5. THE PRESIDENT OF THE HIGH COURT – 6TH OCTOBER, 2000

5.1 EVIDENCE

5.1.1 The matter came before the President of the High Court on the 6th October. As far as I can ascertain the documents that were before the President at this hearing were (i) the report of the Consultant psychiatrist who had been appointed as an independent medical expert by the Court (ii) the medical report of the Clinical Director dated the 15th September, 2000, (iii) brochure for Leas Cross and (iv) all of the correspondence.

Report of the Independent Medical Expert

5.1.2 The medical expert had been requested by the President of the High Court to prepare a report for the Court. While I have not seen any note in the St. Michael's House documents recording a visit by the medical expert to examine Mr. McKenna in The Beeches, he records in his report that he visited him there on the 20th September, 2000. He reported:

> "I visited Peter McKenna, Ward of Court, at Beech House, The Beeches, Donaghmede on 20 September, 2000.
>
> Peter is aged 60 years and has Down's Syndrome. He has, I understand, attended St. Michael's House Service for the Mentally Handicapped for many years, and has been in residential care for about seven years. He is moderately mentally handicapped, and would have had the intellectual capacity of a child of less than 8 years, needing special education and sheltered accommodation. He has, however, now developed Alzheimer's Disease with mental deterioration and increasing dependency, incontinence of excretions, and inability to look after his basic physical needs of dressing and eating. He is now unable to walk unaided, cannot manage stairs, and has to sleep in a living room of Beech House, which is a unit for temporary placement of mentally handicapped people for respite or crisis care, usually due to social problems.

Peter presents now as in frail general health. He is unable to walk and was seated during our meeting. He is friendly and attempts to talk but his conversation is unintelligible, and communication is at a very limited level. Staff report that in his normal state, Peter was cheerful and talkative, and enjoyed his life in his own way. In my opinion, Peter McKenna, has Down's Syndrome, with fairly advanced Alzheimer's Disease. His mental and physical condition can be expected to deteriorate with increasing need for skilled nursing care.

Peter McKenna now needs 24 hour nursing care and supervision, and will need this indefinitely. St. Michael's House Services do not, at present, have a long-stay facility suitable for his needs, and it is proposed that Peter be placed in a Nursing Home where his nursing needs can be met. I understand a place may be available in Lea's Cross Nursing Home. I have visited there on several occasions, and I think Peter's placement there would be satisfactory."

5.1.3 This report was prepared for and at the request of the President of the High Court. Furthermore, the report was released to the parties to the hearing and could therefore be the subject of comment and submissions by the parties, all of whom were legally represented at the hearing. In all of those circumstances, I do not believe that it would be appropriate to go behind the report. However, the following point must be made because, as will be seen below, it appears to have had some influence on the reasoning of the President. The report states that The Beeches "is a unit for temporary placement of mentally handicapped people for respite or crisis care, usually due to social problems." That does not accord with the information that has been provided to me by St. Michael's House. There were some references during the inquiry to The Beeches having originally been a unit where people were placed temporarily but for extended periods for the purpose of assessment[260]. However, that was not the nature of The Beeches by the 6th October, 2000 or indeed the 31st August, 2000. Firstly, as I have concluded above, the plan for Mr. McKenna once he was diagnosed with Alzheimers was that he would end up in The Beeches; secondly, the Residential Manager for The Beeches said, when describing the situation in The Beeches on the 30th September, 2000 that some of the residents of the house on that day had been there when she had been Head of The Beeches in 1999.

[260] Interview with Head of the Social Work Department, the 9th April, 2008, page 6-7

5.1.4 I therefore do not accept that The Beeches was considered by St. Michael's House to be a facility for "the temporary placement of service users or for the provision of "respite care." This description by the medical expert does not appear to have been corrected by either the family or, more importantly, by St. Michael's House. It is not clear, of course, how much reliance was placed on this description of the unit by the President when deciding on the application but it is clear that he relied on it to some extent. I have been furnished with a solicitor's attendance which I understand was prepared by the family's solicitor. It notes that in his decision the President referred to The Beeches as being "no more than a respite hostel." Of course, these may not have been his exact words but it is clear that the supposed temporary or respite nature of the unit had some influence on the President. It is unfortunate that this description was not corrected by the people who must have known it to be incorrect to ensure that the President based his decision on the correct facts.

Report of The Clinical Director – 15th September 2000

5.1.5 The Clinical Director's report of the 15th September, 2000 was also before the President. As far as I am aware this was the only medical report prepared by St. Michael's House which was before the Court. It is clear from documents which have been given to this inquiry by St. Michael's House that there had been discussion about providing a further medical report. St. Michael's House's solicitors wrote to the Chief Executive on the 4th October, 2000 in the following terms:

> "I enclose copies of two letters dated the 3rd October from [the family's solicitors] and also copy of an e-mail from [an individual in St. Michael's House solicitors] to myself setting out the current situation.
>
> I understand that you are now getting a medical report done which should be given to the Wards of Court and the President will then make his decision as to whether Peter McKenna should be moved."

5.1.6 The e-mail referred to in the first paragraph of that quote was an e-mail from one solicitor in St. Michael's House solicitors to another dealing with the 2 letters of the 3rd October set out above. The e-mail reads:

> "I notified the Wards of Court office and also Mr. McKenna's brother's solicitors ([.....]) that it would be necessary to move Peter with the next few days. [The Wards of Court Office] said that it might be a good idea to get a medical report done on Peter's condition and care needs so [the Chief Executive Officer] is currently getting that done. [The family's solicitors] believe that he should not be moved and expressed this in a letter as they feel that he has made quite a good recovery from his turn on Friday. Once we get the report we shall give that to the Wards of Court and the President will make his decision.
>
> As you may or may not know there have been a number of meetings with [the Chief Executive Officer] and [Mr. McKenna's brother]. The main problem is that the family are not happy with Leas Cross and are currently trying to find another suitable nursing home. However, while they look for this home they are opposed to any interim moving of Peter to Leas Cross."

5.1.7 There had been an earlier fax from St. Michael's House's solicitors to the Chief Executive Officer forwarding the family's solicitors' letter of the 3rd October. The fax cover sheet reads:

> "Please find the letter just received from [the family's solicitors]. I think that the medical report should address the point that such a relapse is most likely again and will necessitate greater and constant care.
>
> I do feel that it might be a good idea to include the attitude of the other patients to Peter staying their tv room."

5.1.8 Notwithstanding these discussions and the apparent intention to file a further medical report one does not appear to have actually been filed. The written medical evidence from St. Michael's House, therefore, was the Clinical Director's report of the 15th September.

5.1.9 The Clinical Director's report reads:

"Dear [Assistant Registrar of the Wards of Court Office],

Following my conversation with you on the 14th September 2000 regarding Peter McKenna and your request for a medical report on his present condition.

Peter is a 60 year old man with Downs Syndrome who was first referred to our services in 1974. He attended one of our local centre units on a day basis for a number of years before obtaining residential placement in 1997.

Peter originally was quite a competent socially adept man who was quite independent and functioned at a borderline severe/moderate range of intellectual ability. However, in 1999 there was a suspicion by staff that Peter was developing Alzheimer's and this was confirmed by a psychological assessment. Over the following few months Peter showed a rapid deterioration in his abilities and functions.

His placement in the Swords Day Centre became untenable as the staff were unable to cope with his markedly increased nursing needs. At this stage Peter was becoming incontinent. His mobility was hugely compromised, necessitating a care assistant to help him about the house. He also needed supervision and indeed help with feeding. He was quite agitated and aggressive towards both clients and staff at this stage and he was put on a sedative which helped these symptoms. The staff in the day centre found it impossible to cope with Peter's deteriorating condition and following a Case Conference it was decided to transfer Peter to a temporary day placement in The Beeches. The Beeches is a unit which has nursing staff and has coped with several clients with Alzheimer's on a day basis.

His placement in Warrenhouse Road residential community hostel then became problematic. There are no nurses in this residential unit and Peter's needs were mainly of a nursing nature. He was incontinent at night requiring the wearing of nappies. This incontinence then became a feature of his daytime care and Peter is presently in nappies at all times. He is unable to feed himself and requires an assistant to spoon feed him at all times. He is for all intents and purposes wheelchair bound and when it is necessary to move Peter it requires two assistants to avoid him falling and injuring himself.

It was then decided that Peter was totally inappropriately placed in Warrenhouse Road community hostel. A temporary transfer to The Beeches was arranged. This posed its own

problems as there were no vacancies in The Beeches and arrangements had to be made for Peter to sleep in the downstairs living room. His condition continued to deteriorate and it was necessary to place him on night sedation and provide cot sides to avoid him falling out and injuring himself.

His present mental state is that Peter is aware to some extent of what is going around in the unit but there is little or no interaction or communication with either the clients or the staff. He can be confused at times and quite distressed. These symptoms are features of the late stages of Alzheimer's disease. All aspects of care involving Peter are of a nursing nature given his total dependency.

As a placement in The Beeches was of a temporary nature, alternative placements were sought within St. Michael's House but there are no vacancies or indeed services which are geared towards the level of care needed in the late stages of Alzheimer's. A placement was obtained in Leas Cross Nursing Home which has the necessary nursing support. We have had experience of placing other clients with Alzheimer's in this nursing facility and the placements have proved very satisfactory. St. Michael's House will continue to provide clinical support to Peter in Leas Cross Nursing Home.

Overall his needs can only be met in a high support nursing unit, such a place is now available in Leas Cross and I would strongly support his transfer there."

Why the consultant psychiatrist or the physician did not prepare the report

5.1.10 I inquired of St. Michael's House why the Clinical Director prepared this report. I raised this query in circumstances where the consultant psychiatrist had most direct involvement with and knowledge of Mr. McKenna. In fact she remained his psychiatrist both at the time of this report and at all times until his death. This is the consultant psychiatrist's view and, indeed, the view of the Clinical Director. The consultant psychiatrist had also attended Mr. McKenna on the 25th September, 2000. She also noted on the 2nd October, 2000 the syncopal attack on the 30th September. It is clear that she had an ongoing role in relation to Mr. McKenna's care as his psychiatrist. In those circumstances, I considered that she may have been the most appropriate person to prepare this report. The reasons given are that

the consultant psychiatrist was on leave and was therefore not in work when the necessity to prepare this report arose (around the 15th September) and that the Clinical Director was the most senior clinician who was ultimately responsible for the transfer. The Clinical Director said:

> "Well, as the Senior Clinician responsible ultimately for his transfer, and that the family were objecting to his transfer, and in the absence of [the consultant psychiatrist] not having any problem with me writing the report, to the best of my knowledge, that I was the person who was assigned to write the report, because I was going to appear in court..... I was part of the discussions when it became an issue there was going to be a court appearance, that as the most senior clinician in St. Michael's, I would be the appropriate person, especially as I had looked after him for well nigh three decades, that I would be the person that would actually prepare and present the report."[261]

5.1.11 The consultant psychiatrist stated in her submissions made to the inquiry after the extracts from the draft report had been circulated that she was in fact not aware and had not been told that the Clinical Director had written the said report or that that a court application had been made or a hearing scheduled. She could therefore not have expressed any view, or as the Clinical Director himself put it "*had a problem with him writing the report*". She also stated that she and the Clinical Director were both attending a conference in Cork on the 5th and 6th October and she heard that the Clinical Director had left to attend a court case in Dublin. She was told by the Director of Services the following week about the court case and that Mr. McKenna was to go to Leas Cross.

5.1.12 The fact that the consultant psychiatrist did not prepare the report together with the fact that there was no subsequent consultation with her after her return to work means that the President did not have the benefit of the consultant psychiatrist's views. The consultant psychiatrist does not appear to have been consulted or asked for her views or even her input into the Court application. In fact, she was not even aware that the Court hearing was on the 6th October, 2000. The point has been

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261 Interview with the Clinical Director, the 27th March, 2008, page 13

made, and dealt with above, that if the consultant psychiatrist had had any concerns or had been opposed to the proposed move she had ample opportunity to express those concerns or that opposition and did not do so. It is quite possible, perhaps even probable, that even if she had an input it would have made no difference. That is not a reason for not canvassing her views.

5.1.13 It is not clear why the physician did not prepare the report. She was obviously directly involved with Mr McKenna at least throughout August and onwards. The point has also been made by St Michael's House on a number of occasions that once Mr. McKenna had deteriorated to such an extent she became the key clinician. It might have been expected, therefore, that the physician would have prepared the necessary report. I assume that the reasons why she did not do so are the same as why the consultant psychiatrist did not do so (save, of course, for the consultant psychiatrist's absence on leave).

Oral Evidence

5.1.14 In addition to these documents being available to the President he heard evidence from a number of individuals. I understand that evidence was given on behalf of St. Michael's House by the Clinical Director, the Divisional Manager and the Chief Executive Officer. Evidence was given on behalf of the family by Mr. McKenna's brother who by this stage had been appointed as Mr. McKenna's committee by the President. The family were represented by solicitor and counsel and counsel questioned the St. Michael's House witnesses. Mr. McKenna's brother described what happened during the hearing in the following terms:

> "The Judge was the President of the High Court. He was very helpful, very civil to us all. Our barrister, [.....], was very good, he tried his best for Peter. But they had all the clinicians there and one after the other the clinicians got up -- honestly and I mean this, you would swear Peter was going to Disneyland the way they portrayed that. They handed in to the Court to cap it all they handed in a brochure to the Court that portrayed the place as nearly a five star hotel. I won't exaggerate any more than that but just to say they were asked by our barrister were there

any previous complaints and they were adamant they hadn't. It wasn't that they didn't have but they were adamant there weren't any previous complaints. They won the case and we got short notice, the privilege of short notice to the Court in the event that we found an alternative place."[262]

5.1.15 Mr. McKenna's other brother, MM, kept a note of the hearing and provided same to me. That records the parties and their respective representation and the individuals who attended on behalf of St. Michael's House and who gave evidence on its behalf. It records that the Chief Executive Officer, the Divisional Manager and the Clinical Director gave evidence on behalf of St. Michael's House and that Mr. McKenna's brother gave evidence on behalf of the family. It records that the hearing lasted 2½ hours. It then records:

"At the conclusion, the Judge, the President of the High Court, [.....], made an Order stating that Peter was to be moved to Leas Cross from his present whereabouts in The Beeches, Donaghmede, as soon as was convenient. He gave liberty to the Committee to apply at short notice if there was an alternative to be proposed and he would sympathetically consider it.

He stated in the course of his judgment that Peter was moved to the respite home of The Beeches solely as an emergency. There was an urgent need to have him moved as Warrenhouse Road could not longer cope with him. Question arises then should be moved again and if so, to where. The Judge stated that he was satisfied that The Beeches was not a suitable establishment for long period, that there was not a proper place there and that a place was made in the sittingroom as a temporary measure for Peter. He was further satisfied that it was not good for Peter to remain in The Beeches and that his welfare required him to be moved.

Leas Cross had a place available. Judge accepted the criticism of [Mr. McKenna's brother] and [Mr. McKenna's sister] who had inspected the place but weighed this against the expert's view that Leas Cross was satisfactory, that room was available, that liaison exists with Michael's and that clinical backup and support would be available also from St. Michael's.

The Judge's own report from a medical visitor also said that Leas Cross was satisfactory.

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262 Interview with Mr. McKenna's brother, MM, the 7th February, 2008, page 62

The Judge referred to the letter of [the Head of Unit of The Beeches] in which she said that it was 'completely unsafe' and that the clients were at risk from each other. He ruled out The Beeches as place where Peter could stay in even temporarily and ruled that Leas Cross was an acceptable alternative.

He further accepted that as testified, Peter would suffer a temporary deterioration in condition but that this was inevitable".

Previous Complaints

5.1.16 An issue which came up during the interview stage of the inquiry is whether the question of previous complaints was discussed during the hearing before the President.

5.1.17 Mr. McKenna's brother said in his interview on the 7th February, 2008 that the witnesses from St. Michael's House were asked whether there had been previous complaints about Leas Cross and that they answered that there had been no such complaints. He said:

> "..... they were asked by our barrister were there any previous complaints and they were adamant they hadn't. It wasn't that they didn't have but they were adamant there weren't any previous complaints..... I am adamant when they were asked in the court the St. Michael's House side said we are adamant there were no complaints."[263]

5.1.18 Mr. McKenna's other brother said in an interview on the 16th April, 2008 that:

> ".....Evidence was given that St. Michael's had used Leas Cross, that they had always found it satisfactory, that they had not had complaints about it....."[264]

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263 Interview with Mr. McKenna's brother, the 7th February, 2008, page 63-65

264 Interview with Mr. McKenna's other brother, MM, the 16th April, 2008, page 16

5.1.19 However, the Chief Executive Officer does not recall this issue being discussed and believes that he was not asked by the family's barrister whether there had been previous complaints. He said:

> "My understanding is that the judge didn't ask me about complaints, but had he asked me about complaints I would have said to him that I was not aware of any complaints..... He may have asked [the Clinical Director], I can't remember, but I know that [the Clinical Director] has told me that he would have said the same thing as well. So, had I been asked I would have given the answer that I was not aware of any complaints. Yes, absolutely."[265]

5.1.20 The Clinical Director said that he does not remember whether he was asked whether there had been previous complaints[266]

5.1.21 If this issue had to be resolved solely by reference to the recollections of these individuals I would be satisfied that the question of previous complaints was raised at the hearing on the 6th October, 2009 as both the Chief Executive Officer and the Clinical Director both indicated that they did not recall whether the Clinical Director was asked about previous complaints whereas both of Mr. McKenna's brothers stated that this issue was discussed during the hearing. However, it is noteworthy that none of the documents with which I have been furnished as having being prepared contemporaneously with the hearing contain any reference to the question of previous complaints having been expressly raised at the hearing. MM's note which is set out at paragraph 5.1.14 does not refer to such a question having been raised. Nor does an attendance note which was prepared by the family's solicitor which contains the basis of the President's Order (which is set out in paragraph 5.2.1 below). In those circumstances it would be unsafe for me to make a finding of fact as to whether or not this question was raised at the hearing.

5.1.22 However, nor do I think it necessary to resolve this question in circumstances where the witnesses from St. Michael's House for the most part acknowledge that at the

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265 Interview with the Chief Executive Officer, the 15th July, 2008, page 37-38
266 Interview with the Clinical Director, the 2nd July, 2008, page 22

time of the hearing they were not aware of such previous complaints. That is clear from the quote from the Chief Executive Officer's interview in paragraph 5.1.18 above.

5.1.23 There had in fact been previous complaints. The Chief Executive Officer also told me that:

> "I'm aware that there were four complaints. At that time I wasn't aware there were four complaints...."[267]

5.1.24 The physician said that she was not aware of previous complaints at the time of the meeting with the family on the 4th September[268]. She also said that at the time of the decision and up to the date of the actual move she was not aware that there had been any such complaints[269]. She also said that when they were discussing the options for Mr. McKenna, the social work department did not say that there had been complaints about Leas Cross.

5.1.25 The Divisional Manager said that at the time of the decision to transfer Mr. McKenna and the time of the actual transfer he was not aware of any such complaints.

