

**Submission from the Congregation of Christian
Brothers to the Commission to Inquire into Child
Abuse**

On

**The Review of Financial Matters Relating to the System
of Reformatory and Industrial Schools and a Number
of Individual Institutions 1939 – 1969 (Mazars)**

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Section 1 Introduction

This submission is offered by way of critique of *The Review of Financial Matters Relating to the System of the Reformatory and Industrial Schools, and a Number of Individual Institutions 1939 to 1969*, (Mazars Report –Final Draft). The main purpose of the submission is to examine the Report in general but with specific reference to Artane Industrial School.

The Mazars Report is based on a number of fundamental, and very serious, misunderstandings and misinterpretations that render its conclusions invalid. Among the most significant of these are the following:

- that the land and property at Artane were gifted to the Congregation for the specific purpose of establishing an Industrial School.
- that the State had no responsibility to provide capital funding in such institutions
- that the Industrial School and the Christian Brother Community in Artane were a single entity
- that the State/Department of Education entered into an outsourcing arrangement with the Community/Congregation
- that if the Congregation closed an Industrial School or withdrew from it, the Congregation would have difficulty redeploying the Brothers who worked in that institution elsewhere within the Congregation

In addition, the comparators which the authors of the Report use to establish the adequacy or otherwise of the State funding are not valid comparators even though, contrary to what is stated in the Report, there are in existence comparators which are valid and much suitable as comparators and show quite clearly that the conclusions drawn in the Report are invalid. Another quite noticeable feature of the Report is its failure to refer in detail to any of a number of well known, easily identifiable, and readily available sources which clearly show that the conclusions reached in the report are unsustainable. These sources include:

- the Kennedy Report (1970) which described the State grant-aid paid to Industrial Schools as ‘totally inadequate’ and recommended that: “Separate grants should be available to cover new buildings and maintenance, renovation and modernisation of existing buildings.”¹

¹ Reformatory and Industrial Schools Systems Report, 1970 (Kennedy Report), p. 31

- the Interim Report of the Task Force on Child Care Services (1975) which stated that it had been estimated in England that the capital and annual running costs of a secure institution for boys in the 12-16 year old age bracket were in the order of £20,000 and £10,000 respectively per boy, i.e. a total of £30,000 per boy per annum.
- The Final Report of Task Force on Childcare Services (1980)
- the State funding of Certified Schools in Northern Ireland (presented in written submission to the Commission by the Christian Brothers in September 2005)
- the oral evidence of the Secretary of the Department of Education and Science to the Commission²

These omissions are all the more puzzling in view of the fact that the sources were referred to on a regular basis both in the public hearings of the Commission and in written documentation submitted by various parties to the Commission. The total absence of reference to relevant data from the above sources is so significant that it calls into question the validity and reliability of a Report where the authors are either unaware of such highly relevant material or have chosen to ignore it. The failure to address, or even acknowledge, the fact that the conclusions of Kennedy Report (1970), the Interim Report of the Task Force on Child Care Service (1975), and the Final Report of the Task Force on Child Care Services (1980) are diametrically the opposite to the conclusions of the (Mazars) Report (2006) beggars belief.

The most glaring omission from the Report is the absence of any worthwhile analysis of the data derived from the comparison between levels of capitation in Industrial and Reformatory Schools in Ireland and Certified Schools in the United Kingdom. The Report states clearly: "Finally, we compared the capitation grant over the period with similar data in the UK." (p.56) The rationale given for this omission is that the standard of living in England was much higher than in Ireland. The Report offers no evidence to back up that assertion. Even if the authors have such back up data, it would be very informative to show the relationship between the average industrial wage in England and the level of capitation grant to Certified Schools in that jurisdiction.

A disquieting aspect of this section of the Report is that while it states that the funding of similar institutions in Britain did not constitute a reasonable comparator because of differences in economic conditions, the source material relating to the funding of institutions in Britain is not included in the folder of source material on

² Referred to in Mazars Report at p. 30, but not dealt with by way of analysis

which Mazars relied. Therefore, it is impossible to critique the proposition presented by Mazars as the only material used is a graph reproduced on page 66 of the Report.

It should also be pointed out that in Northern Ireland, in addition to the capitation grant, the salaries of the Manager and all staff both teaching and ancillary were paid by the State as were all expenses relating to Light, Heat, Repair and Maintenance.³ It is quite extraordinary that the authors were either unaware of this major difference in the manner of funding such schools in the two jurisdictions or that, if they were aware of it, they chose to ignore it, as this information was already in the possession of the Commission. Such a serious weakness in the Report must surely call into question both its validity and its reliability.

The manner and language in which the Mazars Report is presented give the distinct impression that the authors undertook their work on a (non-mathematical) hypothesis testing model whereby the authors began with a specific hypothesis and set of assumptions in mind but then set out to prove the validity of that hypothesis. However, both the methodology used and the language in which the Report is written show that the authors proceeded to seek out and impose a framework of interpretation on the base line material which would, could or might support their original hypothesis. The use of a contrived and unsuitable comparator in preference to a much more obvious and valid one (similar institutions in Northern Ireland) is a strong indicator of such an approach. A second is the language usage in the Report. Thus, by way of illustration, when the Report wishes to draw conclusions for which there is no evidential basis it resorts to phrases such as: *it is our view*, or *it is our understanding*, or *it is our opinion* or *in our opinion* or *there is a suggestion that* or *we believe*, or *our understanding of certain matters ...or it might be considered ...* Other words used to justify findings or conclusions are: *arguable*, *arguably*, *perhaps* and *apparent*.

Another technique used is the frequent repetition of data and opinion which support the Mazars hypothesis and the understatement of the facts which are not supportive of it.

