

**SUBMISSIONS ON BEHALF OF THE DIOCESE OF DOWN &
CONNOR TO THE HISTORICAL INSTITUTIONAL ABUSE
INQUIRY**

MODULE 3 – RUBANE HOUSE, KIRCUBBIN CO. DOWN.

Introduction and overview

1. The Diocese, as a core participant in this module of the Inquiry, makes the following submissions with the intention that they assist the work of the Inquiry. They should be read and considered in conjunction with, and in light of, the statements of Father Timothy Bartlett.
2. In the first part of the submissions is set out the terms of reference of the Inquiry and its conceptual approach to abuse, systemic failings and the duties of institutions and the state. The diocese sets out where, in its submission, these concepts encompass it and to what extent.
3. In the second part the submissions deal with the respective responsibilities of Diocese and Order and the issue of who was the administering authority for the purposes of the statutory regime in place at the relevant times.
4. Lastly, the submissions deal with various aspects of the evidence relating to allegations which affect the Diocese directly as involving diocesan priests.

PART 1 – Terms of Reference and Duties of Care

5. The Inquiry's terms of reference are defined by section 1(2) of the Inquiry into Historical Abuse Act (NI) 2013 as being set out in a statement to the Assembly

made by the First Minister and Deputy First Minister acting jointly on the 18th October 2012. That statement says;

"The NI Executive's Inquiry and Investigation into historical institutional abuse will examine if there were systemic failings by institutions or the state in their duties towards those children in their care between the years of 1922-1995.

For the purposes of this Inquiry "child" means any person under 18 years of age;

"institution" means any body, society or organisation with responsibility for the care, health or welfare of children in Northern Ireland, other than a school (but including a training school or borstal) which, during the relevant period, provided residential accommodation and took decisions about and made provision for the day to day care of children; "relevant period" means the period between 1922 and 1995 (both years inclusive)."

6. The Inquiry has provided a document which sets out the definitions of abuse and systemic failings which it is minded to apply when considering the evidence it gathers in the course of its work. This document sets out the duty of an institution (as defined in the terms of reference) towards the children in its care as providing an environment in which they would:
 - (a) Receive proper physical care;
 - (b) Be free from emotional, physical or sexual abuse, or from neglect; and,
 - (c) Develop through the provision of child care in accordance with the standards acceptable at the time.
7. The document goes on to equate the duties of the state with those of institutions where the former directly provided residential institutional care.

This suggests that the duty of the state is of a different character where it is not providing care directly.

8. The document consequently then identifies the state's separate duty to ensure that all institutions maintained the proper standards of care through its statutory obligations or its provision of funding.
9. A systemic failing is defined on the part of an institution:
 - (a) As failure to ensure it provided proper care;
 - (b) a failure to ensure that the children would be free from abuse; or,
 - (c) a failure to take proper steps to prevent, detect and disclose abuse;
or,
 - (d) failure to take appropriate steps to ensure the investigation and prosecution of criminal offences involving abuse.
10. A systemic failing by the state consists of a failure to ensure either,
 - (a) That the institution provided proper care; or,
 - (b) that the children in that institution would be free from abuse; or,
 - (c) a failure to take all proper steps to prevent, detect and disclose abuse in that institution; or,
 - (d) take appropriate steps to investigate and prosecute criminal offences involving abuse.
11. The document then identifies other ways in which systemic failings could occur in particular where those responsible for the inspection, oversight, policy-making or funding of the institutions providing residential services initiated, encouraged or condoned abusive practices, or failed to take appropriate steps to identify, prevent or remedy abuse.

12. Insofar as the Diocese is concerned, it is submitted, for the reasons outlined below, that it is the definition of systemic failure that is relevant. It is, however, submitted that the evidence does not disclose any initiating, encouragement or condoning of abusive practices (if such existed), but it suggests a failure to take appropriate steps to identify, prevent or remedy incidents of abuse.
13. It is further submitted that the references in the Inquiry document to "appropriate" or "proper" steps, must mean such steps which it was reasonably practicable to take in all the circumstances bearing in mind the standards of care acceptable at the time. To use a test of strict liability for systemic failings would be to impose too strict a requirement even by current acceptable standards of care.
14. Finally, it is submitted for the reasons discussed below, that the duty to be imposed on the Diocese in respect of its responsibility for Rubane based on the available evidence, is not to be understood as that attaching to an institution which provides care directly. The duty of the Diocese was one of similar extent and effect, with appropriate modifications, as that imposed by statute on the state where it was not directly involved in the provision of care in a particular institution.

PART 2 – Division of Responsibility and Identity of the Administering Authority

15. As the Inquiry is aware title to the property at Rubane House remained vested in the Trustees of the Diocese at all relevant times. The Board of Governors of the home was chaired by the Bishop of Down & Connor however, rather than simply an emanation of the episcopal authority of the Diocese, the Board appears to have been the representative of the Trustees who had a proprietary interest in the property and assumed financial

management of the project¹. The 1950 agreement between the trustees and the Order asserts the liberty of the Superior of the Order to appoint the Superintendent of the Home².

16. In paragraph 11 of his statement of the 21st November 2014, Father Timothy Bartlett in explaining the allocation of responsibility, in terms of how the home was run, suggests there was a form of joint administering authority as between the Diocese and the De La Salle Order³.
17. However, the Report of the Committee of Inquiry into Children's Homes and Hostels of the 31st December 1985 (the Hughes Report)⁴ contains a finding that the Board of Governors was the "administering authority"⁵. From this finding flowed a number of consequences which were identified as failings in the report.
18. The Hughes Inquiry was concerned that the Board of Governors had delegated so completely its functions of appointment of religious and lay staff to the De La Salle Order. Further it expressed a difficulty in establishing how the requirements of Regulation 4(2) of the 1975 Regulations were met by the Board of Governors. As the records of the annual meetings of the Board of Governors disclose⁶ there was no reference to the statutory monthly visiting and reporting required for voluntary homes.
19. The Hughes Report found that the Board of Governors relied so heavily on the De La Salle Order for the running of the home that it allowed its own

¹ RUB 073

² *Ibid* para. 8

³ Within the meaning of Regulation 3(1) of the Children and Young Persons (Voluntary Homes) Regulations (NI) 1952 & Regulation 2 of the Children and Young Persons (Voluntary Homes) Regulations (NI) 1975.

⁴ RUB 40360-40463

⁵ For the purposes of the 1975 Regulations.

⁶ RUB 5174-5247

functions as administering authority to become partly nominal.⁷ Ultimately the Committee came to the conclusion that the degree of autonomy which the Order enjoyed was significant. This had led to matters of the conduct of brothers being dealt with internally. It identified an unusual degree of delegation and trust⁸.

20. The Hughes Inquiry, however, does not appear to have given any detailed consideration to the autonomy of the De La Salle Order within the structure of the Catholic Church, the setting up of and division of responsibilities regarding the Home or the statutory regime for voluntary homes.

