

**THE INQUIRY INTO HISTORICAL INSTITUTIONAL ABUSE
1922 TO 1995**

**CLOSING SUBMISSIONS ON BEHALF OF
[REDACTED] BR77**

1. At the outset [REDACTED] BR 77 wishes to reiterate his willingness throughout this process to co-operate in all ways possible with the work of the Inquiry. This can firstly be evidenced by the prompt manner, in accordance with time limits, in which his Statement to the Inquiry and questions for relevant witnesses were submitted. Secondly, he attended as requested on November 25th 2014, co-operated fully with counsel to the Inquiry, Mr Aiken, and then answered all questions asked of him during a two-and-a-half hour afternoon session.
2. The level of [REDACTED] BR 77's engagement extended beyond his direct contact with the Inquiry and there were many hours of consultation and discussion with his legal representatives in order to draft the written material submitted to the Inquiry and to prepare for the oral hearing at which he attended.
3. With the benefit of hindsight it is now clear that the teacher training [REDACTED] BR 77 received at [REDACTED] between [REDACTED] and [REDACTED] was inadequate in the manner in which it prepared him for his first teaching post at Rubane House, Kirkcubbin. In his evidence he stated in response to a question relating to dealing with children with particular behavioural difficulties: "I had no preparation at all".
4. Given what he know about Rubane, [REDACTED] BR 77 was reluctant to go there as his first teaching post and tried to persuade [REDACTED], [REDACTED], not to send him there. He had some knowledge of the situation at St Patrick's, Belfast and was wary of what lay ahead at Rubane.
5. The Inquiry will also note [REDACTED] BR 77's evidence when asked about the level of guidance given to him in terms of what was expected of him at Rubane: "I was asked by [REDACTED] BR 3 to read the files of the students. I never got round to doing it. It would have been a lesson for me to know about their backgrounds."
6. The situation was further complicated by the fact that [REDACTED] BR 77 was to live and work at the same location: "It was my first experience of that type of life, Brothers and children living together." He found the twin roles expected of teaching Brothers at Rubane a difficult challenge: "I was there as a teacher but other things were required of me because I was living there".
7. It is clear from the evidence of applicants to the Inquiry and from material submitted by [REDACTED] BR 77 himself that he did his best to broaden the curriculum as much as was possible in terms of providing opportunities to the boys to engage in a wide range of outdoor pursuits. These included games

such as basketball and hurling and activities outside Rubane including camping trips, orienteering, climbing, hiking and canoeing.

8. The Inquiry has heard complaints about some of these camping trips from applicants to the Inquiry. It is respectfully submitted that these complaints should not be allowed to overshadow what appears to have been the largely positive experience of the majority of the boys. This is evidenced at least in part by the photographs which have been submitted to the Inquiry. Even a witness such HIA 18 [REDACTED], who makes serious and significant allegations against BR 77 [REDACTED], conceded that good facilities were provided to the boys by the Brothers and there were opportunities to go on trips outside the Home. "That's correct," he replied in his oral evidence when that was put to him by counsel to the Inquiry. No boy ever refused to go on these trips with BR 77 [REDACTED].
9. The difficulty that BR 77 [REDACTED] and all those involved in providing such activities at Rubane face is that the Inquiry has not been able to hear the many positive voices who would speak highly of the work of BR 77 [REDACTED] and others. Also, it is worthy of note that the range of opportunities and experiences offered to the boys was clearly far in excess of what would have been available to some of them in the home environments from which they had come.
10. BR 77 [REDACTED] has never, in either written submissions or his oral evidence, attempted to deny or equivocate in relation to the assaults on DL 48 [REDACTED], DL 53 [REDACTED] and DL 52 [REDACTED], in respect of which he was convicted at Newtownards Crown Court in 1981. The Inquiry will also note that in his oral evidence he confirmed that subsequent to the assault on DL 52 [REDACTED] BR 77 [REDACTED] apologised to his class: "I told the class I was sorry about it. I knew I had overstepped the mark".
11. It is clear that there was a degree of accountability and reporting within Rubane in relation to the assaults. DL 48 [REDACTED] had reported the matter to his social worker who then raised it at Rubane with BR 1 [REDACTED]. BR 77 [REDACTED] was spoken to by BR 1 [REDACTED] ("I was spoken to in very strong terms by BR 1 [REDACTED]") and told it was unacceptable. Further, he was told that such behaviour should not be repeated and if it was he would have to leave Rubane.
12. BR 77 [REDACTED]'s unequivocal position is that there was no repeat of this type of behaviour. He denies all of the other allegations of physical and sexual assault made against him. The particular attention of the Inquiry is drawn to the fact that his convictions for assault were in 1981. The allegations of physical and sexual misconduct against him are from the period 1976-1980. The Inquiry has no evidence before it of any wrongdoing by BR 77 [REDACTED] of a physical or sexual nature in the 34 years since then.
13. It is not proposed to recount the detail of all of the allegations made against BR 77 [REDACTED] in this submission. The Inquiry already has BR 77 [REDACTED]'s

Statement to the Inquiry dated October 8th 2014 in which the allegations are dealt with in detail.

14. However, one point that emerged following the oral evidence to the Inquiry can be made. In common with other witnesses against whom allegations have been made, BR 77 is confronted with the almost impossible task of proving a negative i.e. that an allegation that has been made did not in fact happen. This is a reversal of the normal burden to be borne by those against whom allegations of misconduct are made and is a difficult one to discharge.