The following sections in this submission deal in detail with the major issues raised above. Section 2 deals with Capital Funding. In Section 3 the financial consequences of running the institution are addressed. Section 4 addresses the framework of interpretation adapted by Mazars as well as the issues of comparators and benchmarks. The summary and conclusions of this submission are contained in Section 5.

³ cf. *Submission of the Christian Brothers on Artane Industrial School 1940-1969* (15th September 1005) pp. 21 ff.

SECTION 2 CAPITAL FUNDING

2.1 Introduction

This particular section deals only with issues concerning the capital funding of the Artane Industrial School. The question of the adequacy of the State contributions for the day-to-day running cost of the school is dealt with elsewhere.

At the outset, it is important to note that it is accepted that the State made no direct capital funding of the institutions. Mazars note this in the report (Page 39) "there was not, in the ordinary course, provision for separate capital grants to the schools during the review period."

Mazars have relied on assumptions and findings in various parts of the Report to make their conclusion that the Orders were responsible for the maintenance of the assets and any capital costs which might have been incurred. These include assumptions that:

- The property and lands were gifted to the Congregation for the specific purpose of establishing an Industrial School.
- The Congregation ran the school significantly independently of the State and sought to protect its autonomy.
- The State and the Congregation were party to what might be described as an "outsourcing" arrangement.

On foot of the above, the Report makes the following findings:

- that the lodging element of the capitation could be deemed to include an amount paid to the Order for the use of their property (based on a reading of the Children's Acts).
- As the property belonged to the Order and as the Order got the subsequent benefit of any capital monies when the property was handed back, then the State had no obligation to fund the capital expenditure.
- That based on the combination of the results of the school and house taken as one, the Artane Industrial School had made a return to the Order.

Using the above assumptions and assertions, Mazars then make a number of findings and draw conclusions in relation to capital expenditure.

2.2 Mazars Findings and Conclusions relating to Capital Funding and Expenditure

Mazars make the following assertions, which they use to underpin their findings :

- *The Institutions could run at least on a breakeven basis and that in general, the Orders were in a position to make a return to the Order from income available to the school. (Chapter 4 Page 11).*
- *The benefit of any capital expenditure incurred in relation to the property remains with the Order and consequently it appears reasonable that these costs should not be solely funded by the state. (Page 14 Paragraph 12).*
- *As the majority of the Institutions remain in the possession of the relevant Orders, even after the schools were closed, "it may be contended" that the Orders received a benefit of any capital works. Accordingly it could be suggested that the State should not have funded all or indeed any element of such capital works. (Pages 50 and 51/52).*
- *If it is accepted that an outsourcing arrangement existed "then the maintenance of the capital assets would in the ordinary course of business fall to owner of the property, in this case the Orders". (Page 52)*
- *We[Mazars]believe that the school and house (in Artane) functioned as a single community (Page 93).*
- *It is our[Mazars'] opinion that the Industrial School and Community at Artane showed a surplus of income over expenditure for the period 1939 to 1969.*

Inherent in these findings and conclusions is an assertion that the capitation grant was sufficient to run the Institution and to meet any of its capital expenditure needs.

These findings clearly ignore the following facts which are fully supported by the documentation reviewed by Mazars:

- The industrial school and the community in Artane were indisputably separate units.
- The industrial school incurred a significant loss.
- The property was not gifted to the Congregation
- The Congregation received no benefit whatsoever from any capital expenditure on the property

2.3 Mazars approach to Capital Funding

The fact is there was no separate capital grant. However, Mazars put forward the view that an element of capital funding may have been inherent in the capitation grant. In order to justify this assertion they try to hypothesise what the Government may have intended in the Children's Act by way of (a) an interpretation of the purpose of the capitation grant and (b) a questioning of whether or not the State had any obligation in the matter of capital funding.

(a) Interpretation of the Purpose of the Capitation Grant

Mazars conclude, by their own interpretation of the Children's Act, that there may have been the intention on the part of the State to provide, in the capitation grant, a sum to cover capital requirements.

On Page 50 they note, from their reading of the Children's Acts, that the purpose of the capitation funding was to cover specifically the lodging, clothing, feeding and education needs of the children. They then proceed on page 51 to review the "lodging" element of the capitation grant and raise the following questions:

- Was it for example intended to fund reasonable maintenance costs and upgrade costs of the school and dormitories?
- Was it to fund the acquisition of land and other buildings for farm, trade or other activities?
- Was it to fund the housing and other lodging needs of the religious and lay staff involved with the Institution?

Mazars note that the legislation does not address these issues clearly yet they go on to note on Page 51 that "in practice, as the premises were the property of the individual Orders, it might be reasonable to assume that the Orders

were entitled to some return on the property used for the purpose of lodging the children. It is our understanding that the capitation grant is understood to include an amount of this regard”.

They also note on Page 10 “it is our understanding that the application of funding for lodging encompasses maintenance and repair costs but not significant capital expenditure.”

The Report offers no basis or supporting evidence to underpin their conclusion. Their conclusions are based on the use of the words “assume” and “understanding” above. They note that the legislation does not address the issue and yet they are happy to state that the “lodging” element included a sum for “the return on property”.

(b) State Obligation in the Matter of Capital Funding

Mazars question in their Report if the State had any obligation at all in relation to capital funding. In doing so they make the following seemingly contradictory statements:

- In a comment on their findings in Chapter 3 they note on Page 9 “the State may have some obligations to contribute towards the maintenance of assets to compensate the Orders for the use of the property.”
- On Page 39 of the report they note that “an over arching issue in relation to the funding of capital expenditure is the question of whether the State had an obligation to support such expenditure”. They state at the end of that paragraph that: “for the purpose of this chapter we note there is perhaps a consistency between the situation where the State does not directly fund capital expenditure of the schools and the autonomy of those schools.”
- They do accept however on Page 52 that it might be considered that the State had some obligation to provide funding for the maintenance of capital assets.