Canonical Position

21. The issue of diocesan authority over the De La Salle Order was alluded to during Inquiry counsel's opening⁹ on two occasions, latterly in an exchange with the Panel Chairman¹⁰. It appears to have been suggested that the Rules and Constitution of the Order made them subject to the authority of the Bishop of the diocese where they were resident, without more. The text of the second rule in the original Papal Bull of Pope Benedict the 13th of 1724¹¹ is certainly on the face of it to that effect. The text of this rule was however modified by the Congregation of the Religious of the Curia on the 21st March 1923 to read:

"...and live in those dioceses into which they have been admitted by the consent of the Bishops, and under their authority, conformably to the Sacred Canons."(emphasis added)

22. For the majority of the time period spanning the Inquiry's terms of reference the applicable canon law was the 1917 Code also known as the Pio-

⁷ Paragraph 10.18 Hughes Report

⁸ *Ibid* 10.51

⁹ Transcript Day 51 page 51 line 19

¹⁰ *Ibid* page 130 lines 1-6

¹¹ RUB 1515

Benedictine Code. It was subsequently superseded by the Johanno-Pauline Code of 1983 which came into effect on the 28th November of that year. The responsibility of the Bishop for doctrinal matters and not matters of internal organisation or discipline of the Religious Orders was, for the most part, duplicated in the 1983 Code.

- 23. The De La Salle Brothers were, at all relevant times, a Pontifical order within the meaning of Canon law. That is to say the order was directly answerable to the Holy See. The Diocesan Bishop had limited authority over such a religious order¹² who function autonomously and who were answerable, in the first instance, to their Superior.

- 24. Under the 1917 Code if a diocesan Bishop became aware of concerns about matters of doctrine or morals within any particular Order he was required to notify the competent Superior who was in turn required to take appropriate action. If no opportune action was taken, or if the matter was of such importance that it would allow no delay, the Bishop could deal with it himself and thereafter inform the Holy See. Similarly the 1983 Code permits intervention by a Bishop directly for the gravest of reasons if a warning to the Religious Superior is in vain¹³.

- 25. This organisational structure is reflected in the evidence of Father McCann to the Hughes Inquiry, where the issue of his respect for the integrity of the De La Salle Order is dealt with in the context of his intervention in the incident in [REDACTED] involving BR77¹⁴.

- 26. The above helps put into context the autonomy of the Order identified by the Hughes report, which is a product of respect for Canonical structures rather than an example of a *laissez-faire* approach to management and delegation of responsibility on the part of the Diocese. The manner of the operation and

¹² Canon 615 1917 Code

¹³ Canon 679 & 683(2) 1983 Code

¹⁴ RUB 40084

management of Rubane was therefore not simply a product of unusual delegation and trust as the authors of the Hughes Report appear to have concluded.

27. A recognition of this structure was implicit in the content of a document which was to have been a submission to the Hughes Inquiry by BR2¹⁵, according to his statement dated the 28th March 2014¹⁶, it is stated that the responsibility of the officer in charge where there is a report of misconduct to report the matter to various bodies, including the Board of Governors and Management Committee. Thereafter however, he is to take direction from the Brother Provincial where the misconduct is that of a Brother.

Setting Up of Rubane

28. A second matter which does not, on the face of the report, appear to have been considered in any real depth by the Hughes Inquiry was the genesis of the original initiative to set up the Home. There is some suggestion in certain of this Inquiry Counsel's opening remarks that the De La Salle Order were, in effect, invited to run the Home on behalf of the Diocese.

29. It should be noted that the Order had at the time Rubane was envisaged already been engaged in running St Patrick's Training School in Belfast for some time. From the statement of BR 45 [REDACTED] it appears that BR 39 [REDACTED], [REDACTED] and a member of the Child Welfare Council, was instrumental in setting up the Home at Rubane¹⁷. Further, a letter of instruction appears to have issued from the Provincial in Dublin at the time instructing BR 39 [REDACTED] to effectively take charge of the matter¹⁸. It is further clear that whilst legal title to Rubane

¹⁵ RUB 1116

¹⁶ RUB 1047 at para. 42

¹⁷ RUB 5000 para. 2

¹⁸ RUB 10017

House was vested in the Trustees, the De La Salle Order paid for its acquisition through loans.

30. In a pamphlet, (presumably published by the Order), entitled "The Rubane House Story", it is recorded that [REDACTED] approached Dr Mageean, the then Bishop of Down & Connor, with the proposal that Rubane House be purchased for the purpose of a Boys Home¹⁹. It will be noted that this is inconsistent with Inquiry counsel's assertion during his opening that it was Dr Mageean who decided to open the boys Home at Rubane²⁰ which appears to be based on the witness statement of [REDACTED] of the 20th May 2013²¹. Also of note in this regard is the witness statement of BR2 dated 28th March 2014 where he refers to Rubane being [REDACTED] [REDACTED] BR 39's conception²².
31. It is submitted that, insofar as the setting up of the Home is concerned, the available evidence from the time does not clearly demonstrate the idea for the Home to have emanated from the Diocese. It does show however, a collaborative effort between the Order and the Diocese in bringing that idea to fruition, with the Diocese playing a largely facilitative role in terms of finance and buildings.
32. The evidence of Father Peter McCann to the Hughes Inquiry that the De La Salle Brothers were invited by the Board of Governors to run the home²³ whilst it may have reflected a quasi-ceremonial formality at the first meeting of the Board of Governors, may not therefore represent the actuality of the circumstances leading to the establishment of the Rubane Home.

¹⁹ RUB 10038

²⁰ Transcript Day 51 page 82 line 24 – page 83 line 6

²¹ RUB 013

²² RUB 1041 at para. 28

²³ RUB 4009 at D

Division of Responsibilities

33. As to the issue of apportionment of responsibilities, the general tenor of the Board of Governors meetings would appear to be one of concern for the financial oversight of the Home rather than involvement in the running of it.

34. This is consistent with the terms of the agreement between the trustees of Rubane House and the De La Salle Order. Matters were already considerably advanced by the Order when the application for registration was made and a note of a meeting between Bishop Mageean and the De La Salle Order on the 10th June 1950 records that BR 39 ██████ had identified Rubane House as a suitable accommodation for a boys' Home²⁴.

35. This contrasts with the Order's position that it accepts the conclusions of the Hughes Report insofar as it relates to the issue of what body is the administering authority for statutory purposes²⁵. This acceptance was relied upon by Inquiry Counsel in his opening remarks²⁶. It is submitted that this acceptance does not accord with the Order's own records. Inquiry counsel does go on to say that this Inquiry may come to its own conclusion on the identity of the administering authority and the Diocese endorses that submission.

36. One piece of correspondence is against this general flow in the form of a letter written on the 10th July 1950 from St Patrick's Boys Home to an undisclosed recipient addressed as "Dear Father" (presumably a Diocesan priest). This correspondence says that the Order were invited by the Bishop, Dr Mageean, to run Rubane Boys Home on behalf of the Diocese. The letter is effectively seeking help for the organisation of flag days in the Diocese to help raise

²⁴ RUB 10012 para. 2(a)

²⁵ RUB 1179

²⁶ Transcript day 51 page 87 line 24 – page 88 line 2

funds and it may be that the emphasis on the involvement of the Diocese was calculated to best secure cooperation²⁷.

