

**IN THE MATTER OF THE HISTORICAL INSTITUTIONAL ABUSE
INQUIRY**

SUBMISSIONS ON BEHALF OF SND 224

Preamble

1. The Inquiry Chairman has decided that submissions may be made on behalf of persons against whom allegations have been made. SND 224 falls into this category. These submissions deal with three matters:-

(a) Allegations made by HIA 67;

(b) Allegations made by HIA 150 and

(c) The Police Materials Bundle.

2. The Inquiry is not concerned with the determination of civil or criminal liability, hence these submissions need not directly address such matters. It is appreciated that the Inquiry is primarily concerned with whether there were systemic failings by institutions or the state in their duties towards children such as HIA 67 and HIA 150, and it is against that background that these submissions are made.

3. These submissions will address the central issues relating to the specific allegations made by HIA 67 and HIA 150: in particular the grounds upon which it is asserted that the evidence underpinning those allegations is of insufficient strength to lead to any positive findings of fact against SND 224 and consequently why the allegations contained in the Police Materials Bundle should be entirely disregarded.

HIA 67

4. This witness gave evidence on 24th March. A transcript portion comprising four unnumbered pages has been provided by the Statutory Inquiry legal team (ref: HIA240314Day10 [31:17 to 35:15]). This witness made his written statement to the

Inquiry on 24th September 2013. The Inquiry is also in possession of HIA 67's statement made to the Police Service of Northern Ireland on 27th June 2011.

5. The following discrete points fall to be made:-

- (a) HIA 67 makes allegations against one 'SND 2 [REDACTED]'. He uses this precise name in both statements and in his evidence to this Inquiry. Notwithstanding the fact that HIA 67 had an advance opportunity to consider SND 224's statement and that the relevant parts of it were put to him during the course of his oral evidence, at no point does he deal with this issue. Moreover, at no point was he asked to deal with this problem during the course of his oral evidence;
- (b) At no point has any form of identification procedure taken place, either by reference to photographs or other records;
- (c) There are no features of the evidence of HIA 67 which tend to suggest that SND 2 [REDACTED] and SND 224 are one and the same person. For example, the witness does not describe the individual by reference to physical appearance or any other features;
- (d) During the course of his oral evidence, HIA 67 did not identify SND 224 or link his allegations to that person by reference to any detail in the latter's witness statement. That includes very specific details such as SND 224's employment as a groundsman in a golf club upon leaving Termonbacca, his subsequent move to London and his marriage to a Spanish lady. This is a significant deficiency in the evidence, bearing in mind that HIA 67 asserted in oral evidence that SND 2 [REDACTED] had been in touch with him since he had left Termonbacca, he had been to his house and he had even taken him and his wife out for tea (final page of transcript portion);
- (e) There are no features of the evidence of HIA 67 and HIA 150 taken together which tend to suggest that the person HIA 67 is making allegations against is the same person against whom HIA 150 makes allegations. That is to say, there is nothing of any cogency in HIA 150's evidence to suggest that SND 2 [REDACTED] and SND 224 are one and the same.

HIA 150

6. This witness gave evidence on 7th April. The transcript portion provided is from pages 53 to 55. He made his witness statement to the Inquiry 25th November 2013. The Inquiry has the unenviable task of assessing the overall credibility and reliability of this witness, bearing in mind his oral evidence as a whole and the nature of his responses to the contrary accounts given by other witnesses in particular.
7. This witness makes allegations against a large number of persons. He is not able to name all of his alleged abusers. Whilst he appears to be making allegations against SND 224 (at paragraph 32 of his statement to the Inquiry) he asserts that at the time of the abuse, SND 224 was an older boy (that is to say, a former resident) who worked for the nuns. In his statement to the Inquiry, SND 224 specifically states that he never worked for the nuns (paragraph 2 & 7).
8. It is assumed that there are records available to this inquiry which show who was formally employed by the nuns at Termonbacca. Those records will show that SND 224 was never so employed. Given that this Inquiry is restricted to considering whether there were failings of a systemic nature, this factor may be of more significance than appeared to be the case at first blush.

Police Materials Bundle

9. SND 224 deals with these at paragraphs 10 to 12 of his statement to the Inquiry. There does not appear to be any procedural or other guidance as to the permissible uses of these materials. However, it is assumed that the Inquiry is in possession of these materials on the basis that they *may* assist it in determining whether SND 224 abused HIA 67 and/or HIA 150 *if* they demonstrate that he has/had a general propensity to abuse children. In other words, the materials may constitute evidence of bad character.
10. The Inquiry will no doubt take great care before utilising any part of the Police Materials Bundle in determining the truthfulness and reliability of the evidence of HIA 67 and HIA 150. Firstly, there is nothing in the Police Materials Bundle which could be said to be strikingly similar to the allegations made by HIA 67 and HIA 150. Secondly, it is respectfully submitted that this Inquiry's primary task would be to assess whether it could safely conclude that SND 224 abused either of these witnesses. If the Inquiry cannot be so satisfied to the standard appropriate to

allegations of this nature, then it is submitted that the Police Materials Bundle should be entirely disregarded.

Submissions

11. The Inquiry will have well in mind the difficulties that arise where very substantial periods of time have elapsed between alleged sexual abuse of children and the making of statements followed by the giving of evidence before a fact finding tribunal.
12. There is a fundamental identification issue at the heart of HIA 67's evidence. There is no other evidence before this Inquiry which is capable of remedying that deficiency. SND 224 strongly disputes these allegations and points out that he was never known by the surname 'SND 2'. It is submitted that there is no evidence before the Inquiry which could satisfy it to any recognised evidential standard that SND 224 abused HIA 67. In such circumstances, the Police Materials Bundle is of no probative value.
13. It is respectfully submitted that there are serious and overarching difficulties with respect to the credibility and reliability of HIA 150. These difficulties were apparent from the answers and responses he gave during the course of his oral evidence. Much of his evidence concerning mistreatment and abuse is flatly contradicted by the evidence of other witnesses. SND 224 vehemently denies these allegations
14. HIA 150 asserts that SND 224 was an older boy in the employ of the nuns at the time he abused him. This is too precise a detail to be simply discounted or treated as being of marginal relevance. The fact that HIA 150 is completely wrong about this throws into doubt the reliability of his recollection as to who abused him in a Hillman car. The deficiencies in HIA 150's evidence cannot be remedied by reference to the Police Materials Bundle.
15. In the round, it is respectfully submitted that it would be quite unfair and, moreover, unwarranted for this Inquiry to conclude that SND 224 abused either of these witnesses. In any event, SND 150 was not employed by the nuns at Termonbacca at the relevant times. For all of these reasons, it may therefore be the position that the outworking of this discrete aspect of the inquiry's work will not assist it in

determining whether there were systemic failings on the part of Termonbacca or the state.

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25th April 2014**