5.1.26 The Clinical Director initially said that he was aware of previous complaints when he was writing his report dated the 15th September. He said:

> "I would have been. It would have been a serious report that I was writing and I wanted to make sure that when I was going to the High Court that whatever was available to me in terms of the suitability of Leas Cross, you know, was made available. That I was making a judgement on the suitability of the unit with full information..."[270]

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267 Interview with the Chief Executive Officer, the 9th April, 2008, page 48
268 Interview with the physician, the 27th March, 2008, page 26
269 Interview with the physician, the 27th March, 2008, page 29
270 Interview with the Clinical Director, the 27th March, 2008, page 64

5.1.27 The Clinical Director then went on to discuss a specific previous complaint. I asked him whether he was aware of that specific complaint at the time. He answered:

> "I would be surprised if I wasn't, that is all I am saying. I cannot recollect it, I honestly don't remember, but I do have a recollect that there were complaints and that none of them actually put my radar up and said, you know, "hold on here, something is really amiss.""[271]

5.1.28 However, at a subsequent interview, the Clinical Director said that he was not aware of the previous complaints at the time of the court hearing and that he "*was subsequently informed that there were complaints, but that they would have been of a very minor nature.*"[272]

5.1.29 The effect of this is that two of the individuals who were centrally involved in deciding upon Leas Cross, the physician and the Divisional Manager, were not aware of the fact that there had been previous complaints when making their decision or when matters came before the High Court for decision. Further, as a result, and possibly also as a result of the witnesses not having been asked whether there had been previous complaints, the President of the High Court was not aware, and not made aware, of the fact of previous complaints having been made.

5.1.30 It seems to me that if the Clinical Director was aware of the existence of the previous complaints, as he initially said, this fact should have been considered as part of the decision-making process, including raising it with the Court. If the Clinical Director was in fact not aware of them it meant that everybody was proceeding on the basis of incorrect information. Furthermore, if he was not aware of such complaints, presumably, given the Clinical Director's emphasis of the seriousness of the report and his desire to ensure that he had the full information to make a judgment on the suitability of Leas Cross and to provide the Court with that information, he inquired as to whether there had been any such complaints and was either not told of any or was told that there had not been any previous complaints.

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271 Interview with the Clinical Director, the 27th March, 2008, page 65

272 Interview with the Clinical Director, the 2nd July, 2008, page 22-23

5.1.31 It has been alleged during the course of this inquiry that there were in fact numerous complaints about Leas Cross and that there was concern about the standards in Leas Cross. Obviously, as a general rule, the more complaints there are the more serious the situation may be. However, I was informed that social workers gave evidence to the Employment Appeals Tribunal in a case which a former employee took against St. Michael's House for constructive dismissal on the grounds of bullying and that they referred to numerous complaints. I have considered the written decision of the Employment Appeals Tribunal in that case. It does not record that such evidence was given although it does record that 2 social workers gave evidence of unhappiness in the Social Work Department at the use of nursing homes. I was also given the name of a social worker who, I was informed, was not happy with standards in Leas Cross. I requested assistance from this individual and she provided same in writing by letter dated the 1st April, 2009 in which she stated that "There were concerns around the care in Leas Cross nursing home but I have absolutely no recollection of specific concerns or incidents in connection to the clients I worked with or any other client"[273]. In those circumstances, I am not making any finding that there were "*numerous complaints*". I find that there were 4 complaints about Leas Cross. There is no dispute about this.

5.1.32 It appears to me to be St. Michael's House's position that none of the 4 complaints were serious and that they were dealt with by St Michael's House and were therefore not of relevance to the decision-making process. I do not accept that position.

5.1.33 The focus of this inquiry is not necessarily the validity or seriousness of the complaints that were made in respect of Leas Cross. What is relevant to this inquiry is how such complaints were dealt with by St. Michael's House and how they fed into the decision-making system because that must form part of the circumstances leading up to the decision.

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[273] Interview with social worker, the 1st April. 2009

5.1.34 The first point in this regard is that it is clear that no consideration was given to these particular complaints by the individuals in St. Michael's House who were centrally involved in the decision-making process because they were not even aware of those complaints.

5.1.35 It seems to me that the individuals who made the decision should not be expected to be aware at all times or on an ongoing basis of all complaints received by St. Michael's House. The question is whether the system of dealing with complaints in St. Michael's House was such that complaints would get fed into the decision-making system so that when important decisions were being made that system took account of the complaints.

5.1.36 I explored how complaints were dealt with in St. Michael's House with a number of individuals from St. Michael's House. The social work department was at that time primarily responsible for processing complaints and presumably feeding them into the system. The information given by the social work department is therefore most relevant although I think it may be helpful if in the first instance I set out what the Chief Executive said in response to a number of questions which I asked in respect of the system which was in place for managing complaints:

> "The system in place was that complaints in relation to respite, either internal or external, were logged with the principal social worker. That would have been at the time [.....] and..... They were the two principal social workers. Or logged with [the Head of the Social Work Department]. Every week they met and they discussed complaints and any complaints that they considered were of a serious nature were brought to the Director of Services by [the Head of the Social Work Department]. So if there were serious complaints, and there were (in and around that time there were serious complaints about issues but not about Leas Cross), they were brought by [the Head of the Social Work Department] to [the Director of Services]. But the four complaints you are talking about were logged by the principal social worker at that time, [.....]. They were followed up and dealt with and the only family who didn't agree that they were finalised was the... family, ... The complaint was that there was food on .... face, one of his wheelchair breaks wasn't on and he hadn't been shaved. The social worker followed up on that complaint

and met with [the Matron of Leas Cross][274]. [The Matron of Leas Cross] explained that he had just had his dinner; he was going for a bath; he had been put outside the bathroom rather than in the bathroom because he liked the company. I know .... very well. [He] is a very disabled man but behind it there is a brightness and he likes company. He was left in the hallway and at that particular point his sister walked in and saw him in that state and was unhappy. They didn't accept the explanation that Leas Cross gave in relation to that but it was followed right through to the bitter end. And they were offered the opportunity to meet with me in relation to it. Now, I wasn't aware of this at the time, but they were offered the opportunity if they wanted to meet with me in relation to it and they didn't take that up".[275]

5.1.37 Following on from this, I asked the Chief Executive Officer who decided whether a complaint is serious and he told me the Head of the Social Work Department and the 2 senior social workers.[276]

5.1.38 Immediately after this I asked the Chief Executive Officer what system was in place to ensure that a series of minor complaints (rather than one serious complaint) would be brought to the attention of St. Michael's House. He answered:

"That's why we used [the Head of the Social Work Department]. It's exactly the same situation with abuse, which is a much bigger issue for a place like St. Michael's House. [The Head of the Social Work Department] is our abuse person. So you use the same person in order that they're getting all of the complaints. So you are not getting some complaints going from [.....], who is one of the principal social workers, some of them going from [the principal social worker responsible for liaison with Leas Cross] to someone else. [The Head of the Social Work Department] was the focal point for the complaints. So if there were a series of complaints coming, she would be aware of that. And that happens and we have instances of that happening where you would have very small instances which you mightn't regard as abuse, but linked to something else she has heard two years ago and you start to put a picture together".[277]

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274 This is an error in the transcript and should refer to the "Matron ".
275 Interview with the Chief Executive Officer, the 9th April, 2008, page 49-50
276 Interview with the Chief Executive Officer, the 9th April, 2008, page 50
277 Interview with the Chief Executive Officer, the 9th April, 2008, page 49-51

5.1.39 The senior social worker who was responsible for liaison with Leas Cross at the time Mr. McKenna was transferred there, having taken over from the individual referred to above the previous June, gave a considerable amount of evidence of what is expected of social workers where they come across concerns in relation to a resident whether in a St. Michael's House facility or an external facility. In relation to the issue of the system of processing or managing complaints I understand her to have said that they were fed in to the two senior social workers who then met with the Head of the Social Work Department on a weekly basis. She said:

> ".....But obviously if I had formal complaint, I would have made her aware. Because she and the principals at the time met regularly, to do all kinds of things, but included in that process would be reviewing what was happening in everybody's case loads. Because everybody reported to somebody else and it was your responsibility to pass on information and it was your senior's responsibility to pass it on, and also then to pass it back down again. So judgments were made and referred back down. And obviously some people were very tenacious and very dogmatic and would not take no for an answer. So it depended very much on the nature of what was happening."[278]

5.1.40 That seems to have been part of the overall system of reporting rather than specifically for the purpose of bringing complaints to the attention of the system. It also seems clear from this senior social worker that there was no formal protocol or policy as to how and when complaints were fed into the system although Social Workers knew how to deal with such complaints. Finally, it is clear from her that how a complaint was dealt with came down to the individual social worker's judgment of how serious that complaint was. That is clear from the senior social worker who had previously been responsible for liaison with Leas Cross.

5.1.41 She described the system in the following terms:

> "But our system was that -- we had a formal reporting system in the social work team at the time, so I had seven social workers, I met them all for two hours once a month. We kept

[278] Interview with the senior social worker, the 16th April, 2008, page 21

> minutes of those meetings and I had a file for each social worker and each month's minutes were in it, and I could track things that happened from one month to the next. And then every Wednesday afternoon [the other identified principal social worker], [Head of the Social Work Department] and I met and we went through all the different issues, concerns, whatever it was that we were dealing with, and [the Head of the Social Work Department] would give us advice and she would decide which was one she would notify, whether it was [the Chief Executive Officer] or [the Director of Services] or [the Divisional Manager] or whoever it would be about. So what I would say is that we had a structure with the system, our system was the reporting system and that's how the things fed, the issues fed up and down."[279]

5.1.42 I asked this senior social worker how a series of low level complaints would feed into the decision-making system and whether there was a mechanism by which the head of the social work department would be aware, when it came time to decide upon using a particular nursing home, that there had been low-level complaints. She confirmed that even such low-level complaints would have been discussed at the weekly meeting.

5.1.43 She also said that the relevant social worker would attempt to resolve complaints at a local level[280] but that even low-level complaints which had, in the social worker's view, been resolved would be discussed at the weekly meeting[281].

5.1.44 Given the contents of this information I find it difficult to understand how the decision-makers were not aware of these previous complaints. I think it is important to acknowledge the point made by St. Michael's House that in their view these complaints were not serious and in fact were for the most part resolved. However, the decision-makers were not aware of the previous complaints, serious or not. It seems to me, therefore, that it must follow that the decision-makers and later St. Michael's House management either did not inquire as to whether there had been previous complaints or that they inquired and were not told of the existence of such complaints. That is a clear systems failure.

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279 Interview with the senior social worker responsible for liaison with Leas Cross, the 18th April, 2008, page 22
280 Interview with the senior social worker responsible for liaison with Leas Cross, the 18th April, 2008, page 26
281 Interview with the senior social worker responsible for liaison with Leas Cross, the 18th April, 2008, page 39

5.1.45 However, it does not follow that this systems failure led to a decision which would not have been made if the decision-makers or the President were aware of the correct facts. It has been emphasised to me that these complaints were not serious complaints. This has been expressed in a number of different ways. The Clinical Director said that none of the complaints "*actually put my radar up and said, you know, "hold on here, something is really amiss.*"[282] The senior social worker who had been responsible for liaison with Leas Cross said:

> "I would say I suppose, I mean -- my feeling is that there was one complaint and there were three issues, and I am not trying to minimise the things that happened, but I suppose that is how I would have categorised it."[283]

5.1.46 My understanding is that this senior social worker was distinguishing between the issues/complaints based on the level of formality with which they were pursued by the respective families rather than the seriousness of the issues. It is clear that she did not consider any of the complaints or issues to be serious.

5.1.47 As stated previously, I do not consider that it is within the scope of this inquiry to assess whether these complaints were serious or not or to assess whether St. Michael's House belief that they were not serious is correct. That would involve this inquiry examining in detail complaints which are not the subject of this inquiry.

5.1.48 St. Michael's House accepts that 4 complaints had been received about Leas Cross and I have concluded that they were not considered by the decision-makers or the President of the High Court. The decisions were therefore made on the basis of partial information only. However, in light of the fact that St. Michael's House and the Court were made aware of what the family had seen when they visited Leas Cross, it seems likely that St. Michael's House and the Court would have made the same decisions even if they had been aware of these previous complaints.

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282 Interview with the Clinical Director, the 27th March, 2008, page 65

283 Interview with the senior social worker responsible for liaison with Leas Cross, the 18th April, 2008, page 23

5.2 ORDER OF THE HIGH COURT

5.2.1 The President made an Order in respect of the transfer of Mr. McKenna following the hearing on the 6th October, 2000. I have not been furnished with a copy of the actual Order. I have been given a copy of the family's solicitor's attendance and a copy of Mr. McKenna's brother MM's note of the ruling of the President. It appears that the President held that the move from Warrenhouse Road to The Beeches had been motivated by Mr. McKenna's interest and by caring intent and had been carried out in an emergency/crisis situation and had been intended to be temporary. He accepted that the move may have been perceived as a slight on Mr McKenna's family but that it was never intended as such. The President went on to consider the proposed move to Leas Cross and made a number of findings, some of which I have addressed. He is recorded by the family's solicitors as having found:

> "1. The Beeches is no more than a respite;
> 2. Extra place had to be made for Peter at The Beeches;
> 3. That the putting of Peter into the sittingroom was a temporary measure;
> 4. That other clients in The Beeches meaning the best were trying to involve Peter and this caused him some difficulty;
> 5. That Peter's welfare provided that he be moved;
> 6. Leas Cross is available to him where he would have the advantage of St. Michaels back-up;
> 7. Judge Morris further found that the Medical Advisor, [.....], visited Peter and was aware of Leas Cross and recommended it;
> 8. He found that it was urgent that Peter be moved forthwith and he made an Order on this basis;
> 9. In doing so, however, he did provide that the family may make an application to him at short notice to have Peter moved if they find an establishment which they feel would be better suited to Peter's needs".

5.2.2 Mr. McKenna was moved to Leas Cross on foot of this Order on the 10th October. However, a number of events occurred before that move. St. Michael's House has

made the point on several occasions that the decision of the President constituted in fact the decision to transfer Mr. McKenna to Leas Cross Nursing Home, i.e. the decision which is the focus of this inquiry. As explained above, it seems to me that that decision was only finalised when it was actually executed. The circumstances and events leading up to the actual transfer between the 6th and the 10th October therefore require to be considered.

6. EVENTS BETWEEN 6TH AND 10TH OCTOBER

6.1 DIRECTION THAT ALTERNATIVE PSYCHOLOGIST AND SOCIAL WORKER BE APPOINTED

6.1.1 Immediately after the decision of the President, the Chief Executive Officer directed that an alternative psychologist and social worker be appointed to look after Mr. McKenna's care in Leas Cross. It will be recalled that a psychologist and social worker had been appointed to assist the family in their efforts to locate an alternative nursing home placement. I understand that the Chief Executive Officer went straight to the airport from the High Court and that this direction was dictated by him over the telephone from Heathrow Airport[284]. He referred in one of our meetings to having dictated 2 memoranda, one to the Head of Psychology, and the other to the Head of the Social Work Department. I have only seen one memorandum, which was addressed to both the Deputy Chief Executive Officer and the Director of Services. The Head of Psychology stated in submissions dated the 20th May, 2009 that the only memo which he received from the Chief Executive Officer was the earlier one of the 27th September. I presume that the Chief Executive Officer was actually referring to the memorandum to the Deputy Chief Executive Officer and the Director of Services. I think that it is safe to do so because the Chief Executive Officer went on to say during the course of an interview on the 15th July, 2008 that:

> ".....I issued a dictate when I was in London on the day of the court case, which is extremely unusual because in St. Michael's House you very rarely can issue dictates because there are always other issues. I also rang the deputy CEO from London to explain the importance of the appointment. I understand [the Head of the Clinic] was advised of same. So [the Deputy Chief Executive Officer] advised [the Head of the Clinic]...."[285]

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284 Interview with the Chief Executive Officer, the 9th April, 2008, page 44-45
285 Interview with the Chief Executive Officer, the 15th July, 2008, page 108

6.1.2 The memorandum that I have seen, as stated above, is addressed to the Deputy Chief Executive Officer and copied to the Director of Services, is dated the 9th October and reads:

> "Now that the Courts have decided that Peter should be based in Leas Cross I feel that it would be appropriate that we would appoint an alternative psychologist and social worker to look after Peter's care in Leas Cross.
>
> I would expect that this change will be made with the same speed that it was possible to appoint a psychologist in the first place."

6.1.3 There was some discussion as to why the Chief Executive Officer felt that it would be more appropriate to appoint an alternative psychologist and social worker. He explained that he had a previous experience where a social worker had been appointed to support a family in respect of a service-user's proposed transfer to an acute hospital and continued to support them after the transfer. The Chief Executive informed me that the social worker had subsequently told him that in his view it had been a mistake for him to have been asked to support the family after the transfer. The Chief Executive said:

> ".....he said to me that it was a mistake to have the same social worker supporting the person after the move had taken place. Because there had been a level of difficulty in relation to the move and he felt it made his relationship with them more difficult afterwards. And he recommended to me that I should, if ever that situation arose again, appoint a separate social worker for the support afterwards."[286]

6.1.4 The Chief Executive Officer also explained in respect of the psychologist and social worker who had previously been appointed that:

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[286] Interview with the Chief Executive Officer, the 19th April, 2008, page 25

"Both [.....] and [.....] were south side clinicians[287], working from the headquarters in Goatstown; so both of them were on the south side. The family lived on the south side and they actually met the family in Goatstown. They were specifically appointed to support the family in the selection of the nursing home, which was a short-term task; okay. They would not have been appointed to a north side caseload, particularly given the shortage of clinicians. Peter's psychologist was on maternity leave. The house was being covered by the head of the social work department on an emergency basis. I was anxious that an alternative arrangement needed to be put in place as I had given a commitment to the family. I issued a dictate when I was in London on the day of the court case, which is extremely unusual because in St. Michael's House you very rarely can issue dictates because there are always other issues. I also rang the deputy CEO from London to explain the importance of the appointment. I understand [the Head of the Clinic] was advised of same. So [the Deputy Chief Executive Officer] advised [the Head of the Clinic]. Because of the commitment for the clinical back-up, and I also advised you previously of the best practice advice that I had been given by [redacted], that it should be a different person. Okay. And that's the reason. It is as simple as that. I requested both an additional or an alternate social worker and an alternate psychologist."[288]

6.1.5 I explored this issue with the Head of Psychology. I explained that one of the reasons why the Chief Executive Officer wanted to have an alternative psychologist appointed was that it would be more appropriate to have a different psychologist appointed in circumstances where the psychologist had been appointed for a particular purpose. The Head of Psychology's response was that he would have debated that rationale with the Chief Executive Officer if he had had an opportunity to do so[289]. He also said that he would have seen a number of reasons for maintaining the same person but did, however, concede that the Chief Executive Officer may have had other reasons. The senior psychologist who had been appointed by the Head of Psychology in early September and subsequently appointed to support the family in their efforts to locate an alternative nursing home, shared the Chief Executive Officer's view that she should be replaced[290] although

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287 In fact, the Social worker made clear in her submissions that she was not based in Goatstown at that time but was based in the Ballymun office.

288 Interview withthe Chief Executive Officer, the 15th July, 2008, page 108-109

289 Interview with the Head of Psychology , the 11th June, 2008, page 14

290 Interview with the psychologist, the 26th March, 2008

there is nothing to suggest that there was any conversation in relation to this question between the Chief Executive Officer and the psychologist at the time.

Effect of removal of psychologist

6.1.6 The relevance of the Chief Executive Officer's instruction is that I have been informed by the senior psychologist that she was in fact told that she was not to visit Mr. McKenna in Leas Cross. She said:

> "When Peter moved to Leas Cross I had been told that I was not to visit Leas Cross, by, my memory was, by the Head of the Clinic, [.....]I, and I think I was also told by [the Head of the Social Work Department], because [the Head of Psychology], I don't know, was on holidays or off campus, that was the week I think that Peter had gone into hospital, then into Leas Cross. And I wasn't happy about that and I said I would wait and see, that I would talk to [the Head of Psychology] when he came about back."[291]

6.1.7 The senior psychologist expanded on her account of conversations which she had with those individuals in her submissions to the inquiry following the circulation of the draft report. She described her conversation with the Head of the Social Work Department as being conversational in tone with the Head of the Social Work Department querying whether she was aware that she was not to visit Mr. McKenna rather than directing or instructing her not to do so. She explained that the Head of the Clinic indicated to her that she should not visit Mr. McKenna in Leas Cross and that, as she was the Clinic Manager and Line Manager to the Head of Psychology, the senior psychologist took this as a direct instruction.