37. In contrast, a letter dated 15th October 1950 was sent by the Irish Provincial of the Order, BR 19 [REDACTED], to a Brother Director (presumably BR 39 [REDACTED] BR 39 [REDACTED])²⁸, in which he refers to correspondence he had earlier sent to Bishop Mageean on the 5th October. He says that one of the points that he made to the Bishop was that Milltown and Rubane were to be run by one governing body. Milltown was the headquarters of the De La Salle Community in Belfast at that time²⁹ and the implicit suggestion is that the governing body referred to by the Brother Provincial was the De La Salle Order. Indeed, it appears that the District Council of the De La Salle Brothers was instrumental in the decision to close the Home in 1985³⁰.
38. The 1950 agreement provided for the establishment of a Committee of Management³¹ which it appears found expression as the Board of Governors. This committee was to be appointed by the Trustees and one was to be the Provincial of the De La Salle or his nominee. It was not simply a coincidence that a Brother was present on the Board as has been suggested but rather that he had administrative authority³².
39. On the 15th December 1952 the Chief Inspector of Taxes wrote to the firm of accountants Magee & Hillan enquiring who was responsible for the finances of the Home. This letter was forwarded for comment and a reply was received by the accountants from the treasurer and secretary of the Board of Governors of Rubane. This makes clear that the Board of Governors was appointed by the Trustees and was responsible for the financial management of the home

²⁷ RUB 10014

²⁸ RUB 013 para. 1.3

²⁹ RUB 10017

³⁰ RUB 5242-5243

³¹ RUB 073 para. 2

³² RUB 1071-1072 para.101

whilst the Order was responsible for the provision of teaching staff and the general operation of the home³³.

40. The setting up of the General Purposes Committee of the Board of Governors on the 30th October 1951, it is submitted, reflects a concern that as the Board meetings were annual, the De La Salle Order would benefit from primarily financial guidance when the need arose during the intervening periods³⁴. The Committee met regularly over a period of 10 years.

41. The submissions to the Hughes Inquiry of the Trustees of Rubane House reveal that, in effect, the General Purposes Committee existed to give advice re financial matters to the Officer in Charge of the Home. In 1979 a Management Committee was set up with, it is submitted, a broader remit but essentially providing logistical support to the Home and advice to the Officer in Charge. The submissions of the Trustees say:

“...the appointment of the Management Committee was not intended to diminish or substantially alter in any way the then existing role and field of responsibility of the Officer in Charge of the House.”³⁵

42. The duty of the Officer in Charge was expressed in those submissions to be:

“...to ensure the efficacious running of the Home on a day to day basis and in liaison with the staff under his jurisdiction to create and maintain the most advantageous possible environment for the boys with whose care the Home has been entrusted.”³⁶

³³ RUB 10024-10027

³⁴ RUB 5178

³⁵ RUB 40358

³⁶ *ibid*

43. It is therefore submitted that, if the notion of administering authority is to be understood as based in the carrying on of the Home then, it would appear, that insofar as the Trustees understood the position, that person was the Officer in Charge who was the Order's nominee.
44. The General Purposes Committee was eventually replaced by the establishment of the Management Committee of the Board at its meeting on the 21st November 1978. At its inaugural meeting on the 5th February 1979 the committee resolved that the care provided must be as good as, if not better, than the state sector; that finance must not be an impediment to the standard of care; the quality of care must be constantly analysed and kept under review; staff training was to be encouraged and there must be suitably qualified staff. This appears to have been in keeping with the evolution of society's general approach to child care over the period since the setting up of the Home.
45. There were some 32 formal meetings of the management committee over the period from 5th February 1979 to 29th April 1985 and the minutes disclose that members of the Committee regularly visited the Home.

The Statutory Scheme

46. The final matter, which the Diocese submits was not addressed in any detail in the body of the Hughes Report, is the applicable statutory regime. The panel will note that it is the "person or persons carrying on the voluntary home "who are the administering authority for the purpose of the applicable Regulations³⁷. Section 99 of the Children and Young Persons Act 1950 (the 1950 Act) requires that the administering authority register a voluntary home with the Ministry of Home Affairs.

³⁷ Reg 3(1) 1952 Regs & Reg 2 1975 Regs

47. The application for registration was made on the 6th May 1950 by the Superior of St Patrick's Belfast. In the body of the application form the De La Salle Brothers, Milltown, Belfast are nominated as the organisation responsible for the Home and BR 39 [REDACTED] as the person in charge of the home³⁸. It is notable that this application pre-dates the first Board of Governors meeting on the 27th September 1950.
48. It is submitted that the application for registration was clearly made under s. 98(2) of the 1950 Act³⁹ which had come into force on the 14th February 2014. That provision required "the persons carrying on or intending to carry on the home" to make the application for registration with the Ministry of Home Affairs. The Regulations made under that provision came into force on the 25th July 1952 (the 1952 Regulations).
49. The 1952 Regulations⁴⁰ required that the administering authority appoint the person to be in charge of the Home. The application for registration in May 1950 by the Order had nominated BR 39 [REDACTED]. In Father McCann's evidence to the Hughes Inquiry he had this to say on the issue of appointment:

"...the Board of Governors and the Management Committee would have no hesitation in accepting an officer in charge or his superior nominated by the Superior of the De La Salle Order..."

"It might be pointed out that the officer in charge and the Superior of the Brothers would be appointed by the Brother Superior in consultation with his own adviser."⁴¹

³⁸ RUB 10005 -10007

³⁹ Replicated in s.127(2) of the Children and Young Persons (NI) Act 1968.

⁴⁰ Reg 5(1) 1952 Regs

⁴¹ RUB 40037 D

50. It appears from his correspondence of the 15th October 1950 to BR 39 [REDACTED] at point 4, that BR 19 [REDACTED] had decided that the person in charge of Rubane should be BR 12 [REDACTED] and there does not seem to have been any input from the Bishop⁴². This is supported by the handwritten history of Rubane House which is included in the Order's documents⁴³. It is further consistent with the 1950 agreement between the Trustees and the Order.

51. The 1952 Regulations also require the administering authority to notify the Ministry of any changes to the identity of the person on charge of a voluntary home⁴⁴. On the [REDACTED] BR13, then Secretary of the Home, notified the Ministry of Home Affairs of the change in the person in charge from BR12 to BR17 with effect from the [REDACTED] expressing this to be in accordance with the 1950 Act⁴⁵. In turn BR17, on [REDACTED] notified his relinquishing of the post in favour of BR6⁴⁶.

