

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

- - - - -

HISTORICAL INSTITUTIONAL ABUSE INQUIRY

- - - - -

being heard before:

SIR ANTHONY HART (Chairman)

MR DAVID LANE

MS GERALDINE DOHERTY

held at

Banbridge Court House

Banbridge

on Monday, 15th December 2014

commencing at 10.00 am

(Day 79)

MS CHRISTINE SMITH, QC and MR JOSEPH AIKEN appeared as
Counsel to the Inquiry.

1 Monday, 15th December 2014

2 (10.00 am)

3 CHAIRMAN: Good morning, ladies and gentlemen. Again,
4 although we have no witnesses scheduled to give evidence
5 this morning, can I remind everyone to ensure their
6 mobile phones are switched off or at the very least are
7 on "Silent/Vibrate" and that no photography is permitted
8 anywhere in the premises or in the chamber.

9 May I also make the point to those who are present
10 that what is going to happen now and again on Wednesday
11 is we will be hearing oral submissions in relation to
12 a number of those against whom allegations are made or
13 on behalf of the institutions concerned, and it is quite
14 possible that in the course of these submissions
15 individuals who have been granted anonymity will be
16 referred to by name. So it is to remind you all that
17 any name which is mentioned as opposed to a designation
18 -- any name which is mentioned must not be repeated
19 outside the chamber.

20 Yes, Mr Aiken.

21 MR AIKEN: Chairman, Members of the Panel, good morning. As
22 you have indicated, Chairman, today is a day for oral
23 submissions from those against whom allocations have
24 been made.

25 Before I invite Mr Arthur Harvey, QC, who has agreed

1 to step forward and begin that process, I want to say
2 the Inquiry in respect of the Rubane module of evidence
3 based on material it had received and applying its
4 criteria to it identified 31 individuals that the
5 Inquiry wanted to engage with and gave an opportunity to
6 respond to various allegations that had been made
7 against them.

8 Of that 31, the Inquiry was unable to contact ten
9 such individuals. A further ten individuals were able
10 to be contacted, but whether due to their own ill
11 health, living outside the jurisdiction or the Inquiry
12 determining as matters developed that it was not
13 necessary to hear oral evidence from those individuals,
14 then they did not give evidence.

15 That left a remaining eleven individuals that the
16 Inquiry did hear oral evidence from. Three of that
17 eleven were individuals who themselves had come forward
18 to the Inquiry but then were also themselves subject to
19 allegations, and the remaining eight were individuals
20 against whom allegations were made.

21 Of that eleven that gave oral evidence to the
22 Inquiry the Inquiry has received written submissions
23 from six of them, with the other five electing not to
24 make any written submission to the Inquiry.

25 In addition to that six, Mr Harvey represents three

1 Brothers who fell into the ill health category, who were
2 not in a position to give oral evidence to the Inquiry,
3 and the Inquiry has received a written submission on
4 behalf of those Brothers, and today the Inquiry is
5 likely to hear submissions orally on behalf of six
6 individuals, three who gave evidence to the Inquiry
7 orally and then the same three Brothers that Mr Harvey
8 represents who were unable to give oral evidence.

9 So the opportunity has been given to each of the
10 individuals who were subject of allegations to make both
11 written submissions and oral submissions, and in
12 a number of respects individuals have elected either not
13 to make a written submission or, in making a written
14 submission, then not to make oral submission. That is
15 why the number that you will hear from by way of oral
16 submission today is a lot lower than those who actually
17 gave oral evidence to the Inquiry.

18 With that, Mr Chairman, I will invite Mr Harvey to
19 begin on behalf of the five Brothers that he represents.

20 CHAIRMAN: Perhaps I should say before you do so, Mr Harvey,
21 that in your case, and indeed for each of those who have
22 put in written submissions, we have these very extensive
23 and very detailed written submissions, and therefore on
24 this occasion, as indeed at the conclusion of the first
25 module, which was similar in its shape, we anticipate

1 that all counsel will wish to say on this occasion are,
2 as it were, overarching submissions rather than taking
3 us through the detail which we already have and have
4 been able to look at.

