

Scottish Child Abuse Inquiry

CLOSING SUBMISSIONS

FOR

**THE CONGREGATION OF
CHRISTIAN BROTHERS**

Introduction

1. The Phase 4 case study into the provision of residential care by the Congregation of Christian Brothers at St. Ninian's in Falkland, Fife began on 4 June 2019. A senior representative of the Congregation, Brother John Burke, was present that day and every day thereafter. He listened first-hand to the accounts of the boys who were sent to St. Ninian's. His colleague, Brother Edmund Garvey was unable to be present throughout. Instead, he has taken the time to read the transcripts of the evidence. Each of them formed the impression that the Congregation required to say more than it had done thus far. They instructed their solicitors to re-draft the Parts A and B, and C and D responses previously given on behalf of the Congregation, and they then amplified those amended responses in the course of their oral evidence.
2. It would not be possible, and probably not helpful, to seek to make submissions on every single aspect of the evidence heard by the Inquiry. In truth, it would be a misnomer to describe this document as a submission at all. Really it is just an attempt to capture the impressions formed by Brother Edmund and Brother John. Those impressions and the statements that accompany them are the position of the Congregation on the matters before the Inquiry. Whether or not your Ladyship considers they should form part of her findings are a matter for her. But it is hoped that they at least assist her in that process; and it is also hoped that whoever reads or hears what follows finds something of benefit.

3. Given the nature and content of the evidence in this case study, it seems not unlikely that the focus of the Inquiry's report will be upon the extensive history of very serious sexual and physical abuse that emerged from the applicants' testimonies. That is discussed below. But the Congregation considers that it is necessary first to say something of the background to these incidents. That is so for two reasons. First, it is clear that, quite apart from the serious abuse perpetrated upon them, each applicant recalled a life within St. Ninian's that fell far short of what the Congregation should have provided. Secondly, while the abuse suffered by boys within St. Ninian's was the result of the deliberate acts of individual men who lived and worked there, it is possible to see within the wider context a set of circumstances – a framework – within which these men were able to give vent to their appetite for abuse.
4. Accordingly these closing comments begin first by looking at certain contextual and background matters, such as: the nature of St. Ninian's; the needs of the boys who lived there; the ability of the Brothers to meet those needs; governance; oversight; and the keeping of records. Observations are made about day-to-day life within the home, with an emphasis upon those matters unconnected to abuse, for example the evidence about education. Next, certain chapters of the evidence about abuse are considered. Finally, the Congregation sets out its reflections on everything it has seen, heard and read during the case study.

The Congregation's approach to the evidence

5. At the risk of adding yet further preamble to these observations, it is appropriate to say something of the way in which the Congregation has approached the evidence heard by the Inquiry. In accordance with what was said on the opening day, it does not challenge any of the testimonies given by the applicants. On the other hand, the Congregation is mindful of the duties it feels it owes to some of those who have been the subject of accusations, in particular those who are not the subject of convictions, and especially where there is the possibility of misidentification. For this reason, and also to reduce the length of this written submission, it is not proposed to deal with every allegation heard at this point. Where the Inquiry considers it would be of assistance to hear from the Congregation further on any point, no doubt that can be picked up in the oral submission.

(1) Contextual & background matters; aspects of care beyond abuse

(a) The status of St. Ninian's

6. As is already known to the Inquiry, provision of residential care of children by the Congregation in Scotland was limited to the period that it operated the residential school at St. Ninian's between around January 1951 and July 1983. We can see that it was registered as a voluntary home in January 1951. But the evidence at times indicated that the precise role and status of the home was not necessarily clearly understood. One brother, "Tom", had thought it was a list D school. Others understood it to have been somewhere on a spectrum between that sort of establishment and a boarding school. Even Michael Madigan, in his evidence, and at one stage in the Part A and B response, described it as a foster home.
7. While the precise legal status of St. Ninian's was perhaps unclear to some Brothers who were there at the time, the overarching purpose of the home ought not to have been. In his evidence, Michael Madigan refers to para. 62 of the Acts of Chapter which reminds Brothers that, in the context of residential schools, they "*hold the position of parents in regard to their children*", and directs them that "*every effort should be made to make [the residential school] as much as possible resemble a home*". Given other evidence before the Inquiry, the extent to which Brothers within St. Ninian's were actively aware and mindful of this enjoinder may be open to some doubt.

