

THE INQUIRY INTO HISTORICAL INSTITUTIONAL ABUSE 1922 TO 1995**Submissions on behalf of SND 38**

1. Nazareth House and the W.H.&S.S.B owed a duty of care to SND 38 in that to their knowledge he was being directed to engage with vulnerable and emotionally and psychologically disturbed young persons in a residential setting.
2. The duty of care included, inter alia,
  - (i) The provision of adequate training and supervision;
  - (ii) The maintenance of detailed and adequate contemporaneous records more particularly concerning his interaction with residents at Nazareth House;
  - (iii) The provision of adequate instructions with respect to his duties and responsibilities within Nazareth House and towards its residents;
  - (iv) The provision of proper and adequate monitoring of his discharge of his duties within Nazareth House and towards its residents and the maintenance of full and detailed contemporaneous records in relation thereto;
  - (v) Fairness towards him with respect to complaints made against him and their investigation to include in particular an open minded approach to same;
  - (vi) Respect for his privacy with regard to complaints made against him more particularly those of a sexual nature and the necessity for ensuring confidentiality in respect of same and ensuring that disclosure of same was made on a "need to know basis" restricted to those involved in the investigation of the complaints more particularly having regard to the residential setting in which the complaints were made.
3. It is submitted that Nazareth House and the W.H &S.S.B failed SND 38 in that:-
  - (i) Insufficient regard was paid to the challenging nature of the interaction and work with HIA 127 given his personal and family history;
  - (ii) Insufficient regard was paid to SND 38's pre-engagement with Nazareth House, namely, the retail sector and a past history of youth work 4/5 years earlier;
  - (iii) There was a failure to provide him with adequate structured pre-employment training to address his vulnerability in interacting and working with vulnerable and emotionally and psychologically disturbed young persons and in particular HIA127;
  - (iv) There was a failure to properly designate and contemporaneously record his role and duties more particularly in respect of his dual key worker/ befriender role;
  - (v) There was a failure to properly or adequately consider the propriety of combining the roles of key worker and befriender;
  - (vi) There was a failure to properly or adequately record his appointment as a befriended and his designated function, role and its relationship with his role as a key worker;
  - (vii) There was a failure to properly monitor his role as a befriender and to make contemporaneous records with respect to his discharge of this role;
  - (viii) There was a failure to put in place a proper or adequate system of accountability with respect to his role as a befriender;
  - (ix) There was a failure to put in place a proper or adequate procedure with respect to the provision of gifts, money and other expenditure carried out by him in relation to HIA127 and to make contemporaneous records in respect of same e.g. Christmas 1989;

- (x) There was a failure to properly separate his role as a befriender from his role as a key worker and to provide separate monitoring and supervision and the maintenance of separate contemporaneous records;
  - (xi) There was a failure to properly monitor his relationship with HIA127, his contact, visits by HIA127 to his home, activities outside of Nazareth House, expenditure incurred, to make contemporaneous written records of same and to regularly review these matters with SND 38;
  - (xii) There was a failure given his dual roles as key worker and befriended to HIA127 to have regard to the effect same was likely to have upon SND 38 more particularly with regard to his ability to act dispassionately and to set and maintain appropriate boundaries and to safeguard himself against false accusations of inappropriate conduct on his part made by HIA127 or others.
4. Nazareth House and the W.H.& S.S.B failed him when allegations were made against him in that:-
- (i) There was a failure to keep an open mind with respect to SND 38's denial of inappropriate conduct with regard to HIA 127's allegations;
  - (ii) There was a failure to properly or adequately consult such contemporaneous records as there were and to proactively disclose same to RUC;
  - (iii) In particular with respect to the Portstewart, holiday allegations there was a most serious failure in respect of establishing the precise date of same at the time the allegations were made given their pivotal reference point role to other allegations in that consideration was not adequately given at the time to HIA 127 being mistaken as to the year 1990 and that the matters complained of could have occurred in 1989;
  - (iv) Failure to interview staff and consult contemporaneous records with respect to HIA 127's holiday in Portstewart in 1989 with a view to determining the truth or otherwise of the allegations;
  - (v) Failing to properly or adequately investigate SND 38's ownership of a red Lada car in 1989 /1990
  - (vi) Making inappropriate disclosure limited or otherwise to residents of Nazareth House that SND 38 was the subject of a complaint and or complaints of sexual abuse resulting in his then suspension
5. Failing to conduct a proper or fair investigation into the propriety of SND's continued work with children and or vulnerable adults following receipt of allegations made on behalf of SND384 and SND202 in that:-
- (i) There was a failure to appoint an independent person to conduct the inquiry;
  - (ii) SR2 purported to conduct an inquiry but failed to provide it with sufficient objectivity in that she in particular furnished SND470 with highly subjective materials to review;
  - (iii) Insufficient regard was paid to the fact that there was lack of supporting evidence to support the "new allegations";
  - (iv) Insufficient regard was paid to the previous inquiry which had resulted in SND 38's reinstatement;
  - (v) There was a failure to properly engage with SND 38 in the inquiry concerning the propriety of his continued employment with Nazareth House
  - (vi) Insufficient regard was paid to the fact that the failings in 2 and 3 supra, had created a situation whereby SND 38's actions could become the subject of misinterpretation if an allegation was made by a vulnerable and emotionally and psychologically disturbed young person;
  - (vi) There was a failure to look for and to examine evidence independent of the complainants, namely, SND384 and SND202 more particularly given their relationship with each other and the medical findings and medical history of SND202 and her complaints against numerous other individuals;