5 Closing submissions by MR ARTHUR HARVEY, QC on behalf of
6 BR2, BR3, BR10, BR25 and BR62

7 MR HARVEY: Might I say, Mr Chairman, Members of the Panel,
8 it is not my intention to refer in any way to the
9 written submissions that have been supplied but rather
10 to make a generalised submission in relation to the
11 background of this case as it is applicable to each of
12 the Brothers on whose behalf I appear.

13 What I would respectfully submit, that in dealing
14 with that, the historical background and context is as
15 every bit as important for the Brothers as it was for
16 the children. What I respectfully submit is when
17 Father~Bartlett last week indicated that the church had
18 let the children down in the sense that it had not had
19 primary regard to the welfare of those children, that is
20 dealing within the hierarchical structure of the church
21 rather than those who were charged with the provision of
22 the front-line services to those children within the
23 hospital (sic).

24 When one comes to look at the background to the
25 landscape of policy and provision of services to

1 children within those homes, it undoubtedly is a fairly
2 bleak and barren one. What one actually has to keep in
3 mind throughout is that the nature of Rubane was that,
4 in fact, whatever the intention when it began in 1950,
5 during the course of its development from then until its
6 close in 1985 it appeared to become a placement of last
7 resort. As a placement of last resort, it simply meant
8 that the children whom it received were undifferentiated
9 in terms of how they were received, undifferentiated in
10 terms of their emotional, psychological, educational and
11 in terms of disabilities that they had. Today it is
12 inconceivable that any organisation would receive
13 a child in those conditions without a statement
14 referring to the specific needs of the child, without
15 resources being sought and allocated to meet those needs
16 both in terms of personnel, finance and professional
17 services.

18 What I respectfully submit perhaps is to look at
19 just two instances of the type of child that was being
20 received. One of those -- and I do not intend to go to
21 it in detail, but it is contained in exhibit 13 to BR2's
22 statement provided by the core participants -- it
23 relates to one child, whose name, of course, which will
24 not be reported, is . That child had
25 had a very troubled background. He had been examined.

1 There was what appears to be a Social Services report on
2 him, unlike many of the other boys. His mother,
3 whenever he was being placed in care of Rubane,
4 indicated that she felt behaviour was driving
5 her insane. When she tackled him about his stealing, he
6 became violent and he had struck her on several
7 occasions. Ms felt, unless something was
8 done, she would end up in Gransha again or else she
9 would throw herself into the river. That happened in
10 .

11 In the boys, who gave evidence before
12 this tribunal, was that they were young children. Their
13 father had died. There had been many attempts to get --
14 to ensure that they would attend school and not be
15 disruptive. Those failed. There are other matters
16 which are known to the tribunal but not to the
17 participants as to the precise nature of what occurred.
18 They were brought to Rubane quite literally kicking and
19 screaming. Their mother was brought down some five days
20 later. This was on , and again they
21 clung to their mother, did not wish to remain in Rubane,
22 and eventually again for reasons known to the tribunal
23 they only stayed for a very short period of time.

24 Now if one asks what qualifications did any of the
25 Brothers whom I represent have which would have equipped

1 qualification. Not one of those experiences of life
2 could have provided them with the most basic skills
3 necessary to function within a school such as Rubane.
4 The boarding schools that they would have attended as
5 junior novitiates would have been disciplined. They
6 would have been dealing with a fairly homogenous group
7 of people and they would have been dealing with
8 individuals who were intelligent and motivated towards
9 achieving a benefit in their life. There would have
10 been no disruption. There would have been no
11 overwhelming personal problems which would have led to
12 ill-advised behaviour. The sole assessment of
13 individuals was as to whether or not they could meet the
14 criteria of a religious life, but it is also a fact that
15 anyone making such a decision at the young age of 12 or
16 13 or 14 could never have anticipated that a life that
17 was meant to be served in teaching within poor
18 communities could have resulted in the silent transition
19 into all of the difficulties that they would face in
20 Rubane.

21 What I respectfully submit is or ask -- invite the
22 tribunal to consider is that such young men were, in
23 fact, like all members of the Catholic community at that
24 time, offered to consider the religious life as a way of
25 life as a matter of duty, and when those decisions were

1 made, it is it is difficult to imagine that the one
2 thing that provides identity to most human beings is
3 their family, and when you leave that family behind, you
4 leave behind the greater family, the small community
5 from which you come. You become into a hierarchical
6 system, where you accept without question the roles
7 which you are allocated within life.