(b) The Brothers within St. Ninian's

8. The Inquiry already has detailed evidence on which Brothers and staff were present and when. It is not intended here to reinvent that wheel. Rather, the purpose of this part of the submission is to consider the extent to which the Brothers within St. Ninian's had the training, experience or aptitude to care for and educate children within a residential setting. It is also necessary to consider aspects of the way in which the Brothers lived their lives within St. Ninian's and the extent to which the ethos and culture of the Congregation were observed. It seems to the Congregation now, that in each of these matters there were obvious deficiencies, and that these deficiencies are part of the framework within which it was possible for abuse to take place so freely.

9. It may not have been true of all Brothers who were appointed to St. Ninian's, but, quite apart from an absence of training, a complete absence of relevant life experience was notable. A large number had joined the Congregation as children themselves. The two "Johns" had joined at twelve and thirteen respectively. "Tom" had joined at fourteen: an age at which he had been too young to make a commitment for life, he said. It is also true, as was accepted by Brother Edmund in response to a question from your Ladyship, that boys of that age or a few years later could not have known what it was to vow a celibate way of living.
10. Overall, it is difficult to see how the lives that each of these men are likely to have lived within the Congregation from boyhood into early manhood could have equipped them for life as carers within St. Ninian's. It can also be said – and this may be relevant again to the extent to which abuse went unnoticed – that some of those who gave evidence (not necessarily those just mentioned) betrayed a very obvious naïveté, and one confessed to recognising now that he had wrongly thought at the time that he would discover how to respond to the children in his care by looking in books.
11. To some extent, the foregoing picture is unsurprising. Prior to St. Ninian's, the Province had been involved in residential childcare in one school in England. Beyond Brother Nugent, who had worked there, and possibly "John" who had had some experience of looking after boarders, it is not clear who if anyone else had had any significant analogous experience prior to coming to Fife to learn on the job. In that context, the provision of training takes on an even greater importance.
12. It looks pretty clear that, with one exception, no Brother within St. Ninian's had training in residential child care prior to coming to live there. It was indicated by more than one witness that this may have been the position in other residential institutions in the UK too. One former brother questioned what training it would have been possible to provide. But the response to that was in the evidence of another: some training is better than no training. Moreover, as discussed above, even if it were the position that the approach to the question of training in St. Ninian's did not differ from that taken more broadly by the state and other institutions, the Congregation does not seek to dilute its obligations by that sort of comparison.
13. In any event, the fact of the matter is that training was available. That is clear from the evidence of "John" who undertook a course at [REDACTED] College in 1971-72.

However, in a sense, his evidence (and other evidence about this role in the home) only underlines the deficiencies in the approach taken within the home at the time. “John” went to St. Ninian’s prior to undertaking the course, having had no training as a houseparent. He completed the course but did not return to St. Ninian’s until a few years afterwards. It is not obvious that whatever he learned on the course had any direct influence on the provision of day-to-day care within the home. Rather, his role appears to have been concerned with periodical review of the boys and liaison with social work/Children’s Hearings and the like. Doubtless, this will have been of some benefit to the lives of the boys. But the limits of that are perhaps captured in the comment by one witness that “John’s” role had been rather office-based.