Notwithstanding the inconsistencies above, they are happy to find that the State had no obligation to fund capital expenditure.

2.4 Other Matters

(i) Autonomy

Mazars have frequently referred throughout this Report to a belief that the Religious Orders guarded the autonomy of the schools carefully. They state (page 8) “in our opinion, implicit in this desire to protect autonomy may be the desire to safeguard the property assets attaching to the school.”

They use the above point to underpin their finding that the State would not have been obliged to make a capital contribution for the needs of an Institution.

They acknowledge that the Childrens Act 1908 made it clear that the role of the State was not to operate Reformatory and Industrial Schools. Rather its role was to provide for the operation of such schools by independent agencies. The network of schools required was at the time of the 1908 Act, well established, and they were owned by the Religious Orders.

However, they fail to recognise that the Congregations provided the land and property at absolutely no cost to the State to be used for a purpose which was the responsibility of the State. Since this is so the following points are irrefutable:

- The schools were the property of the Orders and as such they were entitled to protect and safeguard their interests in these schools.
- The State did not provide separate capital grants to the schools.
- The capitation grant did not include any sum for the purposes of significant maintenance, repairs, upgrading or enhancement where required.

It follows therefore that the Order should have received, and the State had an obligation to provide, the necessary funding for the provision of assets suitable to the children's needs.

(ii) Outsourcing

It is beyond belief that Mazars consider an outsourcing arrangement to have existed. An outsourcing arrangement is generally a situation whereby a third party is contracted to supply goods or services. The contractual arrangements would normally recognise:

- A sum agreed for the service which would be adequate to:
 - Provide the facilities required.
 - Adequately pay for the staffing requirements.
 - Generate a suitable level of profitability to adequately reward the providers.

- That the outsourced party would be entitled to enjoy the profits on its activities and they would be free to renew or withdraw from such contracts within the terms of the agreements.

Clearly the arrangements with the Christian Brothers did not have the above characteristics.

- As the Institution in Artane incurred losses, the Christian Brothers would have ended the arrangement many years before 1969 if it was a normal outsourcing arrangement.
- To deem this arrangement to be outsourcing would be to imply that the personnel of all Religious Orders throughout the country, who were engaged in the primary and secondary school systems were, in fact, outsourced arrangements of the Department of Education.
- Any form of outsourcing arrangement would seek to get an adequate recompense for the services provided. This is clearly not the case where there was a 24 hour 7 day service provided by the Brothers without a claim for overtime or additional remuneration for this service.
- The Order drew a stipend for each Brother which was significantly lower than economic cost of a teacher. This clearly does not have the hallmark of a commercial arrangement.
- Any normal commercial outsourcing arrangement would be reviewed by both parties on a regular basis. This was not the case in Artane.

2.5 Omissions from the Mazars Report

It is startling that the report makes very little references to other reports or submissions made to the Commission which would have relevance to the findings of Mazars. If they had studied these, they would have found the following:

- The Kennedy Report of 1970 described the State aid paid to industrial schools as totally inadequate and recommended that: "Separate grants should be available to cover new buildings and maintenance, renovation and modernisation of existing buildings."⁴
- The Interim Report of the Task Force on Childcare Services (1975) stated that it had been estimated in England that the capital cost of

⁴ Reformatory and Industrial Schools Systems Report, 1970 (Kennedy Report), p. 31

providing a secure institution for boys in the 12-16 year old age bracket was in the region of £20,000 per boy per annum

- The state funding of certified schools in Northern Ireland clearly shows the levels of funding which were required but not met by the Department.
- Submissions made by the Department to the Commission noted that the funding increases secured did not go far enough.
- In a Memorandum to the Minister in 1967, the Department, in the context of setting up the Kennedy Committee, states that the Department was in no position to defend its achievements as far as the size of the grant goes.
- Mazars note (page 30) that the Department of Education usually applied for an increase in capitation significantly higher than ultimately awarded (by the Department of Finance).
- It is interesting to note that the contribution by the Christian Brother Community in the nineteen-forties of a sum in the region of €24,000 towards capital development of the Industrial School receives minimal attention as does the clearing by the Congregation of an outstanding overdraft of €111,737 in 1971 while the payment of stipends to the Brothers receives much prominence. The sum of those two figures €138,737 is equivalent to 50% of the total remuneration received by the Brothers for their work in the Industrial school in the entire period 1939-1969.

2.6 Conclusions

The findings made and the conclusions drawn in the Mazars Report in relation to capital funding in Artane are drawn from comments and observations made in various sections of the Report. However, they are invalid and untenable for the reason set out below:

(a) As pointed out in other sections of this response the assumptions and understandings which Mazars used were incorrect. It subsequently follows that any findings resulting from those assumptions must also be invalid.

(b) The facts are:

- The land at Artane was purchased by the Congregation with Congregation funds. None of the capital expenditure in Artane Industrial School related to these lands

- The State paid no rental for the use of the lands although in the case of St. Conleth's Reformatory in Daingean, the State as owners of the farm charged that institution a rental of €444 per month
- In the 1870s the Brothers and their friends raised some funds 'by means of charitable subscriptions and loans,'⁵ for the erection of the main building and which the Congregation also contributed from its own funds.⁶ There is no evidence to show that funds were raised to fund any of the remaining buildings.