6.1.8 When I asked the senior psychologist why she was told that she was not to visit Mr. McKenna in Leas Cross she said that she had not been given a reason by either of the individuals referred to in the above quote[292]. She went on to say that she had subsequently raised this with the Head of Psychology after he returned to campus.

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291 Interview with the Psychologist, the 26th March, 2008, page 17-18

292 Interview with the Psychologist, the 26th March, 2008, page 18

She explained that she raised the issue of her being directed not to visit Mr. McKenna in Leas Cross with him, that he reverted to her a few days later after he had spoken with the Chief Executive and that he told her that she could visit Mr. McKenna and that he explained why she had been directed not to visit Mr. McKenna. The senior psychologist said that:

> "....my understanding from that explanation was that they felt that I was basically in a position to communicate back to the family issues that they weren't happy about, I think."[293]

6.1.9 It is important to note at this stage that while the Head of Psychology does remember having a discussion with the Head of the Clinic in or around the 17th/18th October during which she advised him that the Chief Executive Officer was instructing that the senior psychologist should no longer work with Mr. McKenna or his family but not that an alternative psychologist should be appointed and he does not recall the Head of the Clinic directing that the senior psychologist was not to visit Mr. McKenna in Leas Cross. The Head of Psychology said:

> "Yes, well, there was a memo written not to me, but to the two Deputy CEOs I think on 9th October, and I never saw that memo until a couple of years later. Around about 18th October [.....], ... the Clinic Manager, spoke to me about that. What she conveyed to me was simply the first half of it, that [the senior psychologist] should be pulled from the task. My response was I just wondered what [the Chief Executive Officer's] thinking on it was. As far as I know he was away, he was in Hong Kong or somewhere, so I said to [the Head of the Clinic], 'look, I know [the Chief Executive Officer] is back on Monday', which turned out to be the day after Peter died, and I said I would like to talk to him about his reasoning on it because this is the first time that I had ever got a directive from the CEO to remove somebody from a case. So I just thought a matter of two or three days that we could discuss it[294]".

6.1.10 The Head of Psychology explained that he never found out why the Chief Executive Officer wanted the senior psychologist to be taken off the case but went on to explain that:

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293 Interview with the senior psychologist, the 26th March, 2008, page 18
294 Interview with the Head of Psychology , the 11th June, 2008, page 12

"It was mysterious to me really. I did have a conversation with him at some time, probably it may have been much later or it may have been during that period of late September before he went away, that he felt that something he said had been communicated to the family rather directly, but he didn't tell me what was coming back to him except to say that he thought it was pretty verbatim... I just wondered if that was the reason, but I am not sure."[295]

6.1.11 The Head of Psychology's recollection of the discussion with the Head of the Clinic in relation to the Chief Executive Officer's memorandum of the 9th October is consistent with the quote from the Chief Executive Officer which is set out above, that is that the senior psychologist should simply be replaced rather than told that she should not visit Mr McKenna in Leas Cross.

6.1.12 I also raised this issue with the Head of the Clinic and the Head of the Social Work Department, both of whom are referred to in the passage from the senior psychologist set out above. Neither the Head of the Clinic nor the Head of the Social work Department have any recollection of having told the senior psychologist that she was not to visit Mr. McKenna in Leas Cross. Both of them also made the point that such a direction would normally come from the relevant Head of Department, in this case the Head of Psychology,[296]. I cannot conclude definitively that either the Head of the Clinic or the Head of the Social Work Department told the senior psychologist that she was not to visit Mr. McKenna in Leas Cross although it must be noted that while the senior psychologist has a very clear memory of these conversations neither the Head of the Clinic nor the Head of the Social Work Department have a recollection of same.

6.1.13 The Chief Executive Officer told me that he had no difficulty whatsoever with the senior psychologist visiting Mr. McKenna in Leas Cross and in fact would have

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[295] Interview with the Head of Psychology , the 11th June, 2008, page 12-13. The Head of Psychology, in submissions dated the 20th May, 2009 after the circulation of the extracts from the draft report, stated that the earliest contact and discussion he had with the Chief Executive Officer was on the 25th October.

[296] Interview with the Head of the Clinic, the 20th June, 2008, page 10 and interview with the Head of the Social Work Department, the 9th July, 2008, page 13-14

supported this and that he told the Head of Psychology this when they discussed the matter. The relevant point is that according to the Chief Executive Officer he did not have a difficulty with the senior psychologist visiting Mr. McKenna and that she in fact contacted Leas Cross on the 18th/19th October to arrange a visit.

6.1.14 In the circumstances, I cannot conclude that the senior psychologist was actually told that she was not to visit Mr. McKenna in Leas Cross. She was either told that she was not to visit Mr. McKenna in Leas Cross or whatever communication was received by her was understood by her to mean that she was not to visit Mr. McKenna in Leas Cross. It seems to me, for example, that if the senior psychologist was told that she was to be replaced or in the words of the Head of Psychology that she was to "*be pulled from the task*" that she could understand that to mean that she was not to visit Mr. McKenna in Leas Cross rather than simply that she was no longer to be supporting the family.

6.1.15 Notwithstanding the Chief Executive Officer's direction in his memorandum of the 9th October that the change in personnel should be made "*with the same speed that it was possible to appoint a psychologist in the first place*" (2 days) an alternative psychologist was not appointed between the 9th October and the date of Mr. McKenna's death, the 22nd October. The Head of Psychology stated clearly in submissions that the instruction to appoint an alternative psychologist was never communicated to him. It seems to me that the effect of the senior psychologist being removed (whether she was informed that she was not to visit Mr. McKenna in Leas Cross or not) and the failure to have a replacement appointed was that Mr. McKenna did not have the support of a psychologist in Leas Cross.

6.2 ATTENDANCE AT BEAUMONT ACCIDENT & EMERGENCY 9TH OCTOBER

6.2.1 The second event that occurred before Mr. McKenna was transferred to Leas Cross is that he had to be taken to Beaumont Hospital Accident & Emergency on the 9th

October, 2000. This is recorded in the nursing notes for The Beeches as having come about as follows. The staff became concerned at 7.20am on the 9th October as he appeared to have developed retention of urine. The staff contacted the physician by telephone who felt that he had probably developed onchronic retention of urine as part of his ongoing neurological condition and referred Mr. McKenna to Accident & Emergency.

6.2.2 Mr. McKenna was accompanied to Accident & Emergency by a nurse in The Beeches. He spent most of the day in Beaumont where he was diagnosed with retention of urine, was catheterised and prescribed an antibiotic Ciproxin and Omnic because of his retention before being discharged. He returned to The Beeches later that evening, the 9th October. I learnt from the documents that Mr. McKenna was passing blood into the urine bag and that this had been noted in Beaumont and was felt to be secondary to his chronic retention of urine.

6.2.3 The physician contacted The Beeches on the morning of the 10th October and was advised of the details of the previous day as set out in the previous paragraph. I am informed by the physician that she told the Head of Unit of The Beeches to ensure that Mr. McKenna received adequate fluids, analgesia and to monitor his blood pressure in view of his new drug. There appears to have been some uncertainty about when Mr. McKenna was to be reviewed in Beaumont and the physician undertook to contact Beaumont in this regard. When she contacted Beaumont she was advised that Mr. McKenna had an outpatient appointment on the 12th October, 2000. The physician then contacted The Beeches and told the Head of Unit of The Beeches of the out-patients appointment. She also asked the Head of Unit to confirm whether Leas Cross would take Mr. McKenna with the catheter in situ or whether they would prefer to wait until after the out-patient appointment 2 days later. The physician asked the Head of Unit of The Beeches to ensure that Leas Cross were aware of this appointment on the 12th October.

Contact between St Michael's House and Leas Cross

6.2.4 The Head of Unit of The Beeches informed me that she contacted Leas Cross and explained Mr. McKenna's condition to the Matron in Leas Cross. She was told that Leas Cross would still take Mr. McKenna[297]. The Matron of Leas Cross does not remember such contact.

6.2.5 The Head of Unit of The Beeches agreed to arrange an ambulance for a transfer later that day. She confirmed to the physician that Leas Cross were prepared to take Mr. McKenna in his current condition. She also contacted Mr. McKenna's brother to invite him to travel with Mr. McKenna. Mr. McKenna's brother declined to do so. The Head of Unit of The Beeches said:

> "I would have been speaking to [the physician] in relation to how Peter was, that he had been discharged, that they weren't sure at the time whether Peter had to go back and [the Physician] got on to the team in Beaumont. I would have also spoken to ....., who was the Divisional Manager in relation to the transfer to Leas Cross. And then I also rang [the Matron of Leas Cross] to see could Peter still be transferred. We did ask, you know, in light of the fact that he now had a catheter, that he had had the urinary retention, were they still going to be able to facilitate Peter in a move there and she had said yes. So, again, I would have got on to the managers, got on to [the physician]. I would have got on to the family and informed the family that, yes, Leas Cross have said they will still move ahead. I mean, the previous day obviously when Peter was in Beaumont, I would have contacted the family to let them know, you know, obviously with Peter being in hospital, he wasn't transferring that day."[298]

6.2.6 There is no doubt that the development of retention of urine and the insertion of a catheter by the clinic in Beaumont Hospital on the 9th October, 2000 constituted an added medical issue to Mr. McKenna's list of conditions. It obviously had implications for whatever placement he was in as it increased the care that he needed. It was, therefore, necessary to ensure that any proposed placement could

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297 Interview with the Head of Unit of The Beeches, the 2nd of April, 2008, page 21.
298 Interview with the Head of Unit of The Beeches, the 2nd April, 2008, page 21

address his increased needs. I understand that it was for this purpose that the Head of Unit of The Beeches says that she contacted the Matron of Leas Cross on the morning of the 10th October. Unfortunately, it is impossible for this inquiry to conclude definitively whether or not the Head of Unit contacted Leas Cross. While the Head of Unit has a very clear memory of having done so, the Matron does not remember this phone call.

6.2.7 However, I do not believe that the development of retention of urine or the insertion of a catheter were such as require a fresh application to the President of the High Court provided Leas Cross was prepared to accept Mr. McKenna and could provide appropriate care. The question therefore of whether Leas Cross was contacted is on the one hand very significant. However, on the other hand, the Matron did become very aware upon Mr. McKenna's arrival in Leas Cross of his condition and was prepared to accept him.

Effect of changes in Mr McKenna's condition between 15th September and 10th October

6.2.8 A similar issue arises in relation to Mr. McKenna's condition between the 15th September and the 6th October, 2000. The Clinical Director prepared his report which grounded the application to the President on the 15th September. The Court appointed medical visitor, prepared his report on the 22nd September. These reports formed the documentary evidence before the President on the 6th October. Obviously, neither of these reports referred to the syncope attack on the 30th September as they pre-dated that event. However, it must be borne in mind that the correspondence between the parties had been copied to the Wards of Court Office (including the letters dealing with the syncope attack). The Court was, therefore, aware of this event.

6.2.9 It has been suggested that this event may have changed the Court appointed medical visitor's conclusion. It is impossible to know whether or not it would have had that effect. It has also been suggested that Mr. McKenna's condition had

changed from the time of St. Michael's House's original decision and that there should have been an active review following this syncope attack.

6.2.10 I accept that the syncope attack (and indeed the retention of urine which came later) were not unusual occurrences in the context of Mr. McKenna's condition and the prognosis for same and I find that they in themselves did not require a change in approach on the part of St. Michael's House. I also accept that Mr. McKenna's case was under constant consideration within St. Michael's House during this period. Of course, as stated above, these events and Mr. McKenna's deterioration raised issues in relation to the suitability of Leas Cross which had to be considered by St. Michael's House.

6.2.11 It has also been suggested that Mr. McKenna's condition had deteriorated to such an extent that he was gravely ill and should not have been transferred.

6.2.12 As previously stated, I availed of the expertise of a consultant in geriatric medicine. The substance of this consultant's evidence was that in late September/early October Mr. McKenna was in the last few months of his life. He said that this period could last up to 12 months but that it would not be particularly surprising if that was considerably shorter than the full 12 months.

6.2.13 My understanding of this consultant's evidence is that it was not clear from the nursing notes from The Beeches, which he complimented, that Mr. McKenna was likely to die within a short period of time but that he was certainly very ill. He also made the point that Mr. McKenna was examined in an acute hospital on the 9th October, 2000 and was not retained in the hospital. This suggests that Mr. McKenna was not immediately terminal at that point in time.

6.2.14 I am satisfied that while Mr. McKenna was, of course, very ill in early October and his condition was undoubtedly deteriorating and could rapidly deteriorate, Mr. McKenna was not "*gravely ill*" in the sense that he might pass away within a very

short period of time on either the 6th October or the 9th October, 2000. However, I am also satisfied that the onset of grave illness and deterioration would not be an unexpected development. His condition was not such as to warrant a decision by St. Michael's House not to transfer him in circumstances where they were of the view that such a transfer was essential.

7. TRANSFER TO LEAS CROSS

7.1 I emphasised at the beginning of this report that I did not consider the Terms of Reference to encompass an inquiry into the care that was provided to Mr. McKenna in Leas Cross per se or into the cause of Mr. McKenna's death. I also emphasised that a consideration of the decision to transfer Mr. McKenna and the circumstances leading up to that decision, which are the focus of this inquiry, can not be divorced from a consideration of what happened following his transfer. For that reason I must consider the actual transfer and the handover of Mr. McKenna's care and, to some extent, his time in Leas Cross.

7.2 HANDOVER

7.2.1 That transfer occurred later that day, the 10th October, 2000, at approximately lunch-time. The physician did not see Mr. McKenna immediately before his transfer due to other unavoidable professional commitments in St. Michael's House on the 10th October. I understand that the physician asked the Head of Unit of The Beeches to go to Leas Cross with Mr. McKenna to give a detailed handover to Leas Cross regarding his medical condition and the treatment commenced by Beaumont Hospital. The physician also asked the Head of Unit of The Beeches to bring any copies of the physician's letters plus copies of the recent nursing notes and any letter from Beaumont Accident & Emergency and a copy of Mr. McKenna's drug cardex.

7.2.2 Mr. McKenna was accompanied to Leas Cross in an ambulance by the Head of Unit of The Beeches. Another nurse from The Beeches followed in her own car. The Head of Unit of The Beeches described the hand-over which occurred in Leas Cross as follows:

"When we arrived in, it was lunchtime and I suppose most of the residents were down in the dining room having dinner. We were met first by [.....], the Matron. We were brought in and we were asked had Peter had lunch, which we explained he hadn't, and we were brought down to the dining room where people were eating. We were introduced to a staff member down there and we were also introduced to a kitchen staff member. They came out and asked what Peter would like to eat, how he normally took things, and we explained that to them there. They gave Peter his lunch while [the Matron] would have shown us around and where to bring Peter's -- obviously, we had brought Peter's belongings -- the room to bring them to. So that would have been that part initially. Then obviously when we had brought in the belongings, we sat down and there was, like, a conservatory at the front and there was a seating area and we sat down with [the Matron] there and went through all of Peter's, I suppose, all his activities of daily living, how Peter ate, how he drank, how he was mobilised, his incontinence -- well, not his incontinence because he had a catheter at that stage. We went through what had happened the day before. We went through the catheter having blood in it, how the hospital -- how that had been, I suppose, highlighted to the hospital; they were aware of it. At that stage, we knew he had an appointment on the Thursday morning in Beaumont -- and then through all the paperwork that I brought with me. I would have brought medical report, the cardex, his nursing notes from before the 30th so they could actually see what had happened on the 30th of September. There was a sheet from the dietician that highlighted the calorific needs as such that Peter took on daily basis. Then there was also an activity list that I brought because it showed the things that Peter liked to do. They would have been there and I would have gone through each one of them individually with [the Matron]."[299]

7.2.3 The nurse from The Beeches, who accompanied Mr. McKenna and the Head of Unit of The Beeches, described the handover in similar terms:

"Absolutely. What can I remember from eight years ago? I arrived there, I think we arrived there around lunchtime and we were met by the Matron, [.....]-- she met us at the front door, greeted us and greeted Peter. She mentioned had Peter eaten and we said he hadn't. So we brought Peter up to the dining area and at that point we met care staff who said to us, you know, how does Peter -- what does he like to eat? The lunch was actually over in Leas Cross so they were making up something for Peter. We basically told her what Peter could do and what couldn't do and what he would like. At that point [the Matron] then said, from what I can remember, 'leave Peter here with the care staff and we'll go up and see Peter's room'. So she pointed us towards Peter's room which was upstairs in Leas Cross. We saw the room. At that point [the Head of

[299] Interview with the Head of Unit of The Beeches , the 2nd April, 2008, page 22-23

Unit of The Beeches] and I decided we would get all his stuff in from the car because I brought all his stuff in the car. So [the Head of Unit of The Beeches] and I went back down I think to get the stuff and brought it up to Peter's room go down. At that point [the Matron] said we will go down and do the hand over. So brought us to the front part, which is the conservatory in Leas Cross. So we did the full hand over there with [the Matron] together."[300]

7.2.4 The Matron's memory of this handover differs from these accounts. Firstly, as stated above, she does not recall there being telephone contact from the Head of Unit of The Beeches earlier that morning to confirm that Leas Cross would still take Mr. McKenna[301]. Secondly, the Matron said that a different nurse took the handover and in fact believes that she, the Matron, may not have been there at the time[302]. The Matron explained that while she did not meet the Head of Unit of The Beeches on the 10th October, she did meet her another day, the 12th October and that she was accompanied on that day by another nurse also. The Head of Unit of The Beeches did in fact visit on the 12th October but my information is to the effect that she visited with another service user rather than another nurse[303]. Another nurse from St. Michael's House was in Leas Cross that day because she accompanied Mr. McKenna from Leas Cross to Beaumont Outpatients but she was not with the Head of The Beeches[304]. It is possible, therefore, that the Matron is mistaken about the different days. On the 2nd April, 2008 the Head of the Beeches recalled another nurse being involved in the hand-over at one stage but was clear that she gave the handover to the Matron[305]. However, the Head of Unit of The Beeches suggested at an interview on the 23rd June, 2008[306] that it is possible that the Matron of Leas Cross did not take the handover. The Leas Cross nursing notes which appear to have been taken at the time of the handover appear to be initialled by a nurse other than the Matron.

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300 Interview with the nurse who accompanied Mr. McKenna to Leas Cross, the 11th July, 2008, page 4-5
301 Interview with the Matron of Leas Cross, the 28th April, 2008, page 19
302 Interview with the Matron of Leas Cross, the 28th April, 2008, page 19
303 Interview with the Head of Unit of The Beeches, the 2nd April, 2008, page 25
304 Interview with the Head of Unit of The Beeches, the 2nd April, 2008, page 22
305 Interview with the Head of Unit of The Beeches, the 2nd April, 2008, page 23
306 Interview with the Head of Unit of The Beeches, the 23rd June, 2008, page 20

7.2.5 I interviewed this other nurse during the course of the inquiry. She does not remember the handover but did confirm when I showed her the notes which constitute the handover or admission notes that they were written and initialled by her. However, she also explained that those notes could have been written up later rather than during the course of the handover. I have seen the Leas Cross staff roster for the 10th October, 2000 and it confirms that this nurse was on duty on that day.

7.2.6 I cannot resolve this dispute but on balance it appears likely that all 4 nurses were present at and involved in the handover to some extent. However, given that the nursing notes were completed and initialled by that other nurse , it appears to be more likely that the handover was formally given and taken by her. It is surprising to me that there should be a disagreement in relation to something as fundamental and formal as a handover of care.

