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**SUBMISSION ON BEHALF OF OBLATES OF MARY IMMACULATE TO THE  
COMMISSION TO INQUIRE INTO CHILD ABUSE.**

**RESPONSE TO DRAFT MAZARS' REPORT**

**Preliminary:**

The position of the Oblates in relation to the Draft Report has already been set out in the Submissions filed on the 7<sup>th</sup> November 2006. At page 10 of that Report the following is stated:

*"The Oblates note that the Mazars report furnished to the Commission has made a detailed analysis of the finances of the school. The Oblates disagree strongly and question fundamentally many of the findings and the assumptions made in this report. Because of the late circulation of the report, the Oblates have had no opportunity to address the report in their oral evidence and feel that the late introduction of this report on an issue so fundamental as the matter of financing is a breach of fair procedures. The Oblates have now decided to commission an independent financial expert to analyse the finances of the school and to consider the report. Thus, the Oblates reserve their right to make further and additional submissions (including the right to amend these submissions) with respect to the finances and operation of the school before any findings are made in this regard by the Commission. The Oblates also refer specifically to Section 7 in the document accompanying the Commission's discussion paper of 7<sup>th</sup> May, 2004. This specifically states that in the event that an expert report discloses significantly different views to that contained in a competing report put forward by another interested party, then the Commission would make provision for hearings to resolve the issue. This position was repeated in the Commission's letter of 7<sup>th</sup> June, 2006. The Oblates also note that originally, the Commission indicated its intention to hold a module dealing with the evidence of experts. This has not happened to date. It is submitted that the Commission should not make any findings in relation to the financing of Daingean until the Oblates have had an adequate opportunity to respond to the Mazars report. This would include an opportunity to cross examine the Mazars expert and to tender their own expert witness."*<sup>1</sup>

<sup>1</sup> The Oblates also note that they were informed in a letter dated 26<sup>th</sup> April 2006 from the Commission that the Mazars' Report would not refer to Daingean.

At the time the Submissions were filed, only a redacted version of the Draft Report had been made available to the Oblates. The unredacted version of the Draft Report was not received until the 29<sup>th</sup> November 2006.

The Oblates have commissioned their own independent expert, Messrs. Goodbody, Economic Consultants, to prepare a report. That report will be available by the end of February 2007. The Oblates will want an opportunity to make further and additional submissions once that report is available. In any event, having regard to the nature of the disagreements which the Oblates have with the Draft Report, it is submitted that, in accordance with the Commission's own procedures, it is essential that there be a module dealing with the evidence of the experts at which the Oblates will be given an opportunity to cross-examine the Mazars' expert and to tender the evidence of its own independent expert.

**Summary of findings in Draft Report concerning Daingean:**

The Draft Report which has been submitted on behalf of Mazars creates the impression that the school at Daingean was operated in a way that resulted in an excessive financial benefit for the Oblate Order and this compromised the care and welfare of the residents of the School and the proper care of the State assets rented by the Order as premises for the School.

The Draft Report presents quotations from a small number of contemporary documents suggesting that the farm operated as part of the operations of the School was making a 'handsome profit' and that these profits were not being applied to 'the benefit of the boys or the improvement of the buildings'.<sup>2</sup> Secondly, the Draft Report compared the level of capitation grants paid to the School to a range of benchmarks selected by themselves and concluded that these grants were 'sufficient over the period to maintain a child'. The School at Daingean operated a farm and workshops as well as being in receipt of capitation grants. The Draft Report implies that the existence of income from these

<sup>2</sup> Department of Education Memorandum quoted in Section 8.6 of the Mazars' Report.

sources meant that the Oblate Order was in a position to profit from the operation of the School.

The Draft Report analysed the Accounts of the School for the period from 1940 to 1969. These Accounts showed a cumulative deficit over the period of the equivalent of €17,706.00. Nonetheless the Draft Report concludes that the Oblate Order may, in fact, have profited from the operation of the School based on Mazars' analysis of these Accounts.