52. It is submitted that on any reading of the 1950 & 1968 Acts and the Regulations thereunder, they are concerned with the requirement for compulsory registration with, and an oversight regimen by, the state and the imposition of a series of attendant day to day duties on the administering authority. These duties include the appointment of a medical officer⁴⁷, ensuring proper dental care⁴⁸ and the keeping of a record book⁴⁹ etc. All of which matters, insofar as they were discharged, appear to have been undertaken by the De La Salle Order.

⁴² RUB 10017

⁴³ RUB 11761

⁴⁴ Reg 15 1952 Regs

⁴⁵ RUB 1187

⁴⁶ RUB 1188

⁴⁷ Reg 7 1952 Regs

⁴⁸ *Ibid* Reg 8

⁴⁹ *Ibid* Para (2) of the Schedule.

53. It is submitted that the concept of the carrying on of a voluntary care home within the meaning of the statutory regime must be understood by reference to the duties and requirements imposed by that regime and what person or body in fact discharges those duties. On the available evidence the only reasonable conclusion that can be arrived at is, that as a matter of law, the administering authority was the De La Salle Order at all relevant times. It follows from this that the *statutory* duty to ensure there were monthly visits lay with the De La Salle Order.
54. This does not however preclude the Diocese from having a duty in respect of the running of Rubane. It considers that it did have a duty. The Diocese submits that duty to be akin to that imposed on the state by statute where it was not directly responsible for the provision of care in state homes. The evidence, it is submitted, does not demonstrate that the Diocese was directly involved in the provision of care. It did, nonetheless, have a duty in respect of Rubane to ensure that the Order maintained the proper standards of care in the Home. That duty is commensurate with that of the state where it did not provide care directly and may be characterised as a moral and legal duty of care whilst not a statutory duty⁵⁰; it is no less as onerous a duty.
55. It is accepted that the Diocese was in breach of those duties in failing to ensure a satisfactory degree of supervision, to include ensuring that the Order had discharged its statutory duties, which in turn would have required that abuse that came to the attention of those directly responsible for the running of the home was notified to the Diocese so that the appropriate steps could be taken where necessary. It further may have ensured that risk of the recurrence of any abuse was reduced.

⁵⁰ Fr Tim Bartlett's statement at 5912 para. 6.3 elides the concepts of statutory duties and common law duties of care.

56. The Hughes Inquiry report of 31st December 1981 concluded that the visits by the Management Committee did not discharge the Board of Governors duty to make arrangements for the home to be visited at least monthly. This duty flows from the Hughes Inquiry's finding that the Board of Governors was the administering authority. Although this appears to have been accepted by Father McCann it may be that he was not aware what how precisely the administering authority was defined by statute.
57. As can be seen above, the material relating to the setting up and registration of the home, the division of responsibilities and the statutory regime, must put this finding in some doubt. It appears likely to have arisen solely from Father McCann's concession and the material available to this Inquiry may well not have been considered by the Hughes Inquiry.
58. The opening to this module proceeded on the assumption that Rubane House was operated by the Roman Catholic Diocese of Down & Connor and run on its behalf by the De La Salle Order. It submitted that in light of the foregoing observations this assumption cannot be made. The relationship between the De La Salle Order and the Diocese cannot be simply resolved into one analogous to the concept of principal and agent.
59. To assert that the diocese governed the home through a Governing Board headed up by the incumbent Bishop of Down & Connor and that it was operated on behalf of the diocese by the De La Salle Order, is to fail to give proper weight to the preponderance of the documentary evidence relating to the relationships between the Diocese, the Order and Rubane Boys Home and the applicable statutory regime. It is submitted that such a conclusion cannot be reached with any reasonable degree of confidence.

PART 3 - Allegations directly affecting the Diocese

BR17 - [REDACTED]

60. This allegation is to the effect that five boys made complaints. It is suggested, by Inquiry counsel, that of these five, four boys told [REDACTED], DL366, that they were abused by BR17. The Inquiry panel was told that that DL366 told the four to tell BR63 who in turn told them to speak to BR14 who then informed BR13. BR13 brought in BP1 who carried out an investigation over [REDACTED].
61. It was suggested that the letter from BP1 to BR17,⁵² effectively admonishing him, is evidence that the chaplain may have been informed by "some of the boys" (*i.e.* from the five) during confession. This may not be entirely accurate as the documentary evidence relied on in the opening appears is capable of leading to a different conclusion.
62. At the time of BP1's investigation, one of the four, DL439 had already left Rubane. The remaining 3 withdrew their allegations. One of these, DL479, according to the record⁵³ said that there had, in effect, been a plot against BR17 at the instigation of DL439 and it was he who told the others to make false allegations directly to BR13 & BR14 not, apparently, through the medium of the chaplain.
63. The note of BP1's interviews with BR13 & BR14, simply states that BR6 was told by the four boys that the chaplain had directed them to speak to some Brothers⁵⁴.

⁵¹ Transcript Day52 page 123 line 21

⁵² RUB 215

⁵³ RUB 200

⁵⁴ RUB 210

64. DL439 was later interviewed by BP1 in Portadown⁵⁵ and ultimately stated that the allegations against BR17 were false. The opening suggests that this document shows that BP1 had concerns for a second time that the allegation by DL439 might not be false. BR19's first concern of a similar nature, however, appears to relate to DL480's allegation⁵⁶ and not DL439. The evidence suggests this to be so as BP1 had not interviewed DL439 before and the other boys involved in that allegation said that the plot was DL439's invention. It is submitted that BP1 was therefore less likely to have entertained any doubt the DL439 allegation was in fact false.
65. A fifth boy, DL480, maintained his complaint against BR17 in interview with BP1. The handwritten note shows he had told the priest about this but it is unclear in what context⁵⁷. In BP1's letter to BR17⁵⁸ of the [REDACTED], he says that the priest was told by DL480 in confession. There is no mention in that letter of the priest having been told anything by the four "plot" boys whether in confession or otherwise. In fact the latter makes clear that only one boy *i.e.* DL480, acted as a consequence of advice from the chaplain.
66. In summary, it is therefore entirely possible the chaplain only had knowledge of one complaint; that from DL480 made in the course of confession. The chaplain, being prohibited from informing anyone else by the seal of the confessional⁵⁹, told the boy to tell the Brothers which he in turn did.
67. The Chaplain would have been prohibited by the seal of the confessional from informing his superiors about what he had been told in the confessional and if there is any failing in communication regarding the [REDACTED] incident it is on the part of the Order. The matter was reported to the Superior General's assistant

⁵⁵ RUB 208

⁵⁶ RUB 213

⁵⁷ RUB 200

⁵⁸ RUB 215

⁵⁹ See Fr Tim Bartlett's statement at RUB 5914 para. 9 and transcript Day 78 page 33 line 22 - page 35 line 28

in Rome by BP1. Thereafter it is unclear what the Order did with that information.