14. In all the circumstances, there is much force in Michael Madigan’s pithy observation that the notion that the Brothers were equipped to provide residential care to multiple boys had been a “facile presumption”. No doubt that phrase will be (justifiably) emphasised by others, but it is worth dwelling on it just a little. In particular, it may be of interest to consider why there was such a presumption. It could be again that in those days there was less thought (by care provider or by the state) about the matters that would have called into question the presumption. But in the particular case of religious orders, it could also be that certain assumptions were made about the calling and motivation of their members: that that was all the qualification that was needed. That thinking was, said Brother Edmund, the product of a misplaced ideal.
15. In any event, it seems tolerably clear that a number of Brothers within St. Ninian’s paid little heed to the encapsulation of the religious ideal within the constitutions and rules of the Congregation. Serial infractions of the rule against being alone with a child are demonstrated by the evidence. These infractions were not a secret, yet nothing seems to have been done. Each of Brother Edmund and Brother John struggled to accept that Brothers could have been unaware of the contents of the Congregation’s constitutional writings, but the fact of the matter is that that was the evidence the Inquiry heard from former Brothers.
16. In short, there was plenty of evidence at a general level – and to the foregoing one could also mention the evidence about drinking – that Brothers within the home were not living the religious life they had vowed to follow. There was specific evidence too: and there is no more obvious – and of course it was obvious – example than Brother Ryan’s almost complete disengagement from the religious aspects of his life within

St. Ninian's. That is the final context in which to place the facile presumption. As Brother Edmund explained, when the obligations to God are given up on, there is a real risk that the other obligations will follow. The facile presumption had no chance, especially in the untrained, overworked, under-resourced environment of St. Ninian's.

(c) The children who came to live within St. Ninian's

17. In a somewhat aspirational statement, "Francis" said this of St. Ninian's in an article he wrote: *"Each child was regarded as an individual, whose needs would be met, and whose potential, it was hoped, would be realised in this context."* So who were these children; and what did the Brothers know of them and of their lives?
18. As is discussed in the paper by "Francis", and as emerged in the evidence, there looks to have been a change in approach over the years as regards the way in which children came to live in the home and as regards the circumstances behind that. Thus in later years it does not appear as if there were intakes from other institutions. No doubt the Inquiry will wish to make findings on these historical aspects, but this part of the Congregation's reflection is more concerned with consideration of the children as individuals. It is by no means clear that there was much inquiry about this at the time by Brothers within the home. While the means to find out information about the boys in their charge was there, it seems clear enough that Brothers were not in the habit of availing themselves of this and that no system for communicating key information about the circumstances of the children was in place. As Brother Edmund said, this was a specialised situation; you needed to know the background.
19. None of the Brothers who gave evidence sought to explain away deficiencies in care by emphasising challenging behaviour on the part of those who were under their care. True, one or two former Brothers indicated that, in later years, the boys may have been a little more streetwise. But none indicated that this had any serious impact on the ability to run the home, and at least one emphasised that the boys were not, as he put it in his statement, delinquent children. If anything, it is in the evidence of the applicants themselves that one can find greater scope for emphasising the challenges presented by the children's backgrounds. "Alan" said the staff were intimidated by the boys; that there was a gang culture; and that bullies were "running wild".

20. But the Congregation does not consider such considerations go any way to lessening the criticisms of their treatment of the boys in their care. The Congregation recognises that, in fact, the correct conclusion to be drawn is to the opposite effect: the poor circumstances of the boys only underlined the need for proper care. The point is perhaps best captured by “Alex”, who said that they had all been “*kids from a hard background and a rough life, but it was two lost years.*”

21. This thought leads to one aspect of the children that was the subject of quite a bit of evidence: their educational ability. The Congregation wishes to say something about that. Doubtless it is true that the educational *attainment* of many and possibly most of the boys who came to St. Ninian’s was not commensurate with whatever notional standard society would have set at the time for children of their age. But it is a step too far to say, as per the evidence given to “Francis” when he wrote his article, that they were “*usually of low IQ*”. The notable intelligence of many of the applicants was obvious from their evidence and from what they have done with their lives. It cannot be known how far one can extrapolate from this group of men, but it seems likely that there were a significant number of boys with considerable educational ability. Against that background, there is something particularly depressing about references within inspection reports to the boys being “*intellectually dull.*”