Adequacy of the handover

7.2.7 However, the real issue is the adequacy of the handover that was given rather than to whom it was given. I am satisfied that while there were four shortcomings in the handover, the handover was adequate in the sense that there was no substantive or material deficiencies in the contents of the handover which would have prejudiced Mr. McKenna's care.

7.2.8 I formally requested copies of all documents which had been held by Leas Cross in respect of Mr. McKenna from the Statutory Commission of Investigation (Leas Cross Nursing Home). The Chairman of the Statutory Commission very kindly afforded me this assistance. I have considered these documents. They include a number of documents which must have come from St. Michael's House and they are very likely to have been given to Leas Cross by St. Michael's House at this handover. The documents which were given to me by the Statutory Commission include 2 medical reports prepared by the physician and both dated the 4th October, 2000 but which

differ in some respects. The documents also include a guide to Daily Eating Plan prepared by St. Michael's House, a Daily Routine Report dated the 21st September, 2000, and a drugs cardex from The Beeches. Four shortcomings in the handover are apparent from these documents.

(i) Firstly, the differences between the 2 medical reports referred to above had the potential to cause confusion. The reports differ in that while they are both dated the 4th October, 2000 one of them includes "*Constipation*" and "*Past history of urinary retention*" under the heading "*Diagnosis*" and "*Centyl K one mane*" and "*Duphalac PRN*" under the heading "*Current Medication*" and the other does not. The physician has explained that she prepared her original medical report on the 4th October and that after Mr. McKenna's visit to Beaumont on the 9th October, she asked her secretary to update the report by adding the above matters. Unfortunately, the date on the report was not changed.

(ii) Secondly, neither of these medical reports fully describe or deal with Mr. McKenna's attendance at the Accident and Emergency on the 9th October, the day before his transfer or with his diagnosis of retention of urine. The updated report simply says that Mr. McKenna has "*Past history of urinary retention*".

(iii) Thirdly, the Daily Routine Report and the guide to daily eating plan which were given to Leas Cross do not refer to the fact that by the 10th October, 2000 Mr. McKenna could only take thickened fluids and liquidised foods. The issue of the necessity for thickened fluids is significant to Mr. McKenna's hydration which I deal with below.

(iv) Fourthly, Mr. McKenna had been prescribed Ciproxin and Omnic in Beaumont Hospital. These were not properly listed on the drugs cardex which was given by St. Michaels House to Leas Cross. They were in fact listed on a "post-it"

which was stuck to the cardex. The explanation that was given as to why these drugs had not been entered onto the drugs cardex is that the physician could not get to The Beeches to write up the cardex before Mr. McKenna was transferred to Leas Cross on the morning of the 10th October due to having to attend a clinic in Ballymun.

7.2.9 The validity of the decision by St. Michaels House could be justifiably criticised on the basis of an inadequate handover of Mr. McKenna's care. There is no doubt that these are shortcomings in the handover and they should not have occurred. However, these particular shortcomings and their significance must be assessed by reference to the nursing notes which were taken at the handover itself. Those notes state:

> "The 60 year old man was admitted from Beaumont due to acute urinary retention. Catheter in situ – haematuria – acc to SMH staff. Beaumont aware of same. Presently on ciproxin 250mg BD x5/7 & omnic T mane x 1/52. Peter has downs syndrome and Alzheimers dementia – end stage. He is currently dependent for all his needs. He is confused and can become agitated at night time – please leave light on in room. On Sat 30 Sep '00 he had recurrent episodes of transient loss of consciousness – in view of his heart block he has a tendency to develop hypotension – suggestive of syncopal attacks. He requires high dependency nursing. Recently his appetite has deteriorated – he can only have thickened fluids and liquidised foods. Apparently has superficial wound on r side of buttock – spirion spray to be applied. May get agitated @ times – prescribed valium PRN. At nightime may become agitated – sometimes it can be relieved by turning him . High risk pressure area – ripple bed mattress in situ. Observations on admission – T.36.7° P – 64 Resp – 16 B/P 125/65."

7.2.10 The notes also recorded that Mr. McKenna had an appointment in OPD the following Thursday, which was the 12th October, 2000.

7.2.11 It is clear, therefore, that Leas Cross were given and noted the updated details of Mr. McKenna's current condition and needs notwithstanding the shortcomings in the handover. It would obviously be preferable if the documentary handover had not

suffered from these deficiencies but I can not conclude that these deficiencies caused prejudice or shortcomings in Mr. McKenna's care in Leas Cross.

7.2.12 One issue which is not recorded in the handover notes as having been covered in the verbal handover is a recommendation by the physician to the Head of Unit of The Beeches that fluids "be pushed" in light of Mr. McKenna's condition. This is a further deficiency in the handover.

7.2.13 The necessity for fluids was important and highlights the desirability for a full written handover because this should be recorded in the handover notes. However, the necessity to ensure that Mr. McKenna receive adequate fluids would have been well within the knowledge of the nursing and medical staff of Leas Cross. In addition, Leas Cross were provided with a copy of nursing notes from The Beeches. These notes record on the 9th October that fluids were to be pushed. Furthermore, Leas Cross notes record that the urologist in Beaumont Hospital advised on the 12th October that fluids should be encouraged. Furthermore, the Head of Unit of The Beeches stated in a letter to the Chief Executive Officer dated September 2005:

> "I also highlighted that fluids needed to be pushed due to his current condition and also highlighted the fact that the doctor in A & E had suggested that sub-cut fluids could be used if we were not able to give oral fluids. (See nursing report dated 9/10/0 ... the nursing notes from The Beeches on the 9/10/00 record that fluids were to be pushed and the report on the 10/10/00 records that fluids need to be encouraged".

7.2.14 In all of those circumstances while there should have been a written handover and same should have included the instruction to push fluids, the failure to do so is unlikely to have caused prejudice to Mr. McKenna's care as there were several other references to this requirement.

8. TIME IN LEAS CROSS

8.1 As stated at the beginning of this section, and indeed, elsewhere in this report, a consideration of the decision to transfer Mr. McKenna and the circumstances leading up to that decision can not be divorced from a consideration of what happened after Mr. McKenna's transfer.

8.2 Mr. McKenna was placed in an upstairs room in Leas Cross. I explored this with individuals from St. Michael's House as it had been said that Mr. McKenna could not be safely accommodated in an upstairs room in The Beeches. The reason for this as explained to me was that only ambulant people could be placed upstairs in that Unit because of difficulties in evacuating non-ambulant people in the case of fire. I understand that Leas Cross now is very different to how it was in 2000 so I was not able to inspect the premises but I presume that it had the necessary means of escape so that non-ambulant people could be accommodated upstairs.

8.3 This room was fitted with a call bell. However, this was of no assistance to Mr. McKenna as he could not operate same. It was explained to me by the Divisional Manager that the bell was for the use of staff who wanted to summon assistance. I also explored this with the Matron of Leas Cross and she confirmed that the bell system in rooms is for the use of the person who is in the bed but that the bell could not have been for Mr. McKenna because he could not use it in this or any room and that it was for the use of staff[307] It is not clear to me how Mr. McKenna could attract attention while he was in his room. The Matron explained that there was a care assistant on the landing outside Mr. McKenna's room at all times. However, that care assistant was responsible for 7 rooms on the landing. It is unclear how Mr. McKenna could attract attention while the care assistant was occupied with his or her other duties. That would have been a difficulty in any room or placement and highlights the need for a high level of nursing care.

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[307] Interview with the Matron of Leas Cross, 26th June 2008 p 4 - 5

8.4 ATTENDANCE AT BEAUMONT OUT-PATIENTS

8.4.1 The day after admission, the 11th of October, 2000, Mr. McKenna was examined by the appointed medical officer to Leas Cross. The medical officer completed a Doctor's Admission Sheet on that occasion and noted on that sheet that Mr. McKenna:

> "Could be difficult to manage in this establishment i.e. he requires full-time nursing and medical care".

8.4.2 Mr. McKenna attended Beaumont Hospital Out-patients Department the next day, the 12th October for his pre-arranged follow-up appointment in the Urology Clinic. He was accompanied on this visit by a nurse from St. Michael's House,. Leas Cross had asked that St. Michael's House provide assistance to accompany Mr. McKenna on this visit as Leas Cross did not have sufficient staff to provide this accompaniment.

8.4.3 The accompanying nurse reported back to Leas Cross upon their return later that day. Leas Cross' nursing notes report that:

> "Went to Beaumont @ 11am with escort....Returned @ 2pm with carer ...acc. to carer – consultant not concerned re haematuria, encourage fluids if possible. For outpatients on Monday for removal of catheter. To stay in all day for observation awaiting on Dr.....to contact Leas Cross with appt time. Will need escort & transport for Monday."

8.4.4 Leas Cross also asked for assistance from St. Michael's House to accompany Mr. McKenna on the planned visit on the 16th October. However, St. Michael's House did not provide that assistance because they themselves did not have sufficient staff. The Head of Unit of The Beeches, explained:

> "We were already four nurses down so to try and supply a staff to get out to Leas Cross, unfortunately we couldn't and I suppose at the time when a transfer like that takes place, the

nursing care has transferred over to Leas Cross, so Leas Cross should have been able to facilitate it ...".[308]

8.4.5 The nurse who accompanied Mr. McKenna to Beaumont Hospital on the 12th October confirmed that she also told Leas Cross on the 12th October that St. Michael's House would not be able to provide assistance for the appointment on the 16th October, 2000.[309]

8.4.6 In fact, Mr. McKenna did not attend at that appointment. As far as I can ascertain the reason for this non-attendance is that Leas Cross was awaiting confirmation of the appointment time from Beaumont and the availability of a day bed in Beaumont. The Leas Cross nursing notes record on the 13th October, 2000 that the consultant's secretary was to be phoned "*9 a.m. Monday for time*". Those notes record that on the 16th October Beaumont was contacted regarding the appointment and that Leas Cross was informed that the secretary would ring when an appointment was available.

8.4.7 There is nothing recorded in the Leas Cross notes or indeed in any of the documents from Leas Cross with which I have been furnished which indicates that Leas Cross was subsequently contacted by Beaumont or that Leas Cross subsequently contacted Beaumont Hospital. I have also been furnished with documents relating to Mr. McKenna by Beaumont Hospital. There are no documents evidencing any contacts between Leas Cross and Beaumont (and in particular the urology out-patients department) between the 16th October and the 22nd October.

8.4.8 The urology consultant wrote to the ERHA, in the context of an earlier ERHA inquiry, by letter dated the 15th April, 2002 in which he stated:

"Thank you for your letter of 8th March regarding this gentleman. I am sorry that I cannot be of much assistance to you in this gentleman's case. The medical records of Beaumont Hospital

308 Interview with the Head of Unit of The Beeches, the 2nd April, 2008, page 27-28
309 Interview with the nurse who accompanied Mr. McKenna to Beaumont Hospital , the 2nd July, 2008, page 6

indicate that he was seen by me in the outpatient clinic on the 12th October, 2000. At that time he had a catheter in situ and I prescribed Omnic, which is a alpha receptor blocker and filled out an admission card for him to come into the day ward for a trial without the catheter. There were no other notes from me or any member of my team and there is no reference in the Accident and Emergency notes to any further attendance by my team on this gentleman".

8.4.9 The fact of Mr. McKenna having missed his appointment and the possible consequences of same understandably caused grave concern to Mr. McKenna's family. Mr. McKenna's brother and sister raised issues surrounding this missed appointment several times during the inquiry. They also raised it in their late submission. The facts set out at paragraphs 8.4.6 – 8.4.8 are the only facts which I have been able to ascertain in relation to Mr. McKenna's appointment on the 16th October. Obviously Mr. McKenna needed to be reviewed and was not. It is outside the scope of this inquiry to comment on the reasons for or the consequences of this review not occurring.

8.4.10 As far as I have been able to determine, St. Michael's House were not informed that this appointment had not gone ahead and were not otherwise aware of that fact.

8.5 MONITORING AND SUPPORT IN RESPECT OF MR. MCKENNA AND ASSESSMENT OF SUITABILITY OF LEAS CROSS

8.5.1 For the reasons set out above I believe that I must consider Mr. McKenna's condition and experience while he was in Leas Cross. The relevance of this is that, as set out above, St. Michael's House have made the point to me on a number of occasions both at interview and in written submissions that they provided ongoing monitoring and support in respect of its service users who were in private nursing homes. I have dealt with the issue of ongoing monitoring and support in general above and deal with it and the efficacy of the system in the specific case in the following sections as it seems to me that a consideration of those issues must be placed in the context of Mr. McKenna's condition and experience in Leas Cross. For

the same reason, I must consider the question of St Michael's House's assessment of the suitability of Leas Cross for Mr. McKenna.

Monitoring and support in respect of Mr. McKenna

8.5.2 I have been given different accounts of Mr. McKenna's condition whilst in Leas Cross. Mr. McKenna spent 12 days in Leas Cross before he died in Beaumont Hospital on the 22nd October. During that period he was visited several times by members of his family. He was also visited by several members of the St. Michael's House staff.

8.5.3 Mr. McKenna's brother described Mr. McKenna during this period in the following terms. On the 7th February, 2008 he said:

> "I even went up one day to his room, I called one morning to him, I don't remember the circumstances of my calling, but I called one morning and they told me that he wasn't dressed and he was up in his room. When I went up there was a young nurse or a nurse aide in the room and he was in the bed and the pillows were up here, his head was down at the other end of the bed because he was still tied on a drip or something like this and he couldn't release himself and the drip, in his pain he had wriggled himself and turned around in the bed. That girl, a lovely girl, she said 'you can see he is in pain and he is after wriggling himself around here'. So she must have recognised there was stuff going on. Don't ask me, at the time I had no idea what was going on as regards septicaemia and all of that, absolutely no idea. Maybe the septicaemia hadn't set in at that stage."[310]

8.5.4 During the same interview, Mr. McKenna's brother, in answering the question of what he had observed of Mr. McKenna when he visited him in Leas Cross, referred back to a description that he had previously used, and said:

> ".....I only thought of the phrase last night, I used it at the time. Peter had, before he left The Beeches to go to Leas Cross he had this frazzled look about him. It was the same frazzled look he had before he took as you call it the TIA in The Beeches. When he went to Leas Cross that

[310] Interview with Mr. McKenna's brother, the 7th February, 2008, page 60

frazzled look was there with him the whole time. What is a frazzled look? Don't ask me to articulate it, I couldn't tell you. All I could tell you, it was not a vacant stare, it is like somebody who is just totally shocked and doesn't know what is happening around him and doesn't know what the next move is really. I don't know that that was more to do with his physical being rather than the Alzheimer's per se. He certainly didn't look well before he left. ..... In the days before he left The Beeches. I keep going back to it and saying to myself well why didn't I put him into a hospital. But then you are on this treadmill, [.....], and the court order was that he was to go to Leas Cross. Nobody spoke to us about variation of the court order. ..... The term I used at the time, and I had forgotten all about it until last night, the frazzled look he had. I had to try and articulate what that frazzled look meant..... I would have visited him most days, not looking for trouble, I wasn't looking for trouble. But the first day we went to visit him, one of the days we went to visit him, I think it was one of the first days we went to visit him they said he was being dressed upstairs and that he would be down in a minute and they wheeled him down in a wheelchair, he was in somebody else's clothes. They weren't his own clothes."[311]

8.5.5 I asked Mr. McKenna's brother whether Mr. McKenna had the "frazzled look" while he was in Leas Cross. He answered:

".....He had to the best of my memory of the few days and certainly as time went on he developed it again. It might have gone away and he developed it again but certainly it was there at the start. He was in a wheelchair, he was wheelchair bound most of time..... Yes, in The Beeches he was wheelchair bound. I was emotional about it at the time. I found it hard to take. Particularly around the stage of the hallucinations I found it difficult to take. You are watching your brother going downhill very very quickly. When he went to Leas Cross, that was the question you asked, first of all he came down in somebody else's clothes. He was wheelchair bound. He did recognise us but there was no warmth in the conversation, he was just in the chair so to speak. He did recognise us ..... He looked clean, he looked presentable but he did not look well."[312]

8.5.6 Mr. McKenna's brother also said later in the same interview:

"Another time, I must have been concerned because [....], my wife, came out with me another time. What she saw she was shocked. I had warned her before we went in, I said 'brace

311 Interview with Mr. McKenna's brother, the 7th February, 2008, page 56-58
312 Interview with Mr. McKenna's brother, the 7th February, 2008, page 58-59

yourself because this man, you are going to see a big change in him' and she was utterly shocked. She has guilt to this day about why didn't she grab him and take him to hospital or something like that."[313]

8.5.7 Referring to Mr. McKenna's final day in Leas Cross, his brother said:

> "On the Sunday that he was put into the ambulance and brought to Beaumont, I had been with him on the Sunday morning and I spoke with a nurse because when I was with Peter she came up with a carton of yogurt and she offered him a bit of yogurt on the spoon and he didn't have the strength to spit it out, spit would be the incorrect word, but she said 'you can see we can't get fluids or anything into him and if this goes on we will have to put him into hospital'"[314]

8.5.8 Mr. McKenna's sister-in-law visited Mr. McKenna in Leas Cross on the day before his transfer to Beaumont Hospital. Unfortunately, I did not have the benefit of a stenographer for this interview. I therefore summarise what Mr. McKenna's sister-in-law said. She described his face being gaunt, white and his lips as being dried up and parched. She explained that her husband had tried to prepare her but that she was not prepared for Mr. McKenna's appearance which still haunts her. She described his lips as being "all cracked and dry" and that she went to two members of staff separately to ask for swabs. She then moistened his mouth and tongue. She also described telling a member of staff that Mr. McKenna was unwell and the member of staff put his hand on Mr. McKenna's leg and said "you're fine aren't you."[315]

8.5.9 Mr. McKenna's sister also visited Mr. McKenna on several occasions. She described him in the following terms:

> "I remember the first morning I went out to see him, [Mr. McKenna's brother] and I went out together the first morning and he arrived down in his wheelchair. We were there before midday. He had not got his on clothes on him. That was the first time ever I saw Peter without a collar,

313 Interview with Mr. McKenna's brother, the 7th February, 2008, page 59
314 Interview with Mr. McKenna's brother, the 7th February, 2008, page 61
315 Interview with Mr. McKenna's sister-in-law, the 24th February, 2009

you know what I mean, some part of it. I remember the woman that was looking after him, well, brought him down in the wheelchair, she said that she had a brother who had Alzheimer's, no, a brother who had down syndrome and we were delighted to meet somebody who had an understanding of them, so we thought, but he was confused definitely. He had the catheter in at this stage and (the witness then got upset)..... [Mr. McKenna's brother] went out one day and I went out the next, that was the way we did it. Yes, he knew you perfectly all it, but then I think it was the start of the second week, now he was certainly getting more and more frail but they still had him up and sitting in a wheelchair. When I noticed he was hopping the leg every time and they had him parked in front of the television. At this stage he had lost all interest in television, a total disinterest in it. I remember bringing the wheelchair over to the window and just lifting up his leg and, unfortunately, did not pull down his sock and just rubbing his leg. He could not even communicate at this stage. That was certainly the second week. At the same time too he could not even talk to you now at this stage. We could understand him and he was banging his genitals all the time. I called the nurse and I said; 'he is very agitated'. She said; 'he has not settled in yet'. I remember saying to her something about; 'is he in pain', with this agitation going on and the leg hopping. She went off and she came back with an Asprin, Panadol or something and she crushed it on a spoon and she went to give it to him. The first time ever in his life I saw him do that with his hand. (Witness demonstrates movement with her hand) I was shocked because that was not him. 'We find it very hard to get food into him', she said. So then I went along then. I went to the matron and like that it was the usual; 'he is finding it very hard to settled in'."[316]

8.5.10 Mr. McKenna was also visited by members of staff from St. Michael's House during this period. He was visited by the Divisional Manager, the Head of Unit of Warrenhouse Road, the Head of Unit of The Beeches and Mr. McKenna's key worker. He was also seen by the nurse referred to above when she accompanied him to his outpatients appointment on the 12th October. Another member of staff also went to Leas Cross to visit Mr. McKenna but this was on the 22nd October and he had already been sent to Beaumont Hospital. This member of staff then went to Beaumont.