The Congregation provided the use of the land and buildings to the State at no cost. Therefore, the Congregation had a right to have it maintained and to receive an amount from the Department in respect of the use of the property. Unfortunately they got no such sums. It is significant that in the case of St. Conleth's, Daingean, where the State owned the land, it charged the Oblate Order an annual⁷ rental of €444. (Report p.120)

- As has been pointed out elsewhere in this submission, no benefit whatsoever was received from the capital expenditure which was used only to maintain the school in a condition suitable for its use as an industrial school. No additional land or buildings were purchased during the period which could have later been resold once the Institution had closed.
- The Christian Brothers had an inalienable right to dispose of this property as they wished. There was no obligation, legal or implied to apply the proceeds of these land sales for the purposes of the Industrial School
- The school and community house in Artane were two separate units and it is incomprehensible that any case could be made to unite them solely to ensure that a 'surplus' is reflected in the accounts. The 'surplus' shown in the report arose from the sale of Christian Brothers land, not land owned by "Artane Industrial School".
- Mazars accept that the Industrial School on its own made a loss of €70,818. The Christian Brothers funded that loss and subsequent funding requirements in the years 1969-1971, bringing the total to €111,737.

⁵ Educational Record 1936, p.180

⁶ Ibid., p.180

⁷ This appears as 'monthly rental' in the Mazars Report, but it presumed here that it was in fact an annual rental

- This figure does not include the sum of c. €24,000 contributed in 1948 and 1949 for capital works.
- They also contributed very significant funds towards the subsequent refurbishment of the buildings for use as a Secondary School.
- No “outsourcing” arrangement was in place.

It is clear therefore that the following conclusions should have been made by Mazars from the factual evidence included in their report:

- The school incurred losses
- The legislation made no provision for separate grants for capital purposes.
- No specified or implied provision was made in the capitation grant for any sum which could be regarded as “a return on property”.

Arising from the above, the conclusion can only be that the funding was not adequate.

Section 3

Financial Consequences of Running the Institution

3.1 Introduction

Having analysed the baseline data relating to finance in Artane Industrial School the Mazars Report makes the following assertion:

It is our view that the school is not run as a separate entity from the house. Nor was it, in our opinion, intended by the Order to be run in such a fashion. Rather, we believe that the school and house functioned as a single community. (p. 91)

It further states on page 92:

Accordingly, it is our opinion that the industrial school and community at Artane showed a surplus of income over expenditure for the period 1939 to 1969.

To compound matters, the above, which comprise the main findings in relation to the state of finances in Artane Industrial School are based on the following incorrect assumptions as outlined on page 93 of the Report:

- That the land and buildings at Artane were initially gifted to the Order for use as an industrial school.
- That the benefit of any capital expenditure incurred in relation to the property remained with the Order and consequently, it appears reasonable that these costs should not be solely funded by the State.
- That the House benefited from the use of the produce of the farm and trades

3.2 The Facts

The Mazars Report offers no evidence for these assertions but simply present them as if they were statements of fact. Their assumptions are incorrect. The original Artane land was purchased by the Christian Brothers for the specific purpose of building a Novitiate and Motherhouse there. It was registered in fee simple in the names of four Christian Brothers. However, when Cardinal Cullen requested the Brothers to open an Industrial School in the Archdiocese of Dublin, the Brothers put their plans for the establishment of a new Novitiate and Motherhouse on hold and made the Artane lands available as the site for the Industrial School.⁸ Funds were raised for the erection of the main building and the Congregation also contributed financially. The

⁸ Educational Record 1927, pp. 63-65

shelved plan for the Motherhouse and Novitiate were reactivated and brought to completion in Marino in the early nineteen hundreds.

As Mazars rely primarily on the assumptions that (i) the land was gifted to the Congregation, and (ii) it was gifted for specific use as an Industrial School and as both these assumption are factually incorrect, the findings based on these incorrect assumptions are therefore untenable.

The Mazars Report attempts to show that the Industrial School was a profit making venture by including the proceeds from the sale of lands, mainly in the middle and late nineteen-sixties, as income to the Industrial School. In order to arrive at this position, the Report attempts to portray the Industrial School and the Community as a single entity for the purposes of accounting. This issue is dealt with in detail later.

The Mazars Report makes frequent references to the Order receiving the benefit of the capital expenditure carried out on the property in Artane and concludes that the State should not, therefore, bear any such capital costs.

The fact is that this maintenance work was undertaken to maintain the buildings in a condition suitable for use as an Industrial School. The expenditure incurred did not enhance the value of the property. No State funds were used to acquire lands or property.

Surely, it would have been more logical to conclude that, since the Congregation provided the use of the buildings free of charge for a purpose which was the responsibility of the State, the least which could be expected was that the State would meet any maintenance costs and further capital costs necessary.

When the Artane Industrial School closed in 1969, the commercial value of the redundant Industrial School Building dating back to the 1880 was almost negligible. Therefore, the only benefit derived from refurbishment of the building over the years was the improvement such works brought to the life of the pupils and staff in the Industrial School during its lifetime. The main building in Artane was later converted into a secondary school at very considerable cost to the Congregation and at considerable saving to the State which would otherwise have had to bear the cost of providing a new school building in the area. Indeed it would have been much more desirable to demolish the Industrial School building and erect a new purpose-built school premises on the site. However, the demolition costs that would have been so high as to make such an option economically prohibitive.

