

## Historical Institutional Abuse Inquiry

**Submission on behalf of HIA 144**Preliminary submission

1. These submissions are made on behalf of HIA 144 as someone against whom allegations have been made. The purpose of the submissions are therefore to protect his interests and advance points on his behalf. The preliminary difficulty in framing such submissions is in understanding the evaluative framework against which the allegations made against him are to be considered, in order both to assist the Inquiry and protect and advance the interests of HIA 144.
2. The Terms of Reference for the Inquiry, per the 18 October 2012 announcement (s.1(2) Inquiry into Historical Institutional Abuse Act (NI) 2013), require that it examine whether there were systemic failings by institutions or the state in their duties towards those children in their care between (1922) – 1995. It is not clear what form the final report produced by the Investigation and Inquiry Panel will take, as regards the treatment of individual allegations.
3. By way of comparison, and to illustrate the point, the Republic of Ireland *Commission To Inquire Into Child Abuse Act 2000* set out a somewhat different remit for the *Commission* in the Republic of Ireland, in that s.4(1)(b)(i) provided that amongst its principal functions was to, “inquire into the abuse of children in institutions during the relevant period.” It is submitted that this was a broader function, as regards looking at individual allegations, than the Terms of Reference of the Inquiry, which is directed towards the issue of systemic institutional failings, and does not have a function in investigating individual allegations. The report of the *Commission* made reference to individual allegations of sexual abuse of children within an institution by other children also in the same institution. However, in dealing with those allegations, the *Commission* appeared to have entirely anonymised the allegations, not even referring to the maker or recipient of the allegation by name, number or other identifier, but simply outlining the nature of the allegation.
4. The Inquiry may want to look at individual allegations because factual findings on the individual allegations will be part of the backdrop for the assessment of institutional issues as part of its function in considering whether there was systemic failing. However, it is not clear whether the intention of the Investigation and Inquiry Panel is to identify specific allegations by description of the allegation, without use of any identifier, whether by way of name or number of either the maker of the allegation or the recipient of the allegation, whether the Panel intends to refer to the allegation and include any form of identifier, at the most extreme by use of the name, or indeed whether it is intended to aggregate the allegations without any reference to specifics at all.
5. This is a matter of importance to HIA 144, as the recipient of an allegation, before even considering the detail of the allegation. It is submitted that, given the Terms of reference of the Inquiry, an aggregated form of reporting is sufficient as regards allegations of abuse by children upon children.

The allegations against HIA 144

6. There are four sets of allegations against HIA 144.

## HIA 67

7. It was clear from the evidence of HIA 67 to the Inquiry that he held very negative views about his time in Termonbacca generally. This was in contrast to others, such as HIA 144 himself, who placed their experiences in the context of the general difficulties and lack of resources of the times. HIA 144 grew up in Termonbacca (Day 26, pg.44, line 19). HIA 144 gave evidence of his own time in Termonbacca as having been 'grand' (Day 26, pg.46, line 21), featuring good and bad memories. He did not enjoy or like the Primary School and felt that the Termonbacca boys were singled out. He felt that the food in Termonbacca was good, (Day 26, pg.52, line 10). This is in stark contrast to HIA 67's evidence (in closed session).
8. Hence, HIA 67 comes from a very different perspective of Termonbacca than HIA 144. His specific allegation against HIA 144 is set out in his statement SND-1420 para.18, and repeated in his police statement (Number not available). HIA 144 is described as having been a big man of 20 stone and having been in charge of the kitchens. HIA 67 describes him as an ex-resident at the time of the alleged beatings. In fact there was only a 4 year age gap between the two boys. HIA 144 was kept on after he turned 16, while he had helped out in the kitchens as a child, HIA 144 then went to work in the farm for 10 years and was only placed in charge of the kitchens in 1980 (SND-16395, para.6). There is only a limited period of time during which HIA 144 would have been helping out in the kitchens as a child when HIA 67 could have been there. He could not have been in charge of the kitchens when HIA 67 could have been there. It is most unlikely that he could have been a big man of 20 stone, although he did accept that he was always heavily built. He has denied the allegation and said that he believed that HIA 67 was interested in money – as HIA 67 himself said; compensation is the redress he wants.
9. It is also apparent from evidence to the Inquiry that the kitchens would have been a very busy place. It would have been difficult for serious beatings to have taken place unnoticed. SR2 has said that she did not see HIA 144 strike anybody. No one else has described being beaten by HIA 144. This is a matter of contested evidence, uncorroborated. The allegations must relate to a time when HIA 144 was himself a child.

