

HISTORICAL ABUSE INQUIRY

Submissions on behalf of SND 14

1. Consideration of the allegations made against SND 14 by HIA 13 should have regard for the fact that HIA 13 gave evidence to the Inquiry on Day 9 at a time when SND 14's statement of evidence could not be put to him denying his allegations.
2. So far as is known, HIA 22 has not given evidence to the Inquiry about the allegations against SND 14.
3. So far as the allegations made by HIA 150 are concerned they were not tested in cross examination and HIA 150 was furnished with SND 14's account prior to giving his evidence. In terms HIA 150 was afforded an opportunity to present a "blanket denial " of SND 14's rejection of the allegations made against him.
4. The degree of certainty which the Panel can have with respect to the accuracy and reliability of the complaints made against SND 14 is contingent upon its assessment of SND 14's credibility and that of HIA 13 and HIA 150.
5. A helpful guide with respect to the assessment of credibility is set out in a judgement of Mr Justice Gillen in Thornton v N.I.H.E. delivered on 11th January 2010 (GIL) at paragraph 13 thereof. As assessment of credibility of evidence must have regard to:
  - " The inherent probability or improbability of representations of fact
  - The presence of independent evidence tending to corroborate or undermine any given statement of fact
  - The presence of contemporaneous records
  - The demeanour of witnesses e.g. does he equivocate in cross examination
  - The frailty of the population at large in accurately recollecting and describing events in the distant past
  - Does the witness take refuge in wild speculation or uncorroborated allegations of fabrication
  - Does the witness have a motive for misleading the court
  - Weigh up one witness against another'
6. SND 14 has at all material times denied the allegations made against him.

7. SND 14 presents as a person who is appreciative of the care he received at Termonbacca and is supportive of the staff who worked there.

8. The Panel should be mindful of the fact that the allegations made against SND have been made by persons who in general terms have made serious allegations with respect to the care they received at Termonbacca and in terms SND 14 could be viewed as a party in opposition to them and accordingly they could be well motivated to make complaints against SND 14.

9. At paragraph 43 of his statement of evidence HIA 13 in terms "takes refuge in wild speculation" in that he surmises that there was a code of conduct "he's mine don't touch him" to explain why boys at Termonbacca thought well of SND 14. A fortiori in paragraph 43 HIA 13 has acknowledged discussions between grown men about the abuse they suffered.

10. The Panel should not discount the real risk of collusion with respect to the complaints made against SND 14. For example HIA 13 makes reference to specifically knowing HIA 22 at paragraph 17 and HIA 150 makes specific reference to knowing HIA 13 at paragraph 3.

12. In his statement of evidence, SND 14 has referred to an occasion at which he and HIA 13 were both present long after the alleged abuse and he has produced a photograph of same wherein HIA 13 can be seen standing next to SND 14 in circumstances where he could easily have placed himself away from the person he said in paragraph 42 of his statement of evidence "he would like to see put in jail".

13. The photograph constitutes independent evidence which supports the improbability of the allegations now made by HIA 13 against SND 14.

14. HIA 150's accepted attendance at SND 14's wedding even if he attended as a friend of SND 14's wife, an explanation proffered by HIA 150 but not accepted by SND 14's wife, sits most uncomfortably with the allegations he has made of serious sexual abuse upon him by SND 14 and renders same inherently improbable.

15. Paragraph 18 of HIA 150's statement of evidence whilst lacking in detail as to time and how SND 14 came to know him and chose him for abuse does permit of a reasonable inference that same occurred after he had attained his 11th birthday on 28th February 1968 given the fact that the location was the senior dormitory and this afforded SND 14 a very limited window of opportunity to have committed the said abuse as he left Termonbacca in April 1968.

16. Delay in reporting sexual abuse as a child can be explained in terms of the effect of the abuse upon the person abused but it stands in stark contrast with active association with the perpetrator of the abuse in adulthood in circumstances where such association could easily have been avoided.

17 The above criticisms of the complaints of HIA 13, HIA 22 and HIA 150 must be considered against a background of an absence of any contemporaneous records supporting same, a lack of particularity with respect to time, the absence of any corroborative evidence tending to support same and the ease with which such complaints can be made.

18. The complaints made against SND 14 by HIA 13, HIA 22 and HIA 150 should also be assessed in light of the wide ranging complaints they have made concerning the care they received in Termonbacca and the picture they graphically portray of same e.g. paragraph 33 of HIA 150's statement of evidence and how same fits in with the description of life in Termonbacca given by other residents more particularly where same differs markedly from that portrayed by HIA 13, HIA 22 and HIA 150.

Martin Rodgers QC

Ivor Mc Ateer BI

Dated this 25th day of April 2014