herewith copy information leaflet from Leas Cross Nursing Home). Other clients of St. Michael's House have been placed at this nursing home and such placements have in their view proved very satisfactory. St. Michael's House also indicate that they will continue to provide clinical support to Mr. McKenna in Leas Cross Nursing Home.

The proposed move to a high support nursing unit is considered very necessary and at this stage very urgent by St. Michael's House.

I propose seeking the Court's direction in regard to this proposal in the near future but before doing so, I would be obliged for the views of your clients, Mr. McKenna's family, in regard to said proposal so that the Court may make a fully informed decision herein."

**Correspondence and contacts between the parties 18<sup>th</sup> September 2000 - 3<sup>rd</sup> October 2000**

***Contact between Mr. McKenna's brother and the Chief Executive Officer on the 18<sup>th</sup> - 20<sup>th</sup> September***

- 4.3.95 There were a number of telephone conversations between Mr. McKenna's brother and the Chief Executive Officer of St. Michael's House, on the 18<sup>th</sup> September. These were the first of a number of direct contacts, including telephone conversations, meetings and letters, between Mr. McKenna's brother and the Chief Executive Officer. It appears that there were at least 2 and probably 3 telephone conversations on the 18<sup>th</sup> September. A number of issues were discussed.
- 4.3.96 Mr. McKenna's brother took serious issue in relation to St. Michael's House having applied to the Wards of Court Office. I understand from a note of one of his

conversations with the Chief Executive Officer that Mr. McKenna's brother had 2 grievances in relation to this application.

- (i) Firstly, he expressed the family's distress and upset that St. Michael's House had not informed them of the application to the Wards of Court Office. He said that the first the family knew of this application was when the Wards of Court office contacted them at 2.30 on the previous Friday, the 15<sup>th</sup> September. This appears to have been a contact with Mr. McKenna's brother, MM. I understand from a letter from the Wards of Court Office to the family's solicitors dated the 19<sup>th</sup> September that the Wards of Court Office had attempted to contact Mr. McKenna's other brother and when it was unable to do so it contacted Mr. McKenna's brother, MM. It is unfortunate that the family were not informed in advance of St. Michael's House intention to contact the Wards of Court Office because this lack of notice heightened the family's belief that they were not being consulted or involved in any meaningful way.
- (ii) The second grievance was that Mr. McKenna's brother said that the application (or the manner of same) had "started a train of events that was becoming adversarial and turning into a big sledge hammer that wasn't doing Peter or Michael's House any good."<sup>194</sup> There is no doubt that the application by St. Michael's House had created an adversarial situation although it may be said that the relationship had already become adversarial at the meeting on the 4<sup>th</sup> September.

However, it is difficult to see what alternative was open to St. Michael's House at that stage. They believed that they had no suitable placement available within St. Michael's House and the family had clearly stated that it could not move Mr. McKenna and that he was a ward of court. It seems to me that in those circumstances it was almost inevitable that an application would be made to the Wards of Court Office. Indeed the possibility, perhaps even

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<sup>194</sup> Handwritten note of conversation on the 18<sup>th</sup> September, 2000

inevitability, of an application to that office appears to have been appreciated by the family from the outset. Mr. McKenna's other brother, MM, said that:

"I was in particular very aware that it was, as it turned out to be, a two-edged sword. Once we threw it into the hands of the High Court and the master, we were subject to any decision that the President of the High Court would make, which happened."<sup>195</sup>

I do not accept the fact that St. Michael's House applied to the Wards of Court Office in circumstances where it was the family who raised the necessity of an application to that office as a legitimate criticism of St. Michael's House.

- 4.3.97 Mr. McKenna's brother's note of this conversation with the Chief Executive Officer also records that the Chief Executive Officer said that Mr. McKenna was in an unsafe place, that he was moved from Warrenhouse Road because there were no nurses available and that Mr. McKenna needed a specialised unit. It also records that the Chief Executive Officer said that he would be happy to discuss the matter. Mr. McKenna's brother asked that the Chief Executive Officer "call off the hounds" before they discussed the matter further. I understand this request to have been that St. Michael's House would postpone their application to the President.
- 4.3.98 Mr. McKenna's brother subsequently faxed the Chief Executive Officer informing him that neither Mr. McKenna's other brother MM, nor his firm had any correspondence or conversations with the Wards of Court Office for a number of years and that the Chief Executive Officer's information to the contrary was incorrect. This was in response to a suggestion by the Chief Executive Officer that there had been some recent correspondence between the Wards of Court Office and MM.
- 4.3.99 Mr. McKenna's brother and the Chief Executive Officer had a further conversation later that day, the 18<sup>th</sup> September, 2000. It appears that in the meantime the Chief

<sup>195</sup> Interview with Mr. McKenna's other brother, the 23<sup>rd</sup> June, 2008, page 16

Executive Officer had taken advice from St. Michael's House's solicitors and had been advised against delaying the application to the President and that it would be irresponsible of St. Michael's House not to continue with the transfer<sup>196</sup>. This position was communicated to Mr. McKenna's brother during this conversation. Mr. McKenna's brother also recorded that the Chief Executive Officer agreed that Mr. McKenna was not being thrown out and that St. Michael's House would be with him until his death. The Chief Executive Officer agreed during the course of this inquiry that this would have reflected St. Michael's House's general approach:

"Yes it would, absolutely. But I said very clearly, and would have put in writing, that we would still have seen Peter as a client of St. Michael's House. Peter was with us for 26 years so there was no way we were trying to dump him or get rid of him. We saw him as an ongoing client. And my hope, and I think I said that to [Mr. McKenna's brother], not at that time but probably subsequently. My hope was that he was going to come back to us when our Alzheimer's unit was open."<sup>197</sup>

4.3.100 The Chief Executive Officer also agreed that there was some discussion of the relationship between St. Michael's House and Leas Cross. Mr. McKenna's brother recorded the Chief Executive Officer as saying that "*He has people inspecting Leas Cross regularly and he is getting good reports*"<sup>198</sup>. While the Chief Executive Officer accepts that there was some discussion of the relationship, he does not accept that he would have used the word "inspecting". He said:

"I probably said something like that but I doubt if I had used the word "inspected". I think what I would have said is that I have people visiting Leas Cross. And I did, I had the principal social worker visiting Leas Cross every month. I was aware that there were staff visiting Leas Cross in relation to [an identified service user of St. Michael's House who lived in Leas Cross for approximately a year and who I will refer to in this report as "IM"] and I knew that a system

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<sup>196</sup> I have been furnished with a note recording this advice

<sup>197</sup> Interview with the Chief Executive Officer, the 9<sup>th</sup> April, 2008, page 46

<sup>198</sup> Interview with the Chief Executive Officer, the 9<sup>th</sup> April, page 47

would be put in place for visits to take place to Peter if and when Peter moved into Leas Cross."<sup>199</sup>

4.3.101 The 2 issues referred to in that passage, St. Michael's House staff visiting Leas Cross and the receipt of good reports, relate to St. Michael's House's system of monitoring the level of care being provided by Leas Cross and St. Michael's House's satisfaction with Leas Cross respectively. These are important matters in this inquiry and I will deal with them in greater detail. However, I think that it should be noted at this stage that I asked the Chief Executive whether he was "*getting good reports*", as he had put it, or simply not getting bad reports and he confirmed that he was getting good reports. He also confirmed that he subsequently learnt that there were 4 complaints about Leas Cross but that at this time he was not aware that there were 4 complaints<sup>200</sup>

4.3.102 Mr. McKenna's brother and the Chief Executive Officer met personally on the 20<sup>th</sup> September. I deal with this meeting in paragraphs 4.3.116 – 4.3.123 below. In tandem with the telephone and fax contacts which those individuals were having on the 18<sup>th</sup> September were contacts between the Wards of Court Office and the family's solicitors and between that solicitor's firm and St. Michael's House. There were also contacts between the Wards of Court Office and St. Michael's House's solicitors.

#### ***Contacts between the family's solicitors and the Wards of Court 18<sup>th</sup> – 20<sup>th</sup> September***

4.3.103 I have already referred to a letter of the 18<sup>th</sup> September, 2000 from the Wards of Court Office to the family's solicitors. This letter appears to have been sent by fax under cover of a fax sheet in which the Wards of Court Office indicated that St. Michael's House considered that the proposed move was required very urgently and that the Office would appreciate a reply as soon as possible.

<sup>199</sup> Interview with the Chief Executive Officer, the 9<sup>th</sup> April, 2008, page 47

<sup>200</sup> Interview with the Chief Executive Officer, the 9<sup>th</sup> April, 2008, page 48



- 4.3.104 Mr. McKenna's brother has furnished me with 2 notes which appear to have been prepared by the family's solicitors recording events of the 18<sup>th</sup> September. One of these notes record a telephone conversation between that firm and the Wards of Court Office. It does not record the time of the conversation. However, when the two notes are read together it is clear that this conversation took place after receipt of the faxed letter referred to in the previous paragraph. The fax transmission details on that faxed letter state that the fax was received at 12.10. It is clear from the two solicitor's notes that the conversation occurred after receipt of that fax and that it occurred after 2.00pm. For the most part this conversation appears to have reflected the contents of the faxed letter. However, there also appears to have been a discussion about whether the family or their solicitors would be furnished with a copy of the application as made by St. Michael's House before the family filed their objections. The note records that the Wards of Court Office said that they would not be given a copy of the application but that they would be advised as to the content of same.
- 4.3.105 This conversation was followed by a letter dated the 19<sup>th</sup> September, 2000 from the family's solicitors to the Wards of Court Office. I propose setting out some of the passages from this letter because I think they are relevant to (a) the continued feelings of tension and upset on the part of the family and (b) an issue concerning the provision of assistance by St. Michael's House to the family. Before I set out those passages it should be noted that the point was made forcefully in this letter that the family and their solicitors needed a copy of the formal application and all relevant information in order to properly reply to the application and that they were at a considerable disadvantage "in being asked to respond to such an application at short notice and without having at their disposal all of the necessary information." This point was addressed in the Wards of Court Office's reply. I deal with this below. The portions of the letter from the family's solicitors which I believe should be set out are as follows:

"We refer to your letter dated the 18<sup>th</sup> September and the writers earlier telephone discussion on Friday the 15<sup>th</sup> September with [the Wards of Court Office]. For the record your earlier telephone call on the same day to [Mr. McKenna's brother] was the first notice that our clients received of the proposed application as is now being made to the Office of the Wards of Courts by St. Michael's House concerning the proposed transfer of Peter McKenna out of the care of St. Michael's House and into the care of Lea's Cross Nursing Home, in Swords.

Equally our clients were not consulted prior to Peter McKenna's move from Warren House Road, Baldoyle where he had been resident since 1994 to the Beeches Nursing Home in Donaghmede where he is at the present moment.

Our clients wish to register their objection to the manner in which decisions are being made affecting their brother's welfare without any prior notice or consultation. In this regard we enclose copy letter as sent to the Chief Executive, St. Michael's House, Ballymun Road, Ballymun Dublin 9.....

....You might also please note as has been requested by our client a psychologist and social worker have now been appointed to act for Peter McKenna who will now attend to having him assessed and reporting thereafter to our clients..."

4.3.106 I have also been furnished with a copy of a letter of the 18<sup>th</sup> September from the family's solicitors to the Chief Executive of St. Michael's House. I believe that it is safe to presume that this is the letter referred to in the above passage and I do so. I set out the bulk of this letter below when dealing with the contacts between the family and their solicitors and St. Michael's House. The letter raised similar points about the failure by St. Michael's House to notify the family of the application to the Wards of Courts Office.

4.3.107 The Wards of Court Office replied by fax on the same date, the 19<sup>th</sup> September, and confirmed that a formal written application had not been made because the written report of the Clinical Director, which is referred to above and is set out in full in paragraph 5.1.9 below, was considered by the Wards of Court Office to have dealt sufficiently with the reasons for Mr. McKenna's proposed move. That report had previously been given to the family and the Wards of Court Office considered that

same was sufficient to permit the family to submit their opinions or objections in relation to the proposed move. The original of this faxed letter is date-stamped "Received 21 Sep 2000". I presume the hard copy of this letter was received and stamped as such by the family's solicitors on the 21<sup>st</sup> September and that the faxed copy was received on the 19<sup>th</sup> September, 2000.

4.3.108 The family's solicitors appear to have replied to the faxed copy of this letter on the 20<sup>th</sup> September, 2000. Firstly, they expressed surprise that no formal application had been made to the Wards of Court Office. The letter then went on to point out that:

"...(iii) Our clients visited Lea's Cross Nursing Home and were not satisfied that Peter would receive the same level of care and attention as he presently receives at St Michaels House.

(iv) It is noted that this report does not furnish details as to when Peter was in fact examined by [the Clinical Director]."