8 Those Brothers were invited to have a religious way
9 of life for one reason and one reason only and that was
10 the betterment of the life of those who were
11 disadvantaged in terms of poverty and background.
12 Christian charity is only a means to an end. The end is
13 ultimately the improvement of people's lives. Christian
14 charity and devotion of a life to the service of that
15 cause is merely an instrumental way of achieving that
16 end.

17 When Rubane was established in 1950, one thing was
18 obvious, that it was the beginning of the welfare state
19 and it was the end of the workhouse, and Northern
20 Ireland had no shortage of workhouses and no shortage of
21 people to fill them. In Belfast alone the Belfast City
22 Hospital began life as the workhouse. As it took in
23 more and more people, it also had to face the necessity
24 of providing medical care. So it had a fever hospital.
25 It also, because of the poor that it had at one time,

1 3500 people living in that one workhouse, it also had
2 mental health problems. So it developed a mental health
3 facility, which came to be known as Windsor House.

4 When the welfare system came in, the children who
5 would have been formerly housed in workhouses had to be
6 found placements, and while in 1950 the correspondence
7 from the Ministry indicates the first preference for
8 dealing with children was, firstly, to find them a home
9 in terms of their own home by returning them or
10 boarding, those that were left were those for whom no
11 placement was available. There was overcrowding in both
12 St. Patrick's Training School in Milltown and later the
13 Glen Road, overcrowding in Nazareth Lodge.

14 The significant feature is when it was founded, it
15 was intended that it should only have a primary school.
16 Very quickly it was realised that most of the children,
17 in fact, were post-primary school age. In other words,
18 those children in whom behavioural problems had been
19 established to such a degree that it was unlikely they
20 would have found -- had it not been the case, they would
21 have found placements earlier, and within a very short
22 period of time it was accepted that most -- the majority
23 of the children in Rubane had educational, behavioural
24 and emotional needs that could not be fulfilled without
25 the establishment of special needs and without the

1 establishment of an intermediate school.

2 The Ministry accepted that the school would have to
3 be on the site of the home quite literally, because
4 these children, because of the difficulties they had,
5 that if they were to travel to the primary school two
6 miles away or the secondary school, which was six miles
7 away in Portaferry, the likelihood of them ever
8 returning was small, and that they required a degree of
9 discipline which was not provided within a normal school
10 situation. That's the only training any of these
11 Brothers had was within a normal school situation.

12 We have that as against the background of a home,
13 whatever its intentions initially, grew organically.
14 They grew without really policy decisions being made
15 either by the Ministry or the diocese. The Brothers in
16 those homes were left to devise a way of managing
17 children with whom they had absolutely no experience.

18 BR2 spent years of his life there and the measure
19 of his life is measured in his diary. One cannot help
20 but read it and wonder at the reverence in which he held
21 those in his care, because every day produced a new
22 trial: children absconding; children who lived vast
23 distances in terms of the transport that would have been
24 available in the from where they were, and yet
25 they managed to make their own way home; appearing in

1 police stations to have children returned; looking for
2 help from the local community, from local psychiatrists,
3 local doctors, but not as a matter of policy, just
4 a matter of a natural, decent, human reaction to, "How
5 do I cope with the problems I see before me?"

6 In fact, over the years one can see even when the
7 administration of corporal punishment was necessary, BR2
8 in his diary reflects having talked to one boy about the
9 dreadful background of his family, a boy called DL95.
10 Within three days the boy, who had been very disruptive
11 throughout his stay, was disruptive again and he was
12 punished. The diary entry was:

13 "I punished DL95. Felt awful."

14 Hardly the reaction of an individual who had been so
15 dulled by the constant experience of failure in terms of
16 the effort being made and the outcomes that were being
17 achieved. It was the reactions one would expect of
18 a decent human being.

19 Even worse than that, after a short stay in
20 in , he returned on and his diary
21 entry is:

22 "What a tale of woe meets me! Wholesale absconding.
23 £200 stolen from . So many implicated. I feel like
24 getting up and running away."