BR14 - [REDACTED]

68. A boy, DL13, made an allegation about BR14 which he reported to his brother on the [REDACTED] which he, in turn, reported to their mother. She then told the Welfare Officer. A statement was made to police on the [REDACTED] [REDACTED] and the boy was medically examined.
69. BR14 was not interviewed by police as he was out of the jurisdiction. Efforts were made by BP1 to establish whether he would make himself amenable for interview but BR14 declined to do so.
70. Correspondence passed between BR6 and BP1 regarding the incident. A Ms Forrest from the Ministry prepared a report and the matter ultimately rested with the Welfare Authorities.
71. According to a memo by Ms Forrest⁶⁰ the only people BR6 told were BP1 and BR12. She records that BR6 told her he did not discuss the matter with the chaplain although he assures her the latter must have guessed due to the absence of DL13 and BR19.
72. On the [REDACTED] the Board of Governors met, but there is no reference to the allegations the preceding summer. No representative of the Order is present at this meeting according to the minutes. This absence of a record of the allegations is in the context of both police and social services having been involved. The minutes record that the Annual General Report was presented.

⁶⁰ RUB 1014

73. The panel was invited by Inquiry counsel to consider what it says for the governance arrangements if the Annual General Report makes no reference to the allegations or that they were not otherwise discussed at the meeting⁶¹. It would also seem that the events log of the home contains no reference to these allegations⁶². As Inquiry Counsel has pointed out a monthly inspection system would have uncovered no record of these events from the log. It would have been expected that the Officer in Charge of the Home would have recorded these matters in accordance with his statutory obligations⁶³.

74. It must be conceded, given the involvement of both police and the welfare authorities, that there was probably some degree of informal knowledge at least, on the part of some in authority in the Diocese. However, as the matter was apparently being dealt with by the appropriate authorities it may have been felt that there was little in the way of any formal involvement that was necessary by the Trustees or Diocese.

BR15 - [REDACTED]

75. An allegation by HIA36 was made against BR15 to the effect that he was abused within two days of entering Rubane at age [REDACTED] in [REDACTED]. Evidence was heard from this applicant on the 3rd November 2014⁶⁴. In the course of evidence he described being abused and recounting this to DL140:

"But what we do know, and the Inquiry has already looked to some extent at material relating to this, that you did report eventually, not at the time --

A. Uh-huh.

Q. -- it was happening, but subsequently, what occurred. You say in paragraph 19 of your statement, if we go to 477, please, that DL 140

⁶¹ Transcript Day 54 page 48 line 8

⁶² RUB 10110

⁶³ Reg 5(2) 1952 Regs

⁶⁴ Transcript Day 63 page 120

knew what was going on and other boys had reported incidents to him, but you, in fact, told your mum what occurred. If we can look at 2622, please, this is from the record when a settlement was arranged between you and the Order. Can we just scroll down, please? You can see: "One Sunday while at home ..." This is at the point where the cursor is just now: "One Sunday while at home he confided in his mother." The point you were making to me earlier, HIA36, was your mother would quite often have gone to visit you or you would have gone to Belfast to visit her on a Sunday.

A. Yes.

Q. Can you remember what allowed you eventually to be in a position to tell her what happened?

A. I just needed to tell somebody and she was the only person I could think of like, you know. I knew she wouldn't kind of believe -- believe me -- believe it, like. It was -- just didn't think she would believe it, you know, but I did just eventually pluck up the courage and told her.

Q. I was asking earlier, as you know, why did you say that? You were saying this was an era when kids tended not to be believed --

A. Oh, aye.

Q. -- and Brothers tended to be held in --

A. High regard.

Q. -- very high regard.

A. Uh-huh.

Q. She must have believed you sufficiently to start speaking to DL140 and BR6 about it.

A. Yes.

Q. But you mention here -- BR6 on this record is BR6 -- BR6 accused you of making up stories --

A. Uh-huh.

Q. -- and you were caned.

A. Uh-huh.

Q. Can you remember -- obviously it seems that either your mum or DL 140 talked to BR6 about it and then he then spoke to you about it.

A. Uh-huh.

Q. Can you remember where you were when he accused you of telling lies and caned you?

A. In his room.

Q. In his room. In the school or in the home?

A. In the home.

Q. In the home?

A. Uh-huh.

Q. How did it make you feel that you were caned for having told your mum what had happened?

A. Well, I was reluctant to tell anybody else about it and I just -- I thought nobody believed me, you know, and I thought, you know, that they really did believe that I was making it up, you know, you know, trying to sensationalise it or something, you know.

Q. It looks like they might have suggested to your mum you weren't to be believed either.

A. Uh-huh.

Q. You are aware of the record I am talking about.

A. Yes.

Q. DL 475 [REDACTED] went to see your mum a year later about you going to live with her --

A. I know.

Q. -- and your mum saying, "You couldn't believe what HIA36 tells you" --

A. I know.

Q. -- and referring back to you having got her into trouble over things you had alleged before. I wonder whether -- we will never know now, because your mother isn't around and BR6 isn't around, whether that's a reference to this interaction.

A. Uh-huh.

Q. Are you aware of -- did you ever make other allegations to your mum that got you into trouble?

A. Not really. I don't recall making any other allegations like, but ... I just always remember being in trouble, you know. My mother would have -- she would have been looking a report, you know, how I was kind of behaving, you know, and they were pretty blunt about it, like, you know. The Brothers would have said -- like, told her what way I was behaving or -- and I would be -- I would be kind of punished by her not coming to visit me, you know, if she didn't believe me or if I was doing something, you know, that type of way, but ...

Q. And you record that DL 140 told you -- you mention this in your statement in paragraph 19 -- DL 140 told you that BR15 was ill.

A. Uh-huh.

Q. He would be getting treatment and he would be moving on.

A. Uh-huh.

Q. But you make the point in your statement that it was then quite some time before he moved on.

A. Yes.

Q. It seems he moved on end of [REDACTED]. We will look at that shortly. The meeting that takes place between BR6 and your mum seems to be [REDACTED], which is about 18 months after you move into the chalet --

A. Uh-huh.

Q. -- and it is at that point that the abuse stopped.

A. Yes.

Q. So is it the case that it was at some point during your time living in the chalet that you told your mum what had happened?

A. Uh-huh.

Q. Is that the -- it wasn't while you were still in the main dorm that you told her?

A. No, it was after I had left the dormitory it was after I had left the dormitory and moved into the chalet, and I just -- I was unhappy at the time and I remember, you know, going to visit my mother on Sundays and I just told her one Sunday. I just -- I just broke down and I just told her and I just said, "This is happening" and she just says, "You'd better not be telling lies", you know, and I wasn't telling lies, you know.

Q. I should make it clear, as you know, that the Order accepts your account"⁶⁵

76. In his Inquiry statement dated 19th February 2014 HIA36 had this to say:

"Finally I told my mother about the abuse and she didn't come near me for about 6 months. She did not know how to deal with the problem. She knew about the abuse because [REDACTED] DL140 knew what was going on. I knew that other boys had reported incidents of abuse to him. I told him and he went to see my mother. He came back and told me not to worry about things as that Brother was ill and required treatment and would not be there much longer."⁶⁶

77. HIA36 says that he knew that other boys had made complaints about BR15 to the chaplain. There does not appear to be any evidence suggesting that DL140 told his superiors about the allegations made by HIA36. On the other hand he does appear to have taken some action and therefore presumably the complaint was made to him outwith the confessional. There is no suggestion that he took any action in respect of allegations made by other boys in contrast to his actions in respect of HIA36. The Inquiry may wish to consider whether this suggests it is more or less likely that, in fact, there were other complaints made to him re BR15, any other Brothers or residents.