3.3 The Industrial School and the Christian Brother Community

The report attempts to show that the Artane Industrial School was a profit-making venture. In order to validate this position, the writers of the Report put forward the theory that the (Christian Brother Community) House and the Industrial School were not separate entities. This theory is incorrect as is evident from the fact that two separate sets of accounts were kept - a fact acknowledged at page 71 of the Mazars Report: "Two separate sets of books and records were maintained ... School accounts and House accounts." The School accounts recorded all School-related activities, while the House accounts recorded "the activity of the community of Brothers resident in Artane." (p.71)

In stating that the Christian Brother Community and the Industrial School were one and the same entity are the authors of the Report implying that all income which was properly the property of the members of the Community should have been available to fund the school and to pick up any shortfall due to lack of adequate State funding?

There is absolutely no evidence offered in the Report, other than the incorrect assumptions and assertions referred to in the introduction above, to support their conclusions. The Report makes no reference to even a single document which supports their statements that the Brothers viewed the operation in Artane as a single unit.

As has been stated above, the Brothers operated two separate sets of books and records which were meticulously maintained. They were viewed as separate returns to the Province. There is no record of the Brothers leadership team considering the operation as a single unit. Furthermore, when the Industrial School closed, the Community remained and provided a different range of services in the area as it still does to this day.

If the Mazars single unit assertion is accepted, then all sums earned by the Christian Brothers in the Community, irrespective of the source, should have been available to the school to fund its losses. Inherent in the findings of the Report is the suggestion that persons who work in State Institutions should, if they had money left over or saved at the end of the year, return it to the employer.

This denies the following obvious and unarguable facts:

- That the property in Artane was clearly the property of the Congregation and as such they were entitled to sell the land at any time and that the resultant income was separately and legally the property of the Artane Community/Christian Brothers Order.
- That each and every Brother who provided his services to Artane Industrial School was entitled to remuneration in respect of these services.

- That remuneration paid by way of stipend was unarguably the property of the Community. If the State was running the Institution itself it would have paid each and every person employed there a salary which would have been the legal property of that person.

It should be noted that the House income includes not alone the stipends received from the Institution and proceeds from the sale of land but also items such as interest, old age pension, teacher pensions, etc., none of which could possibly be construed as an income from a source which should be available to the Institution.

Therefore to add the figures for School and House and declare that the Brothers showed a profit on the operation of the Artane Industrial School is incorrect and misleading to the Commission.

3.4 Sharing the Farm Produce

The report notes that the House shared in the produce of the farm and trades. It is recognised that the Brothers living in the House utilised the produce of the land. However, it is notable that Mazars failed to look at the other side of this particular equation.

The school benefited from the community presence to the following extent:-

- The Congregation owned the farm and donated its use and produce to the Industrial School free of charge
- The Brothers provided 24 hour, 7 day care at no additional cost to the school.
- The funds available to the community were allowed as an offset against the bank overdraft owed by the school. There was an interest saving arising from this.
- That the Christian Brothers would have been entitled to economic wages instead of stipends.

A combination of the above would more than offset the value of any produce consumed by the Brothers, considering that the number of Christian Brothers in residence would have constituted only a small portion of the total population of Artane in any given year. As such, it is spurious to state that the financial affairs of both community and school should be adjoined merely for the purposes of stating in the Report that the Institution generated a surplus.

3.5 Other Matters relating to Finance in Artane

(i) Closing of the Industrial School (Report, page 80)

Following the closure of the School in 1969, considerable expenses were incurred resulting in a further deficit of €35,000 in 1971 which was over and above the deficit of €70,818 shown by the school in 1969 (See Exhibit 11, page 70).

The Mazars Report makes only a brief reference on page 87 to fact that in 1971 the Congregation cleared an overdraft in the amount of €111,737 - which was a considerable sum at that time.

(ii) Stipends

Mazars fail to point out at any time in their Report that the stipends paid to the Community in respect of the services of the Brothers were significantly lower than the economic wage that they should have been paid and was paid in other jurisdictions such as Northern Ireland.⁹ This indicates an undoubted bias in the presentation of the facts and significantly undermines the conclusion that the State adequately funded the Institution.

The fact is that the stipend system represented a major saving to the State. The Brothers were paid an annual stipend which ranged between £142 in the 1940s and £300 in the 1960s. By way of comparison, in a comparable Religious-run Industrial School in Northern Ireland the following annual salary system pertained in the late 1960s:

| | |
|-----------------------------|-----------------|
| Resident Manager | £1,760 - £2,925 |
| Deputy Manager | £1,760 - £2,340 |
| The School Principal | £1,650 - £2,325 |
| Each Primary School Teacher | £1,075 |
| Each Trades Instructor | £1,355 |
| The Bandmaster | £1,355 |
| Cook | £ 676 |

As is pointed out in Chapter 3 of the September 2005 Submission of the Christian Brothers to the Commission, the provision of their services by Brothers at such a low cost of remuneration would, in the case of a school of 272 boys and based on the funding levels in Northern Ireland, have represented an annual saving to the State here.

(iii) Income from Farm and Trades

The Mazars Report presents both the Farm and the Trades as having generated a surplus over the period 1940-1969. This is incorrect as the figures for the Farm and the Trades as presented in the Accounts for Artane Industrial School do not include a figure for salaries. Salaries were treated as a separate entry and were not allocated

⁹cf. *Submission of the Christian Brothers on Artane Industrial School 1940-1969* (15th September 1005) pp. 21 ff.

across the various categories of expenditure. As is shown on page 86 of the Report, the combined number of salaried employees involved in any given year in Farm and Trades ranged from 30 through the nineteen forties and nineteen fifties to 25 in the nineteen sixties. The

The 'belief' expressed in the Report at pages 13 and 76 "that the contribution to the financial position of the institution by trades and, in particular, by the farm was very significant and that this contribution has not been fully captured by the financial accounts," is indeed well founded in relation to the farm at least. The irony is that it was a further contribution from the Congregation – the owners of the farm - to the Industrial School, a fact which the Mazars Report fails to recognise. When it is taken into account that despite this unquantifiable contribution, Artane Industrial School ran a total income and expenditure deficit of €70, 000 over the period, as is shown at page 12 of the Report, and that the Congregation made direct cash contributions of at least €133,322 (or £105,736)¹⁰ and did not charge rental for either buildings or land, the inadequacy of the State funding is so obvious that it is quite incredible that the Mazars can find a framework of analysis which enables them to claim that Artane generated a surplus.