25 Again I respectfully submit if you look at the

1 diary, the diary in its totality reflects what is
2 possibly the most important thing not only in Christian
3 life but in all life. It is reflecting upon what is
4 happening, and not seeing what is, but asking "Can you
5 make it better?", and when you can't and feel low and
6 frustrated, not running away, staying and making the
7 best of it. Should any Brother have been placed in that
8 position in a home that was under-resourced in terms of
9 finance, under-resourced in terms of the physical
10 buildings in which it was operating, under-resourced in
11 terms of the personnel, the Brothers, under-resourced in
12 terms of the lay staff, under-resourced to such
13 an extent that it quite literally wasn't the teaching
14 job that you anticipated when you went into the Order,
15 working at 9.00 in the morning until 3.00 in the
16 afternoon, trying to assist people who had support
17 within their families and their community to advance
18 themselves and elevate their position as best as they
19 could according to the talents that they had?

20 When you found yourself in a place like Rubane with
21 -- BR2 started off teaching in a class. One
22 has to remember one can sometimes get carried away with
23 the use of the word "school". There were 70 boys.
24 There were two classes. There were a massive amount of
25 different needs that had to be met within the school,

1 but then within the home itself those needs became
2 totally different, because there was no structure, and
3 structure had to be imposed.

4 If one looks at what one now knows about what ought
5 to be done and looks at the life of BR10, BR10 was
6 a teacher. He was asked to give up his life as a
7 teacher to come to Rubane. He was asked to do that
8 quite simply because the Brother who had initially
9 agreed was coming towards retirement and declined. His
10 function, therefore, within the home was to achieve what
11 everyone now would recognise as significant and
12 important. That is when boys are deprived of a family
13 life, they learn as much from the socialisation with
14 others in a background which is as normal as possible
15 and involves skills such as sport, music, which elevate
16 and lift the quality of life. That was his function
17 within that home. He worked there for years, but it
18 is never the life that he was prepared for, never the
19 problems that he was qualified to meet, but like the
20 other Brothers, what he brought not were qualifications
21 but qualities as a human being, the qualities of
22 decency, the qualities of a desire to improve other
23 people's lives as best one could.

24 What I respectfully submit, when one comes to deal
25 with all of this, the church not only let the children

1 down, but it let these Brothers down. The State not
2 only let the children down. The State was willing to
3 see burdens imposed on those who were unqualified to
4 meet them, but they were meeting the needs of the poor
5 in a secluded community in the country far away from the
6 observation of the public eye, and they were meeting it
7 at the cost which was minimal to the state.

8 What I respectfully would ask the Tribunal to
9 consider -- the Inquiry to consider is when it comes
10 along to men such as this, you have had the opportunity
11 of seeing both these men. What I respectfully submit
12 about BR2, almost years of age, there is a memoir of
13 Elie Wiesel, who was in Auschwitz. It is a memoir. He
14 said as he got older, every time he looked in the mirror
15 he saw a young man looking back at him and asking the
16 simple question, "What did you do with my life?" Each
17 time I am sure BR2, BR10, BR3, BR25 and BR62 look in the
18 mirror, they ask, "What did I do with that life I was
19 given as a young man?", and for the last twenty years
20 they have had the unenviable problem of facing the
21 allegations against them. What it does in effect, when
22 those allegations are false, it hollows out the meaning
23 and value of your life. Every day may be precious, but
24 every day reflecting, as BR2 had to do, at a trial in
25 2011, and when he gave evidence, it was quite obvious he

1 was not able to go on, because they do question -- he
2 was asked the question, "Looking back on it, what do you
3 think?" "Well, I think I would have been happier if
4 I had followed a different path". Undoubtedly he would.
5 Undoubtedly that goes for the other Brothers that
6 I represent, but a lot of children who did actually
7 benefit from their time in Rubane, not because of the
8 resources, but because of the commitment of the
9 Brothers, would have been much worse. That is why the
10 people who abused within this home not only betrayed the
11 children, not only betrayed their sacred oath. They
12 betrayed the 95% of Brothers who strove to fulfil their
13 Christian obligation of justice and charity. They were
14 able to use the cover of those who fulfilled their
15 duties to perpetrate their acts, and in doing so they
16 brought misery to lots of children who deserved better,
17 and they have embroiled the other Brothers who served
18 with distinction in a non-differentiated, unexamined
19 belief that this abuse spread across virtually everyone
20 that was involved, and facilitates, I respectfully
21 submit, allegations being made which are false, and
22 allegations can be false for many reasons other than
23 sheer mendacity or malice. It is pointed out in our
24 submissions there are lots of reasons why memories can
25 be false, but the effect of those false allegations are

1 far beyond in terms of the consequences they have for
2 those against whom they are made than the motive as to
3 why they are made.