4.3.109 The letter went on to say:

"In the meantime as requested we set out hereunder our clients views regarding the proposed transfer to Lea's Cross Nursing Home:

- (i) As already stated Peter McKenna still has recognition and cognitive abilities. Our clients have been advised that moving him to a strange environment would result in a deterioration of his condition.
- (ii) As St Michaels House is the agency which has had the care of Peter McKenna for upwards on thirty years is it not reasonable to expect that this agency should provide interim care for him until the Alzheimers unit presently proposed is completed and that he be given priority on the waiting list for same.
- (iii) It is our clients understanding that St. Michael's House has provided care to other residents who are in their care when they are in the latter stages of Alzheimers Disease.

- (iv) Our clients believe that Peter McKenna was moved from his residence at Warren House Road, Baldoyle without the normal internal procedures of St. Michael's House being complied with. Our clients understand that such procedures would normally include the involvement of at least a psychologist, social worker and the family. This did not happen in Peter McKenna's case and he was moved without the family's prior knowledge or consent. Our clients have requested that a psychologist and a social worker be appointed to act for Peter. We understand that a psychologist has been appointed as of today's date.
- (v) It is our clients belief that Peter McKenna was examined by [the Physician] of St. Michael's House after he had been moved from Warren House and after the decision had been made to transfer him to an outside nursing home.
- (vi) Our clients are disappointed that St. Michael's House did not provide any other alternatives nor did it help in any way to look at other options within St. Michael's House. Possible options suggested by the family they felt were dismissed without consideration.
- (vii) The ethos of St. Michael's House is that they provide care "from the cradle to the grave" and the family have always been told that Peter would end his days in their care. Given that Peter's life expectancy is at this stage very short it would appear to be most unreasonable and inappropriate to move him from St Michaels House at this stage.
- (viii) The care and medical attention provided by St. Michael's House has been excellent and it is our clients view vastly superior to that on offer elsewhere and in particular at Lea's Cross Nursing Home, Swords.
- (ix) Peter McKenna was diagnosed as having Alzheimers Disease approximately 16 months ago and it is our client's view that St. Michael's House have had ample time to make suitable arrangements for him as their client.
- (x) Our clients were advised that Peter McKenna sudden move from Warren House, Baldoyle was due to staffing difficulties. It is submitted that such difficulties are a problem that will apply to all such caring institutions and not specifically to St. Michaels. Furthermore, our clients understand that St Michaels are very shortly taking on 25 extra nursing staff.

- (xi) The family are concerned that once Peter is moved outside of the care of St Michaels House the move will be permanent and he will not have a right to a place in the specialised Alzheimers unit which St Michaels House is presently preparing.
- (xii) Our clients believe that the Beeches Nursing Home in Donaghmede where Peter McKenna presently is, is a "halfway house" which they believe is a suitable place for Peter until the Alzheimers unit is operational. The Beeches has nursing cover on a 24 hour basis.
- (xiii) Our clients understanding is that Alzheimers Disease is a natural progression for Downs Syndrome adults in their 50's and 60's and St Michaels House as a major carer for Downs Syndrome adults should make provision for this natural progression without handing the care of such clients over to third parties whose philosophy, ethos and standards are quite different to St Michaels House.
- (xiv) Lea's Cross Nursing Home to which it is proposed to move Peter is approximately 50 kilometres from any of his close relatives and it will inevitably mean that they will be able to make fewer visits at a time when he most needs support from his family.
- (xv) It is understood that St. Michael's House have made reference to the Beeches as being unsuitable on the grounds of safety. The ground floor of the Beeches is accessible to Peter. He presently sleeps in a room 12 foot by 10 feet approximately on a hospital type bed with side restrainers and our clients are very happy with the level of safety and comfort.
- (xvi) It is our clients view that at the very minimum Peter McKenna is entitled to a proper assessment by appropriate professionals and clinicians with a view to ascertaining his precise care requirements at this stage and that priority should be given to ensure that such requirements are met within the St. Michael's House network."

4.3.110 Some of the points raised in this letter have already been dealt with above and others are dealt with later in this report. However, one point which I feel should be made at this stage is that while the letter clearly expresses a preference for St Michaels House and that the care which would be provided within the latter would be

better than in Leas Cross, it does not mention what the family observed on their initial visit to the nursing home.

- 4.3.111 The correspondence between the family/their solicitor and the Wards of Court Office before a meeting between the Chief Executive Officer and Mr. McKenna's brother on the 20<sup>th</sup> September concluded with this letter.

***Contacts between the family's solicitors and St Michael's House – 18<sup>th</sup> - 20<sup>th</sup> September***

- 4.3.112 As indicated above, there was also correspondence between the family's solicitor and St. Michael's House over the same 2 days. The family's solicitors wrote to the Chief Executive of St. Michael's House on the 18<sup>th</sup> September. I have been furnished with a copy of this letter bearing a "Chief Executive Received" date stamp of the 19<sup>th</sup> September. I am therefore presuming that this letter was received by the Chief Executive of St. Michael's House on the 19<sup>th</sup> September.

- 4.3.113 This letter stated, inter alia:

"...Our instructions are that our clients have at all stages maintained ongoing dialogue with you in relation to Peter's welfare and were accordingly extremely upset at the fact that you recently moved Peter from Warren House Road, Baldoyle where he has resided since 1994 without any prior notice or consultation.

We understand that following upon a meeting which took place on the 4<sup>th</sup> September last [Mr. McKenna's brother] wrote to you on the 8<sup>th</sup> September. To date our clients have received neither an acknowledgement nor a reply.

Accordingly our clients were most surprised to receive a call on Friday last from the Office of the Wards of Court inviting their response to your application to that office regarding Peter's proposed move to a private nursing home.

Quite apart from all other considerations our clients, would have thought that as a courtesy that they would have been kept fully informed on all matters concerning their brother's welfare. For the avoidance of any doubt about the matter the purpose of this letter is to advise you of our

clients insistence that they at all stages be kept fully informed. In particular our clients now require to be furnished with copies of all documents as submitted or that are proposed to be submitted to the Office of the Wards of Court in relation to this matter."

4.3.114 I have been furnished with a copy of a reply from St. Michael's House to the family's solicitor's letter which is stamped as having been received on the 21<sup>st</sup> September. This letter reads:

"I refer to your letter of the 18<sup>th</sup> September and have noted its contents.

As I am sure you are aware, sadly Peter is suffering from Alzheimer's disease, and as has been explained by [the physician] is at the 'late middle' to the 'early late stage' of the disease.

We have previously explained that none of the staff in Warrenhouse Road where Peter has been in residence has any nursing background which is now essential to his care. As a crisis intervention he was moved to our unit, "The Beeches" on the 1<sup>st</sup> September for the week-end to the bed of a service user who was away. This followed discussions between [the physician], [Head of Social Work Department] and [the Divisional Manager].

I understand that [the consultant psychiatrist] advised [Mr. McKenna's brother] before the move took place from Warrenhouse Road. As the Consultant psychiatrist is on holidays I cannot confirm this.

We met with [Mr. McKenna's brother] and two other family members on the 4 September and advised them that it was no longer possible for St. Michael's House to provide the nursing care that was necessary to safely look after Peter's needs.

Peter's temporary occupation of the sitting room in "The Beeches" now doubling as a bedroom is untenable given the number and diversity of our service users. It is not possible for us to guarantee Peter's safety in either his original residential unit (Warrenhouse Road) or in his emergency placement ("The Beeches").

Having considered all the possible options within St. Michael's House it is our opinion that the safest placement for Peter is that he avail of the bed that has been offered by Leas Cross Nursing Home. This bed will be funded by St. Michael's House. We have an ongoing relationship with the nursing home and maintain very close links in order to monitor the level of

service provided to our service users who are using its facilities. In addition, we will provide clinical backup.

We are saddened that unfortunately we do not have the acute nursing facilities or specialist units to provide for service users with Alzheimer's disease at present. The only safe option is that Peter is transferred to Leas Cross Nursing Home as soon as possible.

As I am sure you are aware it will not be possible to maintain his place in the nursing home (Leas Cross) indefinitely and so I am most anxious that he take up this place as soon as possible.

I wish to assure you that Peter will remain as a service user of St. Michael's House and that we will be very much looking after his interest in ensuring that he receives the care appropriate to his needs in Leas Cross. Should he have other needs we will attend to them and do whatever we can to have those needs met also.

We were informed by letter by [Mr. McKenna's brother] that Peter was a Ward of Court. Therefore anything relevant to his welfare we understood must be decided by the Court. As we were extremely concerned about the safety of his placement and the family were refusing to agree to a move to Leas Cross we felt it was important to advise the Court of our concern.

Our motivation in making application was purely for Peter's safety and comfort and he continues to be our primary concern.

As [Mr. McKenna's brother] is aware, our [Clinical Director], [...], and our [physician], [...], have both advised that Peter's placement in Warrenhouse Road and "The Beeches" are unsafe and have recommended that Peter be moved to Leas Cross. I understand you have already received a copy of [the Clinical Director's] report which was submitted to the Court.

Finally, we in St. Michael's House are most anxious to re-establish dialogue with the family, and as Chief Executive, I have offered to meet with [Mr. McKenna's brother] now on two occasions and should he so wish I will be happy to meet with him in the future at a mutually acceptable time."

4.3.115 This letter expressly raised 2 issues which are central to a consideration of the discussions between St. Michael's House and the family and of the decision the



focus of this inquiry: the issue of clinical backup and the issue of "an ongoing relationship" with Leas Cross and "close links" between St. Michael's House and Leas Cross "in order to monitor the level of service provided to our service users who are using" its facilities. Rather than dealing with these issues at this point in the discussion of the chronology of the contacts between the parties, I deal with them separately below.

**Meetings between Mr. McKenna's Brother and the Chief Executive Officer of St. Michael's House – 20<sup>th</sup> and 27<sup>th</sup> September**

4.3.116 The Chief Executive Officer and Mr. McKenna's brother met on the 20<sup>th</sup> September. My impression of the tone of that meeting is that despite the obvious tension which must have existed between the parties it was cordial. I have formed that impression based on the Chief Executive Officer's description of same<sup>201</sup> and on the fact that the family informed the Wards Of Court Office of this meeting and the belief that it might be possible for the parties to resolve their differences. Having met Mr. McKenna's brother on a number of occasions during the course of this inquiry I am not surprised that the meeting was cordial notwithstanding the family's anger and the obvious source of tension between the parties.

4.3.117 Mr. McKenna's brother frankly says that he does not have a good memory of this or a subsequent meeting which he had with the Chief Executive Officer. I have been given what appears to be a note of this meeting prepared by the Chief Executive Officer on the same day as the meeting. I have also discussed this meeting with him and his account of same<sup>202</sup> largely accords with the contents of this note:

"Met with [Mr. McKenna's brother] in the Tolka House at 1.30pm (on time).

[Mr. McKenna's brother] outlined his concern and dismay at the lack of information in terms of the moving of Peter. I apologised for the lack of consultation. However, I advised him that the

<sup>201</sup> Transcript of interview with the Chief Executive Officer, the 9<sup>th</sup> April, 2008, page 32  
<sup>202</sup> Interview with the Chief Executive Officer, the 9<sup>th</sup> April, 2008, pages 32-33

move was made on an emergency basis because of Peter's safety and comfort, and it was my understanding that [the Consultant psychiatrist] had spoken to him in relation to the move.

[Mr. McKenna's brother] informed me that [the consultant psychiatrist] had spoken to him about a move to Leas Cross but not about a move to "The Beeches". I advised [Mr. McKenna's brother] that St. Michael's House only interest was in Peter's safety, comfort and well-being and the reason we were suggesting moving him to Leas Cross was because this would be a safe and comfortable environment for him and that in no way would be losing touch with him. He would remain as a client of St. Michael's House and we would be very much looking after his interests.

[Mr. McKenna's brother] was reluctant to go into too much detail. However, he acknowledged that whatever the outcome of the review being taken by [the independent medical visitor appointed by the High Court] that both sides would have to attempt to abide by it.

We agreed that when [the independent medical visitor] had provided his report and a decision was made that we would get in touch.

We discussed the possibility of Peter being a priority placement in our new Alzheimer's unit when it was developed and [Mr. McKenna's brother] felt that if we could make this commitment that it would be helpful.

PS. It occurred to me when I was leaving the meeting with [Mr. McKenna's brother] that the major problem that the family seem to have is with the nursing home, Leas Cross, and that we would be happy for the family to select an alternative nursing home which they would deem more appropriate and if there was an additional expense involved that they could cover this additional cost.

In this situation we could not take responsibility for the level of care in the nursing home selected by the family."