8.5.11 The Divisional Manager explained that he visited Mr. McKenna in his room in Leas Cross in the evening of the day he was transferred, the 10th October. He said:

316 Interview with Mr. McKenna's sister, the 11th February, 2008, page 32-33

"He appeared to me to be calm and relaxed. There was no evidence of distress is how I would describe him."[317]

8.5.12 The Head of Unit of The Beeches visited Mr. McKenna with another resident of The Beeches on the 12th October. She described that visit:

"When I went in, it was in the evening time -- I think it was probably around seven o'clock in the evening or half seven in the evening and he was sitting watching television. There was a number of residents around him. He was in his wheelchair. He appeared in fine form. I remember sitting down with him and giving him a drink and he took the drink and the other residents spending time and I suppose there was nothing untoward, you know, there was a lot of people around"[318]

8.5.13 Mr. McKenna had also been seen by another member of staff from The Beeches earlier that day, the 12th October 2000, when she had accompanied Mr. McKenna from Leas Cross to Beaumont Hospital for his follow-up appointment in the urology clinic. This staff member had only very recently started in St. Michael's House so was not familiar with Mr. McKenna. I asked her how he appeared to her and whether he appeared to be in distress. She answered that:

"He appeared fine to me. There was nothing standing out at me. I thought he was a quiet gentleman and he ate his breakfast and he muffled a few words. His speech would not have been that great at all" and that he definitely did not appear to be in distress."[319]

8.5.14 The Head of Unit of Warrenhouse Road visited Mr. McKenna in Leas Cross with 2 other residents of Warrenhouse Road. I understand from St. Michael's House's submissions to this inquiry that this visit occurred on the 14th October. She described Mr. McKenna in the following terms:

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317 Interview with the Divisional Manager, the 25th June, 2008
318 Interview with the Head of Unit of The Beeches, the 2nd April, 2008, page 26
319 Interview with the nurse who accompanied Mr. McKenna to Beaumont, the 2nd July, 2008, page 8

"He looked okay. I mean, I remember kind of thinking how surreal the place was. It was particularly quiet. It seemed really calm. Peter seemed, he seemed content and he seemed relaxed in -- he was in bed. He wasn't very coherent. I don't know that he recognised us but he seemed content."[120]

8.5.15 Mr. McKenna's key worker in Warrenhouse Road also visited Mr. McKenna. He estimated that he visited approximately 4 or 5 times. St. Michael's House stated in its submissions to this inquiry that the Head of Unit of Warrenhouse Road and the staff in Warrenhouse Road were aware that Mr. McKenna's key worker was visiting him in Leas Cross on a very regular basis and was advising Warrenhouse Road about him.

8.5.16 Mr. McKenna's key worker described two of these visits in the following terms:

"Then it came to him having food. So [redacted] came out and said 'You haven't eaten', and he has to have food. So the food was a yogurt style mousse nutritional drink. Not drink but mousse as in having to be fed. [redacted] It was very clear that Peter had no interest in the food at all. So she was insisting that he had to take this food. [redacted] It was no sooner in his mouth than, with full force, back out. It was projectile coming back out, which clearly states that the man was in distress and the last thing that was going anywhere near him was food. So as visitors we had the contents of the mousse all over us. It then progressed from a mousse being unsuccessful to a drink. 'You have to have your drink, Peter'. [redacted] It wasn't even a cup with... For want of a better word, it would be maybe a child's cup with the teething thing so you can suck at your own pace as you take it in type of thing. [redacted] This was in the reception. So for anyone walking in or anyone standing outside if they were having a cigarette just outside the window. You know, looking at the other staff and going [to myself] 'Okay, it's not our environment'. You know, you have to tread carefully in that sense, but at the same time saying to yourself 'If this was within St. Michael's House, there would be no hesitation' [redacted]

[120] Interview with the Head of Unit of Warrenhouse Road, the 31st March, 2008

[redacted] So, like, would have got up and tried to re-direct that staff to say 'I don't think he wants it now'. The matron clearly saw what was happening so she intervened with [redacted] and she suggested to [redacted] Obviously he doesn't want it now. It might be best to try him later on'. [redacted] So she repeated herself and then she [redacted] pulled the matron aside by saying 'Can I have a word with you'.

Q. [redacted] did?

A. Yes. Say, that was the hall door and your window is there (indicating) and this is the area where we were. There was a pillar there where the handle of the door is. The two of them walked to the edge of that wall, so still within hearing distance. [redacted] The matron was saying it was obvious that the person didn't want, it was obvious that what was going on wasn't working. [redacted] And I would have thought the matron was very pleasant in the manner she dealt with her. [redacted]

"On one occasion Peter was very distressed. When going in, the staff had said he was down in a room at the very back on his own. So I went down and he was just literally in a room on his own, receiving no direct care or supervision that I could see. He was just kicking away and shouting and screaming to himself. So having chit-chats and trying to use any distracting skills, anything that was available to re-focus him in a positive manner, we used that. So in the end we found that with the move of his chair towards the door/the corridor his temperament came down about three notches. So the closer we got to the hall, the door of the conservatory, the front door type of thing, the calmer in one sense he was becoming. At one stage you are right at reception and whether he was lucid enough even to see the car, because he would have always gone for trips in my car or in the staff car, so he would be familiar. Whether he was concentrating on that, no-one would know but it was just funny how the behaviours changed as we got closer to the door. We are chit-chatting away".

8.5.17 Mr. McKenna's key worker identified another care worker from St Michael's House who was with him on one of these occasions. I contacted this individual to seek her assistance. She chose not to meet or to be interviewed on the telephone.

8.5.18 Another member of the Warrenhouse Road staff, confirmed that she remembered Mr. McKenna's key worker telling her that he had visited Mr. McKenna in Leas Cross and was not happy with the care that he was receiving.[321]

8.5.19 There are obviously very marked differences between these different accounts of Mr. McKenna's condition while he was in Leas Cross.

8.5.20 It is possible that the different accounts are not in conflict with one another but that Mr. McKenna's condition was simply different at different times.

8.5.21 As previously stated, St. Michael's House encouraged me to seek and avail of independent medical expertise to assist me in this inquiry. I furnished this medical expert with a number of documents including all the documents relating to Mr. McKenna which were supplied to me by the Statutory Commission of Investigation into Leas Cross as having been in the possession of Leas Cross. He has advised that an individual with an infection can present differently at different times.

8.5.22 It is possible, therefore, that Mr. McKenna presented differently at different times. The Divisional Manager, the Head of Unit of Warrenhouse Road, the nurse who accompanied Mr. McKenna to Beaumont Hospital, and the Head of Unit of The Beeches have all told me that Mr. McKenna appeared to be fine when they visited him. There is no basis to find at this remove that their accounts are incorrect. However, it must be noted that the Divisional Manager visited on the very day that Mr. McKenna was transferred, the nurse who accompanied Mr. McKenna to Beaumont saw him on the 12th October, 2000, two days after his transfer as did the Head of Unit of The Beeches, and the Head of Unit of Warrenhouse Road visited 4 days after the transfer. The medical expert who assisted the inquiry emphasised how important familiarity with the patient is in assessing his or her condition in circumstances where they cannot communicate. The nurse who accompanied Mr. McKenna to Beaumont on the 12th October was not familiar with Mr. McKenna. The

321 Interview with Warrenhouse Road staff member, the 9th June, 2008 p.15

latest visit by any of these individuals who was familiar with Mr. McKenna was, therefore, the visit by the Head of Unit of Warrenhouse Road on the 14th October. It is therefore possible that as his condition deteriorated he presented in greater distress. This may explain the differences in the descriptions given by these individuals and the descriptions given by Mr. McKenna's family and his key worker who visited him in his second week in Leas Cross also.

8.5.23 In circumstances where I can not and do not find that the descriptions given by the Head of Unit of Warrenhouse Road, the Divisional Manager, the nurse and the Head of Unit of The Beeches are incorrect or inaccurate, I do not believe that they or St. Michael's House can be faulted for not reacting or intervening as, on their account, there was nothing to react to and no basis for intervening.

8.5.24 However, a different situation arises in respect of the information which has been given by Mr. McKenna's key worker. I have set out the key worker's account above. He told me that he expressed his concern to the Matron of Leas Cross[322]. She does not remember meeting Mr. McKenna's key worker and said:

> "I can remember female care assistants coming from St. Michael's House, I cannot remember a male, but it may have been. It is too long ago".

8.5.25 Mr. McKenna's key worker also informed me that he reported this to St. Michael's House. He described what he did after the incident in relation to the feeding:

> "I reported back to Warrenhouse Road in the sense that that's my unit, but [also] in the sense of knowing that that man was technically linked to The Beeches. So I would have phoned those people to express my degree of concern, which was heard by the staff. The Head of Unit for that place wasn't present. They did get the sense of seriousness from the call and said, well, they would phone the head of unit.
>
> Q. They said they would?
>
> A. Yes. So they phoned the head.

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322 Interview with Mr. McKenna's key worker, the 23rd June, 2008, pages 53 - 54

Q. They did phone?

A. Yes.

Q. How do you know that?

A. Because she linked back to say that, you know, an agreement to phone the manager. So in that sense I did phone the manager of my house.

Q. Sorry, you rang The Beeches and you spoke to a member of staff?

A. Yes.

Q. And she said that she would speak to the Head of Unit?

A. Yes. She phoned the Head of Unit on the mobile.

Q. The Head of Unit at that time was [.....] at the Beeches. Then presumably after your conversation she hung up and you hung up, or whatever. Your phone conversation came to an end. She then phoned you back. I may be wrong in this: She phoned you back to say 'I have spoken to [the Head of Unit of The Beeches] on the mobile'.

A. Yes.

Q. And what happened?

A. From that point of view I knew they had been informed from my manager. I had the same discussion then...(INTERJECTION)

Q. You then spoke to your Head of Unit, [.....] in Warrenhouse Road?

A. No, I spoke to the manager.

Q. Which is [the Residential Manager]?

A. Yes.

Q. And you told him the same thing?

A. Yes.

Q. Did you tell him that you had spoken to the Beeches staff and that it had been passed on to [the Head of Unit of The Beeches]?

A. Yes. I'm not too sure if [.....] was managing The Beeches as well or if someone else was managing that house.

Q. I have that information somewhere. I just can't remember. What did [the Residential Manager] say or do about it?

A. Well, the recall I have is that it was out of their control. I think that was the response basically and that somebody senior needed to be contacted on it.

Q. Was there any feedback given about anybody being contacted. Did you get any feedback to say...(INTERJECTION)

A. No. I had imparted, I had given that information in the best way possible to highlight the seriousness of what that person was going through, the neglect that was going on for him.

Q. That's really what I meant. You passed it on to two people: [the Head of Unit of The Beeches] indirectly and directly to [the Residential Manager]?

A. Yes.

Q. [The Residential Manager] had said to you 'It's out of our hands'?

A. No, that was The Beeches. That's why, following from that, I needed to go somewhere higher.

Q. Sorry, I misunderstood that. I just want to get this right. You spoke to The Beeches staff. That staff member contacted [.....], the Head of Unit, on her mobile.

A. Yes, she wasn't at work. So out of hours. We'll say they got the seriousness of what I was saying.

Q. You then get a phone call back from the staff member from The Beeches to say 'Pass it on to [the Head of Unit of The Beeches]'. She said that it was out of their hands and that you had to speak to somebody more senior?

A. Yes.

Q. Presumably that explains why you phoned [the Residential Manager] rather than speaking to [the Head of Unit of Warrenhouse Road]?

A. She wasn't on.[323]

Q. So you speak to [the Residential Manager] and you tell him the same story, account or detail and you tell him that you have also spoken to The Beeches?

A. Yes.

Q. Now, what was [the Residential Manager's] response to that?

A. It was [on the] lines of that he understood the concern but that possibly it was out of his -- I don't know about responsibility or whatever, but between the confusion of who is responsible I suppose and who isn't for him in there in Leas Cross. Is it St. Michael's House or is it Leas Cross.

Q. Did he tell you to talk to somebody else or did he simply sort of -- the impression I get is that you told him and he said 'I understand what you are saying but it's not really my area'?

A. Domain I suppose, yes.

Q. Did he then go on to say 'I'll have to talk to someone more senior' or 'you should talk to somebody more senior' or was it just left by [the Residential Manager] in that way?

A. I got the sense of the whole responsibility, who's responsible for that whole situation. I think he may have felt that it would be like him phoning another organisation and telling them their job I suppose.

Q. I appreciate this is all eight years ago and there have been a lot of dealings with it over the course of the eight years. Do you remember having that impression from him at the time or is that sort of looking back on it through everything you have learned since? Because that is an issue; exactly whose responsibility it was once Mr. McKenna had gone to Leas Cross. I am just

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[323] In submissions Mr. McKenna's key worker clarified that he was told by the staff in The Beeches who spoke with the Head of Unit of The Beeches that she had advised that he should inform his manager, and as his Head of Unit was not on duty he contacted the Manager of the unit

wondering whether that was the response you got at the time or is that you sort of judging that conversation through the lens of what you have learned since? Do you know what I am saying? A. Yes. I suppose you could say it was one of those moments where I felt a huge burden was on your shoulders. A basic humanitarian cry from this person to say 'I am massively distressed and you bloody well know it' type of thing 'and I want you to do something'. You could say there were emotional ties there. There are emotional ties".

8.5.26 I asked the Head of Unit of The Beeches whether she had any reports back from Leas Cross about Mr. McKenna's condition through St. Michael's House members of staff and she said no. She also said that she does not remember being contacted by a member of staff from The Beeches to say that they had been contacted by someone who had visited Mr. McKenna in Leas Cross. She said:

" ...certainly something I actually ... it is not something that's standing out that I ever recall somebody ringing up".[324]

8.5.27 The Head of Unit of The Beeches requested a meeting following the circulation of the draft report. During the course of that interview she said that she does not recall any phone call from a member of staff. She went on to say:

"I still don't recall any phone call. However, in light of the seriousness of what [Mr. McKenna's key worker] has said, it would not be my practice. In general, if a staff member rang me with concerns such as the ones raised, for me to tell them to go back - - my normal practice would be to ring [Mr. McKenna's key worker] back himself directly ... Or to link immediately with one of the senior managers ... so, as I said, I don't recall ever getting a phone call but had it have happened, my line would not have been to feed back through a staff member. The normal line was that you would speak to your senior manager, which in my case would have been probably [the Divisional Manager], I would have immediately directed him on it. It is just, again, I suppose my concern is the contents of what [Mr. McKenna's key worker] is reporting, and had it had have happened it would have been reported onwards. It wouldn't be my practice, as I said, to say ----"[325]

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324 Interview with the Head of Unit of The Beeches, the 9th July, 2008, page 6

325 Interview with the Head of Unit of The Beeches, the 8th July, 2009 page s 5 - 6

8.5.28 The Residential Manager described the system as being that a member of staff who had a concern about a St. Michael's House client would be expected to contact his or her head of unit in the first place and then the head of unit would contact the relevant Residential Manager and the manager would inform management. This accords with what Mr. McKenna's key worker expressly said in submissions – that "*if a team member needed to report a problem or seek advice then they contacted their head of unit but if that person is not available ie. off duty then they would contact the next senior member of staff, their service manager and make the report.*" In submissions following the circulation of the draft report St. Michael's House explained that there was in fact detailed procedures in place for reporting suspected or alleged abuse. I deal with this in detail below.

8.5.29 The Residential Manager said in response to my question whether he got any reports back from staff members who had been out to visit Mr. McKenna in Leas Cross that:

> " It's not clear in my mind. [The Head of Unit of Warrenhouse Road] feeding back in relation to her visit with the service users, that probably stands out in my mind. But others, no. But obviously the link between Warrenhouse Road The Beeches – there would be that type of link from The Beeches as well because obviously he had left from The Beeches."[326]

8.5.30 The Residential Manager also said that he did not receive any reports or concerns from any members of staff from the Beeches[327]. In submissions following the circulation of the draft report it was submitted that it was unfair that I had not put Mr. McKenna's key worker's transcript to the Residential Manager or the Head of Unit of The Beeches. This occurred for logistical reasons. I do not accept that there was any such unfairness not least because they were provided with the draft report or the relevant extracts therefrom which included the relevant passages from Mr. McKenna's key worker's transcript in order to provide an opportunity to address what he had said. However, following this submission I invited both the Residential

326 Interview with the Residential Manager, the 25th June, 2008 page 25
327 Interview with the Residential Manager, the 25th June, 2008 page 25

Manager and the Head of Unit of The Beeches to meet with me again if they wished to do so. They both sought such a meeting. I refer to the Head of Unit's subsequent interview in paragraph 8.5.27.

8.5.31 During the course of the interview following this request the Residential Manager said that while if Mr. McKenna's key worker had contacted him that would have been the correct procedure, Mr. McKenna's key worker did not contact him regarding Mr. McKenna once Mr. McKenna had gone to Leas Cross[328]. The Residential Manager said:

> "Well, I suppose I'd be basically saying that [Mr. McKenna's key worker] didn't make contact with me in relation to his concerns about Leas Cross. I suppose the statement that he made, which obviously I wasn't aware of the previous meetings, and I can't [redacted] As far as I am concerned, he didn't make contact with me to explain his concerns [redacted] Basically, the procedures like they are there. [redacted] And you know if [Mr. McKenna's key worker] had made contact with me and he raised the concerns [redacted] I would have automatically – like I'm 38 years working in learning disability ... I would have – obviously, from procedures, practice policies, that are normally placed you would carry them out – I would have immediately informed my manager, who had been [the Divisional Manager] at the time, and see what action we would take then ... So I challenge [Mr. McKenna's key worker's] statement really ... In relation to stating clearly that he contacted me"[329]

8.5.32 In his submissions Mr. McKenna's key worker said that he also reported to the Head of Unit of Warrenhouse Road at a later date as she was not on duty at the time. She told me that she has no memory of Mr. McKenna's key worker telling her that Mr. McKenna was in distress or needed help or that something needed to be done[330].

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328 Interview with the Residential Manager, the 8th July, 2009 page 8
329 Interview with the Residential Manager, the 8th July, 2009 pages 4 - 5
330 Interview with the Head of Unit of Warrenhouse Road, the 24th June, 2008, page 22

8.5.33 As in the case of the Head of Unit of Warrenhouse Road, the Divisional Manager, the nurse and the Head of Unit of The Beeches, I have no basis for disbelieving the key worker's account of what he saw in Leas Cross. However, there is a clear dispute on the facts between what Mr. McKenna's key worker says on the one hand and what the Head of Unit of The Beeches, the Residential Manager and the Head of Unit of Warrenhouse Road says on the other hand. This dispute which concerns important and fundamental issues, can not be resolved within the parameters and limitations of this type of inquiry.