4 Ultimately what I respectfully submit is that the
5 work of this tribunal is in many respects a healing one,
6 and I believe -- I would ask the court -- the tribunal
7 to consider that it should be healing for those against
8 whom allegations have been made which are not justified.

9 Thank you.

10 CHAIRMAN: Thank you, Mr Harvey.

11 MR AIKEN: Chairman, Members of the Panel, the next
12 submission is going to be on behalf of HIA147 and that's
13 going to be made by a solicitor, Mr McAteer, who is
14 present.

15 CHAIRMAN: Yes, Mr McAteer.

16 Closing submissions by MR McATEER on behalf of HIA147

17 MR McATEER: Chair and Members of the Inquiry, this is
18 a submission on behalf of HIA147, HIA147, who did appear
19 and give evidence at the Inquiry. Subsequently another
20 person appeared, HIA21, who made a number of quite
21 serious allegations against HIA147. A written
22 submission has been put in and it is just a few brief
23 points to outline that.

24 HIA21 gave evidence on 20th November last. He gave
25 evidence that he had suffered abuse from HIA147 for

1 a period of approximately years. He had also given
2 evidence that one of the houseparents had also troubled
3 him, albeit with while quite serious but of a lesser
4 nature than the complaints against HIA147. He made
5 complaints to the Brothers about the houseparent and
6 that houseparent . However,
7 he made no complaints during a -year period to the
8 Brothers against HIA147. He also in conclusion to his
9 submission said that he had been very, very happy during
10 his period in Rubane, which would seem to be somewhat at
11 odds with the facts that he was outlining of the abuse
12 that he had received. As I stated, a written submission
13 has already been put in and this is just merely to
14 emphasise some of those points. Thank you.

15 CHAIRMAN: Thank you, Mr McAteer.

16 MR AIKEN: Chairman, Members of the Panel, I see the legal
17 representatives for DL1, who was in the
18 school, present, and I believe Mr Taylor is going to say
19 something by way of oral submission about DL1.

20 Closing submissions by MR TAYLOR on behalf of DL1

21 MR TAYLOR: Yes. Morning, Mr Chairman, Members of the
22 Panel. We are in a similar position in respect of DL1,
23 who has been designated as DL1. Submissions on behalf
24 of DL1 have been reduced to writing. Subject to the
25 views of the Panel, I don't intend to add any oral

1 submissions to what has already been reduced to writing.

2 It serves no new information.

3 CHAIRMAN: Yes. Very well. We do have the written
4 submission to which you have referred, Mr Taylor. As
5 I said earlier, we therefore are in a position to look
6 at the detail contained in these. It is really to allow
7 anyone such as yourself representing DL1 to have the
8 opportunity to say what they wish in addition to that.
9 So if there is isn't anything more you wish to say, we
10 are quite content with that.

11 MR TAYLOR: No, Mr Chairman. Thank you.

12 MR AIKEN: Chairman, then Mr Fahy appears on behalf of BR77.
13 He is nodding his head to me. So I think he is in
14 a position to deal with his oral submission at this
15 point, and I believe, subject to anybody correcting me,
16 that will then bring the oral submissions to an end for
17 the six individuals that are --

18 CHAIRMAN: Yes. Now, Mr Fahy, we are grateful to you for
19 coming rather earlier than your allotted slot. It is
20 a matter for you, but if you are ready to proceed with
21 your submissions, we are certainly in a position to
22 receive them.

23 MR FAHY: Mr Chairman, the only issue is that my instructing
24 solicitor is on his way and will be hear imminently. If
25 it wasn't testing anyone's patience unduly, my

1 preference would be to wait until his arrival. It
2 should be within the next five to ten minutes, given the
3 communications he has made to me.