- 4.3.118 One point of difference between this note and the account which the Chief Executive Officer gave during the course of an interview on the 9<sup>th</sup> April, 2008 is that at this interview he said that the realisation that Leas Cross in particular may be the difficulty occurred at a second meeting with Mr. McKenna's brother some days after the 20<sup>th</sup> September rather than at this first meeting, as is recorded in this note. In

response to my question as to what the purpose of the subsequent meeting (in the Botanic Gardens) was the Chief Executive Officer said:

"The purpose of that meeting was again to attempt to see if we could meet the needs of the family and ensure that we were taking on board their wishes as best we could and also to try to explain to the family what the difficulties were for St. Michael's House. It struck me towards the end of the meeting as I was leaving, I think I actually went back and said to [Mr. McKenna's brother] that maybe Leas Cross was the problem and would another nursing home make it easier for the family. I suggested to him that if another nursing home would make it easier, we'd be willing to look at that. It literally struck me as I was there and I said to him 'We would be willing to look at that'. Then we talked about that and how that might work. That's when I think he asked for the psychologist and the social worker, and I agreed to provide a psychologist and a worker. That's when I went off and asked [the Head of Social Work Department] and [Head of Psychology Department] to provide them."<sup>203</sup>

4.3.119 The Chief Executive Officer did preface these remarks by saying earlier in that interview<sup>204</sup> that he was probably confused in relation to the 2 meetings. It is therefore possible that he was simply mistaken in his memory that this occurred at the second meeting rather than the first. The fact that the Chief Executive Officer's note of the meeting which seems to have been prepared on the 20<sup>th</sup> September, 2000 records that this occurred at the meeting on the 20<sup>th</sup> September, 2000 suggests that it did in fact occur at this first meeting. On the other hand, it seems to me that there is nothing in the note of this first meeting, such as a discussion of conditions in Leas Cross, which would have led to this realisation. It must also be said that it is somewhat surprising that the realisation that the family had a particular difficulty with Leas Cross only occurred at either the 1<sup>st</sup> or 2<sup>nd</sup> meeting. St. Michael's House had been told of specific objections to Leas Cross at the meeting on the 4<sup>th</sup> September, 2000. The only conclusion that can be drawn from this is that the Chief Executive Officer was not briefed fully as to earlier discussions between the family and St. Michael's House.

<sup>203</sup> Interview with the Chief Executive Officer, the 9<sup>th</sup> April, 2008, page 33-34

<sup>204</sup> Interview with the Chief Executive Officer, the 9<sup>th</sup> April, 2008, page 32

4.3.120 The second meeting between the Chief Executive Officer and Mr. McKenna's brother took place on the 27<sup>th</sup> September. A meeting had been scheduled for the 25<sup>th</sup> September. The Chief Executive Officer was slightly late for this meeting due to being delayed in St. Michael's House by a discussion of Mr. McKenna's case with the consultant psychiatrist and the psychologist who was appointed to support the family in identifying an alternative nursing home and Mr. McKenna's brother had gone when the Chief Executive Officer arrived. The meeting on the 27<sup>th</sup> was the rearranged meeting of the 25<sup>th</sup>.

4.3.121 The Wards of Court Office was kept informed of these meetings.

4.3.122 There were some events of relevance and significance to this inquiry between the Chief Executive Officer's and Mr McKenna's brother's first meeting on the 20<sup>th</sup> and the second meeting on the 27<sup>th</sup> September. However, I think it would be more appropriate and convenient to deal with these in a separate section of this report and I do so in section 4.4 below.

4.3.123 This second meeting between the Chief Executive Officer and Mr. McKenna's brother appears to have resulted in heads of agreement being reached. I have been furnished with a note of this meeting which was prepared by Mr. McKenna's brother. This note records that Mr. McKenna's brother opened the meeting by indicating that the family would accept Mr. McKenna being moved on the basis that (a) Mr. McKenna would always be a client of St. Michael's House while in the nursing home and would have access to clinicians and (b) he would have first priority in the new Alzheimers Unit. Mr. McKenna's brother furnished me with a draft letter from St. Michael's House and a solicitor's note by the family's solicitors, both of which reflect a broad agreement. The meeting also led to a formal exchange of correspondence between the solicitors for St. Michael's House and the family's solicitors.

#### ***Solicitors' correspondence regarding heads of agreement***

4.3.124 St. Michael's House's solicitors wrote to the family's solicitors by letter dated the 29 September, 2000. The date stamp on the copy with which I have been furnished is largely illegible but to the extent that it can be read it appears to record receipt in October, 2000. The said letter stated, inter alia:

"...Our understanding of the outcome of this meeting is as follows.

1. The family will select a nursing home that they feel is appropriate for Peter's needs. Your client has indicated that this would be done within one week of the date of the meeting.
2. St. Michael's House will support your client through their psychologists and social workers in whatever way they can. However, they will not be part of the decision making process in relation to the nursing home selected.
3. St. Michael's House cannot take responsibility for Peter's health and safety in the nursing home selected by the family as it is not possible for St. Michael's House to evaluate and monitor the performance of whatever nursing home is selected by the family.
4. It will not be possible for St. Michael's House to provide clinical back in the nursing home selected.
5. St. Michael's House is in the process of developing an Alzheimer's unit and when this unit has been developed Peter will be given a priority place in the unit subject to it being in his interest to move at that time.
6. Peter to be moved to the selected nursing home within one week from the 27<sup>th</sup> September 2000, and if that move is not imminent within that time St. Michael's House will, have to move Peter to Leas Cross while waiting on a bed for him in the nursing home selected by the family.
7. The costs incurred by St. Michael's House will not exceed the cost in Leas Cross nursing home.

We would be grateful if you could respond confirming as soon as possible that the above is acceptable to your client, and if so we will advise the Ward of Court Office that we have reached agreement.”

4.3.125 On the basis that this letter was received in October it was written before and received after an event on the 30<sup>th</sup> September when Mr. McKenna was given the Last Rites whilst in The Beeches. I return to this event in paragraphs 4.3.135 – 4.3.151 below.

4.3.126 The family's solicitors replied by letter dated the 3 October 2000 in which they referred to that event of the 30<sup>th</sup> September. The contents of the letter, insofar as they replied to St. Michael's House solicitors' letter of the 29<sup>th</sup> September, 2000, are as follows:

“In relation to the contents of your said letter our client [Mr. McKenna's brother], as Committee to the Ward would make the initial point that he understood it was agreed in principle that St. Michael's House accept that Peter would remain a client of the organisation. Could you please confirm by return.

Having stated that, we now turn to the points in your letter as follows:-

- 1 and 2. [Mr McKenna's brother] confirms that the family are making every effort to choose an appropriate home for Peter. To do this they need the help of the psychologist and social worker from St. Michaels which was promised in your said letter. However, they have only had their first meeting with a psychologist on Friday last. The family's first contact with an appointed social worker was by telephone as late as yesterday morning, although they have been attempting to have a social worker appointed for some weeks now. Mr. Moore agrees that it was originally hoped to have a decision made within one week of the 27<sup>th</sup> September but you will appreciate that in these circumstances the family are simply not in a position to make an informed decision within the next 24 hours and to expect them to do so would be most unfair to Peter.
3. It is accepted that responsibility for Peter's health and safety is a matter for whichever institution or nursing home in which he will be resident.

4. If the principle is accepted, as stated above that Peter remains a client of St. Michaels, our clients find it very difficult to understand why reasonable clinical service cannot be provided for Peter if it is decided that he should reside in some nursing home other than the one nominated by St Michaels. Whilst the family are not certain about this they understand that such service has been provided to other clients of St. Michaels in other locations.
5. We confirm agreement on this point, i.e. that Peter will be given a priority place in the Alzheimers Unit of St Michael House when it is ready.
6. Our above remark re points 1 and 2 apply. Also, in view of Peter's recent health set back it would seem to be even more important that he not be subject to two moves i.e. initially to Leas Cross and then somewhere else.
7. It is noted that the costs incurred by St. Michael's House will not exceed the cost in Leas Cross Nursing Home."

4.3.127 The letter of the 29<sup>th</sup> September from St. Michael's House solicitors was copied to the Wards of Courts Office. Similarly, the family's solicitors sent a copy of this reply to the Wards Office. They did so under cover of a letter addressed to the Wards of Court Office dated the 3<sup>rd</sup> October in which they stated, inter alia:

"...For the reasons set out in our said reply our client believes that it is not in Peter's best interest to be moved from St. Michael's House until such time as the matters referred to in the reply are satisfactorily dealt with. In particular we refer to the issues of adequate time being given to receive the professional help of St. Michaels psychologist and social worker in assessing options, and the issue of continuing clinical care for Peter.

If St Michaels indicate that they still wish to move Peter immediately we would ask that the matter not be dealt with in Chambers and that St. Michaels be requested to bring their application before the Judge by Motion.

Finally, could you please let us have a copy of the Report of the Courts Medical Visitor."

- 4.3.128 A letter dated the 3<sup>rd</sup> October, 2000 was sent by St. Michael's House solicitors to the family's solicitors in which it was stated that *"the condition of Mr. Peter McKenna has deteriorated much over the weekend. It shall therefore be necessary for our clients to move Mr. McKenna to Leas Cross Nursing Home in the next 2 days so as to afford him the proper nursing care he needs"* This letter was copied to the Wards of Courts Office. The family's solicitors' reply was also copied to the Wards of Courts Office. I deal with the details of this particular exchange of correspondence below when dealing with the event of the 30<sup>th</sup> September, 2000 in paragraphs 4.3.135 – 4.3.151.
- 4.3.129 The Wards of Court Office wrote to the family's solicitors and St. Michael's House solicitors on the 4<sup>th</sup> October in which they notified them that the President of the High Court had directed that the matter be listed before him the following Friday, the 6<sup>th</sup> October, "for the purpose of considering the merits of the proposed transfer of the Ward to Lea's Cross Nursing Home". The report of the President's Medical Visitor was also released to the family's solicitors under cover of this letter.
- 4.3.130 The matter was indeed heard by the President on the 6<sup>th</sup> October. Before dealing with this hearing I propose to consider some of the other events and developments which had occurred during September. While these events can not strictly be described as 'communication' I am dealing with them in this section partly because they arise at this point in the chronology but also because they were dealt with during this correspondence and communication between St Michael's house and the family.

### ***Psychological and Social Work Support***

- 4.3.131 As is evident from the letter of the 29<sup>th</sup> September, 2000 from St. Michael's House solicitors to the family's solicitors which is quoted above, St. Michael's House, at the request of the family, agreed to appoint a psychologist and a social worker to



support the family in sourcing an alternative to Leas Cross. St. Michael's House stated in their submissions to this inquiry that:

"On Wednesday, 27<sup>th</sup> September 2000, the CEO met with [Mr. McKenna's brother] and agreed that the family could select a Nursing Home of their choice and that the bills would be paid by St. Michael's House.

[Mr. McKenna's brother] requested social work and psychological support in sourcing a Nursing Home. At that time due to shortages of therapists, Peter did not have the cover of a psychologist or social worker, other than on an emergency basis. Despite these difficulties the Chief Executive agreed that the family could have support from a psychologist and social worker provided they were not actively involved in the decision around selecting the Nursing Home. It was agreed at the meeting that Peter would move within one week."

4.3.132 St. Michael's House have furnished a memo from the Chief Executive Officer to the Head of Social Work Department dated the 27<sup>th</sup> September, 2000 in which it is stated:

"I met with [.....], the brother of Peter McKenna, and have agreed with him that the family may select a nursing home of their choice for Peter to be transferred to.

[Mr. McKenna's brother] requested support from our psychology and social work departments and I have explained to [Mr. McKenna's brother] that while we can support him, that neither our psychologists or social workers can take any active part in the selection of the nursing home. It is very important that this is made clear to whoever is providing the support as afterwards if a family are unhappy with the nursing care that Peter receives, we could be held responsible if we took an active part in the selection of the nursing home".

4.3.133 Three issues arise from this submission. Firstly, my initial understanding based on this submission was that psychological and social work support was only sought by the family at this meeting. That understanding is incorrect insofar as it relates to psychological support. Secondly, my initial understanding was also that any psychological support which was provided by St. Michael's House was provided on

foot of this request. That understanding is also incorrect. Thirdly, the question arises of precisely what support the psychologist and the social worker were to provide.

- (i) In relation to the first issue, that is when the family first sought such support, in fact the first reference to a request by the family for psychological and social work support in the documents is contained in a St. Michael's House document entitled "Note re: Peter McKenna" dated the 15<sup>th</sup> September 2000, 12 days before the family is recorded in St. Michael's House's submission as having sought such support. This note is initialled "JB" which I take to mean the Divisional Manager. The note reads:

"One minor concern is that in the letter received from Mr. [redacted in the original] this week (copied to CEO) he asked for the name of an alternative social worker or psychologist that he could discuss Peter's future with. He was aware [redacted in the original] was on maternity leave and also that [redacted in the original] both attached to Warrenhouse Rd) were unavailable. I did not respond to this as we do not have any alternative clinicians and secondly I felt it was another potential delay. My concern is that this might be cited as a failure on behalf of St. Michael's House."