## HIA 151

10. HIA 144 has dealt with these allegations in his statement SND-16395 at para.7. It is, of course, very difficult for anyone to refute allegations after such a lengthy period of time has elapsed. This is a matter acknowledged by the Court of Appeal in a criminal context *R v JW* [2013] NICA 6, para 13 et seq. It is suggested that, while clearly not considering criminal or civil liability, the Inquiry might similarly reflect on those issues identified in *JW* when considering whether it has reached the level of certainty required to accept such allegations.
11. HIA 144 can only deny the allegations, as he has done in his statement and in evidence to the Inquiry (Day 26, pg.78, line 8) and look forensically at the allegation. In that regard, it appears that the age difference between the two men is 3 years. It

also follows that HIA 151 left Termonbacca aged 13 and that HIA 144 must have been aged 13-14 when the abuse is alleged to have occurred. This is in contrast to HIA 155's statement, where he identifies HIA 144 as having been 16/17 at the time of the abuse, which is a very significant difference in the context of a sexual allegation.

## HIA 69

12. Again, this allegation is denied. As HIA 144 points out, he is the Godfather of both HIA 69 and his sister (SND-16395 at para.9). HIA 69 states that he made a complaint in relation to HIA 144 to sister Cormac (SND-2194 para. 24), and that his bed broke during the confrontation with HIA 144. There is no record of such an incident. It does not appear that this suggestion of a complaint to a nun has been corroborated. HIA 144 denies being confronted by a nun about such an allegation. It seems unlikely that such an allegation would not have led to HIA 144 being confronted (see discussion Day 17, page 134, line 1-10) – HIA 69 says that he was taken to a Doctor, so it does not seem that the allegation was being brushed aside.
13. It is unlikely that HIA 144 would have been asked to be godparent to HIA 69 aged 8 if such allegations had been made by HIA 69 against him. It is likely that a complaint would have been passed on to outside agencies. It is questionable whether HIA 144 would have been retained to work in Termonbacca after aged 16 if a complaint had been made.
14. It is also unclear from HIA 69's evidence (Day 17, pg.137, line 16-21) whether the specific allegation against HIA 144 was intended as a specific and accurate account, or whether it was being given as a representative allegation intended to give an impression of what went on. Line 1 -3 of the page does not seem to reflect a strong memory of the incident alleged.
15. HIA 144 gave a strong denial of the allegation in evidence (Day 26, pg.78, line 13 et.seq.).

## SND-33

16. This man is deceased. He did not give evidence, but there are statements SND-15593 that he gave to the police. Indeed, there are 30 pages of police materials disclosed to HIA 144 relating to this allegation.
17. Attention is drawn to a document (number unknown) dated 12 March 1990 created by Detective Sergeant Pentland, which notes that the allegations made by SND-33 had been changed and enlarged. The allegations lack consistency. His statement making allegations against HIA 144 was made after his own arrest and charge with offences of buggery and gross indecency.
18. The police investigation concluded that his allegations were uncorroborated. Detective Inspector Armstrong, on 18 October 1991, concluded that the allegations had been made up by SND-33 as mitigation and to lessen his responsibility for offences that he was facing.
19. The allegation against HIA 144 is one that would have taken place in the busy kitchens and involved HIA 144 completely exposing himself and performing a public sex act in a busy kitchen in an area open to anyone to enter. This is inherently

unlikely. There are allegations of sexual acts in a cottage. It is unclear why SND-33 would have made his way to the cottage to be abused by HIA-144.

20. HIA-144 was interviewed by police on 25 April 1991 (SND-15605). He denied the allegations in evidence to the Inquiry (Day 26; pg.82, line12) and in his statement to the Inquiry SND-16395 at para.4.
21. It is submitted that the conclusions of the senior police investigating officers were reached after an opportunity to interview SND-33, HIA 144 and those others in relation to whom SND-33 had made complaint and who had made complaint against him. It is accepted that the police did not have access to the other information about Termonbaca that is before the Inquiry or the other allegations against HIA 144. Nevertheless, the timing of his allegations and the variability of them are still important factors, as is the assessment made of him by police.
22. As a result the Inquiry could not make a factual finding to any relevant degree of certainty that HIA 144 abused SND-33. It is not possible to analyse the time line of his complaints because of the redaction to the statements.
23. In general, in relation to HIA 144, it must be remembered that much of the allegations against him, perhaps all of it, relates to conduct as a child. Even were the Inquiry to find allegation(s) proved to the requisite degree of certainty, it must be placed in context of his age and to the entirety of his childhood and experiences having been within Termonbacca. In that context it is submitted that not only ought he to retain his anonymity, such findings ought only to be referred to in the Investigation and Inquiry Panel Report in aggregated form, consistent with its remit.

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