**Terms of Reference:**

The precise Terms of Reference communicated by the commission to Mazars have not been furnished to the Oblates. Mention has been made of the Terms of Reference in the following :-

1. The Commission's letter of the 7<sup>th</sup> June 2006 stated as follows: -

*"Mazars have been appointed to examine issues of finance and will produce a draft report on how an institution was financed, how the money was spent, what records exist and related questions as to supervision and management."*

2. Mazars' letter to Sheehan & Co., the Oblates' Solicitors, of 15<sup>th</sup> June 2006, recited their terms of reference in the following way.

*"Mazars has been asked to carry out a review of financial matters relating to St. Conleth's Reformatory School, Daingean. The terms of reference of our review are as follows:-*

1. *An analysis of the adequacy of funding by the State.*
2. *A review of the application of the State Funding to the care of children in the relevant institutions.*
3. *An analysis of the capitation funding of the Institution/s as operated at that time.*
4. *Commentary on the effects of changes in the number of children in the relevant institutions over the period 1939 to 1969.*

5. *The financial consequences for the relevant Institutions as a result of caring for children over the period 1939 to 1969."*
3. The Terms of Reference of Mazars are set out in page 4 of their Draft Report as follows: -

*"In 2004 the Commission of Inquiry into Child Abuse ('the Commission') requested Mazars to carry out a review of certain financial issues relating to the operation of a system of Reformatory and Industrial Schools in Ireland during the period 1939-1969. Our work was also to consider the financial information available in relation to a number of individual institutions within that system. In accordance with the terms of reference selected by the Commission we have carried out a review of documentation and files made available by the Commission by a number of Religious Orders and Government Departments. This report is the output of that review ...."*

**Principal Areas of Major Dispute:**

Subject to the reservation expressed above, the Oblates wish to make the following observations and comments in relation to the Draft Report:-

1. It is submitted that the Draft Report goes way beyond the Terms of Reference. It proceeds to express opinions on a variety of controversial issues which are outside its expertise and beyond its competence.

An example of this can be seen in the Section entitled '*Findings of our Review*' where there are a number of statements made which are critical of the religious orders (although they have looked at four congregations only). The views they express are well outside the scope of what one would have expected of an expert who is commissioned to perform a review of finances of a number of institutions. Furthermore, in some areas the Draft Report trespasses on areas which can clearly only be within the remit of the Commission and which could not be delegated. As an example of statements outside the remit of the experts we would refer in particular to paragraph 1.b. and 1.c. at page 7 where it is stated:

*"b. The Religious Orders had sufficient manpower available to operate and manage the schools.*

*c. The Religious Orders had, in the form of Capitation Grant and Primary Grant, sufficient funding to provide services to a level consistent with contemporary standards of what might be termed an 'ordinary family'."*

And further at page 8 :-

*"In our view these conflicts created a situation where the adequacy of the funding for the schools, and adequacy of conditions in the schools, became subordinate to questions of acceptability of funding levels to the differing needs of the institutions of State and the Religious Orders. Accordingly, the issues of care and nurture of children in the schools were in peril of being considered only as questions of minimal sustenance and the maintenance of property."*

2. The Draft Report quotes on a number of occasions from documents which form part of the evidence before the Commission. It is submitted that it is inappropriate for the Mazars' expert to make reference to documents out of context and in circumstances where neither the context of the document prepared, nor the weight which was to be attached to the document having regard to all the documentation available, is apparent. Some of the opinions expressed in the Draft Report clearly depend on the expert's reliance on certain documents to the exclusion of others. It was not the role of the expert to form a view on the evidence, particularly not to base its views on documents chosen so actively.

There is no evidence that the Draft Report systematically examined all contemporary statements and reports about the finances of St. Conleth's and indeed such an examination would, in any event, be beyond its Terms of Reference.

3. The benchmarks chosen by the Mazars' expert for the purposes of comparing the capitation grants paid to St. Conleth's do not appear to be appropriate. Comparisons with the value of average family incomes, welfare benefits paid to families or family spending are unlikely to give a useful measure of the costs to the Oblates of running a residential institution. It is very surprising also that the Mazars' expert could so readily appear to

dismiss what would appear to be by far the most relevant benchmark, namely, the Exchequer capitation payments in the UK and instead relies on what are clearly unsuitable benchmarks, namely, the average household income per head, child support payments and unemployment benefit. As can be seen on page 11 of the Submissions of the 7<sup>th</sup> November 2006 and previously Fr. Michael Hughes' statement in advance of the public hearing relating to St. Columeth's in May of 2005, the cost of keeping a child in Obcrstown Boys' Centre and Trinity House in 2002 was in the order of €250,000.00. No one would suggest that average household income per head or child support payments or employment benefit would be an appropriate benchmark for the appropriate costs of keeping a child in these places of detention.