It is clear, therefore, that support was sought by the family prior to the 15<sup>th</sup> September. The support which was sought at that time was not specific to assistance in locating an alternative to Leas Cross which is the request that was made at the meeting on the 27<sup>th</sup> September.

- (ii) The second issue which arises from that St Michael's House submission is whether any psychology support that was provided was on foot of the request on the 27<sup>th</sup> September. In fact there was psychological input even prior to this earlier request. I have been told by the psychologist who was subsequently assigned to support the family in identifying an alternative nursing home (hereinafter referred to as "the senior psychologist") that she was contacted by Mr. McKenna's other brother MM in late August in relation to the proposed move. MM and the senior psychologist were friends and my understanding of

the information provided by the senior psychologist is that the contact was made in that context. She said that MM contacted her around the 28<sup>th</sup> August, 2000 and explained that Mr. McKenna was being moved from Warrenhouse Road to The Beeches and that the family were very upset<sup>205</sup>. She also said that there was a second telephone call in which MM told her that Mr. McKenna would have to move from The Beeches to Leas Cross.

MM said that he does not remember such contact but that "*it may be possible*" but also said that he would have been very careful about the senior psychologist's position and that if there was any such contact it would not have been "extra-curricular" and would have been "official"<sup>206</sup>.

The senior psychologist gave further details in respect of these telephone conversations and I will return to them below. However, it is clear that her memory that the date of the first conversation was the 28<sup>th</sup> August 2000 must be incorrect. There is no dispute about the fact that the family were not informed of a proposed move until the 31<sup>st</sup> August, 2000. Therefore, MM could not have contacted her about Mr McKenna being moved until after that date. She subsequently said that the first telephone call occurred in the week of the 28<sup>th</sup> August, rather than on the 28<sup>th</sup> August:

"I am just trying to see if there was anything that happened on that day that would remind me. What I have got in my actual notes here is it was the week of the 28th, [as I have actually my own timeline]<sup>207</sup>. I may have said that to you on the 28th, what I have got in my own notes is the week of 28/8." <sup>208</sup>

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<sup>205</sup> Interview with the senior psychologist, the 26<sup>th</sup> March, 2008, pages 10-11

<sup>206</sup> Interview with Mr. McKenna's other brother MM, the 23<sup>rd</sup> June, 2000, pages 4-5

<sup>207</sup> The senior psychologist requested that a phrase as it appeared in the transcript be amended as she believed that the phrase as it originally appeared was an error,

<sup>208</sup> Interview with the senior psychologist, the 10<sup>th</sup> June, 2008, page 11

It appears that the senior psychologist advised MM over the course of these two telephone conversations to ask St. Michael's House for "*social work and psychological support in relation to managing the complex issues.*"<sup>209</sup>

I am satisfied that the senior psychologist's involvement on foot of MM's contact can not be said to be psychological support or any sort of official involvement.

However, coincidentally and independently of these contacts, the senior psychologist was subsequently appointed by the Head of Psychology to provide psychology support to the family. The Head of Psychology, who is now retired from St. Michael's House, explained how this occurred<sup>210</sup>. He was approached on the 5<sup>th</sup> September by a psychologist who, at the time, was employed by the HSE but was in training in St. Michael's House and who was finishing in St. Michael's House within a few weeks. This psychologist raised a number of cases with the Head of Psychology in the context of closing off her case load. One of the cases she raised was Mr. McKenna's. I queried with the Head of Psychology whether she raised this case in the context of expressing concern about the proposed move. He did not understand her to be raising a concern about the proposed move or to be taking a position about whether it should occur or not but that she was raising the necessity for some psychological input. The Head of Psychology expressly mentioned that the psychologist raised the necessity of psychological input for the staff in Warrenhouse Road because Mr. McKenna's departure was almost like a bereavement and the staff would require support and that he understood that she was raising the necessity for psychological support for the family. He described it as follows:

"I think she was raising a concern for him and for his family, that they would need support and that the staff would need support and that possibly he would need an assessment of needs."<sup>211</sup>

<sup>209</sup> Interview with the senior psychologist, the 10<sup>th</sup> June, 2008

<sup>210</sup> Interview with the Head of Psychology, the 11<sup>th</sup> June, 2008

<sup>211</sup> Interview with the Head of Psychology, the 11<sup>th</sup> June, 2008, page 8

The Head of Psychology asked the senior psychologist to provide the psychological input for Mr. McKenna and his family. The Head of Psychology said that the senior psychologist was asked some time shortly after the 5<sup>th</sup> September (either later the same week or early the following week, that is, some date between the 6<sup>th</sup> and 12<sup>th</sup> September) to link with the family and provide support to them and perhaps to carry out an assessment. He described the type of assessment which he felt was necessary in the following terms:

"It 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."<sup>212</sup>

He explained that he can not be categorical as to whether he asked the senior psychologist to carry out this assessment of needs. The senior psychologist did subsequently carry out such an assessment and she confirmed to the inquiry that the Head of Psychology asked her to do so.

The Head of Psychology was aware that the senior psychologist knew the family. Indeed he said that one of the reasons that he asked her to provide the support was because she had worked with the family for quite a number of years previously. The Head of Psychology also confirmed that while he did not know that the senior psychologist and MM were friends, the senior psychologist told him that she had been in contact with the family<sup>213</sup>.

The senior psychologist did not refer to being asked by the Head of Psychology to provide psychological support to the family during the course of our meetings. However, she did confirm that she was asked by MM to carry out an assessment of Mr. McKenna's needs. I return to this assessment below but at

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<sup>212</sup> Interview with the Head of Psychology, the 11<sup>th</sup> June, 2008, page10

<sup>213</sup> Interview with the Head of Psychology, the 11<sup>th</sup> June, 2008, page 10

this point it should be noted that the assessment was carried out on the 25<sup>th</sup> September.

The senior psychologist did not confirm that the Head of Psychology asked her to provide support to the family. However, I am satisfied and find that the senior psychologist was asked by the Head of Psychology to provide support to the family and to carry out the assessment and it seems to me to be quite possible that she was also asked to provide support to the family.

The senior psychologist stated that she informed Mr. McKenna's brother, most probably between the 20<sup>th</sup> and 24<sup>th</sup> September, 2000 that she had been appointed by the Head of Psychology. This would explain why in the week leading up to the date of the Divisional Manager's memo of the 15<sup>th</sup> September referred to above the family were still requesting the provision of psychological support because they did not know that the senior psychologist had been appointed.

It is clear to me that the senior psychologist's involvement, at least after the 12<sup>th</sup> September (or such earlier date as she was asked to provide input by the Head of Psychology), was in an official capacity and at the request of her Head of Department. This is significant because the point has been made to me by St. Michael's House during the course of the inquiry that the senior psychologist's role between the 28<sup>th</sup> August and the 27<sup>th</sup> September was not clear. The Chief Executive Officer in particular made this point. I asked him whether he had requested the assessment on the 25<sup>th</sup> September. He replied "*Absolutely not*" and then went on to say:

"[The senior psychologist] was in contact with the family on 28th August. This was an informal contact because of a friendship with [MM]. But that wasn't known to the team who were managing the crisis. I certainly wasn't aware of it and I don't believe the [Director of Services], [the physician] or [the Clinical Director] were aware of it. I am not sure what her role was between 28th August and 27th September. I asked for the

involvement of a psychologist on 27th September because [Mr. McKenna's brother] asked me to provide a psychologist and a social worker. I am absolutely clear because I know [the senior psychologist], [she] is even longer in St. Michael's House than I am. I am absolutely clear that, whatever [the senior psychologist] did in relation to that, she was doing it in the best interests of Peter and the family..... I mean, I requested [the Head of the Psychology Department] to appoint a psychologist on 27th September to support the family in the selection of the nursing home. That's what I requested. I was very clear about it. And that's what [Mr. McKenna's brother] had requested from me. The report was dated 25th September but I don't know what the purpose of that report was. I have seen it since. It's a psychological report but it doesn't say an awful lot to be honest. I don't know who it was given to and, to be honest, I think most likely it was probably done for the family. But the team who were involved in the managing of that crisis were not aware. I have gone and checked. Like, [the Director of Services] wasn't aware of it, [the Head of Social Work Department] wasn't aware of it, [the physician] wasn't aware of it, [the Clinical Director] wasn't aware of it, [the Head of Unit of Warrenhouse Road] wasn't aware of it, [the Head of Unit of The Beeches] wasn't aware of it, [the Residential Manager] wasn't aware of it. So they weren't aware of that report."<sup>214</sup>

The Chief Executive Officer also went on to say:

"At that meeting [a meeting on the 25<sup>th</sup> September] (and I have a note of it here) I asked [the senior psychologist] what her role was in the case because I was aware that there wasn't a psychologist in Warrenhouse Road. I was aware that she wasn't a psychologist for The Beeches. And I asked her what her role was and she told me, and it stuck in my mind. She advised me that she was interested in the case from a psychological perspective. Now, interested in a case from a psychological perspective is a kind of unusual response to a question from a Chief Executive as to what's your role in this case. It struck me as strange at that time. Yes, it certainly did. She didn't advise me at that time that she had met with the family and she certainly didn't advise me of any concerns that she had at that time. I know that her intentions were absolutely good and proper, but I didn't have the information that she had at that time that she was writing a report; that she had met with the family; that she may have been aware of information that I wasn't aware of. And I was going to meet with [Mr. McKenna's brother] I thought five minutes later. So that report is certainly a point of confusion for me as to how it ever

<sup>214</sup> Interview with the Chief Executive Officer, the 9<sup>th</sup> April, 2008, pages 20-22

evolved because, to the best of my knowledge, it wasn't requested. It certainly wasn't requested by me and I am not aware of who could have requested it. Because I have spoken to the people who might have requested it. I think that [the senior psychologist] might have met with the family on the 29th as well. But again, I wasn't aware of any of those meetings. The only thing I was aware of at that time was that I had requested [the senior psychologist] to support the family in terms of the selection of a nursing home."<sup>215</sup>

The senior psychologist stated in her submissions to the inquiry that a number of people in St. Michael's House, namely, the Head of Psychology, a senior social worker, the consultant psychiatrist and the Head of Social Work Department (when she returned from a break) were aware of her appointment. I am satisfied that the Chief Executive Officer (and, indeed, the other individuals who were most involved with Mr. McKenna's case during this period) were not aware of the senior psychologist's involvement or that she had been requested by the Head of Psychology to be involved. The Residential Manager was aware that the senior psychologist was carrying out an assessment<sup>216</sup>. I am equally satisfied, partly from speaking with the Head of Psychology, that contrary to what is suggested by the Chief Executive Officer in the above passages, her involvement during this period was not at the request of the family (although there is no doubt that the family had contacted her and that she had discussed the matter with them and others on foot of this contact) but at the request of her St. Michael's House Department Head.

It is unfortunate that the senior psychologist's formal involvement was not known. This becomes particularly significant when one considers what happened to her report of the assessment of the 25<sup>th</sup> September.

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<sup>215</sup> Interview with the Chief Executive Officer, the 9<sup>th</sup> April, 2008, pages 23-24  
<sup>216</sup> Interview with the Residential Manager, the 28<sup>th</sup> March, 2008, p. 32



The senior psychologist carried out an assessment on the 25<sup>th</sup> September. I am satisfied that she did so at the request of her Department Head. She then completed a report.

However, neither the family, the President of the High Court at the hearing on the 6<sup>th</sup> October, St. Michael's House, nor subsequently Leas Cross, had the benefit of this report. It appears that while the report was completed immediately or very shortly after the assessment it was not typed until the 5<sup>th</sup> October. The Chief Executive Officer informed me that St. Michael's House's computer records show that it was not typed until the afternoon of the 5<sup>th</sup> October<sup>217</sup> and the senior psychologist said that it was not placed on Mr. McKenna's file until the 6<sup>th</sup> October at a point that was too late for the Court hearing. She explained that:

"I knew there was going to be a court hearing but I didn't know the date, I thought it happened earlier so I was kind of taken aback because I didn't think that my report had any relevance to actually going to court at that time necessarily. Then I heard on the 5<sup>th</sup> that they were going into court on the 6<sup>th</sup>, so my report, as far as I remember, was obviously in train somewhere and I just made sure that it was on the file for the 6<sup>th</sup> but they had already gone into court."<sup>218</sup>

I asked the senior psychologist what she felt the purpose of her report was and she explained that in circumstances where St. Michael's House were of the view that a move to Leas Cross was the only option the purpose of the report was to inform that service rather than to form the basis of an assessment of the suitability of that service.<sup>219</sup> The Head of Psychology described the purpose of the report as being:

"It 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

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<sup>217</sup> Interview with the Chief Executive Officer, the 9<sup>th</sup> April, 2008, page 22

<sup>218</sup> Interview with the senior psychologist, the 10<sup>th</sup> June, 2008, page 21

<sup>219</sup> Interview with the senior psychologist, the 10<sup>th</sup> June, 2008, page 22

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."<sup>220</sup>

It is unfortunate that the report was not available to any of the relevant parties in order to inform the decision-making process and the decision itself and, perhaps more importantly in light of the stated purpose of the report, to assist Leas Cross.