(iv) Re-assignment of Brothers

On page 90 Mazars assert a view that the Congregation needed the Industrial School in order to provide employment for the Brothers: "this demonstrates the limitation on the capacity of the Order to re-assign Brothers, in the short term at least, as the activity of the school decreased". This was by way of general observation to the reduction in lay personnel as the number of pupils decreased over the years.

This point is factually incorrect and ill-considered by Mazars. The vast majority of the staff operating on the farm, in the workshops or in the general maintenance areas were lay staff. As the operation in these areas wound down, the number of lay staff declined accordingly.

It also shows how easily Mazars draw conclusions for which there is absolutely no evidence. The truth is, that in view of the wide ranging mission of the Congregation at the time - covering about 200 schools, 2 Novitiates, a Nursing Home and a Teacher Training Colleges in Ireland, along with schools and other missions around the world - the work of the Order was limited by the number of personnel available, not the reverse as Mazars state.

(v) Visitation Dues

The Report makes two references to visitation dues (pages 88 and 91). Without direct referencing, they seem to indicate in their findings that these are the matters referred to as a return on resources committed (page 7, p. 2.3) or that in general, the

¹⁰ Ibid., p.28

Institutions were in a position to make some return to the Order from income available to the school”.

Visitation dues were paid by every Christian Brother community in the country to the Central Province funds to cover the centralised costs of the Order. Each community, which at the time lived in residences attached to the schools, lodged their income to the Community bank account. In the case of the Brothers in Artane, the income received from the school was a substantially lower stipend and not a salary.

In each community the frugality of the Brothers lifestyles led to a situation where funds were available to enable the visitation dues to be paid.

It is disappointing in the extreme to note that Mazars seem to regard this as the “required return on resources”. A simple enquiry to the Christian Brothers would have clarified this matter further.

3.6 Conclusions

The fundamental misconceptions and consequent erroneous findings by Mazars render the section in relation to the financial consequences for Artane to be so flawed as to be misleading to the Commission. In particular the following are unarguable facts:

- a) The Industrial School made a loss of €70,818 up to 1969. (Exhibit 11, Report p. 72)
- b) The Industrial School Accounts reflect only income and expenditure. Mazars make no reference to the fact that if depreciation had been charged, the losses would have been significantly greater
- c) The loss would have been even greater still if the community members were paid a salary instead of a stipend
- d) The Congregation had to fund these losses
- e) The land was solely the property of the Christian Brothers and they had the right to use or dispose of it as they saw fit
- f) Income earned by the members of the Community belonged to the Brothers and not to the Industrial School
- g) The facts already presented show clearly that the benefit of any of the farm produce used was minimal in comparison to the overall figures and was more that offset by services rendered by the Community.

h) It is clear therefore that the Community House was a separate stand alone Community.

Following therefore from the above, and based on the figures recorded in the annual accounts of the school is the inescapable conclusion that the funding provided by the State was not adequate to the needs of the Institution

Section 4 Framework of Interpretation and Use of Comparators

4.1 Introduction

In this section of the submission the framework for analysis used by Mazars is examined. In Section 4.2 the concept that an outsourcing arrangement was in place between Artane Industrial School and the State is critiqued. Section 4.2 critiques the suitability of the benchmarks used by the authors of the Report.

4.2 Outsourcing

The Mazars Report puts forward a theory that State and Congregations had an outsourcing arrangement. This is clearly incorrect. The arrangement between the State and the Industrial Schools was similar to the arrangement between the State and Primary or Secondary Schools managed by the Christian Brothers at the time except for the obvious difference that the vast majority of the children in Industrial Schools were committed to these schools at the behest of the Court. However the following similarities are noteworthy:

- The State had a regulatory function in relation to Industrial Schools.
- The schools were subject to inspection by the Department of Education.
- The Primary School Inspectorate was responsible for inspections for the purpose of the award of Primary School Teaching Diploma without which a teacher (Brother) would not be recognised as a Primary School Teacher.
- Members of the teaching staff were appointed by the Manager and accepted by the Department of Education if they were suitably qualified.

Outsourcing arrangements do not confer on the outsourcing group regulatory control, validation of qualification and inspection over the group to which the work has been outsourced

4.3 Suitability of Comparators and Benchmarks

The Report uses what it states are relevant contemporary benchmarks which include the average industrial wage, child benefit and unemployment benefit. It maintains that these represent an *Expenditure on Child Maintenance Model* which in the view of the authors provides "a basis for fairly assessing whether the capitation grant was adequate to the needs of the children resident in the institutions." The question of the suitability of such a model which does not compare like with like is discussed below. However, the need for such a contrived model is highly questionable.

The most suitable comparator would have been a similar institution in a comparable jurisdiction. The Report states that comparisons were made with similar institutions in the United Kingdom citing England Scotland and Wales. However, the authors decided not to use this method of comparison stating as a reason that economic

conditions “were significantly better and living standards were much higher in the U.K. throughout the review period.” (p.68) The Report offers no data to validate this assertion other than to state that the U.K. was also a highly industrialised society at this time and that Ireland was significantly poorer.