⁶⁵ *Ibid* page 134 line 10 – page 135 line 8

⁶⁶ RUB 477 para. 19

78. Action was taken by BR6 and the Provincial Superior to remove BR15 and he was ultimately the subject of a dispensation in [REDACTED]. There are twenty-one witnesses to the Inquiry who have now come forward to allege abuse at the hands of BR15 whether physical or sexual.
79. The Board of Governors did not meet between 1967 and 1972. At the meeting on the 31st May 1972 there is no record of the allegations relating to BR15 being discussed. There is no other evidence referred to which suggests that the Diocese were made aware of this allegation against BR15 which, at that time, as the Order point out, was isolated.
80. These allegations were not disclosed by the diocese to the Hughes Inquiry. The documentary evidence to date suggests that the diocese was not informed of these allegations in any formal sense at the relevant time.
81. In the circumstances of each allegation, it has been accepted⁶⁷ there was a failing in the reporting arrangements as more stringent mechanisms may have ensured that the allegations would have come to the attention of the Trustees of the home and therefore the Diocese. The failing in the Order's governance arrangements necessarily contributed to the fact that these incidents were not the subject of formal reporting to the Trustees through the medium of the Board of Governors.
82. The lack of suitably stringent reporting mechanisms may also have contributed to a failure to ensure that Rubane House was run in the best interests of children at that time as their presence may have reduced the risk of recurrence of such incidents.

⁶⁷ RUB 5465

Allegations of HIA18

83. This applicant gave evidence on the 6th November 2014⁶⁸, he had the following to say about the local parish priest DL454:

"You had another positive memory that you indicate to the Inquiry of DL454.

A. Yes.

Q. Now I think up until 1971 there had been a chaplain at various times living in Rubane and various chaplains over the twenty years that preceded that, but from '71 the local priest would have come in and been involved in the home, and DL454 was a local priest who was based in the area.

A. That's correct.

Q. The point you make in paragraph 18 of your statement at 431 was you could tell him anything. That's the warmth that he had, and I was then asking you were you able to tell him about what -- some of the things that were going on in terms of the physical or the level of physical engagement with the adults and the boys? Can you remember talking to him about that?

A. He would -- he would ask us after Sunday mass, so he would.

Q. Sorry, HIA18?

A. He would ask us after Sunday mass. We were altar boys.

Q. Yes.

A. He would ask us, "What happened to you this week? Anything happen to you?"

Q. Would you have felt able to tell him about --

A. Yes, because there was a trust within him. He wasn't like any other priest, you know. He was down to earth.

Q. And did he give you any advice about how to stay out of trouble?

A. He did, yes. "Just stay out of their way. Behave yourself."

Q. So --

A. Words like this.

Q. So "Keep your head down" --

A. Yes.

⁶⁸ Transcript Day 66 page 2 *et seq*

Q. -- *in layman's terms.*"⁶⁹

"CHAIRMAN: HIA18, can I just ask you to go back to what you told us about the chaplain, DL454? Now if I have understood you correctly, you are saying that he was somebody who you found it easy to get on with, to talk to and to confide in. Isn't that right? I understand you to say that you did say something to him about the way you were being treated and he told you, "Just keep your head down" presumably. Get on with life, so to speak. What exactly --

A. He didn't mean it in a cruel way, though.

Q. I beg your pardon?

A. It wasn't in a cruel way he meant it.

Q. No, I am not suggesting it was. That is the advice he gave you, "Keep your head down". What exactly did you tell him about the way you were being treated?

A. Just the way the Christian Brothers were beating us and that.

Q. You told him about the beatings?

A. Uh-huh.

Q. I see. Did he say anything in response to that apart from --

A. I don't know if he approached the Christian Brothers or not.

Q. But when you told him, you told us that he told you to keep your head down. Did he say anything else about the beatings?

A. No. I just kept my head down.

Q. I beg your pardon?

A. No. What he advised me to do, that's what I done, try to get out of the way."

Q. Fine. Thank you very much."⁷⁰

⁶⁹ Ibid page 59 line 21 to page 61 line 4

⁷⁰ Ibid page 65 line 1 – page 66 line 8

84. In his witness statement he says :

*"The Priest who said mass, Father DL454, was lovely. He was from the Parish near the Home. He is now deceased. He used to give us money for helping at mass and he would ask us if everything was OK in the Home and told us we could tell him if anything was wrong. I told him everything was fine apart from the beatings. He said I was not the only one who had complained about that."*⁷¹

85. DL454 is deceased and therefore the Diocese is unable to comment on the detail of the allegation raised by HIA18. There is no record of any communication between DL454 and the Diocese which could shed light on this matter. The Diocese has no record or knowledge of any other allegations against DL454.

86. It is evident that DL454 exhibited a genuine concern for the boys who served Mass. It is of concern that he did not communicate what the boys had told him to those in authority in the Diocese as it appears to have been imparted outside the confessional. The Diocese can only speculate as to why he did not manifest his concern further by reporting, it may be that he felt, as did Father McCann in the context of the BR77 complaint, that he did not have the authority to intervene in the affairs of the Order.

Allegations of HIA26

87. This applicant did not give oral evidence to the Inquiry. His statement and associated documents were read into the record⁷².

88. In his Inquiry statement he refers to DL389 who he says was a parish priest in Belfast in and around [REDACTED] in the following terms:

⁷¹ RUB 431 para. 18

⁷² Transcript Day 59 page 94 line 24 *et seq*

"I told DL389 in/around [REDACTED] about what happened to me in Rubane. He was the Parish Priest of... which was in the area where my sister lived. I went up to the priest's house and asked to speak to him but he just threw me out and told me not to come back. He was really abrupt with me. He is now deceased. I had never ever told anybody prior to this date. I have only told people in recent times since 1995 when I made my statement to the police."

89. The Diocese has no record of any such complaint having ever been made to DL389. There is further no record of any other complaint relating to DL389. If DL389 had received such information outside the context of the confessional he would have had a duty and would have been expected to report the matter to his superiors and the relevant authorities.
90. The Diocese notes the response statements of the De La Salle Order⁷³ and the inconsistencies and timing of the various allegations made by HIA26 particularly in his various complaints to police⁷⁴ and his civil claim. The Diocese must submit therefore that his evidence must be approached with some degree of caution, particularly as the panel has not had the opportunity to observe his demeanour or raise any issues with him either through counsel or directly.

Allegations of HIA59

91. In his statement dated 27th February 2014, HIA59 makes an extremely serious allegation of rape against BR12 which occurred sometime in the [REDACTED] s.