It must also be noted that while the senior psychologist said that the report was placed on Mr. McKenna's file on the 6<sup>th</sup> October, the Chief Executive Officer stated during the inquiry that he was not aware of the senior psychologist doing the report until 2007 when St. Michael's House was preparing for this inquiry. I do not know whether the Chief Executive Officer meant he personally was not aware of the report or whether he was speaking on behalf of St. Michael's House. The issues being considered by this inquiry have previously been at least partly considered by other investigations. I would be most surprised if Mr. McKenna's file was not reviewed and considered in detail on a number of occasions since 2000. It is therefore difficult to understand how St. Michael's House or even the Chief Executive personally would not have been aware of this report at a much earlier stage. It must also be noted that this assessment report was not in the documents which were given by Leas Cross to the Statutory Commission and which that Commission furnished to me.

As indicated above, the Chief Executive Officer agreed with Mr. McKenna's brother while the senior psychologist had already been appointed on the 27<sup>th</sup> September that St. Michael's House would appoint a social worker and a psychologist to support the family in their efforts to secure an alternative nursing home to Leas Cross. I explored this with the Chief Executive Officer because I was curious to know why there was a place or role for psychological input on the 27<sup>th</sup> September but not on the 31<sup>st</sup> August. It will be recalled that one of the

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<sup>220</sup> Interview with the Head of Psychology, the 11<sup>th</sup> June, 2008, page10

reasons that was given as to why a psychologist was not involved in the initial decision to transfer Mr. McKenna was because there was no role for psychology at that time (see paragraph 3.3.51). The Chief Executive Officer was very clear that he still did not believe that there was any role for a psychologist on the 27<sup>th</sup> September and that he had agreed to appoint one simply because he had been requested to do so by Mr. McKenna's brother<sup>221</sup>. The Chief Executive Officer also said:

"Well, I didn't really understand I suppose, to be honest, why the family wanted a psychologist and a social worker to assist them in selecting a nursing home. It didn't make sense to me. They were requesting it and I wanted to be helpful and I wanted to provide them with the help that they felt they needed, but I honestly didn't see -- possibly a social worker but certainly not a psychologist. I didn't see what their role would be in relation to the selection process."<sup>222</sup>

I accept that this was the view of the Chief Executive Officer. This is reflected in the narrow purpose for which the psychologist was appointed on the 27<sup>th</sup> September, 2000. It is clear from point 2 of the letter from St. Michael's House solicitors dated the 29<sup>th</sup> September, 2000 which is at paragraph 4.3.124 and from the Chief Executive's memo which is at paragraph 4.3.132 that the purpose and role was to be limited.

- (iii) The third issue arising from the St Michael's House submissions is the question of precisely what the role of the psychologist and social worker was to be when assisting the family. I explored this with the Chief Executive Officer and he explained that it was intended that they would be free to go to prospective placements with the family and point out shortcomings in those prospective placements but that they could not recommend a particular nursing home. He described it in the following terms:

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<sup>221</sup> Interview with the Chief Executive Officer, the 9<sup>th</sup> April, 2008, page 21 and page 25  
<sup>222</sup> Interview with the Chief Executive Officer, the 9<sup>th</sup> April, 2008, page 40

"No, they were being told that they could go in and that they could look at the nursing home with the family and point out whether they have an OT or they have this and that but they don't have that. But they weren't to say 'I am recommending that'. That is my understanding of what was being said.....It would be absolutely pointless that they would be involved at all if they weren't able to go in and actually say 'Look, Peter has a need for a special bath or something. This nursing home doesn't have a special bath so it would be very foolish to be putting him in there'. I assume that they certainly would have given that advice, but they weren't to actually say 'This is the one that we, the staff of St. Michael's House, are recommending'. That was the point that was trying to be put across. Maybe we didn't put it across very well, but that was my understanding of what we were trying to say."<sup>223</sup>

He explained that the reason why St. Michael's House did not want their staff recommending a particular nursing home was because they had:

" ... confidence in Leas Cross and we had confidence in [the nursing home on the southside of the city] and the ones we had selected ourselves. We had genuine confidence in those. We had built up that confidence over years. I mean, we had been working with Leas Cross at that stage for at least two years, I think more. So we had confidence that they were capable of looking after people with high medical needs. We didn't want to be involved in the actual selection of saying we recommend this one because we didn't have that of any other nursing home. We hadn't worked another nursing home at that level."<sup>224</sup>

He further explained that:

"I suppose the concern was that an inappropriate nursing home would be selected and that the care wouldn't be provided in a manner that would have been to an appropriate standard and that we would have been blamed for it. It's funny to look back on it now but that's the way it was at that time. We were concerned. We had great confidence in Leas Cross and we had great confidence in [the nursing home on the southside of the city] for the respective jobs that they did. I would never have sent a person with high medical needs to [the nursing home on the southside of the city] because I wouldn't

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<sup>223</sup> Interview with the Chief Executive Officer, the 4<sup>th</sup> April, 2008, page 41  
<sup>224</sup> Interview with the Chief Executive Officer, the 4<sup>th</sup> April, 2008, page 42

have confidence in them for doing that. And I wouldn't have sent a person who was very able to Leas Cross because they would have been out there with a lot of old people. We had confidence in the different nursing homes for doing different jobs and we didn't want to become involved in the selection of a third one."<sup>225</sup>

Mr. McKenna's brother has given me a copy of a note re a telephone conversation between himself and the Divisional Manager on the 3<sup>rd</sup> October, 2000. This note bears the initials "JB" and I take it that the note was authored by the Divisional Manager. One of the items that was discussed in this conversation was the family's efforts to secure an alternative to Leas Cross. The Divisional Manager recorded:

"I asked how he was progressing with the nursing home place. He said that he had only his first meeting with [the senior psychologist] and only yesterday [the] social worker had been assigned to him. I asked if they were part of the process (seeking the nursing home place) and he said they were 'crucial, crucial.'"

I think it is most likely that the meeting with the senior psychologist which is noted in that passage was a meeting in Goatstown on the 29<sup>th</sup> September, 2000. Mr. McKenna's sister recalled having a meeting with the senior psychologist in Goatstown but could not remember the specific date. However, she believed that it was before the court case. The senior psychologist remembered meeting Mr. McKenna's brother and sister in Goatstown on the 29<sup>th</sup> September<sup>226</sup>. It appears that the family believed that this was a meeting following on from the appointment of that senior psychologist to assist in identifying an alternative placement – Mr. McKenna's sister described the meeting as being "to discuss what we wanted for Peter"<sup>227</sup> whereas the senior psychologist saw this as a feedback session following her assessment on the 25<sup>th</sup> September but that she became aware at that meeting that she was being

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<sup>225</sup> Interview with the Chief Executive Officer, the 9<sup>th</sup> April, 2008, page 43.  
<sup>226</sup> Interview with the senior psychologist, the 26<sup>th</sup> March, 2008, page 17  
<sup>227</sup> Interview with Mr. McKenna's sister, the 11<sup>th</sup> February, 2008, page 37

asked to support the family at that meeting<sup>228</sup>. The senior psychologist stated in her submissions to the inquiry that she had a number of telephone conversations and short meetings with members of Mr. McKenna's family during the month of September.

Mr. McKenna's sister also said that the consultant psychiatrist was at this meeting. Mr. McKenna's sister described this meeting in the following terms:

"You see, as far as I know that was between the truce all it. [...] then was appointed his social worker [sic] but as I said I think that [the consultant psychiatrist] may have heard that [...] was appointed and then when she was meeting with us that she turned up. At that meeting, I will always remember it stuck in my mind so much, we said at that meeting if we transfer Peter anywhere other than Leas Cross we are not going to get the medical backup for him. I remember [the consultant psychiatrist], I could actually see her flinch, actually flinched and she said; 'who told you that'. We said; 'that is what has been going on all along'. As far as I know [the Chief Executive Officer] told us. She said; 'as long as Peter is under my care I will be his psychiatrist'."<sup>229</sup>

The consultant psychiatrist did not recall the details of this conversation but did not disagree that it would have been her position that she was Mr. McKenna's psychiatrist as long as he was under her care.<sup>230</sup>

There is a dispute in relation to the involvement of the social worker who was appointed to assist the family and what precisely was her role. The Divisional Manager's note of his telephone conversation with Mr. McKenna's brother quoted above records Mr. McKenna's brother saying that the social worker had only been assigned to the family on the 2<sup>nd</sup> October. I understand this to mean that the contact from the social worker occurred on the 2<sup>nd</sup> October. I have spoken to the social worker who was assigned to provide this support. She described her assignment as being open-ended and not limited to simply

<sup>228</sup> Interview with the senior psychologist, the 26<sup>th</sup> March, 2008, page 17

<sup>229</sup> Interview with Mr. McKenna's brother, the 11<sup>th</sup> February, 2008, page 37

<sup>230</sup> Interview with the consultant psychiatrist, the 17<sup>th</sup> June, 2008, page 45



draft report that her telephone contact was with a male family member and that she did not speak with a female family member. Given this clear factual dispute I can not resolve the question of whether the social worker actually spoke with Mr. McKenna's brother or sister.

Of far greater significance, however, is the allegation made by both Mr McKenna's brother and sister that the social worker was "hostile" and "unhelpful". This was denied by the social worker<sup>236</sup> who said that she contacted the family and her offer of assistance was declined and that she then informed her Head of Department of the position. While I accept that Mr. McKenna's brother and sister consider the social worker to have been unhelpful, I am not prepared to find that she was either hostile or unhelpful. In certain respects both Mr. McKenna's brother's and sister's memory of this period is unclear. I do not think that this is surprising given the situation with which they were dealing during this period. The days spanning the end of September/beginning of October must have been particularly stressful and upsetting given the events of the 30<sup>th</sup> September when it was thought that their brother, Mr. McKenna, was dying. However, this lack of clarity means that I could not base such a finding against a professional on their account solely. There is no other information upon which I could conclude that the social worker was hostile or unhelpful. I therefore do not do so.

4.3.134 The relevance of the dates upon which the contacts between the family and the senior psychologist and the social worker occurred on foot of their appointment at the request of the Chief Executive Officer is that the family maintains that they did not have sufficient time to locate an alternative before the court hearing on the 6<sup>th</sup> October. There is no doubt whatsoever that there was a very short period of time between the dates of these contacts and the 6<sup>th</sup> October and that the period was probably too short to actually identify and secure an alternative to Leas Cross. Indeed, by way of example, the physician explained that it can take weeks to get in

<sup>236</sup> Interview with the social worker, the 24<sup>th</sup> June, 2008, page 7



to the hospice. However, this period can not be taken in isolation. In fact efforts to have located and secured an alternative placement could have been made during September prior to the appointment of these individuals. It would, therefore, not be correct or fair to say that St. Michael's House only gave a week (or a little over a week) for the family to secure such an alternative.

***Event of 30<sup>th</sup> September, 2000***

- 4.3.135 On the 30<sup>th</sup> September the family were called to The Beeches because it was feared that Mr. McKenna was dying. Mr. McKenna had suffered loss of consciousness and it was feared that he had suffered a stroke or a series of trans-ischemic attacks.
- 4.3.136 Mr. McKenna was attended by the family, a bureau doctor, the Manager-on-Call, the Residential Manager and a consultant psychiatrist. He was also attended by a priest who administered the Last Rites. The physician subsequently diagnosed this incident as a syncope attack.
- 4.3.137 As will be appreciated, one of the reasons why St. Michael's House has always maintained that The Beeches was unsuitable was that the room which was being occupied by Mr. McKenna was a sitting room which had been used by the other residents of The Beeches and that while Mr. McKenna was there they continued to come in to the room. According to St. Michael's House this disturbed Mr. McKenna, caused distress and inconvenience to the other residents who normally used that room, and was unsafe for Mr. McKenna. A Service Manager in St. Michael's House with responsibility for The Beeches was there on the 30<sup>th</sup> of September. She described a number of incidents of disturbance and disruption which occurred even on that day.
- 4.3.138 It has been alleged that while the family were there on the 30<sup>th</sup> September, a resident was pushed into Mr. McKenna's room. I presume that it is alleged that this was done in an attempt to cause disruption to reinforce the St Michaels House

position that the room was unsuitable. I can not find as a fact that this occurred. It has been expressly denied by the Service Manager that this occurred. It should also be noted that the person who is alleged to have pushed the person into the room has told me in a different context that she was in fact on leave on the 30<sup>th</sup> September and only returned to work on Monday, the 2<sup>nd</sup> October. I have no reason to doubt that she was not on leave. In light of a direct dispute on the facts it would be unsafe and inappropriate for me to make such a finding.