The most obvious and reliable benchmark which could have been used was the funding system for Northern Ireland Certified Schools run by Religious Orders. Therefore, in the specific case of Artane Industrial School an obvious comparator would be a contemporaneous Northern Ireland Certified School for Boys run by a male Congregation such as the De La Salle Brothers.

The clear advantages of a comparison between two such institutions are as follows:

- It is not a contrived model
- The Institutions being compared are similar
- The Management Systems are similar
- The services offered are similar

Furthermore, if there is any validity in the claim regarding different economic conditions in Ireland and the U. K., the likelihood is that it would be less significant in Northern Ireland than for instance in England. The failure to make such a comparison is all the more surprising as the necessary data is already in the possession of the Commission.¹¹

Nonetheless, the graph at Exhibit 9 on page 66 shows the significant differential between the Capitation Rates in Ireland and those in the U.K. The graph shows that, prior to the doubling of the Capitation Grant in Ireland in the final year of the existence of Artane Industrial School, the Capitation Grant in the U.K. was treble that in Ireland.

Incredible as it may seem, the authors of the Report failed to make any reference to funding arrangements in Northern Ireland where although the Capitation Grant was significantly higher than in this jurisdiction, it formed only part of the total public funding to such schools as, in addition to the capitation grant, the Ministry in the Northern Ireland met the total cost of a large variety of items including salaries, special allowances, and practically all overheads - all of which had to be met out of the Capitation Grant in Ireland.

The following list although not exhaustive, gives an indication of the services which in Northern Ireland were covered by State funding additional to the Capitation Grant:¹²

¹¹ Ibid.

¹² Submission of the Christian Brothers on Artane Industrial School 1940 – 1969 (15 September 2005), p. 22.

- Salaries
 - Manager
 - Deputy Manager
 - Bandmaster
 - Trades Instructors
 - Cook
 - Domestic Staff
- Special Allowances for Supervision
- Heating & Lighting
- Repair & Maintenance
- Clothing Grant
- Band Instruments

The failure to include this information in the Report as part of the brief analysis on page 66 is extraordinary, especially as the information is already in the possession of the Commission.

The absence of the backup documentation relating to funding of Certified Schools in the U. K. is a notable feature of the folder of *Documents Relied on By Mazars* which was delivered by the Commission to the Christian Brothers on 7 November 2006.

4.4 The Mazars Benchmarks

The use of the average industrial wage, child benefit, unemployment assistance or any combination of these as a bench mark for the unit cost of funding of a residential institution is seriously flawed. By a combination of the above benchmarks, with a correction factor to allow for economies of scale, the Report concludes that the Capitation Grant was adequate to meet the needs of the children. The reason given is that the Mazars' model identifies the unit cost of maintaining a child during the period in question and that the Capitation Grant was at least equivalent to that figure. What Mazars fail to identify is that the 1965 household income in a two adult/two children family which is used in the Report as a comparator, was not sufficient to maintain such a family. The CSO figures show quite clearly that the average income for such families was 15% less than the average expenditure. This in itself seriously undermines the validity of the Mazars comparator.

Further reasons why the Mazars thesis is fundamentally flawed are outlined in detail below.

By way of setting the scene for such a discussion, consider the following. If the Mazars' theory is true, then by extension any household with two or more children and a household income at the level of the average industrial wage or unemployment benefit should have been in a position to have all the children educated at boarding school where they would be maintained and cared for, receive a very high quality Primary School education, be trained in a variety of trades, placed in a trade at the

age of sixteen and have the benefit of an aftercare service until they reached the age of eighteen.

It is worth noting that during the period in question Artane Industrial School numbered among its services and facilities, an excellent Primary School, a Trades Department which provided training in a large variety of trades including workshops, instructors, equipment, raw material, twenty-four hour per day, seven-day-a-week supervision, dormitory, wash room and toilet facilities, dining and kitchen facilities, full laundry service, an infirmary, a fulltime qualified nurse for all but about five years of the relevant period, a medical doctor on full-time call, a quarterly medical examination, sports field and pavilion, hot showers, a band room, a band master, band instruments, band uniforms, a music room with four grand pianos, a music teacher, a choir master, a tiered-seated theatre/cinema with weekly film shows and from the mid- nineteen sixties onward a games room, T.V. rooms and an indoor heated swimming pool.

All of these services with the exception of the Primary School were paid for from the Industrial School Capitation Grant. The Mazars' model puts forward the proposition that not only would the above be possible but in fact the owners/managers of the school would have made 'a return' on the enterprise.

Practically none of these services could be provided by the typical two-parent, two-child family on the scale of income referred to in the Report.

Several obvious questions arise from the above scenario:

- Why did the State not take on this profit-making enterprise itself?
- Why did the spokesperson for the Department of Education and Science state in evidence to the Commission that the DES now accepts that the funding of Industrial and Reformatory Schools was inadequate?
- Why did the Northern Ireland. authorities squander so much public funds by the comparatively profligate manner in which it funded similar schools?
- Why did the Kennedy Report state that the funding of Reformatory and Industrial Schools was totally inadequate
- Why did the Task Force on Child Care Services Interim Report state that running such an institution for 12-16 year olds would cost £30,000 per annum per boy.

The answer to all these questions is that the Mazars model is fundamentally flawed.

The fundamental flaw in the above is that Mazars Benchmarks do not compare like with like. The Report fails to recognise that there is a huge difference between the unit cost of maintaining a child at home and the unit cost of maintaining a child in a residential, educational and training setting.