"I reported this to the priest attached to Rubane House in confessions. I cannot recall his name. He told the Brother concerned and I was punished. I do not recall which Brother was responsible but I got my hair shaved, I was put in short trousers and I was locked in a cupboard

⁷³ RUB 2699

⁷⁴ RUB 60468, 65239, 62662

for three days and never got out of it. I never got anything to eat, I had to pee and everything in it because I couldn't get out and then I got beaten when I got out by BR17 and BR12. I didn't get back to the farm then but I was glad I didn't have to go back. I was given other duties."⁷⁵

92. In his oral evidence to the Inquiry he said:

"Q. Now whenever -- you describe then in paragraph 13 telling the priest --

A. Yes.

Q. -- about this. Why this particular incident rather than all the other stuff that went on?

A. Well, it was just -- it was just different, wasn't it? I didn't want to stick the pain any more.

Q. And this was the -- you were talking to the chaplain, the priest who lived on the site?

A. Yes.

Q. I was asking you did you remember his name and you couldn't remember his name --

A. No.

Q. -- but when I mentioned DL366 --

A. Yes.

Q. -- who seems to straddle [redacted] through to perhaps beyond you leaving ...

A. I heard that name, but I can't say whether it was DL366.

Q. You don't know whether it was him or not?

A. No.

Q. But that's a name that rings a bell?

A. Yes.

Q. You told him about what happened. You say that he then told the Brother concerned --

A. Yes.

⁷⁵ RUB 538 para. 13

Q. -- and then you were punished further?

A. Yes. ^{”⁷⁶}

93. The Panel has had the opportunity to observe this applicant giving evidence and will come to its own view as to his reliability. Relevant to this is, however, the discrepancies in his various accounts highlighted by the Order’s response to his statement.⁷⁷ The Panel will have noted his allegation that residents disappeared during the night with the implicit suggestion that they had been abducted and murdered – an allegation which appears far-fetched.
94. Insofar as the diocese is concerned it appears that the applicant cannot recall the name of the priest who he told of the allegation of rape in confession. It was only after Inquiry Counsel suggested the name DL 366 that HIA 59 said that he recognised the name but could not say it was him. It is apparent this name was suggested to HIA 59 as DL 366 was chaplain at Rubane at the relevant time.
95. HIA 59 claims that the priest told BR12 and that he was further punished as a result. This is extremely unlikely to have occurred if, as HIA 59 claims, he told the priest in the course of confession as any priest would have been strictly bound by the seal of the confessional.
96. It is further notable, as the Order has pointed out, that no such allegation was made during the extensive inquiry made by BP1 into allegations made against BR17. Indeed, HIA 59 does not appear to particularly recall these events.⁷⁸

⁷⁶ Transcript Day 55 page 95 line 23 – page 96 line 24

⁷⁷ RUB 2163

⁷⁸ Transcript Day 55 page 188 lines 10-18

HIA 97

97. This applicant, who was resident in Rubane from [REDACTED], gave evidence to the Inquiry on the 7th October 2014 during which he alleged that a BR25 abused him by constantly grabbing him by the testicles whilst he was in the shower. He goes on to say that he told the chaplain DL366 about this in the confessional.

Q. In paragraph 18 you say that you complained to a priest when you made your confession to him at Rubane House and he said keep it between you, him and God, and you remember one day he was coming off the soccer field and he started a row with --

A. No. Gaelic football field.

Q. So that is not right in your statement then when you say soccer field?

No?

A. Does it say soccer field?

Q. Yes, at paragraph 18.

A. That's a misprint on the people that were taping me.

Q. So he was coming off and you say that he started a row with this particular Brother, and you often wonder if that was how he dealt with what you had told him about this Brother.

A. Well, looking back at what my brother said to me about the abuse -- and I went into DL366 -- he was from [REDACTED] as far as I know -- and I told him in the confession box about BR25 grabbing me by the testicles and that, and he said, "This is between you, me, God and the confession box. It is not to go outside of here", but when we were coming up from the Gaelic playing field he started -- you know, he had been playing soccer, and BR25 was a strict Gaelic man, plus there was a ban in them days. You weren't allowed to play soccer. That's the GAA had this in force, and BR25 being a hurling man, he had a go at DL366. DL366 says, "I have a collar off now", and they were going to go to fisticuffs, and we were looking on, and I think, looking back

*now, that was his way of dealing -- he didn't know how to deal with it. They weren't trained men. So I think his way of getting at BR25 was to give him a good hiding if he could have got him to provoke him by playing soccer to annoy him, like, you know, because they were very nationalistic in the schools about sports and that. Soccer was banned. That was taboo. You would be in big trouble if you played soccer. You would get a fair hiding for that.*⁷⁹

98. In his statement he said:

*"The only person I ever told at the time was DL366 when I made my confession to him at Rubane House. He said to keep it between me, him and God. One day he was coming off the soccer field and he started a row with BR25 and I often wondered if that was his way of dealing with what I told him in the confession box."*⁸⁰

99. The Diocese notes that the Order believe that HIA97 is mistaken that the Brother he is referring to is BR25 as there was no Brother of that name at Rubane at the time this abuse is alleged to have occurred. The Order believes that he may be referring to BR14 in respect of whom another complaint was made dealt with at para. 60 *et seq* above.

100. As noted at para. 86 above, if this matter had been reported to a priest in the confessional, the priest would have been strictly bound by the seal of the confessional and could not have told anyone else. It seems that he in fact did not if HIA97's account is true. This is to be contrasted with the reaction he is alleged to have had when HIA59 says he told him what he claims happened to him.

⁷⁹ Transcript Day 56 page 48 line 20 - page 50 line 7
⁸⁰ RUB 572 para. 18

HIA 128

101. This applicant made serious allegations of sexual abuse against DL140 between [REDACTED] and [REDACTED] which are not supported by any other evidence before the Inquiry. As indicated in the statement of Father Timothy Bartlett dated 17th October 2014, the Diocese cannot accept these allegations are true⁸¹. A combination of the inconsistency of reporting, lack of supporting evidence, the unfortunate personal circumstances of HIA128, his failure to give oral evidence in the context of the egregious nature of the allegations mean that the Diocese is bound to submit that his allegations can be afforded little if any weight.

HIA 261

102. This applicant alleges he was abused by BR17 whilst in Rubane from [REDACTED] to [REDACTED]. He says he told the chaplain at the time about the abuse in confession. In his statement he says:

"I decided to tell the priest in the confessional but he just told me to tell the principal. I cannot recall the name of the priest but he was the regular priest who said mass and heard confession at Rubane. [REDACTED]

*[REDACTED]."*⁸²

103. In his oral evidence he gave the following account:

"Q. You say you knew it was wrong, but you didn't know what to do about it. So, knowing that it was wrong, you decided to speak to the priest. You say he was the regular priest who heard mass and heard confession at Rubane. There would have been a chaplain assigned to the home. Is that the person that you remember going to confession to?"