8.5.34 In its submissions following the circulation of the draft report St.Michael's House made the point that *"[i]t is shocking that [Mr. McKenna's key worker's] disclosure is being made nine years after the event."* My understanding of this submission is that I am being urged not to accept that Mr. McKenna's key worker's account is correct because he had not previously raised it. In support of this submission St. Michael's House stated in their submissions that Mr. McKenna's key worker had 2 specific opportunities to disclose what he had witnessed and the fact that he had reported it to St. Michael's House: during the course of bereavement sessions with a senior psychologist from St. Michael's House for the staff group in Warrenhouse Road following Mr. McKenna's (and another resident's) deaths; and during the course of an internal programme on abuse training with a senior psychologist. Both of these post-date Mr. McKenna's death. They, and particularly what may or may not have occurred during them, therefore fall outside the scope of this Inquiry. Notwithstanding that they were expressly raised by one of the parties to the inquiry, it would be inappropriate for me to consider same in detail. In fact the bereavement session and the follow on from same had previously been raised with me by individuals and I had decided not to inquire into same in light of the fact that they post date Mr. McKenna's death. However, for completeness sake and particularly in light of the fact that St. Michael's House had specifically raised this issue I did discuss same with Mr. McKenna's key worker. I also interviewed the senior psychologist who facilitated this bereavement session on two occasions. I am of the view in light of the contents of these discussions and without carrying out a full

investigation that it would be unsafe to make a finding that Mr. McKenna's key worker had not previously disclosed concerns about Mr. McKenna's care in Leas Cross to St. Michael's House. There remains the conflict of evidence identified in paragraphs 8.5.33.

8.5.35 As stated in paragraph 8.5.33 I can not safely disbelieve Mr. McKenna's key worker's descriptions of how Mr. McKenna was presenting in Leas Cross or find that those descriptions are incorrect. In those circumstances I am forced to conclude that there was a systems failure in respect of the system of monitoring and support put in place by St Michael's House. I previously set out this proposed finding in the draft report which was circulated for the purpose of inviting submissions. I also set out the basis for this proposed finding.

8.5.36 That basis for this proposed finding was that Mr. McKenna's key worker either witnessed events which should have caused serious concern in relation to standards in Leas Cross and how Mr. McKenna was being cared for and did not report them back to St. Michael's House or he did report them back to St. Michael's House but nothing was done about the situation. St. Michael's House have, throughout this inquiry, emphasised the role of visits by social workers and members of staff in monitoring and supporting St. Michael's House service users. There was either a failure of a member of staff to report serious concerns about a St. Michael's House client back to St. Michael's House or if he did in fact report same, a failure by St. Michael's House to react to same. I believed that either of these failures, and it must have been one or the other, represents a grave flaw in the operation of the system of monitoring and support.

8.5.37 St. Michael's House by way of submissions explained that they have and had at the relevant time a detailed and well-resourced abuse policy which was circulated throughout the organisation. They also supplied copies of the relevant documents.

8.5.38 One document is entitled "Procedures for Investigation of a complaint of a service user by a staff member"; another is entitled "St. Michael's House Clinical Procedures for carrying out an investigation of abuse of a service user" and the final document is entitled "Human Resources Policies and Procedures."

8.5.39 I do not propose to set out the entirety of these documents. It is clear from these documents which I understand, but have not confirmed, were in force in October 2000, that St. Michael's House had in place a very detailed and considered abuse policy.

8.5.40 The policy required any member of staff who became aware of abuse (or the possibility of abuse) to report same. Section F of the "Procedures for investigation of a complaint of a service user by a staff member" provides, inter alia:

> "1. Any person in the agency's service who knows or suspects that a service user is being abused must report this immediately to his/her immediate supervisor. (A reporting form and guidelines on dealing with either a complaint or suspicion of abuse are available at Appendix 1 + 2 respectively). Alternatively, the matter may be reported directly to the Medical Director or the Head of Social Work Department/Psychology Department."
>
> **If a member of staff suspects abuse;** if a member of staff suspects that service user has been abused but has not received a complaint to that effect, the member of staff should furnish a confidential verbal and written report to their supervisor without delay. The member of staff should give precise and detailed grounds on which the suspicion is based and should explain exactly what has happened and give any evidence to support those suspicions. The member of staff should not question the person complained of or any witness.
>
> 2. The supervisor will report the matter without delay to the Divisional Manager."

8.5.41 The second document, "St. Michael's House Clinical Procedures for carrying out an investigation of abuse of a service user", provides, inter alia:

"(1) Staff/ volunteers/host families who witness abuse must intervene to stop the abuse from continuing. Assistance may be needed to stop it and this might come from other colleagues...."

(2) Any person in the agency's service who knows or suspects or has been given information that a service user is being or has been abused must report this as soon as possible to his/her immediate supervisor and a member of the local Clinic Team who will in turn report this to the social worker on the team. If a social worker is not available they will report it to the Head of the Social Work Department. A hand written statement should be given to the supervisor and social worker as soon as possible using Form A in Appendix C....."

8.5.42 St. Michael's House submits that Mr. McKenna's key worker (or alternatively the individuals to whom he says he reported) did not comply with the requirements of these policies and that in those circumstances it is incorrect to conclude that there was a systems failure but that rather there was a failure on the part of individual(s).

8.5.43 St. Michael's House submits that Mr. McKenna's key worker did not comply with his obligations under these policies as he did not report these events in writing in line with the policy, did not exercise the dual reporting option and did not take matters further when, as he alleges, the Residential Manager and the Head of Unit of The Beeches did not do anything about his reports. Similarly, St. Michael's House submits that if Mr. McKenna's key worker did report to the Residential Manager or the Head of Unit of The Beeches (which is denied) those individuals were in breach of their reporting obligations under the abuse policy.

8.5.44 It is not the place of this inquiry to express a view or to make a finding of fact that any particular individual(s) did or did not comply with the policies of St. Michael's House and I do not do so. The steps which Mr. McKenna's key worker states he took are set out above, as are the positions of the Residential Manager, the Head of Unit of Warrenhouse Road, and the Head of Unit of The Beeches.

8.5.45 The gravamen of St. Michael's House's submission is that my proposed finding that there was a systems failure was incorrect because such failures as might have occurred were personal rather than systems failures. The core of this submission is contained in paragraphs 12 and 13 of their submissions in which they state:

> "12. If [Mr. McKenna's key worker] observed this abuse and did not report it, it is not a systems failure; it is a clear dereliction of his clearly communicated responsibilities in the abuse policy.
>
> 13. If he did report this matter , as he has described, to [the Residential Manager] and the Head of Unit of The Beeches (which is strongly disputed) then their failure to follow through on their reporting obligations, as outlined in the Abuse Policy, is a clear dereliction of their clearly communicated duties and responsibilities."

8.5.46 I can not accept that the mere fact that there may have been a failure on the part of an individual means that there was not a systems failure. If a system is put in place and does not operate because individual(s) who have responsibilities under that system do not comply with their responsibilities and obligations the system will have failed . I am of the view that the system which was described in the interview stage and which was helpfully augmented by St. Michael's House's submissions detailing the abuse policy failed and it is on that basis that I remain of the view expressed in the draft report that there was a failure in the system for monitoring and support.

8.5.47 There is a further issue in relation to the system of monitoring and support which is a cause of concern. As referred to above, the medical officer to Leas Cross, examined Mr. McKenna the day after his admission to the nursing home and completed a Doctor's Admission Sheet on which he wrote "*Could be difficult to manage in this establishment as he requires full-time nursing and medical care*". I explored this issue with the medical officer and I deal with this further under the heading "*Assessment of Suitability*". The relevance of this comment to the area of monitoring and support is that St. Michael's House was unaware of the medical

officer's comment. It was not brought to St. Michael's House's attention by Leas Cross or anybody acting on behalf of Leas Cross.

8.5.48 At interview the Matron of Leas Cross indicated that she thinks she was aware of the medical officer's note and offered the view that the medical officer was always very cautious and said that she did not have any discussion with him when she became aware of his view[331].

8.5.49 St. Michael's House described itself as having a close relationship and close links with Leas Cross. It is very surprising therefore that the view of the medical officer to whom St. Michael's House have repeatedly emphasised Mr. McKenna's medical care was passed would not have become known and, more importantly, been made known to St. Michael's House by Leas Cross. In my view, this calls into question the efficacy and adequacy of the relationship and close links which were for the stated purpose of monitoring the level of care that was being provided to St. Michael's House clients for that purpose.

Suitability and Assessment of Suitability

8.5.50 I have previously concluded that there was no formal evaluation or assessment by St. Michael's House of the suitability or appropriateness of a placement in Leas Cross specifically for Mr. McKenna. St. Michael's House accepted in its submissions following the circulation of the draft report that there was no formal evaluation or assessment by St. Michael's House of Leas Cross specifically for Mr. McKenna. I had also included a proposed finding in the draft report that there was no adequate assessment of the suitability of Leas Cross for Mc. McKenna. St. Michael's House do not accept that finding.

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331 Interview with the Matron of Leas Cross, the 28th April, 2008 page 27

8.5.51 St. Michael's House has explained why it believed that Leas Cross was a suitable placement. St. Michael's House identified 9 grounds for considering that Leas Cross was suitable:

1. It was inspected and accredited by the NAHB.
2. It had been used by St. Michael's House for respite and longer placements from 1998 to 2000 for clients with significant medical needs.
3. A client with Alzheimers disease and Down Syndrome had had good care there from August 1999 to her death in August 2000.
4. Another client was successfully placed there for 9 months from 1999 to 2000.
5. The matron of Leas Cross had 11 years experience of working with people with learning disability.
6. The service to St. Michael's House clients was monitored by monthly visits by a senior social worker.
7. Leas Cross was visited regularly by St. Michael's House staff from the day or residential units from which the clients came.
8. The level of complaints about Leas Cross was relatively low.
9. Both the Mater Hospital and Beaumont Hospital regularly referred patients to Leas Cross.

8.5.52 I accepted in the draft report and continue to accept that all of these are reasons why St. Michael's House could be optimistic and could believe that Leas Cross would prove suitable or appropriate for Mr. McKenna. St. Michael's House submitted that the 9 grounds do constitute evaluative criteria by which the suitability of the placement for Mr. McKenna was assessed by St. Michael's House particularly where there were fundamental similarities in relation to Mr. McKenna's needs and the needs of some of the clients who had previously been placed in Leas Cross. I accept that these grounds can properly be described as "*evaluative criteria*". I also accept that it is correct and proper that they would have been considered by St. Michael's House when assessing the suitability of Leas Cross for any service-user

including Mr. McKenna. However, I do not accept that they in themselves constitute a sufficient or adequate assessment of Leas Cross for Mr. McKenna specifically.

8.5.53 In addition to these 9 grounds, St. Michael's House could also take significant comfort in the fact that the independent medical visitor who was appointed by the High Court was also of the view that Leas Cross was suitable. The independent medical visitor was a consultant psychiatrist who had visited Mr. McKenna and Leas Cross and expressed an independent view that Leas Cross was suitable for Mr. McKenna. Obviously, St. Michael's House had concluded that Leas Cross was suitable before the independent medical visitor had formed or expressed this view and therefore St. Michael's House did not have regard to his view when making the initial decision of 31st August 2000.

8.5.54 I set out in the draft report why I believed that the 9 grounds set out above were inadequate as an assessment of Leas Cross which was personal to Mr. McKenna and his needs, I have considered the submissions made by St. Michael's House and, as stated above in paragraph 8.5.52 remain of the view that the assessment was inadequate.

(i) Firstly, as stated above, none of these 9 points are personal or specific to Mr. McKenna or his specific needs.

(ii) Secondly, inspection and accreditation by the NAHB did not amount to certification that the placement was suitable for a particular individual. St. Michael's House accepted in its submissions that inspection and certification did not amount to certification that the placement was suitable for any particular individual but that it gave assurance in relation to the nursing home's compliance with the nursing home Regulations. I agree. It is for that reason that I stated in the draft report and in paragraph 8.5.52 above that the 9 grounds were reasons why St. Michael's House could be optimistic and could believe that Leas Cross would prove suitable or appropriate for Mr.

McKenna. An agency such as St. Michael's House must be entitled to rely on inspection and accreditation by the relevant agency to conclude that a nursing home complies with certain standards, particularly where, as in this case, the inspections were very recent (there was an inspection on the 6th October 2000). However, the point is that statutory inspection and accreditation is not a certification that a particular nursing home is suitable for a particular individual. Indeed, in this case it could not be because Mr. McKenna had not even been transferred to Leas Cross on the date of inspection. Inspection and registration by the NAHB is also relevant to the points that were raised by St. Michael's House in the submission that was made after I had delivered my final report. I deal with this below.

(iii) Thirdly, points 2, 3 and 4 are historic matters. St. Michael's House took issue with my use of the word "historic" and pointed out that the previous St. Michael's House service-user who had been in Leas Cross had only passed away 8 days before St. Michael's House had proposed to move Mr. McKenna to Leas Cross and only 5 and a half weeks before he was actually moved there. Grounds 2, 3 and 4 in their terms arise from past experience and are therefore historic. The mere fact that there were no difficulties with other people's care or, indeed, that they were provided with good care and that St. Michael's House's past experience was good, is not a guarantee that good care would be provided to a different individual. Of course, the fact that this good experience was so recent and was with a service user who, according to St. Michael's House's submissions, also had complex medical needs, means that St. Michael's House could have a greater expectation that Mr. McKenna would also receive good care than if this experience was older or the service-user had less complex needs.

(iv) Fourthly, point 8 simply did not arise at the time. I accept that a low level of complaints could be a basis upon which the suitability of a placement can and should be assessed. However, in this case, the individuals in St. Michael's

House who made the decision that Mr. McKenna should be transferred to Leas Cross did not advert to the existence of complaints. In fact they were not even aware of 4 complaints having been made. Nor was the President of the High Court when he made his decision.

(v) Finally an assessment based on these 9 points did not have regard to the points which I make below.

8.5.55 The view that Leas Cross was suitable was reached on the basis of past experience and a general view that it was suitable. I remain of the view, having considered St. Michael's House's submissions that this is not adequate in circumstances where it is proposed to hand over the medical and nursing care of a person with complex medical needs.

8.5.56 Of course, it does not necessarily follow from an inadequate assessment that the placement itself was unsuitable. However, there are a number of factors which in fact tend to suggest that the placement which Mr. McKenna was given in Leas Cross might not be suitable for him.

8.5.57 Before dealing with those factors it is important to emphasise that I have been careful to avoid considering Leas Cross through the prism of the subsequent suggestion that Mr. McKenna was not properly cared for in Leas Cross. I have also been conscious of the fact that Leas Cross in October 2000 was a much smaller nursing home than it subsequently became.

8.5.58 The factors which tend to suggest that the placement that was given to Mr. McKenna was unsuitable are as follows.

(i) The reason Mr. McKenna had to be transferred from St. Michael's House was because he had reached a stage where he needed nursing care which was not available within St. Michael's House. The nature and extent of the nursing

care which he required has been described in various terms. The physician, in one document with which I have been furnished, described Mr. McKenna as requiring "*high support care with nursing input in a unit that is specialised and geared towards the care of people with this disease.*" The Clinical Director in his report dated the 15th September, 2000 which he prepared for the Wards of Court Office described Mr. McKenna's needs as being such that they could "*only be met in a high support nursing unit.*" He was also described as needing "*full time nursing care.*" The Leas Cross handover notes record that Mr. McKenna needed "*high dependency nursing.*" St Michael's House also said in its submissions to this inquiry that Mr. McKenna required "*high dependency nursing*" and that the primary need for people in late stage Alzheimer's is for high dependency nursing care, although St Michael's House also stated in those submissions that "the important issue was that he received regular nursing care...". The medical officer to Leas Cross identified the type of nursing care that was needed as "*full time nursing and medical care.*"

The placement can not be said to have been suitable if in fact the type of nursing care that was available did not fall within these descriptions (or one of them). There does not appear to have been any consideration by St Michael's House of whether the nursing and medical care that was available in Leas Cross or, more particularly, that would be given to Mr. McKenna, matched any of these formulations. Unfortunately, due to these different descriptions it is difficult to understand precisely what was felt necessary for Mr. McKenna. Notwithstanding this difficulty I think it is possible to assess whether the nursing care which was available and which he received could be said to have fallen within these descriptions or any of them.

At the relevant time there were approximately 35 residents in Leas Cross. I have been provided with the Leas Cross off-duty roster for the 2 weeks ending on the 21st October. It shows that for all but two of those days there

was only one staff nurse on duty during the day and there was only one staff nurse on duty for each of the nights during that period. The Matron appeared on the roster but was not rostered for duty. However, it is clear from the information that was provided by various parties that the Matron was on duty during Mr. McKenna's stay in Leas Cross. There was therefore, at least on occasions, 2 nurses on duty during the day. The NAHB carried out an inspection of the nursing home on the 6th October. The report of that inspection records that on that day there were 2 nurses rostered for day duty and 2 nurses were on duty. It also records that there was 1 nurse rostered for night time duty. The inspection was carried out at 2 p.m. so it could not record how many nurses were actually on duty that night.

There were also care attendants on duty. St. Michael's House in its submissions pointed out that it understood that there were 2 nurses and 4 care attendants on per duty roster during the day and one nurse and 3 care attendants on duty at night. St. Michael's House also compared this with The Beeches where, it was pointed out, there was one nurse on duty at night and where that nurse was asleep the person awake would be an unqualified care assistant. It was pointed out that this was similar to the arrangement in Leas Cross but that the nurse in Leas Cross was awake and on duty throughout the night. However, the ratios were vastly different. In The Beeches there was 1 nurse for 10 residents at night; in Leas Cross it was 1 nurse for 35 residents.

It is very difficult to see how this level of nursing cover, i.e. 2 nurses during the day and 1 at night, can be described as "*high dependency nursing.*" Furthermore the brochure for Leas Cross which I was given during the course of the inquiry and which I understand to have been the brochure available at the time states the price to have been a weekly fee of £565 for a single room and £495 for a twin bedded room with a weekly supplement for high dependency. I was also provided with the invoice for the period during which

St Michael's House was charged for Mr. McKenna's bed. It shows that St Michael's House was charged £495 per week between the 4th September and the 9th October and £600 per week from then until the end of October. It is not clear why the weekly charge between the 9th October and the end of the month differed from the brochure weekly fee for a single room of £565. It is possible that the difference is accounted for by the supplement for high dependency. However, this is very unlikely for the following reasons. Firstly, £35 per week is an extremely small amount in respect of the extra staff which would be needed to provide high dependency. Secondly, there is no reference in the staff roster to additional staff being on duty during the period while Mr. McKenna was in Leas Cross and St Michael's House was being charged £600 per week. Finally, I have been furnished with invoices in respect of other St Michael's House clients who stayed in Leas Cross. Several of those record a charge in respect of "Residential Care" and they expressly record additional items under separate headings. For example, some of them have charges under the headings "Special Care" and "Escort duty". It is likely that a "high dependency supplement" would have been treated in the same way. The only charge recorded on the invoice in respect of Mr. McKenna is one for "residential care". It is likely, therefore, that Leas Cross was not charging St Michael's House for high dependency.

While the Matron during the course of one interview referred to the location of Mr. McKenna's room being in the area where more dependent individuals were accommodated, I do not believe, based on the above, that the nursing care which was available in Leas Cross i.e. between 1 and 2 nurses for 35 residents, could be described as "*high dependency nursing care*".

Similarly, I do not accept that a unit with either of those staff ratios could be said to be a "*high support nursing unit*" as recommended by the Clinical Director. The Clinical Director states in his report of the 15th September that overall Mr. McKenna's "*needs can only be met in a high support nursing unit*"

and that "*such a place is now available in Leas Cross*". I do not know the basis upon which the Clinical Director concluded that the placement in Leas Cross was a "*high support nursing unit.*" It was undoubtedly a nursing unit but I do not believe, on the basis of the staff ratios, that it could be described as "*high support*".