4.3.139 The physician in St. Michael's House, attended Mr McKenna in The Beeches later that evening. She diagnosed the incident as a syncope attack<sup>237</sup>. There is a note in the documents with which I was furnished by Mr. McKenna's brother which is initialled "JB". As previously, I take this to refer to the Divisional Manager. This note is dated the 2<sup>nd</sup> October and records a telephone conversation with the physician. It reads:

"I spoke with [the physician] today (Monday 10.30am) regarding the incident involving Peter McKenna which took place on Saturday 30<sup>th</sup> September. She visited the Beeches and examined Peter on Saturday evening. She said that the incident was probably a sudden drop in blood pressure and as a result a failure to oxygenate his brain. He was being supervised in the bath at the time. She said that there was no evidence of neurological failure which would indicate a stroke. Her impression is that this was a transient event and has no implication for his life span. He could remain in his present condition for months. She stated that he needs to move as he has now reached the point where he needs total nursing care. As previously stated this cannot be provided in a temporary arrangement in the Beeches.

The indication on Sunday and today Monday is that he has rallied and is back to his strength before the weekend. He had refused to eat over the weekend but staff have since re-established his diet. He had a full assisted breakfast today (Monday) two bowls of Readybrek and a yogurt).

[The Service Manager] stated this morning that Peter is being constantly disturbed by other residents as they are all the time seeking access to the sitting room that he now occupies as a bedroom."

<sup>237</sup> Interview with the physician, the 27<sup>th</sup> March, 2008, page 54

4.3.140 The physician expanded on what she is recorded in this note as having said in relation to diagnosis when I met her on the 27<sup>th</sup> March, 2008. She said on that occasion:

"Okay, the diagnosis there most likely was what we would call a "syncope attack", it is a type of faint. That is that he hadn't got enough blood going to his brain, so he basically fainted. Of course you would have a whole other list of differential diagnoses, you know, what are the other common causes of transient loss of consciousness like, did he have a stroke? Well, no, he had a fairly quick recovery from it. Was it an epileptic seizure? Well, he didn't have a lot of associated things like convulsive movements or whatever. So, in view of -- he really had quite serious medical, you know, he had quite a diseased heart. He had an enlarged -- the two main valves in his heart were enlarged and he had an enlarged heart. So, it sounded very much -- and he also had heart block and would be prone to arrhythmia, that it was a type of what we would call "syncope attack."<sup>238</sup>

4.3.141 The Divisional Manager's note quoted above and in particular the sentence "*She stated that he needs to move as he has now reached the point where he needs total nursing care. As previously stated this cannot be provided in a temporary arrangement in The Beeches*" can be interpreted in 2 ways. Firstly, it can be taken as simply a repetition of the physician's previous advice that Mr. McKenna needed nursing care and needed to be transferred to obtain same. Alternatively, it can be interpreted as meaning that as a result of this event he needed total nursing care and therefore needed to move. If the correct interpretation is the latter, I find it difficult to reconcile that advice with the statement in the note that it was a transient event with no implications for Mr. McKenna's life span. If it was a transient event with no such implications, it is difficult to understand how or why it in itself required Mr. McKenna's transfer. Furthermore, of course, the physician had been advising for a number of weeks that Mr. McKenna required to be transferred. This fact is itself reflected in the Divisional Manager's note. The note states:

<sup>238</sup> Interview with the physician, the 27<sup>th</sup> March, 2008, page 54-55

"She stated that he needs to move as he has now reached the point where he needs total nursing care. **As previously stated** this cannot be provided in a temporary arrangement in the Beeches". [emphasis added]

4.3.142 The physician, even prior to this incident, was of the view that Mr. McKenna needed total nursing care and had been advising along those lines for some time prior to this incident. Indeed, the independent medical expert who had been asked by the High Court to prepare a report found on the 20<sup>th</sup> September that Mr. McKenna at that stage needed "24 hour nursing care and supervision". It seems to me that in fact this event had no additional bearing over and above his general condition on whether he needed to be moved or not.

4.3.143 The reason this is relevant is that this event gave rise to a letter from St. Michael's House's solicitors which was sent to the family's solicitors and copied to the Wards of Court Office which suggested that as a result of this event the transfer had become so urgent that it had to happen within 2 days. That letter, dated the 3<sup>rd</sup> October reads, *inter alia*:

"We refer to the above matter and write to inform you that the condition of Mr. Peter McKenna has deteriorated much over the weekend. It shall be therefore necessary to move Mr. McKenna to Leas Cross Nursing Home in the next 2 days so as to afford him the proper nursing care he needs."

4.3.144 I have previously (in paragraph 4.3.126) referred to a letter from the family's solicitors dated the 3<sup>rd</sup> October in which they dealt with the letter from St. Michael's House solicitors setting out the heads of agreement between the Chief Executive Officer and Mr. McKenna's brother. The letter from the family's solicitor also dealt with the events of the 30<sup>th</sup> September. The relevant part of that letter reads:

"We refer to your letter of the 29<sup>th</sup> September.

Since then there has been a development in that Peter's health took a turn for the worse on Saturday last the 30<sup>th</sup> ultimo. We understand that he appears to have suffered a mini stroke, or

syncope of some nature. This could have more serious consequences but we understand that thus far, he is recovering. Whether he is capable of being moved at all is obviously a matter for medical opinion and our following remarks are made subject to that."

4.3.145 This was followed by a further letter of the 3<sup>rd</sup> October from the family's solicitor to St. Michael's House solicitors and copied to the Wards of Court Office which was a reply to St. Michael's House solicitors' letter of the 3<sup>rd</sup> October referred to at paragraph 4.3.128 above. The family's solicitors' letter reads:

"We refer to yours of the 3<sup>rd</sup> inst which crossed with ours of even date.

We are instructed whilst Peter McKenna's health did deteriorate over the weekend it has since then improved considerably and we are instructed that it is the opinion of the doctor who attended him that Peter does not require to be hospitalised and could be adequately cared for at the Beeches where he now is.

Accordingly we do not agree that it is necessary for Mr. McKenna to be moved within the next two days as has been suggested by you."

4.3.146 The basis upon which St. Michael's House solicitors were instructed to write their letter of the 3<sup>rd</sup> October is not clear to me. The physician had clearly told the Divisional Manager on the 2<sup>nd</sup> October that the syncope attack was a transient event with no implications for Mr. McKenna's life span yet St. Michael's House solicitors were instructed to write a letter in which reference is made to a "deterioration" and reliance is placed on that "deterioration" to say that the proposed move must take place very urgently i.e. within 2 days. In fact, it is not clear on the basis of what the physician had told the Divisional Manager on the 2<sup>nd</sup> October that there was such deterioration or increased urgency. Furthermore, in submissions which were made to a previous investigation and which have been given to me, the point was made that Mr. McKenna was not gravely ill after the 30<sup>th</sup> September. I deal with this in greater detail below.

4.3.147 It seems from some of the documents with which I have been furnished that Mr. McKenna was at risk of further such attacks. I do not believe that such a risk was an adequate basis in itself for the suggestion that the necessity to move Mr. McKenna had become so urgent that it had to happen within 2 days. It is also noteworthy that in a solicitor's note with which I have been furnished St. Michael's House were advised that the medical report which was to be presented to the High Court should deal with the risk of relapse of further such attacks. In fact the medical evidence which was presented to the High Court did not deal with any such risk. This suggests that the risk of such attacks was not a significant consideration.

4.3.148 I appreciate that St. Michael's House's position since the 31<sup>st</sup> August had been, and on the 3<sup>rd</sup> October (the date of this letter) continued to be, that Mr. McKenna needed full time nursing care and needed to be transferred to Leas Cross to receive same. However, it is important to note that this letter of the 3<sup>rd</sup> October was not simply a restatement of this position but rather was advancing a development in his condition as either a reason why the transfer had to happen urgently or as an additional reason why a transfer had to happen at all.

4.3.149 A number of days after this incident, on the 4<sup>th</sup> October, the Head of Unit of The Beeches, wrote a strongly-worded letter to the Divisional Manager asking to be advised when Mr. McKenna was to be moved but did not refer specifically to the event of 30<sup>th</sup> September 2000 or any deterioration in Mr. McKenna's condition. The letter reads:

"I wish to bring to your attention a number of serious difficulties which have arisen in relation to Peter McKenna occupying a place that does not exist in The Beeches and furthermore use of a communal room as a bedroom. There are serious concerns I wish to outline in relation to safety.

As you are aware we accepted Peter as a weekend emergency on 1<sup>st</sup> September 2000 because the residential place he occupied in Warrenhouse Road was no longer tenable due to his extensive nursing needs. Needless to say that client whose place he temporarily occupied returned within days. We now have eleven clients in the house which is completely unsafe.

As you are aware Peter is occupying the sitting room on the ground floor as a bedroom. You will appreciate that with such a large group of clients and the attendant level of challenging behaviour it is essential to have more than one sitting room to maintain any reasonable level of safety. Clients are at risk from each other in the present situation.

A further problem arises in that the clients are continually entering the sitting room in search of an area they understood to be for recreation. This means that Peter gets no respite from interruption when in bed which in his condition must be very confusing.

The impact on staff is considerable. As you know we do not have a full staff compliment in The Beeches and are pressured to provide a reasonable and safe level of care. Having someone in The Beeches in the latter stages of Alzheimer's disease immediately restricts the freedom of the other clients to go out and about. Staff who would otherwise be able to attend to the ordinary needs of clients and involve them in the community have to concentrate instead on providing increased levels of in-house supervision.

The Beeches as you know is not an Alzheimer's unit. It has a nurse on duty to meet the particular cardiac needs of two clients. I would appreciate being advised when Peter is to move."

4.3.150 I understand that this letter was put before the President of the High Court on the 6<sup>th</sup> October. In light of this, I inquired of the Head of The Beeches why she came to write the letter at that particular point in time. She replied:

"I suppose, I had been away on two weeks' annual leave within the time Peter was in the Beeches. I came back to work on the 2nd of October and I met a huge amount of staff stress levels. As you are aware, Peter had an episode on the 30th of September in which his family were called in. There was doctors/managers called in. There was a huge level of stress on the staff. They were trying to maintain not only somebody who on the Saturday previous was a very sick person, but the level of challenging behaviour that was in the house as it was meant that, due to us being short-staffed – I mean, we were four nurses down on a complement of eight, so we literally only had half the nurses that we should have had -- the level of challenging behaviour, we had a huge level of challenging behaviour within the house. The people that had challenging behaviour did use that sitting room, I suppose, as a space to get away from the other -- ten in a house is quite a large number, you know, and they would have used the two sitting rooms to kind of give themselves space. So they would have been used to going into the

sitting room, although Peter was there. And the day, I believe, on the 30th, although I wasn't there myself, even though Peter was sick, they were still trying to enter the room, you know, to watch the telly, to sit and have a bit of peace, not understanding that this was now somebody's bedroom, you know. So, I suppose, it was due to the staff. I mean, the staff were very, very good within the Beeches and at the time when Peter came in for the weekend, the staff were fully acceptant and were in full support of providing the care. But it had gone to a stage where it was now six weeks where, yes, they could have managed for a weekend. We had now stretched beyond that and, I suppose, the large levels of stress and staff coming to me and approaching me as their head of unit prompted me."<sup>239</sup>

4.3.151 I asked the Head of Unit of The Beeches whether she had been asked to write this letter or whether it had been suggested to her that such a letter would be helpful for the application which was to be heard two days later. She denied that she had been asked to write a letter or that it had been suggested to her that such a letter would be helpful.

#### **4.4 CLINICAL BACK-UP AND MONITORING AND SUPPORT**

4.4.1 During the course of the contacts between the Chief Executive Officer and Mr. McKenna's brother and the parties' respective solicitors which are set out above St. Michaels House referred to the fact that St. Michaels House would provide clinical back-up to Mr. McKenna when he was transferred to Leas Cross and that St. Michaels House had a close relationship with Leas Cross which provided for monitoring and support by St. Michaels House. Indeed, both of these points formed part of the heads of agreement that were reached between the parties at the end of September and were made to the President at the hearing on the 6<sup>th</sup> October. As appears from paragraph 5.2.1 below, the President appears to have relied on these points in deciding that Mr. McKenna should be transferred to Leas Cross.

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<sup>239</sup> Interview with the Head of The Beeches, the 2<sup>nd</sup> April, 2008, page 16-17



- 4.4.2 There is no doubt that the existence of clinical back-up and a close relationship to ensure monitoring and support are relied upon by St. Michael's House to (a) validate or justify the use of Leas Cross and (b) at the time, to allay the family's concerns.