(d) *Education at St. Ninian’s*

22. Whether assessed under reference to those who had ability or under reference to those who were struggling and would always do so, the approach to education at St. Ninian’s was inadequate. That this never seems to have attracted the attention of any state authority is perhaps surprising and concerning. But, once again, the Congregation does not seek to shirk its own responsibilities here. The Inquiry has a considerable amount of evidence on this aspect of matters, and there is no requirement to labour the point. To summarise, it would appear that at least until the arrival of Mrs. Nicol there is no suggestion of any expertise in remedial education. But the visitation reports would indicate that overall there was an unmet need regarding remedial teaching, and Brother John indicated the importance that an educational psychologist could have had in the context of St. Ninian’s. The failure to provide the opportunity and means to those who could have had the ability to leave school with exam certificates and with opportunities was never addressed.

(e) Day-to-day life within St. Ninian's

23. Even without the evidence of abuse, the picture of life within the home emerging from the testimonies of former residents was not a happy one. Positive experiences were despite, rather than because of, the regime within the home. The impression at times was that, as "Barry" said, it was very much down to what each boy made of it himself. In keeping with this, Frank McCue said that the boys were able to be happy when with each other.
24. The humility of some witnesses was striking. "James" recognised that he would not have been able to do half the things he did within St. Ninian's if he had been elsewhere. But based on their life experiences before they came to St. Ninian's, the expectations of these boys are likely to have been very low. Whatever positives they eked out for themselves (for example through sport or friendships) are to be seen in that context; in the context that the predominant evidence was clearly that the negatives outweighed the positives; and in the context of the obligation upon the Brothers to help improve the lives of these boys.
25. St. Ninian's must have seemed a strange, remote and faraway place for many of the boys who came to live there. Sure enough, running away appears to have been a prevalent issue. The evidence of "John" showed just how disruptive to the life of the home that could be. The response to instances of running away by the Brothers (and other agencies) was inadequate. While it is was no doubt true that running away was a problem in all residential schools, it seems likely that abuse was what led some of these boys to runaway (e.g. "Alec"; Frank McCue).
26. No doubt there are other aspects of life within the home about which the Congregation could provide additional comment, for example the approach to non-physical punishment, the extent to which birthdays and Christmas were celebrated, and contact with and visits to/from family. As already indicated, the Congregation is content to provide whatever comment on such matters as would be of assistance. It is hoped that, in the meantime, the foregoing comments make it clear that the Congregation considers that care given to children in St. Ninian's was inadequate, quite apart from any abuse they suffered.

(f) Governance, oversight & records

27. The Congregation's whole approach to the Inquiry owes much to the work of Karen Johnson in securing, cataloguing and interrogating the written record of St. Ninian's. Her great care and effort in relation to the documents stands in stark contrast to the approach that was taken within St. Ninian's (and indeed by the Province) at the time. To mention just a few examples: the annals were written up irregularly, after the fact and the information within them was increasingly vague; there is not (and appears never to have been) a log book covering the last years of the home; the records of St. Ninian's did not (presumably ever) contain visitation reports (far less any record of follow up); there does not appear to have been any sufficient system for recording punishments.

28. Karen Johnson confirmed that she had found no personal records for former residents. That is hardly surprising given other evidence about the approach taken to the files of residents. The evidence of "John" appeared to indicate that when a boy left St. Ninian's his whole file would be transferred to the relevant area social work department. It is not clear what happened to any files remaining when the home closed.

29. Overall the approach to documents at the time appears to have been fairly casual. The fact of the matter is, and as already referred to, deficiencies in the conduct of Brothers and the unmet needs of boys (via the need for training and in relation to remedial teaching) were disclosed in visitation reports, and nothing appears to have been done about that.

(2) The Abuse of Children resident within St. Ninian's

(a) Sexual Abuse

30. For the reasons set out above, what follows is not intended as a comprehensive assessment of all of the evidence about sexual abuse within St. Ninian's. But it is hoped that, together with the evidence of Brother Edmund and Brother John, it presents a reasonably clear picture of the Congregation's response to the evidence placed before the Inquiry.