4 CHAIRMAN: Certainly. We will rise for a few minutes and
5 perhaps you would let us know when you are ready to
6 start.

7 MR FAHY: Yes, of course.

8 (11.42 am)

9 (Short break)

10 (11.50 am)

11 Closing submissions by MR DES FAHY on behalf of BR77

12 CHAIRMAN: Yes, Mr Fahy.

13 MR FAHY: Mr Chairman, Members of the Panel, as you know,
14 I have represented BR77, with the designation BR77, in
15 the course of these proceedings. I have submitted
16 an initial witness statement on his behalf. There has
17 during the course of the Inquiry been written
18 communications with Counsel to the Inquiry in terms of
19 suggested written questions and issues, and finally you
20 will have closing submissions that I have prepared in
21 relation to BR77 and the totality of the evidence.

22 In keeping with the guidance of the Panel thus far
23 I don't intend to rehearse those. What I hope to do in
24 short order really is to draw on some of the themes that
25 are present in all of the documentation that has been

1 presented to the Inquiry on BR77's behalf.

2 At the outset can I make it clear to the Panel, as
3 it should be in terms of the level of engagement that
4 there has been, that at all points throughout this
5 process BR77 has cooperated fully. He has met through
6 myself and my instructing solicitor all of the time
7 limits set down in terms of the submission of written
8 documentation. As the Panel will no doubt be aware,
9 a level of engagement does not necessarily end with
10 attendance at the Inquiry or the submission of written
11 documentation. There have been many hours of
12 consultation which take place outside of this Inquiry
13 room. BR77's geographical situation has meant that he
14 has had to travel on a number of occasions to consult
15 with me, and a significant amount of work and time has
16 gone into the submission of the written documentation
17 that the Panel has and to the oral evidence that you
18 heard.

19 Picking up on Mr Harvey's theme earlier this
20 morning, you will no doubt recall the oral evidence of
21 BR77 in terms of what he told you about the teacher
22 training that he received at between
23 and , and with the benefit of hindsight how wholly
24 inadequate that was to prepare him for the life that was
25 presented to him when he arrived at Rubane House. He

1 was someone who had been within the De La Salle Order
2 since early teenage years. He had lived within that
3 environment and within the same set of strictures and
4 regulations that Mr Harvey referred to in relation to
5 Brothers whom he represents.

6 Perhaps the most telling aspect of his evidence was
7 his expressions of reluctance to his Superior to go to
8 Rubane, because he himself realised in -- sorry --

9 that he was not prepared and had not received
10 sufficient instruction for what lay ahead of him at
11 Rubane House.

12 That may be echoed in the picture that emerges in
13 relation to many of the other Brothers who were there,
14 but it is certainly BR77's immediate experience, and
15 everything that occurred during the years he was at
16 Rubane House should in my respectful submission be
17 properly viewed in that context. Perhaps if there are
18 lessons to be learned at this remove or observations to
19 be made at this remove, they might focus initially
20 certainly on the lack of preparedness of many of the
21 teaching Brothers for the dual roles that were expected
22 of them not only as teachers but as carers for the boys
23 and who were at that home.

24 Notwithstanding that a picture, I respectfully
25 submit, has emerged of the many positive aspects that

1 BR77 brought to life for the boys at Rubane, and it
2 appears clear from his oral evidence, and even in terms
3 of evidence that was perhaps inimical to him, that he
4 attempted to broaden the curriculum and to introduce
5 a dimension to the lives of the boys that may well have
6 been absent prior to their arrival at Rubane and may not
7 have been provided by any other resource or educational
8 establishment at the time.

9 You have seen photographs. There have been
10 references to diaries, which indicate efforts that he
11 made consistently to try to bring new experiences to
12 those boys in terms of outdoor trips, in terms of
13 sporting activities and competition, and my respectful
14 submission is that that is a significant and positive
15 contribution that he in conjunction with religious and
16 non-religious staff attempted to bring to the boys.

17 Notwithstanding all of that, there is no attempt --
18 and I make this clear in the written submission and
19 repeat it -- there is no attempt to equivocate or to
20 deny everything that flows from the convictions in 1981
21 for the three assaults. I on behalf of BR77 wish to
22 make it clear there is full acceptance of culpability
23 for that and that matters that I raise either orally or
24 in written submissions are an attempt to explain that
25 behaviour, but not to excuse that behaviour. His

1 position remains that there was no repeat of that type
2 of behaviour after 1981, and there were no instances
3 where any sexual assault of any kind was perpetrated by
4 him on any boy at Rubane.