4. The Draft Report presents calculations suggesting that the capitation grant kept pace with inflation during the period 1939 to 1969. Even if that were so, it is of little significance if the capitation grant was inadequate at the start of the period.

5. The Draft Report has attempted to calculate a break-even point for the School. However, that break-even point appears to be calculated not in terms of what the expenditure should have been but what it was. The fact that the School Managers avoided going into deficit, so far as they could, does not mean that they had sufficient funding.

6. At page 23 of the Draft Report, paragraph 14, the following statement appears:-

*"While the overall financial impression for the period is that the School ran in deficit, it should be borne in mind that the accounts do not reflect the considerable economic value derived from the consumption of farm produce by both the boys and the brothers. Nor do the figures reflect the savings which were made by the boys meeting virtually all of the clothing and footwear requirements of the school for a large portion of the period under review."*

The implication from this statement is that the deficit would be less or indeed the School might have run a surplus if the consumption of farm produce for the boys and brothers

were included in the Accounts. This is a somewhat extraordinary suggestion. Clearly if the boys and the brothers were not able to consume food from the farm, that food would have to have been sourced elsewhere and the expenses of the School would have been greater. The same point can be made in relation to clothing and footwear.

7. The Draft Report does not attempt to quantify the value of the farm produce or the value of the goods produced in the workshops or to calculate the expenses which would have been incurred had that farm produce or clothing or footwear not been available.

8. The Draft Report appears to conclude that a considerable income would have been derived from the annual sale of work. That conclusion seems to be based on references in the De Mazenod record which appears to simply compliment the running of the sale of work and does not give any indication of the amount of income arising therefrom. It is entirely speculative on the part of the Mazars' expert to suggest that there was a substantial and significant amount of money raised through the annual sale of work.

9. The Draft Report appears to criticise the Oblates for failing to keep the premises '*in good and tenable state of repair and condition*'. It is submitted that it is not within the remit of the Mazars' expert to express views in relation to the respective responsibilities for the upkeep of the buildings. Secondly, it is beyond the competence of the Mazars' expert to express a view as to whether the capitation grant provided was in any event sufficient to allow for the maintenance of the premises, having regard to their dilapidated condition. It is submitted that the Draft Report fails to give sufficient weight to the fact that the premises in Daingean were the property of the State and that all responsibility for capital expenditure lay with the State.

10. The Draft Report refers to the payments to the Oblate Order during the 30 year period of €78,022.00 representing 10 per cent of the total expenditure for the period. The Draft Report does not give any or any sufficient weight to the value of the work done by the priests and brothers of the Oblate Order or consider that these should be counted as a

cost to the School matched by a liability from the School to the Oblate Order. In fact, it is submitted that the Draft Report at page 35 only grudgingly acknowledges that fact.

**Conclusion:**

In its letter of 7<sup>th</sup> June 2006 the Commission stated:-

*"Responses will be considered by the experts to see if alterations should be made to the draft reports. If there is no major dispute of fact the Investigation Committee will proceed to consider the reports in the light of other relevant evidence. If major factual disputes arise which affect the content of the reports the Committee will arrange for appropriate hearings. Following the process of consultation and, if necessary, dispute resolution the committee will determine how and to what extent the contents should be reflected in its report."*

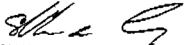
The above is not an exhaustive summary of all of the disagreements which the Oblates have with the Draft Report. Nonetheless, it should be apparent from the points made above that the disagreements the Oblates have with the Draft Report are absolutely fundamental.

It is submitted that if the Commission intends to rely to any extent on the Draft Report, fair procedures require that at a minimum the Oblates be entitled to cross-examine the Mazars' expert and to tender their own expert.

COLM Ó HOISÍN, S.C.

CONOR MAGUIRE, S.C.

Dated this 9<sup>th</sup> day of February 2007.

Signed:  .....

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