⁸¹ RUB 5456

⁸² RUB 710-702 para. 20

A. I don't remember the name or the priest. I know that I went to confession, told the priest what was happening. The priest then said to me, "You must go tell the principal". [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. So whether the priest picked up on all that I don't know. I assume he had the intelligence to pick up on it."⁸³

104. It must be noted that HIA gives a materially different account of what he told the priest in the confessional as between his statement and his oral evidence. In his statement he claims he told the priest that BR17 was abusing him, whilst in his oral evidence simply that BR17 knew of the abuse. If it were the latter the priest may well have assumed that BR17 was dealing with the matter and, in any event, could not have taken it further himself as the information was imparted in the course of confession. In those circumstances the advice given to report it would have been quite proper and that which would be expected of a priest in the confessional.

105. During the time period in which HIA261 was at Rubane the chaplain was DL 410 [REDACTED]. In his statement to the Inquiry dated 3rd December 2014 he maintains that he does not recall any allegation of either physical or sexual abuse being made to him⁸⁴. DL 410 [REDACTED], does however, remain bound by the seal of the confessional.

BR1 & BR77

106. In or around [REDACTED] two former residents of Rubane made disclosures to a social worker regarding inappropriate touching of them in the guise of medical examinations by BR1. The Board made some further enquires

⁸³ Transcript Day 48 page 54 line 17 - page 55 line 7

⁸⁴ RUB 5947

and further allegations emerged. This matter was reported to **DL 518**, Assistant Director of the Eastern Health & Social Services Board who in turn informed the police.

107. A number of pieces of evidence suggest that this information having reached the Diocese through Monsignor Mullaly, BR1 was immediately suspended by Bishop Philbin. The Hughes Report records that he wrote to the Ministry of Home Affairs advising them of the suspension. In a meeting with the Under-Secretary of the Department of Health and Social Services (DHSS) the Bishop indicated his intention to set up an internal inquiry to be chaired by a High Court judge. This did not proceed as it would have been inadvisable when the police investigation was underway⁸⁵.

108. The intervention by the Bishop demonstrates, the Diocese submits, a willingness to act with alacrity on the part of the Diocesan authorities when such matters were brought to its attention. It is suggested that the Bishop's intervention was unilateral and that the Provincial of the Order was not consulted⁸⁶. This would suggest the matter was of such importance that it would allow no delay.

109. This was an unprecedented situation, which called for immediate action to ensure the protection of the current Rubane residents. The Bishop advised the DHSS that BR1 had been "temporarily withdrawn" and it is to be assumed that there was communication with the Superior of the Order in the aftermath of the disclosure. It appears clear that the Bishop took an "executive decision" which was proportionate to the exigencies of the situation, which involved allegations of sexual abuse. It is submitted it does not reveal an additional power to intervene in the matter of the appointment of the officer in charge of the home in ordinary circumstances.

⁸⁵ RUB 40396 para 10.39 – 10.40

⁸⁶ RUB 1071 para. 100

110. The BR1 situation can be contrasted with the action taken by Father McCann regarding the BR77 allegations. These allegations emerged during the revelations regarding BR1. Father McCann, who was then chairman of the Management Committee, appears to have been made aware of the allegations of physical assaults by BR77 in 1979. They had been brought to his attention by Father O'Connor who had himself been told by the social worker from the Catholic Family Welfare Office who was at that time visiting the Home.

111. Father McCann's intervention was to effectively exhort BR1 to deal with the matter. He accepted that his intervention was an insufficient response and does not appear to have brought the matter to the attention of those in authority within the Diocese or the police. The Diocese accepts that this was a failing of its own reporting mechanisms. It is deeply regrettable that when the matter did come to its attention in April 1980 no action was taken to have BR77 suspended at that stage and the impetus for this had to come from the Under-Secretary of the DHSS. From Father McCann's evidence to the Hughes Inquiry it appears that the removal of BR77 from the Home was effected by the Order who had him transferred⁸⁷.

CONCLUSION

112. It is readily apparent that where physical or sexual occurred at Rubane during the period under consideration by the Inquiry, it was not reported in the manner in which it should have been either to the statutory agencies and authorities or to the Diocese in whose area and with whose authority it was operated by the De La Salle Order. The Diocese accepted its failings in this regard and apologised for that⁸⁸.

⁸⁷ RUB 40021

⁸⁸ RUB 5324 para.33

113. Perhaps with hindsight undue reliance was placed on the De La Salle Order's deserved high regard and reputation for teaching throughout the Christian world. However, its expertise was in this field and not in that of the care⁸⁹ of extremely vulnerable and damaged children. The Diocese would have been aware that the Order had a set of rules and a constitution which sought to guard against the very dangers which were manifest in Rubane House. Unfortunately, as has been acknowledged⁹⁰, these rules were not always adhered to by those in Rubane. However, although the notion of child sexual abuse was not new at that time, the modern understanding of the predatory and manipulative nature of paedophiles was lacking.

114. The situation was exacerbated by the practice of the Order to deliberately choose not to divulge the existence of allegations and incidents of abuse where uncovered. It appears to have dealt with these matters internally and in such a manner, which did nothing to impede the activities of those determined individuals whose object was to abuse children in their care.

115. The Order's undoubted expertise in teaching did not, however, equip it to provide the type of environment that was required to deal with vulnerable and damaged children perhaps even by the standards of the time when it came into being. Standards of childcare developed rapidly during the period of Rubane's operation and the Home failed to ever keep pace with them. The Rubane boarding-school type model for older boys had not been attempted before by the Diocese and, as it transpired, it did not have the requisite professional expertise to embark on such an enterprise.

116. As was alluded to during the evidence of Father Tim Bartlett to the Inquiry, many opportunities were lost due to non-reporting to address the

⁸⁹ See e.g. SWAG report RUB 40325 para. 12.2

⁹⁰ Transcript BR 45 [REDACTED]'s evidence Day 78 page 91 line 17 – page 93 line 17

insidious problem of child sexual abuse as it arose. The experience of the Catholic Church in the recent past has resulted in the learning of lessons in this area. The witness statement of Ms Barbara McDermott⁹¹ will, it is hoped, give this Inquiry some sense of reassurance about the systems now in place within Down & Connor Diocese. The paramount concern is and must always be the safety of children

117. The Diocese would again reiterate the concluding paragraph of Father Bartlett's initial statement to the Inquiry as indicative of the primary posture, it would wish to adopt towards the issues raised by this Inquiry.

"In conclusion, the Diocese wishes to express its deep sorrow and regret that any child was abused while a resident in Rubane House. Established with the sole intention of improving the circumstances and opportunities of the children in its care, Rubane House, as with any institution founded on Christian principles, should have been exemplary in the love, dignity and protection it provided. Clearly, for too many, and despite the best efforts of many of the staff, this was far from the case. It is our hope that this Inquiry will go some way to helping those who experienced such abuse to have their voices heard and their painful experiences acknowledged and that they will be assisted in advancing towards healing.⁹²"

15th December 2014

Jones & Co. Solicitors

⁹¹ RUB 5553

⁹² RUB 5324 para. 33