5 One of the tasks that he faces or one of the
6 challenges that he faces through my submissions to the
7 Inquiry is the impact of a denial and on occasions
8 attempts by him to prove a negative, that is to say,
9 allegations that are made did not happen and he has no
10 explanation as to why the allegations would be made.

11 Now on occasion the Inquiry has heard rebuttal
12 evidence of his denials and I would ask the Inquiry to
13 consider that in that context, because, like many others
14 who face allegations before this Inquiry, which they
15 deny, there is a grappling for an explanation as to why
16 those allegations would be made, and if that is at times
17 imperfect, again it is in the context of allegations
18 which are denied by him.

19 At particular instances of my written submissions,
20 and specifically at paragraph 16, but I am not going to
21 read those into the record in oral submissions, but
22 there are detailed observations in relation to
23 inconsistencies in the evidence and patterns that emerge
24 where allegations are made either on a piecemeal basis
25 or not made consistently throughout interviews or

1 submissions to the Inquiry, and the Inquiry has that
2 both in terms of the original witness statement and, as
3 I say, at paragraph 16 of the final submissions that
4 have been submitted to the Inquiry.

5 I would respectfully ask the Inquiry to consider and
6 reflect on the evidence that it has heard in terms of
7 specific allegations viewed against the observations
8 that I have made on BR77's behalf in relation to
9 inconsistencies and manifest difficulties at times in
10 relation to the credibility of some of the allegations
11 that were made.

12 BR77 through me understands that the Inquiry has
13 a particular interest in the structures that persisted
14 at Rubane throughout the time that he was there, and who
15 have heard oral evidence from BR77 that I repeat in the
16 written submissions of attempts that he made to report
17 specific allegations that were made to him, and there
18 was an awareness by him of a structure or a chain of
19 command that existed within Rubane, and on at least one
20 occasion you have heard evidence from him that he
21 attempted to utilise that to the aid or the benefit of
22 the boys who had come to him making allegations.

23 Finally, Mr Chairman and Members of the Panel, in
24 the final paragraph of my submissions I set out the time
25 frame within which all of this has occurred, because the

1 allegations that have specifically been made against
2 BR77 have been a part of his life effectively since
3 1980. So that means that they have been a feature for
4 some 34 years. The convictions date from events in 1980
5 that came before a court in 1981, and I would
6 respectfully ask the court to take due account of the
7 passage of time that has elapsed since then with no
8 repeat of that scenario.

9 I have dealt with the impact and the significance of
10 a denial or denials that are made. I would respectfully
11 ask the Panel to take the view that the impact of one
12 denial need not necessarily be diluted by the fact that
13 it is repeated in respect of a number of allegations of
14 either physical or sexual abuse.

15 He has continued to be the subject of RUC and PSNI
16 inquiries throughout the period between 1980 and today
17 and there have been no further prosecutions of him,
18 despite the spotlight that has been shone on the
19 allegations made to this Inquiry and allegations that
20 were previously made against him in the course of those
21 RUC and PSNI investigations.

22 Those are my submissions, Mr Chairman and Members of
23 the Panel. Thank you.

24 CHAIRMAN: Well, thank you very much, Mr Fahy. Well, unless
25 there is anyone else who wishes to make a submission on

1 behalf of anyone, that would seem to bring us to the end
2 of this morning's proceedings.

3 We will sit again on Wednesday, which we anticipate
4 will be the last day that we will devote to this module,
5 when we will hear closing submissions on behalf of,
6 amongst others, the De La Salle Order as opposed to the
7 individual Brothers, whose submissions have been made
8 this morning, and no doubt on behalf of others as well.

9 So until Wednesday morning at the usual time, ladies
10 and gentlemen.

11 (12.10 pm)

12 (Hearing adjourned until 10.00 am
13 on Wednesday, 17th December 2014)

14 --ooOoo--

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

Closing submissions by MR ARTHUR5
HARVEY, QC on behalf of BR2,
BR3, BR10, BR25 and BR62

Closing submissions by MR McATEER on18
behalf of HIA147

Closing submissions by MR TAYLOR on19
behalf of DL1

Closing submissions by MR DES FAHY21
on behalf of BR77