31. It can fairly be said of Brother LNA that he was a habitual predatory paedophile. He appears to have had entirely unrestricted access to boys for the whole of his time within St. Ninian's. While his activities may not have been known to everyone within the home at the time, he appears to have made little attempt to disguise them (cf. the evidence of "Derek" and "Steve"). The evidence of former residents indicates that he preyed upon boys with impunity. His abuse could be clandestine (as in the case of "Jack"); it could be violent (as in the case of "James" and "Alex"); or it could involve grooming, and more than one applicant said that, as a boy, he had considered himself to be in a relationship with Brother LNA. It is clear that Brother BHD, Paul Kelly and John Farrell indulged in similar behaviour to that of Brother LNA. As to the first of these, it is difficult to forget the quiet dignity of "James". A number of long silences were eloquent of the turmoil within him as he struggled to say what Brother BHD had done to him.
32. Brother John was correct to say that, at times, there was a culture of abuse within St. Ninian's. Certain features of life within the home were arranged in a way that, whether by accident or design, helped provide men like Brother LNA with opportunities to abuse boys. Two features of these arrangements are worthy of mention: the showers and the sleeping arrangements.
33. It is hard to accept that there was any legitimate reason for Brothers to supervise showering in the way that was regularly and consistently described in the evidence. Boys of the age of those at St. Ninian's did not require to be told how to wash themselves; they did not require to be watched while they did so; and they did not require to have shampoo placed onto their heads by a supposedly supervising adult. It seems clear that brothers used the showers for their voyeuristic desires: "Jack" considered that the only reason that boys showered in the evening was for the sexual gratification of Brother LNA. Sure enough, the rota rather confirmed that he tended to be on duty when showering was taking place.
34. The sleeping arrangements were also the subject of a large amount of consistent evidence, and, again, the point does not require to be laboured. No Brother should have had boys "socialising" and sleeping in his room. Brother John said that he was completely appalled by this.
35. Nor is it easy to think that there could ever be any real need for a Brother to check for wet beds during the night. The evidence about the management of bed wetting

disclosed no reason why that would ever be necessary. But there is no requirement to speculate upon this: the evidence clearly shows that the expressed concern about bed wetting was simply a pretext.

36. Two further aspects of the evidence about sexual abuse require to be emphasised. In expressing his concern about the sleeping arrangements within St. Ninian's, Brother John Burke said that he did not know why this had not been stopped. He described that failure as a breakdown of authority. He was right to do so. The evidence about the way in which Brothers were permitted to have boys in their room and the failure by the Province to act upon concerns about Brother LNA indicate a serious failure of governance and oversight within the home and the Province alike.
37. A feature of some of the allegations of historical sexual abuse by members of the Congregation is that they are accompanied by allegations of a cover up; of things being brushed under the carpet. "Jack" said as much in his evidence. He was right, most notably in the case of John Farrell. It would be hard to do justice to the shocking story disclosed in the evidence of Brother Joe O'Neill. In the recorded correspondence, there are too many examples of things that should have been said not being said. But as Brother John said it is the failure not to act upon, and indeed to ignore, the warning of Brother Colman Curran that is most shocking. It is simply impossible to understand how that could have happened. As Brother John indicated: the life stories of the applicants who gave evidence to Inquiry are the result of decisions like that.

(b) Physical Abuse

38. Corporal punishment was used within the home. It is not proposed in the submission to engage in consideration of what would have been permissible by reference to standards of the time (or indeed by reference to the standards set by the Congregation). That is because, first of all, it seems unlikely that a methodical and standardised approach to discipline was enforced within the home, which is perhaps rather confirmed by the absence of any punishment book. Secondly, it is clear that physical "punishments" went well beyond anything that could ever have been described as reasonable chastisement.
39. Not every applicant complained of excessive punishment, and having regard to evidence from Brothers there may be room for a certain amount of doubt as to how

widespread the problem was. But (beyond demonstrating the obvious truth that it was not necessary to beat the children) that is really nothing to the point. A substantial amount of evidence indicates that a number of Brothers and staff members engaged in punishment to the point of brutality, and that a substantial number of children are likely to have lived in fear. Brother John referred to the evidence of "Jim", and he emphasised in particular the beating to the soles of his feet. But "Jim's" evidence was replete with reference to such assaults, and one could just as easily emphasise a number of other incidents: for example the beating in the washhouse after he ran away. A report of this incident at the local school and to welfare officers appears to have elicited no response. It says a great deal about "Jim" that, notwithstanding his treatment at St. Ninian's, he has gone on to lead such an impressive life.