Another description of the type of nursing required by Mr. McKenna which arose during the inquiry is "*high support care with nursing input in a unit that is specialised and geared towards the care of people with this disease.*" There is obviously less nursing input required in this type of care than in high dependency nursing or high support nursing and it may be that Leas Cross would have satisfied this formulation but I find it difficult to establish the basis upon which it could be described as a "*unit that is specialised and geared towards the care of people*" with Alzheimer's. I accept that all nursing homes which admit elderly residents must have the capacity to deal with people with Alzheimer's as it is inevitable that some residents will develop the disease even if they do not have it when they go in to the home. However, this formulation, which was used by the physician, suggests that the unit which was required for Mr. McKenna must have a speciality in dealing with Alzheimer's. There is nothing in the information or documentation with which I have been furnished which suggests that Leas Cross had or considered itself to have had such a speciality. Indeed, its brochure does not even refer to Alzheimer's. In addition, while it is not particularly relevant and is certainly not determinative, St. Michael's House, through their solicitors, submitted a document from a leading Alzheimer's support group to the inquiry which listed nursing homes in the Eastern Region which had indicated to that support group that they were prepared to take residents with Alzheimer's. Leas Cross does not appear on this list.

It is arguable that the care that was available was "*full time nursing and medical care*" which the medical officer to Leas Cross identified on the 11th

October as being what was needed by Mr. McKenna. I do not think that the medical officer's formulation could properly be understood as meaning "one-on-one" nursing but that nursing and medical care should be available to Mr. McKenna at all times. Even with the ratios available in Leas Cross such care was available (albeit on call) to Mr. McKenna at all times. However, when this formulation is put in the context of the sentence in which it appears it is clear that the medical officer was of the view that the nursing and medical care that was available to Mr. McKenna in Leas Cross did not comply with his requirements. He noted that Mr. McKenna "*could be difficult to manage in this establishment* ***as*** *he requires full time nursing and medical care.*" [emphasis added]. The clear implication in that sentence is that Mr. McKenna could be difficult to manage in Leas Cross because the nursing and medical care that was available did not meet Mr. McKenna's requirements. This is even more apparent from the contents of a letter which the medical officer sent to this inquiry and which I deal with in the next section.

In my final report, I found on the basis of the reasoning contained in the preceding paragraphs that the nursing care which was available in Leas Cross did not match any of the formulations of the type of care which those who were caring and were going to be caring for Mr. McKenna felt he needed. I had also included a proposed finding to this effect (and the reasoning for it) in the draft report. As stated in paragraph 1.3.12 above, following the delivery of my initial final report, St. Michael's House made a further submission dated the 17th July, 2009. I have considered the said finding in light of the contents of this submission much (though not all) of which is directed towards the section in the final report dealing with the suitability of Leas Cross for Mr. McKenna. I remain of the view set out in my final report.

St. Michael's House made a number of points in those submissions. Firstly, it was submitted that it was significant that the Statutory Commission reached the following conclusion:

> *"Although the Commission has received some evidence of complaints made regarding care at Leas Cross from its opening in 1998 until the latter half of 2003, the Commission has not found evidence of a sustained pattern of inadequate care at the Home during that period."*

In paragraph 8.5.62 below, I draw a distinction between the questions of the suitability of Leas Cross and whether Mr. McKenna in fact received adequate care in Leas Cross. In my view, St. Michael's House's point, and indeed the Statutory Commission's conclusion is more relevant to the second question.

Secondly, St. Michael's House submitted that:

> "The points you outlined to support your findings of unsuitability are contrary to the findings of the Statutory Commission. In this respect, we would draw your attention to the following findings in the final report of "The Commission of Investigation (Leas Cross Nursing Home) June 2009:
>
> - *"By 2000, as a result of the inspector's monitoring of the nursing home, acceptable staffing levels were achieved"*. (page 59)
> - *"The second period covered the years 2000-2002. The inspection reports for those years do not reveal significant staffing problems"*. (page 93)
> - *"No significant issues in relation to staff members are noticeable from a review of the inspection reports for the years 200-2002. Staff members increased during that period, so that there were 2 nurses and 7 care attendants rostered for the day shift by November 2002 when there were 36 residents"*. (page 95)"

The fact that the Commission of Investigation reached a conclusion that "acceptable staffing levels were achieved", even if same is contrary to the finding contained in my final report, does not in itself mean that my finding is, or must be, incorrect and must be altered. Contrary findings may be arrived at

by different inquiries. In my view there is ample basis for the finding that the nursing care that was available did not match any of the formulations of the type of care which those who were caring and were going to be caring for Mr. McKenna felt he needed. The basis for that finding is set out at length in the preceding paragraphs. The point must also be made that this finding of the Statutory Commission was a general finding about staffing levels in the nursing home rather than a detailed consideration of its suitability for one particular individual. The focus of the respective findings is therefore different.

The other two quotes from the Statutory Commission report do not constitute findings by the Commission that there were in fact "no significant staffing problems" or "no significant issues in relation to staff members" but rather that same are not revealed by or noticeable from the relevant inspection reports although it is reasonable to believe that the Statutory Commission accepted the contents of these inspection reports. As far as I am aware, there was no inspection of Leas Cross while Mr. McKenna was there. These reports did not deal with the suitability of the nursing care for Mr. McKenna specifically. However, they are relevant to the third point which was made by St. Michael's House:

> "We would particularly also like to draw to your attention that the Northern Area Health Board registered Leas Cross to cater for maximum dependency residents and that the Commission finds that the decision of the Northern Area Health Board to grant registration to Leas Cross Nursing Home was reasonable:
>
> - "*The application to register Leas Cross as a nursing home clearly indicated that the home could cater for maximum dependency residents*". (page 340)
> - "*On the basis of the evidence before it, the Commission finds that the decision of the Northern Area Health Board to grant registration to Leas Cross Nursing Home was reasonable*". (page 340)

In the context of this registration of the nursing home for maximum dependency residents, we believe it is important to take account of the minimum staffing levels as laid down by the Health Board for Leas Cross.

- *"In January 1999, Health Board Inspectors recommended the following minimum staffing levels:*

  Day Duty: *1 nurse 8 a.m. to 8 p.m.*
  1 nurse 8 a.m. to 1 p.m. ***whenever Matron is not on duty e.g. every Saturday and Sunday***
  3 care attendants 8 a.m. to 8 p.m.

  Night Duty: *1 nurse 8 p.m. to 8 a.m.*
  3 care attendants 8 a.m. to 8 p.m." (page 94)

It is clear from this roster that the Matron who was "generally on the premises between 9 a.m. and 5 p.m., Monday to Friday" (page 94) was considered as part of the nursing complement for the day duty.

We believe this information calls into question the findings you make in relation to staffing and rosters to support your conclusion of unsuitability or potential unsuitability and we ask you to reconsider your opinion in this matter in view of the Statutory Commission's report".

This submission may be summarised as follows:

(i) The fact that Leas Cross was registered following an application by the home in which it was indicated that the home could cater for maximum dependency residents amounted in effect to an indorsement or a finding that the home was suitable for maximum dependency residents and, therefore, Mr. McKenna.

(ii) The fact that Leas Cross, having been registered following its indication that the home could cater for maximum dependency residents, complied with minimum staffing levels which were

recommended by the NAHB in January, 1999, means that suitable levels of nursing care were available for maximum or high dependency residents and, therefore, Mr. McKenna.

(iii) As the Statutory Commission found that the decision of the NAHB to grant registration to Leas Cross on foot of the home's application in which it was indicated that the home could cater for maximum dependency residents was reasonable, I should conclude that it was suitable for Mr. McKenna.

Whether or not the combined factors of (a) the application for registration having referred to Leas Cross' ability to cater for maximum dependency residents, (b) the NAHB's subsequent registration of the home and (c) Leas Cross' compliance with the recommended minimum staffing levels amounted, in effect, to an indorsement by the NAHB that the home was suitable for maximum dependency residents, I am satisfied for the reasons set out above that the evidence of the type of care which was actually available to Mr. McKenna did not in fact match any of the formulations of the type of care which he was identified as requiring. Even though Leas Cross was registered by the NAHB in the knowledge that its proprietors believed that it could provide a suitable level of nursing care for maximum dependency residents and intended to do so, it must have been implicit in such registration that adequate levels of staff would be in place for the number of residents and, importantly, for the mix of dependencies at any given time. The mere fact of the registration did not in itself act as an indorsement by the NAHB of the suitability of Leas Cross for any particular individual at any particular period of time after the registration. It must also be noted that registration is simply a certification that an applicant nursing home has satisfied the statutory criteria for registration.

In relation to Leas Cross' compliance with the minimum staffing levels recommended by the NAHB, it must be borne in mind that these were minimum levels. As stated above, it is the responsibility of a nursing home to ensure that it has adequate staff for the number and mix of residents at any given time.

In relation to (iii) it is clear that the Statutory Commission was considering the reasonableness of the decision to register Leas Cross in light of questions about the suitability of the building for the purpose and was not referring to whether or not Leas Cross was suitable for maximum dependency residents. The entire paragraph from which St. Michael's House quoted reads:

> "The decision to register Leas Cross Nursing Home in 1998 has been criticised on the grounds that the building was not entirely suitable for the purpose. On the basis of the evidence before it, the Commission finds that the decision of the Northern Area Health Board to grant registration to Leas Cross Nursing Home was reasonable". [Emphasis added]

Indeed, in the previous paragraph from which St. Michael's House also quoted, the Statutory Commission said:

> "The application to register Leas Cross as a nursing home clearly indicated that the home could cater for maximum dependency residents. [The owner] has not provided the Commission with any basis for this assertion on the application form, which was repeated on subsequent applications for re-registration and for the expansion of the nursing home".

For all of those reasons, I remain of the view, as expressed in my initial final report, and having reconsidered same in light of St. Michael's House's submissions, that Leas Cross did not match any of the formulations of the type of care which those who were caring and were going to be caring for Mr. McKenna felt he needed. It is partly on the basis of this finding that I

conclude below that Leas Cross was not a suitable placement for Mr. McKenna.

As intimated above, I do accept, however, that the question of the registration of the nursing home by the Northern Area Health Board must also be considered in the context of my consideration of whether St. Michael's House had a bona fide belief and had reason to believe that the placement would be suitable. If St. Michael's House was aware at the time of its decision to place Mr. McKenna or the time of placement that Leas Cross had asserted to the Northern Area Health Board that it was suitable to accept maximum dependency residents and that it had been registered by the NAHB following that assertion, then this was another reason why St. Michael's House could have had an expectation that the appropriate type of care would be available to Mr. McKenna. I return to this at paragraph 8.5.59.

St. Michael's House, in response to the circulation of the draft report and specifically the proposed finding that the type of care which was available in Leas Cross did not match any of the formulations of the type of care which it was felt was needed for Mr. McKenna, submitted that the inquiry was "unfair' in not recognising the [following] steps that St. Michael's House took to ensure that Mr. McKenna received the type of nursing care he required":

(a) St. Michael's House rang the matron of Leas Cross on the 9th October to clarify whether or not Leas Cross would be able to look after Mr. McKenna in a situation where he had chronic retention of urine and a catheter inserted and that the matron confirmed that Leas Cross would be able to provide the care he needed. This in fact was considered and dealt with in the draft report and is considered at paragraphs 6.2.3 and 6.2.4 hereof;

(b) In the handover of Mr. McKenna to Leas Cross, St. Michael's House clarified that Mr. McKenna required 'high dependency' nursing care and that this was recorded and accepted by Leas Cross. In addition, St. Michael's House gave Leas Cross the telephone number of The Beeches and St. Michael's House's physician's number and advised Leas Cross that they could be contacted at any time. Both the matron and other staff in Leas Cross contacted St. Michael's House during the period. The fact of Mr. McKenna requiring high dependency nursing and same being recorded was in fact considered and dealt with in the draft report and is considered at paragraph 8.5.58(i) hereof;

(c) The fact that Leas Cross rang St. Michael's House on both the 12th October and prior to the 16th October to request a nurse to attend the outpatients' appointment in Beaumont Hospital would not have alerted St. Michael's House to difficulties in relation to nursing shortages at Leas Cross as to secure a nurse to spend a whole day with one client, in addition to your existing rostered nurses, would be difficult for any service at the time as all agencies were experiencing nursing shortages;

(d) There is no evidence that St. Michael's House are aware of that Mr. McKenna did not receive the high dependency nursing that St. Michael's House specified during his 12 days in Leas Cross.

I have considered all of these points. I do not believe that points (a) or (b) impact upon the objective question of whether in fact Mr. McKenna received 'high dependency' nursing care or any of the other types of nursing care which were identified. They do certainly disclose that St. Michael's House communicated to Leas Cross that Mr. McKenna needed high dependency nursing care but they do not assist in determining whether that type of care

was available to him in Leas Cross. I find that it was not and I set out my reason for this conclusion in paragraph 8.5.58(i) above.

Point (c) in fact suggests that staff in St. Michael's House were aware that Leas Cross were short of nursing staff in the same way as many if not all agencies were at that time.

In relation to point (d), I have set out the evidence upon which I conclude that Mr. McKenna did not receive high dependency nursing care while in Leas Cross in paragraphs 8.5.58(i) above.

(ii) In light of the medical officer's comments on the Doctor's Admission Sheet i.e. that Mr. McKenna "*could be difficult to manage in this establishment as he requires full time nursing and medical care*", I wrote to him by letter dated the 6th May, 2008 and by further letter of the 18th November, 2008. I raised a number of questions with him in the letter of the 18th November, 2008. Insofar as is relevant to this issue, my letter stated:

> "The Leas Cross Admission Sheet in respect of Mr. Peter McKenna contains a note which appears to have been written by you and which states that Leas Cross may have difficulty caring for Mr. McKenna. I would like to explore what precisely was meant by this statement....".

There followed some correspondence between the inquiry and a solicitor acting on behalf of the medical officer. I furnished documentation to the medical officer including the medical and nursing documents which had been maintained by Leas Cross. The medical officer replied to the above query by letter dated the 3 February 2009 in which he stated, inter alia:

> "With regard to the first area in which you seek assistance and my note on the Leas Cross admission sheet, I do not remember why I made this entry but on reviewing the notes which you sent me, it was probably due to the severity of the patient's medical

history and condition. Because of the severity of his condition, I believed he needed to be placed in a unit with resident medical attention and fulltime nursing care and at that stage there was a shortage of nursing staff in Leas Cross.

The deceased's condition, from reviewing the records, was that he had the following:

Down's Syndrome
End stage Alzheimers
Mitral valve incompetence secondary to mitral valve prolapsed
Aortic incompetence
First degree heart block
Left Ventricular hypertrophy
Bilateral lens opacitus
Recurrent blepharitis
Suborrhic dermatitis
Dementia
A past history of urinary retention
Doubly incontinent
Unable to walk
Almost unable to bear weight
Confused and agitated."

The medical officer concludes his letter with the comment that:

"It seems to me that he was looked after as expected in a unit that was not really equipped to deal with someone with Mr. McKenna's difficult medical condition which I have already referred to."

It was clear from this letter that the medical officer did not believe that the nursing and medical care which was required by Mr. McKenna was available in Leas Cross. This is at least suggestive that the placement was not suitable.

Following the circulation of the draft report, the solicitors for the medical officer made submissions on his behalf which stated, inter alia, "*having reviewed the relevant nursing records ... he believes that Mr. McKenna did*

receive adequate nursing care whilst in Leas Cross. This is notwithstanding the initial reservations he recorded in the admission note, specifically that Mr. McKenna 'could be difficult to manage in this establishment as he requires full-time nursing and medical care'". I understand this to mean that while the medical officer had reservations about Mr. McKenna's placement in Leas Cross at the time of admission, as things turned out he did receive adequate nursing care. This is a point I touch on further below.

These comments are the view of one individual. However, given the position of that individual and his responsibility for the medical care of residents in the nursing home, a point which has been repeatedly emphasised by St Michael's House, the medical officer's initial view is very significant as, of course, is the view contained in his said submissions.

St. Michael's House was not aware of the medical officer's reservations about the suitability of Leas Cross and presumably if they had been made aware of that view it may well have made a different decision in respect of Mr. McKenna's placement. It is indeed unfortunate that the medical officer was not asked for his view at the time. It is also unfortunate that he did not communicate his view to St. Michael's House at that time (the 11th October, 2000) or when he was speaking with the consultant psychiatrist on the 19th October, 2000. The medical officer does not specifically recall speaking with the consultant psychiatrist but does recall a doctor asking him if they could visit Mr. McKenna. It is also indeed unfortunate and surprising that Leas Cross did not inform St. Michael's House of the medical officer's view as recorded at the time. This is particularly unfortunate given that the Matron of Leas Cross also had reservations about the extent of Mr. McKenna's needs when he was transferred to Leas Cross. In this regard, she said:

> "He was – there was quite a – there was a significant deterioration in his condition from the time I assessed Peter in St. Michael's House. You know, his feeding, his drinking,

you know, he was taking an awful lot more than we ever could manage to assist him with his feed."[332]

However, the Matron of Leas Cross did go on to say that if she had been asked to assess Mr. McKenna and reach a view as to the suitability of Leas Cross on the day of his transfer that:

"I would have still said Leas Cross would be able to handle all his caring needs [and that] his needs had changed from the time to the time his was admitted. But Leas Cross had the staff and, you know, the ability to take care of any aspect of patients".[333]

These comments are significant for three reasons. Firstly, they illustrate the challenges that Mr. McKenna's requirements presented for Leas Cross and in my view it is surprising that this, taken together with the medical officer's comment, did not lead to some contact between Leas Cross and St. Michael's House. It should have led to such contact. The second reason they are significant is that the issues which were expressly identified by the Matron of Leas Cross as contained in the quote above were in the area of drinking and feeding. This is significant in light of (a) the fact that upon admission to Beaumont Hospital on the 22nd October, Mr. McKenna was clinically dehydrated and (b) the opinion of the medical expert who assisted the inquiry that it is clear from the Leas Cross notes that Mr. McKenna was dehydrated. The third reason they are significant is that it highlights the difficult situation for St. Michael's House. On the one hand, the medical officer clearly had reservations about the suitability of Leas Cross for Mr. McKenna but St. Michael's House was unaware of those reservations and on the other hand the matron accepted Mr. McKenna's admission thereby, to St. Michael's House's eyes, implicitly accepting that Leas Cross could care for Mr. McKenna appropriately.

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332 Interview with the Matron of Leas Cross, the 28th April, 2008, page 19

333 Interview with the Matron of Leas Cross, the 28th April, 2008, page 21

(iii) One further issue raises a question about the suitability of Leas Cross. On both the 12th October and the 16th October, Leas Cross indicated that it did not have sufficient staff to accompany Mr. McKenna to his out-patients appointment. St. Michael's House provided assistance on the 12th October.

The accompaniment of a resident to a hospital appointment is a normal part of the role of a nursing home. Leas Cross' difficulty in doing so raises questions about its staff numbers and, therefore, its suitability for a person with Mr. McKenna's needs. St. Michael's House addressed this in its submissions following the circulation of the draft report. I have considered those submissions and deal with them in paragraph 8.5.58 above.

8.5.59 These three issues are strongly indicative of the unsuitability of Leas Cross. In light of my findings in relation to the type of nursing care that was available (or, more precisely, not available) and the comment of the medical officer on the admission sheet, I conclude that Leas Cross was not a suitable placement for Mr. McKenna.

8.5.60 These issues have come to light following a detailed and lengthy inquiry. St Michael's House did not have the luxury of being able to engage in such a process. The third indicator obviously had not arisen at the time of St. Michael's House's decision. It can not be concluded that St. Michael's House knowingly placed Mr. McKenna in a placement in respect of which they knew there were very strong indicators of unsuitability and which the medical attendant believed was unsuitable. On the contrary, for the 9 reasons set out above, the fact that the NAHB registered Leas Cross following its assertion that it was capable of catering for maximum dependency residents, the fact that Leas Cross complied with the recommendations of the NAHB inspectors in relation to minimum staffing levels, the fact that the matron of Leas Cross accepted Mr. McKenna into the nursing home and the fact that the independent medical visitor indorsed the suitability of Leas Cross, St. Michael's House had a bona fide belief and had reason to believe that the placement would be suitable.