### **Clinical back-up**

- 4.4.3 In St. Michael's House's reply to the family's solicitors dated the 21<sup>st</sup> September, it was stated that *"We have an ongoing relationship with the nursing home and maintain very close links in order to monitor the level of service provided to our service users who are using its facilities. In addition, we will provide clinical backup."*

### ***Meaning of "clinical backup"***

- 4.4.4 The family believe that St. Michaels House did not honour its commitment to provide clinical back up when Mr. McKenna was transferred to Leas Cross. Central to this belief is the family's understanding of what was meant by *"clinical back-up."*
- 4.4.5 Mr. McKenna's brother told me that he asked the Chief Executive Officer whether people from St. Michaels House would be able to go out to visit Mr. McKenna in Leas Cross and that he had assured him that people would be going out to him<sup>240</sup>. I asked Mr. McKenna's brother what his understanding of the commitment to provide clinical backup meant and he explained that while the parties did not go into the detail of it, he understood it to mean:

*"Doctors and psychiatrists, particularly the psychiatrists as well as the doctors now would be calling to Peter. We were assured that Peter would still be very much St. Michael's House client and that he would get clinical backup from St. Michael's House. I took it, I was naive, I took it that it was going to include doctors and psychiatrists and psychologists, the whole band that Peter was getting, all the backup services that Peter was getting in St. Michael's House."*<sup>241</sup>

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<sup>240</sup> Interview with Mr. McKenna's brother, the 7<sup>th</sup> February, 2008, page 51  
<sup>241</sup> Interview with Mr. McKenna's brother, the 7<sup>th</sup> February, 2008, page 51

4.4.6 It appears from this that Mr. McKenna's brother and the family understood St. Michaels House's commitment to provide clinical back up as meaning that Mr. McKenna would have regular and ongoing input from the various St. Michaels House clinicians and that the clinicians would be calling into Mr. McKenna in Leas Cross. Indeed, in submissions to the inquiry following the circulation of extracts from the draft report, Mr. McKenna's brother submitted that "*he feels that the vast majority of ordinary decent people would expect medical/nursing clinicians*" to be included in the phrase "*clinical backup*" and that this is what St. Michael's House stated it was on a point of clarification to Mr. McKenna's brother.

4.4.7 The Chief Executive Officer explained what St. Michaels House meant by the commitment to provide clinical backup:

"In the main the clinical back-up that was required by people was in fact the social worker. The social worker was the key link. In other words, if the social worker went in and discovered that the person actually needed some OT, she would be the link person to get the OT. If she discovered that the person needed physiotherapy, she would link to the physiotherapy department. So the social worker was the key person in terms of providing that link. There were also instances where that support could have even stretched to medical, although that would have been very unusual. But we did have a level of expertise in relation for instance to epilepsy. If someone was suffering from epilepsy, our experts in epilepsy would have supported [the medical officer to Leas Cross] in terms of supporting the person, but it was clear that [the medical officer to Leas Cross] had responsibility for the person's medical care. The social worker would have been the key to providing all of those feeds into the person if they needed them."<sup>242</sup>

4.4.8 The Chief Executive Officer's comments in a subsequent interview mirrored the above quote. He said:

"Well, what I meant by the use of that phrase is that we would have a social worker who would be visiting and if, through their assessment, the person needed whatever range of clinician from

<sup>242</sup> Interview with the Chief Executive Officer, the 9<sup>th</sup> April, 2008, page 38-39

St. Michael's House, that that person would be made available to Peter, as he would have had in Warren House Road."<sup>243</sup>

- 4.4.9 In other words, St. Michaels House would provide clinical back up as needed but that it would not continue to be the agency to provide day to day medical or nursing care. St. Michaels House have at all times been very clear that when a service user was transferred to an external nursing home, including Mr. McKenna, day to day responsibility for medical or nursing care passed to the nursing home. Indeed that was implicitly accepted by the family's solicitors on behalf of the family in their letter of the 29<sup>th</sup> September, 2009 in which it was stated that "It is accepted that responsibility for Peter's health and safety is a matter for whichever institution or nursing home in which he will be resident."
- 4.4.10 It would, in my view, be unreasonable to expect St. Michaels House to retain such responsibility to provide day to day medical or nursing care in respect of an individual who was residing in a nursing home or any external facility which was not under the control of St. Michaels House. That could not have been what was intended by St Michael's House when the commitment to provide clinical back up was given.
- 4.4.11 In those circumstances, I cannot find that St. Michaels House reneged on its commitment to provide clinical back up. It was never intended by St. Michael's House that "clinical back-up" would mean either regular or ongoing input by St. Michael's House clinicians (other than the social worker) or the provision of ongoing or day to day medical or nursing care by St. Michael's House. Clinical back-up meant (a) the back-up of the social worker who was responsible for the liaison between St. Michael's House and Leas Cross and (b) that if Mr. McKenna needed the input of St. Michael's House clinicians same would be provided.

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<sup>243</sup> Interview with the Chief Executive Officer, the 15<sup>th</sup> July, 2008, page 25-26

4.4.12 I must accept in good faith the commitment that if a request had been made or a need identified for a particular form of clinical support or backup then same would have been provided. Unfortunately, Mr. McKenna was in Leas Cross for a very short period of time. The fact that he was not visited by St. Michaels House clinicians during that time does not in itself suggest to me that there was a failure on the part of St. Michaels House to honour its commitment. It must also be noted in this regard that the consultant psychiatrist did in fact contact the medical officer to Leas Cross as a professional courtesy to ask whether he would have any objections to her visiting Mr. McKenna. Similarly, the senior psychologist was making arrangements to visit Mr. McKenna.

4.4.13 There is an overlap between this issue of clinical backup and whether St. Michael's House's clinicians should have become involved and the system of monitoring which was in place because there is an issue about whether St. Michael's House should have identified that Mr. McKenna needed assistance. I deal with this later in this report.

***Refusal to provide clinical backup except in Leas Cross***

4.4.14 The second issue in relation to "clinical backup" is the position of St. Michael's House that they would not provide clinical back up in any nursing home other than Leas Cross. It was stated in the letter setting out the heads of agreement that "*It will not be possible for St. Michael's House to provide clinical back in the nursing home selected.*"

4.4.15 This clearly caused significant annoyance and anger amongst the family. Mr. McKenna's brother expressed his views as follows:

"It was clear that if Peter went to Leas Cross they would give him clinical backup but if we put Peter in anywhere else, no clinical backup. We didn't see anything strange about that at the time. Other people have been appalled about it since but we didn't because at that stage -- it is hard to describe how you feel at that stage, [...], you are on a treadmill and things are

happening all around you and you are fending off punches here and blocking off punches on this side and things happen and you don't see that things are going particularly, are you with me? They were wrong, they were going wrong big time. They should never, if Peter was a St. Michael's House client from the cradle to the grave they should never have even threatened to withdraw clinical backup to him."<sup>244</sup>

4.4.16 He later said:

"...we were supposed to be, that was, if you don't mind me saying so, largess on their part, that if Peter went to Leas Cross that of course he would have the St. Michael's clinical back-up but if he went elsewhere sort of that wasn't on the cards. It was through their kindness and generosity that he would have clinical back-up if he went to Leas Cross."<sup>245</sup>

4.4.17 The Chief Executive Officer explained the bases for this position as being (a) that having to provide such clinical back-up in another nursing home would place demands on resources due to the geographical difficulties presented for the social worker and other clinicians having to get to a third nursing home and (b) not all nursing homes were as welcoming of the St. Michaels House staff's ongoing involvement with the service user even when he or she was in a nursing home. The Chief Executive Officer said:

"So it wasn't just a case of the geographics. It was also about the relationship with a nursing home that you couldn't just assume that any nursing home that was picked would have exactly the same reasonableness in terms of dealing with the staff that I would be sending in, that just wasn't there, and it didn't work, and we had evidence of it not working."<sup>246</sup>

4.4.18 St Michael's House's position was that it would not provide clinical backup in any nursing home other than Leas Cross or the nursing home which St Michael's House used on the Southside. However the two reasons why clinical backup would not be provided may not have applied to a nursing home chosen by the family. It may have

<sup>244</sup> Interview with Mr. McKenna's brother, the 7<sup>th</sup> February, 2008, page 55-56

<sup>245</sup> Interview with Mr. McKenna's brother, the 15<sup>th</sup> April, 2008, page 25-26

<sup>246</sup> Interview with the Chief Executive Officer, the 15<sup>th</sup> July, 2008, page 53-54

been in a location which would not have presented geographic difficulties and it may have had "exactly the same reasonableness in terms of dealing with the staff" that St Michael's House would be sending in. On the basis of they being the reasons for St Michael's House's position I would have expected that St Michael's House would have been willing to give clinical backup in a nursing home picked by the family *if* St Michael's House could be satisfied that the nursing home was in a suitable location and was prepared to be welcoming of St Michael's House involvement.

4.4.19 However while that would have been my expectation I think that as a matter of general principle, St. Michael's House's position was not an unreasonable one and could not in general be open to criticism. St. Michael's House had to make decisions as to how best to deploy the resources which were available to them and it is reasonable that they would be reluctant to stretch their resources any further.

4.4.20 Furthermore while it can be suggested this was a case where an exception could and perhaps should have been made - the family had expressed their opposition to Leas Cross *and* the reasons for that opposition and it was commonly accepted that Mr. McKenna's life expectancy at that time was relatively short, I do not think that the mere fact that St. Michael's House did not make an exception when they could have and when perhaps other service providers might have is a proper or appropriate basis for criticising the decision or policy of St. Michael's House.

### **Monitoring and Evaluation**

4.4.21 In their letter of the 21<sup>st</sup> September, 2000 St. Michael's House also said that "We have an ongoing relationship with the nursing home and maintain very close links in order to monitor the level of service provided to our service users who are using its facilities." The letter also said "... Peter will remain as a service user of St. Michael's House and ... we will be very much looking after his interest in ensuring that he received the care appropriate to his needs in Leas Cross. Should he have other needs we will attend to them and do whatever we can to have those needs met

*also*". It is therefore necessary to consider the nature, purpose and efficiency of these links.

4.4.22 This relationship and the links were principally maintained through (a) monthly visits by the senior social worker who was responsible for liaison with the nursing home and (b) visits by other members of staff (sometimes with other service-users) to service users who were residing in the nursing home. The Chief Executive Officer described the nature of the "close links" in relation to another St. Michael's House client who resided in Leas Cross for a year as:

"I had a principal social worker visiting Leas Cross at least on a monthly basis. I had significant numbers of my staff visiting Leas Cross on an ongoing basis in relation to [another service-user who resided in Leas Cross for approximately a year]. So I was very much aware of the close working relationship that we had with Leas Cross at that time. Like, a principal social worker is actually at the top of their [profession]. It wasn't a junior social worker or a senior social worker. It was a principal social worker that I had going into Leas Cross"<sup>247</sup>

4.4.23 In addition, on occasions, service-users who were residing in a nursing home were still attending their day unit and were therefore in continuing and ongoing contact with St. Michaels House staff in the day unit. Of course, this is not a means whereby the relationship with the nursing home was maintained but it is another means by which the level of service being provided to those service users was monitored. This was not a feature of the system of monitoring in Mr. McKenna's case as he was too ill to attend his former day unit. I therefore do not consider this in any great detail.

4.4.24 In relation to visits by members of staff, it is clear from the information given by a number of individuals who assisted the inquiry that members of staff were expected to visit service users who were placed in external nursing homes, or indeed, in the case of illness requiring hospitalisation, in hospital. This was part of the ethos of St. Michaels House whereby service-users were considered as part of a large family. In

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<sup>247</sup> Interview with the Chief Executive Officer, the 9<sup>th</sup> April, 2008, page 38. In fact, both social workers who were responsible for visiting Leas Cross on a monthly basis described themselves at interview as "senior social workers".

particular, the residential placement of a service-user was considered to be that service-user's home and the other residents and staff in that unit part of a family.

4.4.25 There was no formal protocol or system requiring visits at particular intervals or a particular level of frequency and there was no system whereby a roster was drawn up detailing when and by whom visits should be made. However, I am satisfied that it was considered by St. Michaels House and, more importantly, by the staff themselves, to be part of staff's role to visit and keep in touch with service-users who for one reason or another had to be transferred from St. Michaels House's internal facilities. Indeed, even in the short period of time that Mr. McKenna spent in Leas Cross, he was visited on a number of occasions by members of staff including his key worker on several occasions, the Head of Unit of Warrenhouse Road and the Head of Unit of The Beeches.

4.4.26 The practice in St. Michaels House was that the unit from which a service-user was transferred continued to be the service-user's home, address or point of contact within St. Michaels House. In those circumstances, Mr. McKenna continued to be considered as a Warrenhouse Road resident, albeit one who was no longer physically residing in Warrenhouse Road. The primary responsibility for visiting Mr. McKenna therefore remained with the members of staff of Warrenhouse Road.

4.4.27 This certainly ensured a degree of contact between St. Michaels House, the service-user and the nursing home. It did so in a manner which reflects the interaction between the members of a family of a resident, the resident and the nursing home rather than in a formal, systematic manner. As stated above, there was no protocol as to the frequency of visits. Nor was there any protocol as to what should occur on such visits or guidelines or criteria as to what staff should do or look out for on such visits. The visits were a way of keeping an eye on things in much the same way as this is done by visits by the families of nursing home residents.