40. But of all of the evidence about physical mistreatment of boys, one incident stands out: the assault upon Frank McCue. Such is the extent of the evidence about this incident, that there can really be little doubt about the key facts. Frank was attacked by an enraged Brother ^{BHD} [REDACTED] and severely beaten. This resulted in significant injury. Quite apart from Frank's own evidence, this is clear from the evidence of "Jim". In a rather sad image that captured the severity of what had occurred, he described how some days after the incident he helped the injured boy walk slowly through the grounds. "Jim" said something else that is of use to understanding what occurred over these days. He called into doubt the accuracy of the recorded apology. He did not think Frank would have been physically capable of being present for this. It is at this point that we see the further benefit of Karen Johnson's careful work. She was able to identify the author of the record. It was Brother ^{BHD} [REDACTED].

(3) Reflections

41. While it has no ongoing involvement in Scotland, the events in St. Ninian's are part of a broader worldwide story that has had a devastating effect upon the Congregation. The evidence of Brother Edmund and "William" was aligned on this point: the Congregation has in a real sense lost everything, and certainly its reputation. As a result, for some years now, it has not been involved in the running of residential schools. It has strived to follow the one-Church approach in relation to safeguarding. So, for example, where allegations of abuse are made, the Congregation advises the former resident or pupil to report the matter to the police and that it will be doing so itself.

42. Shortly after he gave evidence to the Inquiry, Brother Edmund wrote a letter to members of the Leadership Groups across the world. His purpose in writing that letter was to highlight the failures that led to the abuses within St. Ninian's, and to emphasise the requirement for vigilance and care to ensure that such things can never happen again. He emphasised that the willingness to "do good" is never enough, and that proper regard to matters such as training, screening and oversight are fundamental if a repeat of what occurred at St. Ninian's is to be prevented. Brother Edmund expressed the hope that the legacy of the Inquiry, and from the courage of the men who gave evidence of their experiences as residents within St. Ninian's, will be that no person will ever again suffer abuse from a Christian Brother.
43. But the Congregation is realistic. It does not expect that the foregoing statements of what the Congregation is doing and saying now will provide any great comfort or reassurance to former residents of St. Ninian's. Like other organisations, the Congregation has apologised to those who were abused while in its care. It continues to do so. But it seems unlikely, judging by the opening remarks made on behalf of survivors, and judging by their evidence, that that apology has provided much by way of solace. The weeks of listening to the evidence reveal why that should be so. The word "sorry" has very little content of itself, and survivors are entitled to see it as having no content at all when not accompanied by what really matters: admission and recognition of what happened and that what happened was wrong.
44. It is hoped that the evidence of Brother Edmund and Brother John, together with these written reflections, go some way towards providing that content. Where they fail to do so – where there remains room for the charge of "weasel words" – the fault lies in the drafting: because it was surely evident from the evidence of Brother Edmund and from Brother John that a cautious legalistic approach would not be their wish. Rather, as Brother John observed, their approach reflected a recognition that the light required to be shone upon what happened within St. Ninian's.
45. But even words borrowed from Yeats are still just words. The Congregation has no right to expect that anything that its current representatives (or indeed its legal representatives) have said these past few weeks will change anything for the boys who were robbed of so much within in St. Ninian's. Time will tell whether the work of

the Inquiry brings with it the prospect of peace for the boys of St. Ninian's. But in the final words of "Jack" – "*It is time to move on*" – there may be room to hope.

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