8.5.61 In their submissions in response to my proposed finding that Leas Cross was an unsuitable placement, St. Michael's House argued that in fact what the inquiry proposed to determine was Leas Cross' potential unsuitability and that I was not entitled under the Terms of Reference to determine that it was an unsuitable placement. I do not accept that I am not entitled to make a finding in relation to the suitability or unsuitability of Leas Cross. The question of Leas Cross' suitability is at the heart of the decision of St. Michael's House which is a subject of this inquiry.

8.5.62 In making this finding I am not expressing a view or making a finding as to whether or not Mr. McKenna in fact received adequate care. The questions of whether a proposed placement is suitable and whether the individual actually received adequate care in that placement are separate and distinct questions. Of course, an individual is more likely to receive adequate care in a placement that is suitable but an individual could receive adequate care notwithstanding the unsuitability of a placement. I could not make a finding as to whether or not Mr. McKenna received adequate care and I do not do so.

8.5.63 I also find that the absence of the appropriate type of nursing care and the placement's unsuitability were not identified because of an inadequate system of assessment. An adequate assessment process would have ensured that St. Michael's House was aware of the staff and, in particular, nursing ratios in Leas Cross and that the nursing care did not, therefore, match the various formulations of what was required including those identified by St. Michael's House. Such a process should also have ensured contact with the nursing home's medical attendant.

8.6 22ND OCTOBER, 2000

8.6.1 During the course of the preceding section I referred to Mr. McKenna having been dehydrated upon admission to Beaumont Hospital on the 22nd of October and the view of the medical expert who assisted the inquiry that the Leas Cross notes disclose that Mr. McKenna was dehydrated whilst in Leas Cross. He based this view on Mr. McKenna's fluid output as disclosed in the Leas Cross notes.

8.6.2 On the 22nd October, 2000 Leas Cross sent Mr. McKenna to Beaumont Hospital by ambulance. He appears to have been unaccompanied and it appears that it was only when a member of staff from Warrenhouse Road fortuitously went to Leas Cross, was told that Mr. McKenna had gone to hospital and then went herself to Beaumont, that Mr. McKenna had company. He was noted to have become unwell through the night and morning of the 21st/22nd October. The Leas Cross nursing notes record:

> "Client unwell pulse erratic – hyperventilating 45/50pm – min urinary output – poor concentrated and sedimented – very dehydrated and chesty – fluids encouraged – he has difficulty swallowing – client sent to Beaumont 3 o clock UTI RTI – family informed, medication and information faxed to Beaumont."

8.6.3 Further light was cast on Mr. McKenna's condition by a report which was subsequently provided to the family by a consultant in Beaumont Hospital based on the Accident and Emergency Department notes. While this report is dated the 27th May 2001 and is therefore outside the time period prescribed by the Terms of Reference, I believe that I can record same as it is based on the information in the A & E notes which pre-date Mr. McKenna's death. The report, having recited Mr. McKenna's history, stated:

> "Examination revealed him to be unwell looking. He was breathing at a rate of 18 breaths per minute. Oxygen saturation read 53%. It was difficult to feel his peripheral pulses. His

temperature was noted to be 37.5º. His heart rate was 120 beats per minute. He was clinically dehydrated. Cardiovascular and respiratory system examination were non-diagnostic. It was noted that he had a urinary catheter in situ. The urine bag contained infected looking urine. There was a pustular discharge from his penile tip. The clinical diagnosis of sepsis secondary to primary infection was made. The most likely source was thought to be a urinary tract infection. It is documented that Mr. McKenna's level of hygiene was poor".

8.6.4 The comment in that report in relation to Mr. McKenna's hygiene reflects information that was given to this inquiry by a member of staff from Warrenhouse Road who went to Beaumont Hospital on the 22nd October, 2000 which I return to below.

8.6.5 As previously stated, I availed of the assistance of a consultant in geriatric medicine. He explained that it was clear from the nursing notes from Leas Cross (presuming that they are accurate) that Mr. McKenna was dehydrated for a considerable amount of time while in Leas Cross. He also explained that dehydration is frequently indicative of an infection. Based on the notes, the medical expert estimates that Mr. McKenna was suffering from an infection from within a day or two of being admitted to Leas Cross. He explained that there is a risk of infection when a person has a catheter in and believes that it is *"fairly clear that he developed the infection after the catheter was put in"*. He also said *"Whether it happened at the time of the catheterisation, which is not usually the case because people tend to be very careful at that stage, or subsequently, it is not clear, but it certainly would have occurred probably within, I would have thought, within a day of the catheter being put in basically".*[334] He pointed out that the test results from Beaumont Hospital on the 10th October show no signs of an infection and he deduced from that that Mr. McKenna was not suffering from an infection on that date. It must also be noted that Mr. McKenna was prescribed antibiotics (Ciproxin) in Beaumont Hospital on the 10th October. It must also be noted that there is nothing in the documents which I received from Beaumont Hospital which discloses that there was an infection present on the 12th October, 2000 but it must be emphasised that there is no

334 Interview with Consultant in Geriatric Medicine, 10th December, 2008, pages 14-17

evidence in those documents of tests having been performed on that occasion. There is no express mention of an infection in the Leas Cross nursing notes.

8.6.6 As stated above, a member of staff from Warrenhouse Road went to Leas Cross on the 22nd October. When she arrived there she was told that Mr. McKenna had gone to Beaumont Hospital. She then went to Beaumont to see Mr. McKenna. She described Mr. McKenna in the following terms:

> "He looked bad..... Very bad, yeah, ill and in pain, a lot of distress. He was kind of shouting and roaring..... .....He was just very distressed. I don't know whether he - I can't tell you whether he knew me or not because he was very ill looking..... Like he was sitting up in the bed and he was, like, rolling, and you know, very physical and very distressed..... Well, he looked in the pain in his face, to be honest with you. He was very gaunt and thin looking and he was roaring and very distressed. I actually said to myself "God, if there's something you do today, do something", do you know. He looked painful in himself."[335]

8.6.7 She also said that:

> "the nurses said to me "he's very, very ill"..... She said he was very dehydrated and they didn't say anything -- I can't remember anything from that, what they said."[336]

8.6.8 She was also recorded in the documents with which I was furnished as reporting that one of the doctors in Beaumont passed a comment about the level of care which Mr. McKenna had received. I discussed this with this member of staff. She did not remember precisely what was said but remembered that it was to the effect that he had not been well cared for or that he had received better care in St. Michael's House:

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[335] Interview with the member of staff from Warrenhouse Road who visited Mr. McKenna in Beaumont Hospital, the 9th June, 2008, page 19

[336] Interview with the member of staff from Warrenhouse Road who visited Mr. McKenna in Beaumont Hospital, the 9th June, 2008, page 18

"And when I went in the nurse -- he was in, kind of, a corner cubicle in the hospital on his own. He was very distressed and looked, you know, quite distressed and in pain. And the nurse came in and said to me that he wasn't very well and he was very ill. So then that doctor came in not too long after. It was within the hour. I think it was about half-two or two o'clock I was at the nursing home and then I think it was about half-three o'clock, three o'clock when I got to Beaumont. And it was a just a comment that he said, as far as I can remember he had asked me where Peter was and where was he before that and he just said, he kind of commented that he obviously got better care there. It was just a comment. I don't know why that stayed in my head but it stayed in my head. He commented that he obviously had got better care there [in St. Michael's House]. Then I was there, I stayed with him. He was very distressed and I stayed with him until about seven, half-seven and then [Mr. McKenna's brother, MM] came in and I think it was his partner at the time, [.....], I don't know her first name, a lady, and then I left about a half-an-hour after. And I got a phone call I think between about nine and half-nine, I don't know why half-nine is in my head from [the Head of Unit of Warrenhouse Road] that he had passed away."[337]

8.6.9 Mr. McKenna died at 9.30pm on the night of the 22nd October, 2000. The death certificate was signed by the physician at the request of the coroner and following discussion between the physician and the Coroner's Office and between the physician, Beaumont Hospital Casualty Department and receipt by the physician of the laboratory reports although it appears that the coroner was not aware that Mr. McKenna had been residing in Leas Cross Nursing Home. Section 20 of the Births and Deaths Registration Act, 1880 provides that:

"(2) In the case of the death of any person who has been attended during his last illness by a registered medical practitioner, that practitioner shall sign and give to some person required by this Act to give information concerning the death a certificate stating to the best of his knowledge and belief the cause of death, and such person shall deliver or cause to be delivered that certificate to the registrar, and the cause of death as stated in that certificate shall be entered in the register.

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[337] Interview with the member of staff from Warrenhouse Road who visited Mr. McKenna in Beaumont Hospital, the 9th June, 2008, page 16- 18

(3) Where an inquest is held on the body of any deceased person a medical certificate of the cause of death need not be given to the registrar, but the certificate of the finding of the jury furnished by the coroner shall be sufficient"

I understand that the physician was satisfied and advised that in light of these discussions Mr. McKenna's death raised no cause for concern and that his death was caused by one of the well-recognised complications of Alzheimer's Disease in people with Down Syndrome. The Death Certificate records the cause of death as septicaemia 12 hours, Chronic Urinary Retention 3 months, Alzheimers Dementia, Downs Syndrome, Severe Mental Handicap, Mitral Incompetence, Aortic Incompetence, Heart Block.

8.6.10 The consultant in geriatric medicine confirmed that infection is the most common cause of death in dementia.[338]

8.6.11 While I have found that on balance Leas Cross was not a suitable placement , I do not believe for the reasons set out at above that it necessarily follows that this unsuitability led to Mr. McKenna's dehydration, the fact that he had an infection which was missed until the 22nd October or his death. That is a finding which I cannot make. They are matters which do not fall within the terms of reference of this inquiry as they relate to the adequacy of the care which Mr. McKenna received in Leas Cross. I do not make any finding in that regard.

8.6.12 It has been submitted that the contents of this section, which were also contained in the draft report, are outside the Terms of Reference and should therefore be omitted. This point was also made in St. Michael's House's submissions which were made after the delivery of my final report. I have considered both of those submissions and do not accept that interpretation of the Terms of Reference. I was expressly required to consider matters up to the date of Mr. McKenna's death and in those circumstances I was entitled to consider the matters set out in this section. I

338 Interview with the consultant in geriatric medicine, the 10th December, 2008, page 4

emphasise that the purpose of the consideration contained in this section is to examine the decision to transfer Mr. McKenna, the circumstances leading to same and to his actual transfer and not to examine or make any findings of fact in relation to the adequacy of care that Mr. McKenna received in Leas Cross and I expressly do not do so.

8.6.13 A report of an inquiry carried out under terms of reference which required me to examine matters up to the date of Mr. McKenna's death would be incomplete if it omitted to record information which I was given in relation to Mr. McKenna's condition in Leas Cross and shortly after leaving there immediately prior to his death. It would also be incomplete if it omitted to record that "*it does not necessarily follow from my conclusion that Leas Cross was unsuitable that this unsuitability led to Mr. McKenna's dehydration, the fact that he had an infection which was missed until the 22nd October or his death.*"

8.6.14 Nor do I accept, as was submitted by St. Michael's House, that as there was no full inquiry in the report into Mr. McKenna's care in Leas Cross, that an unfair negative impression has been created. This section records information which I have been given during the course of the inquiry (including information derived directly from Leas Cross' own notes). It does not make findings of fact in relation to Mr. McKenna's care in Leas Cross.

9. CONCLUSION

9.1 I have stated several times during this report that the focus of this inquiry and report is the decision to transfer Mr. McKenna from St. Michael's House to Leas Cross Nursing Home and not the care that Mr. McKenna received in Leas Cross or the circumstances leading to his death. I believe that this bears repeating.

9.2 I have made numerous findings throughout this report and I set out my principal findings of fact in the following section. All of these findings refer and are intended to refer to the decision to transfer Mr. McKenna and the circumstances leading up to it rather than to the care which Mr. McKenna received or the circumstances of his death.

9.3 It is now nearly ten years since Mr. McKenna's death. During the course of this inquiry I was struck by his family's grief at his passing and their anger at the manner in which they believed he had been mistreated in the final month and a half of his life. They have been seeking answers to questions in relation to that final month and a half for the best part of those ten years. I hope that this report, insofar as it can, given the focus and parameters of the inquiry, provides those answers. I also hope that it together with its recommendations provide assistance to St. Michael's House in the performance of the invaluable work to which it has committed itself with dedication for half a century through very difficult times.

10. SUMMARY OF PRINCIPAL FINDINGS OF FACT

10.1 My findings of fact are to be found in the body of the report. For ease of reference I set out in this section a summary of my principal findings. This is not an exhaustive summary. Nor does it contain the reasoning leading to these findings or the ancillary findings upon which these principal findings of fact are based. For that reason, this summary should not be read in isolation and should only be considered following, and in conjunction with, a detailed consideration of the whole report.

10.2 My principal findings of fact may be summarised as follows:

- Mr. McKenna was diagnosed as suffering from Alzheimer's Disease in November, 1999 and this diagnosis was formally given to Mr. McKenna's family at a meeting on the 31st January, 2000.

- The St. Michael's House representatives at this meeting explained the likely course of Mr. McKenna's condition and that it was likely that his needs would become such that they could not be met in his then placement, Warrenhouse Road, which was not a nursing unit. The Beeches, a St. Michael's House unit in which nursing care was available, was identified as a likely onward placement when Mr. McKenna reached that stage. Both St. Michael's House and Mr. McKenna's family proceeded over the following months on the basis that The Beeches was the intended onward placement.

- That intention or plan was subject to there being a place available in The Beeches when the time came when Mr. McKenna needed to be moved and must be seen in the context of the limited physical and financial resources that were available to St. Michael's House at the time. In

particular it must be seen in the context of the residential crisis that was being experienced by St. Michael's House despite continuous lobbying by St. Michael's House of the government for a number of years. This crisis seriously limited St. Michael's House's options when Mr. McKenna's placement in Warrenhouse Road broke down.

- St. Michael's House decided on the 31st August, 2000 that Mr. McKenna urgently needed to be transferred from Warrenhouse Road to a nursing facility. At that time there was no permanent place available in The Beeches. St. Michael's House decided that as Mr. McKenna needed nursing care he should be transferred to an external nursing home, specifically Leas Cross Nursing Home, from the following Monday, the 4th September, and to The Beeches for the weekend.

- The first aspect of this decision, that Mr. McKenna should be transferred **from** Warrenhouse Road was a reasonable decision. In circumstances where Mr. McKenna needed nursing care and I can not find that there was any nursing placement available within St. Michael's House, the decision that Mr. McKenna should be transferred to an external nursing home was also a reasonable decision in the circumstances facing St. Michael's House at that time.

- The decision was not made in accordance with St. Michael's House's normal non-crisis decision-making process. It was made largely in accordance with what St. Michael's House describe as their decision-making process in cases of crisis or irretrievable breakdown.

- However, it is likely that the same decision would have been made even if the normal or non-crisis decision-making processes had been followed but

a decision which was made in accordance with the normal processes would have been more likely to have addressed issues such as support for Mr. McKenna and support for and communication with his family.

- There was an absence of forward planning for Mr. McKenna's needs in the period leading up to the decision that Mr. McKenna should be transferred so that the decision was made in a crisis situation which adversely affected consideration of issues such as support for and communication with Mr. McKenna's family and adversely affected the level of consultation with his family.

- There was no advance notice or consultation with Mr. McKenna's family in relation to St. Michael's House's decision.

- This, together with the absence of forward planning, led to an environment of lack of trust.

- Members of Mr. McKenna's family have complained that they were treated contemptuously by St. Michael's House when they opposed the proposed move to Leas Cross and that St. Michael's House was closed to the family's suggestions. I find that while that was their perception they were not in fact so treated and St. Michael's House were not closed in the manner suggested. However, the process of consultation with Mr. McKenna's family after St. Michael's House's decision had been communicated to them was inadequate. There was no or no adequate inquiry into or consultation with the family in relation to the specific reasons why they were opposed to a move to Leas Cross.

- There had been four previous complaints to St. Michael's House about Leas Cross. The individuals in St. Michael's House who made the decision were not aware of those complaints at the time. Nor, therefore, was the President of the High Court when he decided upon St. Michael's House's application to him on the 6th October 2000. There was a systems failure in this regard in that the decision-makers and later St. Michael's House management either did not inquire as to whether there had been previous complaints or inquired and were not told of the existence of such complaints.

- It is likely that even if St. Michael's House and the President of the High Court had been aware of these complaints at the relevant times they would have made the same decisions.

- Mr. McKenna's condition deteriorated between the date of the St. Michael's House decision (the 31st August 2000), the date of the report of the Court-appointed medical inspector (the 22nd September 2000) and the Court hearing on the 6th October or his transfer on the 10th October. The deterioration was not of a nature to require, in itself, a reversal of the decision to transfer Mr. McKenna to an external facility or a fresh application to the President of the High Court.

- Mr. McKenna was transferred to Leas Cross on the 10th October, 2000. There were shortcomings in the handover of Mr. McKenna's care from St. Michael's House to Leas Cross. While they should not have occurred, they were not of a nature which were likely to have prejudiced or compromised Mr. McKenna's care.

- I do not conclude that St. Michael's House reneged on its commitment to provide clinical backup.

- There was a systems failure in respect of St. Michael's House system of monitoring and supporting Leas Cross in that a member of staff either witnessed events which should have caused serious concern in relation to how Mr. McKenna was being cared for and did not report them back to St. Michael's House or reported them back to St. Michael's House but nothing was done.

- There was no adequate assessment of the suitability for Mr. McKenna of the proposed placement in Leas Cross.

- While St. Michael's House had grounds for believing that Leas Cross would be a suitable placement for Mr. McKenna, and did not knowingly place Mr. McKenna in a facility which they knew to be unsuitable, on balance the placement was not suitable for him and that unsuitability was not identified because of an inadequate system of assessment.

11. RECOMMENDATIONS

11.1 Based on the findings contained in the body of this report I make the following recommendations:

- Insofar as it is necessary to use an external facility, including a private nursing home, formal criteria by which the general suitability of such facility will be assessed and evaluated for that individual should be formulated and applied.

- Such assessment and evaluation should be formal and documented.

- There should also be a formal and documented assessment and evaluation of the suitability of such facility for individual service users where it is proposed that the service user will reside in the facility for an indefinite or long period of time. The criteria by which the suitability of the facility will be assessed and evaluated should refer to the individual needs of the service user.

- Normal non-crisis decision-making processes should be followed in all cases insofar as possible. In circumstances where it is not possible to follow those processes every attempt should be made to involve all the individuals who should be involved in a normal non-crisis decision-making process to the greatest extent possible.

- A system of forward planning including contingency planning should be formulated and applied to ensure that service-users' anticipated short to medium term needs can be planned for and addressed. Such a system should include the service-user's family and in particular should ensure adequate consultation with and notice to the family of such plans including contingency plans.

- The role, function and duties of the social worker in monitoring and supporting

the external facility and the service users in that facility should be clearly defined, as should the role, function and duties of members of staff visiting service-users in an external facility.

- A system should be formulated and applied whereby decision-makers in relation to a proposed transfer of a service-user to an external facility must inquire, and will be able to ascertain, whether there had been any previous complaint in respect of that facility.

- There should be a full written handover of medical and nursing care in all cases where the medical and nursing care of a service user is being transferred.

11.2 It should be emphasised that I did not inquire into the systems that are currently in place in St. Michael's House or whether external residential facilities are currently being used by St. Michael's House (although there were some references to there being a possible need to do so) as I did not consider same to be a proper matter for inquiry given the terms of reference under which the inquiry was conducted. It may be that some of these recommendations are no longer relevant. I make them because of the terms of reference and based on my findings and in the hope that they will be of assistance.

CONOR DIGNAM BL
12th March 2010