4.4.28 There was more formality involved in relation to the role of the senior social worker. I do not mean to suggest that the interaction between the nursing home and the social worker was formal or formalistic but simply that the interaction was more systematic. This interaction consisted of monthly visits by the relevant senior social worker and meetings between that social worker and the matron of Leas Cross, other occasions when the social worker dropped in to the nursing home, and contacts between the social worker and the nursing home in relation to issues which arose from time to time.

4.4.29 When St. Michaels House started using Leas Cross individual social workers were able to contact Leas Cross directly. It was subsequently decided that it would be better if there was one point of contact between St. Michaels House and Leas Cross. In July, 1999 a memo was circulated informing the social workers that "*as we are using this service more frequently and formally, please could you go through me or [another identified social worker] in my absence as I will be liaising with them regularly.*"

4.4.30 The senior social worker who circulated that memo and is referred to in it described this system of liaison as:

"So I suppose I established the system where I went to both places once a month and I reviewed the breaks that had happened and asked how everybody had got along and I had a format to do that, which was the same one that [the other identified social worker] and I used when we went to the respite houses to see how breaks had gone. So I went, I reviewed the breaks, I booked the breaks for the next month and then by the time, for instance, the lady that went from Delval who then lived there for the year was there, and she wasn't going out to her day service, I had to go and see her each time I was up there."<sup>248</sup>

4.4.31 She also said that she checked whether anything was required by the St. Michael's House clients and gave the example of a pressure mattress in one case<sup>249</sup>.

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<sup>248</sup> Interview with the senior social worker, the 18<sup>th</sup> April, 2008, page 16

<sup>249</sup> Interview with the senior social worker, the 18<sup>th</sup> April, 2008, page 19

Furthermore, she said that she would be on the telephone to Leas Cross in between visits if any specific issues arose<sup>250</sup>.

4.4.32 The senior social worker also expanded upon what happened on her regular visits:

"The lady that went from Delval who then lived there for the year was there, and she wasn't going out to her day service, I had to go and see her each time I was up there, and when I was first there she was up and awake and... And then as the months progressed she was in bed and she was asleep, I would just go in and sit and hold her hand and see that she looked comfortable and well cared for, and I would chat with [the Matron of Leas Cross] and make sure she had meds and there weren't any kind of complex medical issues.....So, you know, I never saw the guy very much who was also there, there was another young man there, [ ], because he wasn't ill and so he went out to his day service every day. But in itself, going to the day service is a good form of monitoring because they saw him every day, they would have known what his weight was, they would have changed him so they would have made sure his skin integrity was good and they would have been monitoring his epilepsy and all that kind of thing. He was a complicated guy, I wouldn't have seen him there in the day myself because he had gone out to his day service..... Well, I would sit down with [the Matron of Leas Cross], and I would review the list of people that had been and she would say to me how people had got on. And sometimes there were a couple of people that it didn't work out with, she would say to me, 'look, he is too complicated for us', or 'I know that parent wasn't happy and if they come back again, I know they are going to be unhappy'. There was a young man who was just too noisy and the other residents weren't used to people with disabilities and they found it too difficult and she would say to me, 'look, that person we don't want to take again if that's okay'. And there were always these little issues about what time the Saint Michael's House bus came in the morning and what was happening with the people's clothes and, you know, the day service and Leas Cross liaising. So we looked at all those things, see how the people had got on and then we would make the bookings for the next month as we went on.....If a particular thing had come up, like if a parent had said to me, 'I was really worried, I think he had seizures', I would say to [the Matron of Leas Cross], 'can you look [at the nursing notes] for me?', and she would take the chart down for the person and she would look and show me. I didn't ask to see the nursing notes every time, no, I wouldn't be truthful if I said I did. But when there were things that had come up, I did..... Because nursing notes, I wouldn't have necessarily understood the

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<sup>250</sup> Interview with the senior social worker, the 18<sup>th</sup> April, 2008, page 16

medical content of nursing notes. I would have been looking at things, I suppose, more from the social point of view or the parents' point of view."<sup>251</sup>

4.4.33 It is clear from that final sentence but also from the entirety of the senior social worker's description of the mechanics of her regular visits that her monitoring role was not a medical or nursing role. Indeed, the senior social worker would not be qualified to perform such a role. The monitoring role reflected that of a family of a resident although it must be acknowledged that the role was carried out from a professional and objective perspective that normally would not apply in the case of a family. This perspective took account of the care needs and psycho social experience of St. Michael's House's service users in relation to the resources and knowledge available in Leas Cross to meet their needs.

4.4.34 It was also emphasised by the Chief Executive Officer that St. Michael's House did not purport to be directly monitoring the nursing home from a medical or nursing point of view. This arose in the context of questions which I asked the Chief Executive Officer arising from statements which had previously been made by the Clinical Director (and to which I return below) and a statement in a St. Michael's House submission in which it was stated "*The supports provided....could not include direct supervision or monitoring by medical or nursing staff as these aspect of Peter McKenna's care had clearly been handed over to Leas Cross and its doctor following normal practice for such a hand over.*" I explained to the Chief Executive Officer how I was having difficulty reconciling this with the statement in the letter of the 21<sup>st</sup> September to the family's solicitors that St. Michael's House maintains very close links "*in order to monitor the level of service provided to our service users who are using its facilities.*" The Chief Executive Officer confirmed that the monitoring that was going on was the monitoring by the senior social worker and the staff who were visiting the nursing home. In relation to the nature of that monitoring role he said:

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<sup>251</sup> Interview with the senior social worker, the 18<sup>th</sup> April, 2008, page 15-18

"We couldn't do any other monitoring. We'd had difficulties previously in the use of a nursing home where we had staff going in and attempting to instruct nurses or care staff on how they should care for our service users. And we had been very quickly told by the nursing home that it wasn't their responsibility. They didn't manage the nursing home staff and they shouldn't be making any comments. So I was very clear. What I was talking about here was the monitoring that was being done by the principal social worker who was visiting the centre and by the staff who were going.....The very first thing they would be monitoring is how Peter was. Was Peter well, was he getting the meals that he wanted, was he being cared for, was he developing bed sores, were there issues arising for him that should have been managed in a different way. That is what they were monitoring. That would be my understanding of what they were monitoring. They were monitoring his care but they couldn't directly....."<sup>252</sup>

#### 4.4.35 He also went on to say:

"[The principal social worker] was going in to actually ensure that the care that was being provided to any of our service users was appropriate for them in the best way that she could. She couldn't directly check the work of the nurses or the care assistants but she could see the effect that that was having on our service user. And that was her purpose..... what we were monitoring was the effect that it was having. If I can explain to you how St. Michael's House works: St. Michael's House works on what we call a "personal outcomes model" and we are accredited as a personal outcomes organisation. What that means is that we don't monitor the inputs. We don't say 'Yes, there were 20 nurses in the room but no-one happened to give the client food'. We monitor the output, and the output is about how the person is being looked after. Is the person being looked after appropriately? That was the output. That's what I would have expected our social worker to be monitoring, the output. How was Peter McKenna, how was he actually cared for. Did he look as if he was okay? Did he have bed sores? Was he being brought out? She would have looked at the routine that he had. We had gone to the trouble of telling Leas Cross that he liked Readybreak and he didn't like porridge. So she would have gone to the trouble of actually checking was he getting the things that he liked, were there issues arising, did he need any additional medical support. That's what that person was doing."<sup>253</sup>

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<sup>252</sup> Interview with the Chief Executive Officer, the 9<sup>th</sup> April, 2008, page 61-63

<sup>253</sup> Interview with the Chief Executive Officer, the 9<sup>th</sup> April, 2008, page 64-66

4.4.36 The Clinical Director had earlier been even more emphatic that the role of the social worker (and indeed the staff visiting the nursing home) was not to directly monitor or supervise the performance by Leas Cross and its staff of their medical or nursing duties. Firstly, he said, in response to my question whether the role of the social worker was to ensure that the resident was receiving the care that St. Michael's House would like:

"I would be very worried if we had to rely on a social worker for the quality of excellence that we expect of a nursing home. I would expect them to stand alone, that they might visit and observe, but I would be very worried if we were dependent on our clinicians for the quality of a nursing home, because normally the needs of a person with Alzheimer's could be quite subtle and might not be picked up by a social worker, or indeed a psychologist, or indeed a psychiatrist, but would be picked up by a doctor, you know, that the hydration is wrong, urinary output is down, you know, push protein, you know, that sort of thing....."<sup>254</sup>

4.4.37 I informed him that the contact between the social worker and the nursing home had been emphasised by St. Michael's House as the means by which they ensured that "the clients were being properly looked after." The Clinical Director replied:

"We have to be very careful here in terms of "properly looked after", because the responsibility of the care in Leas Cross was that of [the medical officer to Leas Cross], who was the visiting physician. Now, there are professional etiquettes here, you know, where I can pass comment, but I cannot dictate, and in the sense that Leas Cross had all the requisite nursing staff, and support staff, and was passed and accredited by the HSE, it was recently passed, but it was a yearly, I think it was yearly, it was very recently passed..."<sup>255</sup>

4.4.38 The Clinical Director had earlier said:

".....to say that a social worker could vet the nursing care, I would be a little bit worried about that because it is putting a huge responsibility on the social worker. I would anticipate a nursing home like Leas Cross should be able to provide a care of its own without inputs. I mean that is

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<sup>254</sup> Interview with the Clinical Director, the 27<sup>th</sup> March, 2008, page 21-22

<sup>255</sup> Interview with the Clinical Director, the 27<sup>th</sup> March, 2008, page 23-24

what other families depend on. They don't have social workers visiting to see that Mr. Murphy is being well looked after...."<sup>256</sup>

4.4.39 I explained to the Clinical Director that the reason why I was asking these questions was that the point had been made by St. Michaels House in their documents that the involvement of the social worker was how St. Michael's House 'kept on eye on things'. The Clinical Director immediately agreed with this description and, unprompted, added "*Just as a child going in, an adult going in to see their father who has Alzheimer's, would keep an eye and say, you know, he hasn't been changed, or you know.*"<sup>257</sup>

4.4.40 It should be noted that the social workers from St. Michaels House with whom I spoke during the inquiry appeared to act on the basis that their role was greater than that described by the Chief Executive Officer and the Clinical Director. The Head of the Social Work Department said that the meetings in the nursing homes would have reflected the types of discussions and questions that were raised in relation to St. Michael's House own respite house and that they "would have been looking at care practices, hygiene, and people getting out and about."<sup>258</sup>

"We would have also checked with day services. Almost everybody would have had a day service. We would have checked if there were any complaints coming through to day service or any issues. Did somebody arrive back from Leas Cross dirty, were they unhappy, was there anything that you noticed. We would have checked that. We would have checked it with every break because the social workers were attached to the units so they would have been talking to the units. And if there was any issue, they would have brought that to the seniors. We would have looked at it in terms of, how serious a complaint is this, what follow-up needs to happen, who needs to be informed, that sort of thing."<sup>259</sup>

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<sup>256</sup> Interview with the Clinical Director, the 27<sup>th</sup> March, 2008, page 23

<sup>257</sup> Interview with the Clinical Director, the 27<sup>th</sup> March, 2008, page 25

<sup>258</sup> Interview with the Head of the Social Work Department, the 9<sup>th</sup> April, 2008, page 18-19

<sup>259</sup> Interview with the Head of the Social Work Department, the 9<sup>th</sup> April, 2008, page 18-19

- 4.4.41 I believe that this just a difference in emphasis. The role of the social worker in the system of monitoring which is referred to in the St. Michael's House's letter of the 21<sup>st</sup> September 2000 in fact replicated the place of a family who, just as St. Michael's House did, assesses the "outcomes", that is, how the resident/family member appeared.
- 4.4.42 Indeed, it seems to me that the system of monitoring itself replicated the place of a family.
- 4.4.43 Of course, the point, which has already been made above, must be emphasised that the analogy is not completely accurate. The visits and monitoring were conducted by experienced social workers rather than lay-people and was placed on a more formal and systematic basis.
- 4.4.44 I explored the nature of this relationship and these links because in my view they were advanced to explain why St. Michael's House had confidence in Leas Cross, partly to explain why St. Michael's House believed Leas Cross was suitable for Mr. McKenna, to some extent to defend the St. Michael's House decision and also to allay any concerns that the family had about the proposed move. Therefore a consideration of the nature of the relationship and the links between St. Michael's House and Leas Cross and their effectiveness for their stated purpose, i.e. "*to monitor the level of service provided to our service users*" is crucial to a consideration of the transfer of Mr. McKenna outside of St. Michael's House. It seems to me that this assurance is an acknowledgement by St. Michael's House that service levels can be unsatisfactory and that they therefore need to be monitored.
- 4.4.45 I return to the efficacy of this system in the specific case of Mr. McKenna below and am critical of the system.