6. So far as the allegations made against SND 38 are concerned the degree of certainty which the Panel can have with respect to the accuracy and reliability of the same is contingent upon primarily its assessment of HIA 127's credibility insofar as HIA 127's complaints are first in point of time, the most serious, are alleged to have occurred through a residential setting and could have been known to those making later complaints.
7. 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. An 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”
8. Up until SND 38 filed his statement of evidence to the Inquiry HIA 127 and in particular those who had been investigating his complaints, namely, RUC and Nazareth House had believed HIA 127 was referring to abuse commencing in the summer of 1990 by reference to the Portstewart holiday. Upon being appraised of SND 38's denial and in particular his comment to the effect that those allegations of abuse in Nazareth House after the Portstewart holiday lacked credibility given the fact that HIA 127 was placed with foster parents in August 1990 he then in terms asserted that the Portstewart holiday referred to by him had been the holiday in 1989.
9. No explanation for placing the abuse in 1989 as opposed to 1990 has been advanced by HIA 127 save for the fact that it could not have been 1990.
10. In relation to the abuse now alleged to have commenced at Portstewart holiday in 1989 in his police statement of 12 th August 1996 detailing the alleged abuse which he has reiterated to this Inquiry HIA 127 makes specific reference to being collected from school by SND 38 in his “red Lada “ car Document SND 17174 confirms that SND 38 did not have a red Lada until July 1990.
11. Independent contemporaneous documentation in relation to HIA 127 and his relationship with SND 38 is not consistent with the abuse alleged by HIA 127 against SND 38 e.g. SND 5152 and SND 5229 and SND 10397.
12. In making a determination with respect to the degree of certainty of the allegations made against SND 38 the Panel should exercise caution and look at the allegations

independent of the view taken by SR2 and the police and in particular SND470 and not engage in speculation.

13. The panel should look closely at how SND 38 gave his evidence to the Inquiry over in terms a full day, the contemporaneous records that do exist and in terms document his contacts with HIA 127.
14. The Panel should look at the allegations against a background wherein those making the allegations are vulnerable and emotionally and psychologically disturbed young persons who have been shown in the past to have been untruthful and manipulative. HIA 127's mother's attitude to Social Services and her influence over HIA 127 and his siblings must be taken into account.
15. The Panel should have regard for the ease with which the allegations could be made and SND 38's vulnerability to same and the temptation to see a pattern of abusive behaviour by virtue of the fact that more than one individual has made a complaint and the danger of misinterpreting innocent behaviour e.g SND 38 's conversation with SND525. SF 036 purports to recall a conversation which had taken place approximately 4 years earlier and about which a contemporaneous complaint was not made by SND525 to the effect that SND 38 had in some way behaved inappropriately. SND 38' acceptance of a conversation with SND525 and his acceptance of the subject matter but not the context advanced by SR2.
16. SND 38 has fully set out his explanations with respect to the allegations made against him, see SND 16682 - SND 16704. The Panel should have regard for his overall consistency in his denials and explanations and the fact that he has not sought to distance himself from the possibility of committing the acts complained of or of having had the opportunity to commit same save where he has been able to establish impossibility of same e.g. initial allegations of abuse in 1990.
17. In relation to the abuse alleged by HIA 127 to have occurred at his foster parent's home the Panel should have regard for the fact that SND 38's role with HIA 127 was the subject of complaint by the foster parents and not any perceived inappropriate conduct by SND 38 with HIA 127. A fortiori SND 38 accepted that the foster parents had concerns and he offered a rational and reasonable explanation for behaviour and the foster parents concerns none of which permits of a reasonable inference of any sexual impropriety on his part with HIA 127.

**Martin Rodgers QC**

**Ivor McAteer BI**

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**Addendum to SND 38's Submissions of 2nd May 2014**

1. Document SND 5224-5228 supports SND 38's evidence to the Inquiry to the effect that he had been invited to and appointed as a "befriender" as opposed to self appointment without the knowledge in particular of the W.H. & S.S.
2. Document SND 5224-5228 in terms contradicts the evidence of Denis Patrick O'Brien in his statement to the police of 15/10/96 wherein he questioned whether SND 38 had been appointed a befriender.
3. In relation to the evidence of Valerie Devine it is submitted that the Panel have regard to the following matters:-
  - (i) She interprets "the present and flight mode incident" against a background of "awareness of the allegations against SND 38";
  - (ii) If she had not been aware of allegations against SND 38 she may not have made the "interpretation " she now makes to the Inquiry;
  - (iii) Whilst she acknowledges at page 65 lines 21-24 "levels of manipulation, control, deceit and secrecy that actually enables a person to abuse a child" she fails to acknowledge manipulation deceit and untruthfulness as recognised features with regard to psychologically and emotionally vulnerable young persons in care ;
  - (iv) She has proceeded upon an acceptance of the truth of the allegations she was aware but has not set out any reasoned approach to the allegations such as to permit reliance upon same to support her interpretation of "the present and flight mode incident".
4. She has sought to distance the W.H.&S.S. from awareness of and approbation of the "befriender role"

**Martin Rodgers QC**

**Ivor McAteer BI**