This is so because the Institution has a huge range of costs which don't arise in the home either because the facilities and/or services in question are not provided in the home or because the parents (traditionally the mothers) provide such services. The following are given by way of illustration:

- Full-time Supervision (24/7) – provided in home by parents
- Management Personnel – N/A in average industrial wage home
- Secretarial Personnel- N/A in average industrial wage home
- Accounting Personnel - N/A in average industrial wage home
- Office and Administration Accommodation – N/A in average industrial wage home
- Telephone and Postage (Administrative) - N/A in average industrial wage home
- Light and Heat (Administrative) - N/A in average industrial wage home
- Doctor on *full-time call* – Unnecessary in home/some families entitled to free medical/dental care
- Nurse-full-time – N/A in average industrial wage home
- Infirmary including treatment and medicine full-time - N/A in average industrial wage home
- Cooking costs – provided in home by parents
- Cleaning – provided in home by parents
- Laundry Costs – provided in home by parents
- Trades Tuition, including salaries, equipment and materials – Not provided in home
- Aftercare – provided by parents

Besides the above, many of the extracurricular activities provided in Artane Industrial School would have been looked upon as luxury items not normally available to children of such families unless the parents could provide them.

Section 5 Summary and Conclusions

5.1 Introduction

The Mazars Report is fundamentally flawed in relation to financial matters in Artane Industrial School. The Report findings are based on the following assumptions:

- that the land and property attached to Artane Industrial School was gifted to the Congregation for the purposes of establishing an Industrial School.
- that the State had no responsibility to provide capital funding in such Institutions
- that the Industrial School and the Community were a single entity and that any surplus generated from the income of the of the individual Brothers should be available to the Industrial School
- that the Industrial School had a propriety right to income from sale of land owned by the Congregation
- that the State/Department of Education entered into an outsourcing arrangement with the Community/Congregation

As has been shown in this submission, these assumptions are incorrect. It follows, therefore, that any findings or conclusions based on these assumptions are invalid and untenable.

5.2 Capital Funding

In their review of the Capital Funding, Mazars make the following points:

The property belonged to the Order, and the Order got the subsequent benefit of improvements when the property was handed back. Therefore, the State had no obligation to fund capital expenditure.

By adding the annual accounts of the school and community, Artane Industrial School can be deemed to have made a return to the Order.

Even though no specific capital grants were paid, an interpretation of the word 'lodging' in the Children's Act can be stretched to lead to a conclusion that that there may have been an intention on the part of the State to provide, in the capitation grant, a sum to cover capital requirements.

The facts are as follows:

- The School incurred losses.

- The property in Artane was not gifted to the Christian Brothers.
- The land was bought by the Congregation for the purposes of establishing a Novitiate and Motherhouse and not for the purposes of establishing an Industrial School.
- The Congregation gained no benefit from capital expenditure which was used only to maintain the school in a condition suitable for use as an industrial school
- No additional land or buildings were purchased during the period which could later be resold on closure of the institution.
- The Christian Brothers had an inalienable right to dispose of this property as they wished and there was no obligation, legal or implied to apply the proceeds from the sale of their own land to the Industrial School
- The Industrial School and the Community were two separate entities with two sets of books, records and accounts and no valid case can be made to unite them in order to show a 'surplus' in the accounts. The 'surplus' shown in the Mazars Report arises from sale of Congregation owned land –not from land owned by the Industrial School
- No 'outsourcing' arrangement was in place between the Department of Education and the Congregation
- The legislation made no provision for separate grants for capital purposes
- No provision was made in the capitation grant for any sum which could be regarded as a 'return on property'.

5.3 Financial Consequences of Running the Institution

The fundamental misconceptions and consequent erroneous findings by Mazars render the section in relation to the financial consequences for Artane to be so flawed as to be misleading to the Commission. The following are irrefutable facts

- The school made a loss of €70,818 to 1969. (Exhibit 11, page 70)
- The loss would have been greater if the community members were paid a salary instead of the stipend and if depreciation on assets had been included.
- The Christian Brothers funded that loss and subsequent funding requirements in the years 1969-1971, bringing the total to €111,737.

- In 1948 and 1949 a contribution of c. €24,000 was made for capital works
- They also contributed very significant funds towards the refurbishment of the buildings for subsequent use as a Secondary School.
- The land was the sole property of the Christian Brothers and they had the right to use or dispose of it as they saw fit
- The stipends earned by the Brothers were lower than a salaried cost and the Community/Congregation was entitled to use these as they saw fit
- Any benefit to the Community from the use of farm produce used was minimal in comparison to the overall figures. However, the farm was owned by the Congregation.

Following from the above, and based on the figures recorded in the annual accounts of the school is the inescapable conclusion that the funding provided by the State was not adequate to the needs of the Institution

5.4 Benchmarks and Comparators

The Benchmarks used as Comparators in the Mazars Report are contrived. Even in the figures quoted, they do not compare like with like as the cost of maintaining a child in a residential institutional setting is inevitable much higher than the cost of maintaining a child in the home. In addition, Mazars failed to recognise that in relation to the family unit which they used in the Report, expenditure exceeded income by 15%.

The main reasons for the higher cost in the institution setting are the range of resources and services which have to be paid for in the institution which in the family setting can be provided by the parents or are not provided at all.

The Mazars Report ignores the findings of the Kennedy Report and the Interim and Final Reports of the Task Force on Child Service and the Department of Education Submission to the Commission all of which contain findings that are greatly at variance with the findings in the Mazars Report.

The Mazars Report ignores completely the data in the possession of the Commission which compares the funding of Artane Industrial School with the Fund of a similar institution in Northern Ireland.

5.5 Conclusion

The Mazars Report is a fundamentally flawed document as it is based on assumptions and assertions which are untrue, and uses a comparator which is not valid. To compound matters, it ignores evidence from well known and reliable sources which contradicts its findings. It follows, therefore, that its findings and conclusions are invalid and untenable