15. It is respectfully submitted that the volume of complaints of physical and sexual abuse made against BR 77 – or any other witness – cannot of itself make those complaints more likely to be true. Each has to be examined individually in terms of its overall credibility before a leap to judgement is made because it is of a similar nature to a number of other complaints. The impact of a denial of wrongdoing should not be minimised simply because it is required to be repeated a number of times in relation to a succession of similar-type allegations.

16. In addition to the submissions already made in the Statement to the Inquiry of October 8th 2014, BR 77 wishes to draw attention to the following particular aspects of some of the oral evidence of those who have made allegations against him:
 - HIA 218 stated to the RUC in 1980 and 1995 during live investigations that he was not sexually abused during his time at Rubane. Allegations of sexual abuse were not made in HIA 218's witness statement to the Inquiry dated March 25th 2014 but do feature in an ABE interview with police in 2010. This inconsistency, it is respectfully submitted, is a factor which the Inquiry should take account of when assessing the overall credibility of what he alleges against BR 77.
 - HIA 219 stated in his 1980 statement that: "Nobody interfered with me in any way or touched me". In a statement in 1995 there were no references to masturbation or sexual assault. The situation is markedly different in both his Witness Statement to the Inquiry dated March 25th 2014 and his oral evidence in which allegations of masturbation, oral rape and anal rape are made. He also states that these assaults always occurred when his brother HIA 218 was also present, but this assertion was not corroborated by the evidence of his [redacted].
 - the evidence of DL 124 in his police statement of February 17th 1995 appears to be wholly discredited as it alleges wrongdoing by BR 77 during the period [redacted] when he was not teaching at Rubane. Further, DL 124 failed to pick out BR 77 in an identification parade which was subsequently convened
 - On November 25th 2014 Counsel to the Inquiry stated, in relation to the evidence of DL 49 in a police statement dated January 13th 1995, that "police [were] not impressed with his allegations" and that "[he] may be seeking a claim".
 - Diary entries clearly show that the camping trip to [redacted] in respect of which HIA 41 makes allegations lasted only five days

- ██████████ and not the 14 days without a break which he suggests. The Inquiry is also invited to consider the history of statements and allegations made by this witness, as referred to by counsel to the Inquiry during the taking of oral evidence and the shifting positions adopted between statements made in April 1980, January 1995, April 1995, February 2010, September 2010, September 2011 and September 2012.
- HIA 25 ██████████ stated to the RUC in 1980 that “nothing of that nature happened to me” i.e. sexual assault but then goes on to make allegations of sexual misconduct in his witness statement to the Inquiry of March 31st 2014. These are not consistent with the content of the ABE interview of April 8th 2013. Nor are the allegations in the witness statement to the Inquiry consistent with the oral evidence given on November 6th 2014 which contains the following pieces of additional information not repeated in another statement or interview: “[There was] cream on my backside after slapping me”; “[I’m] near sure he made me feel him up”. Also, attention is respectfully drawn to the references by HIA 25 ██████████ in that ABE interview to HIA 41 ██████████ telling him that instances of sexual abuse by BR 77 ██████████ did occur even though he, HIA 25 ██████████, can’t remember them. This lack of certainty was also a feature of the oral evidence to the Inquiry of this witness
17. The patterns of inconsistency traced out above are, it is respectfully submitted, significant in assessing the overall credibility of the allegations made against BR 77 ██████████ – aside from the physical assault matters in respect of which he pleaded guilty and was sentenced. The internal weaknesses of the allegations should also be set against the clear and consistent denials of any wrongdoing which have been a feature of the RUC/PSNI interviews of BR 77 ██████████ in 1995 and 2012-14, of his statement to the Inquiry of October 8th 2014 and of his oral evidence to the Inquiry on November 25th 2014.
18. BR 77 ██████████ that the Inquiry has a particular focus on the structures that were in place within Rubane in relation to the reporting of allegations of physical or sexual impropriety. The Inquiry will therefore note the evidence of BR 77 ██████████ when he was asked about allegations or rumours while he was living at the Home in relation to the behaviour of ██████████. BR 77 ██████████ recounted that he had heard one rumour from a boy named DL 59 ██████████. He then took two further courses of action. Firstly he told DL 59 ██████████ to go to BR 3 ██████████ and repeat the allegations he was making to him. Secondly, he himself went to see BR 6 ██████████ who told him he was aware of an incident involving a sexual assault on DL 69 ██████████ and that he, BR 6 ██████████, had dealt with it. It is not clear if these two incidents are the same but the submission on BR 77 ██████████’s part is that he did his best to act appropriately by encouraging a boy making a complaint to take it further and by himself reporting it to his superior within the De La Salle Order.
19. The allegations made against BR 77 ██████████ have, in form or another, been a feature of his life in one form or another since they were first made in 1980. Since then he has been the subject of RUC/PSNI investigations in 1980, 1995 and in the period 2011-14. The evidence on each and every occasion has been determined, after due consideration, not to be sufficient to merit any further

prosecution or prosecutions. BR 77 has also on occasion been the subject of lurid and intrusive media coverage in respect of allegations that remain unproven against him. The convictions for assault on DL 48, DL 53 and DL 52 aside, BR 77 has been consistent and adamant in his denial of any other criminal behaviour during the period he spent at Rubane House. Consideration of these denials should, it is submitted, also take proper account of the fact that no similar-type allegations have been made against him in the period of time that has elapsed since he left Rubane.

DESMOND FAHY BL
December 5th 2014