

Historical Institutional Abuse Inquiry

Submission on behalf of HIA 321

1. These submissions are made on behalf of HIA 321 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 321.
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 321, 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.
6. As regards the allegation made against HIA 321, there is one allegation made by HIA 113.

7. Previous submissions were made on behalf of HIA 321 as regards HIA 113's allegation, and were considered by the Inquiry. Insofar as they remain relevant they were;

"... the evidence that HIA 321 was responsible for that conduct is extremely weak. He was not identified at the time of the act. HIA 113 purports to identify him by voice some time after the act, when she was walking past a boy's bedroom and heard two boys talking. At that time there is no suggestion that he was anywhere other than a bedroom where he was entitled to be. HIA 113 cannot hear what is being said but *presumes* that the conversation is about her. She *presumes* that the participants in the conversation must include the perpetrator of her abuse. She *presumes* that the voice that she can identify is that of the perpetrator.

"It is entirely speculative to conclude that HIA 321 committed any abuse upon HIA 113 from the statements of HIA 113. Setting aside the weakness/strength of the voice identification, even if it was HIA 321's voice that HIA 113 heard, there is no basis upon which a reasonable tribunal of fact could come to a conclusion that HIA 321 was the perpetrator. Such a conclusion requires multiple acts of speculation."

8. These submissions were based on the description of the allegation made by HIA 113 in her statement to the inquiry SND-2334, pg.3, para 9 and her statement to police dated 14 November 2013, SND-15325, pg.4. In evidence this allegation was repeated on Day 16, pg.22, line 3 et.seq.
9. However, when asked about the basis of her recognition of HIA 321, HIA 113 added that she had seen him come back into the room after the abuse (Day 16, pg.25, line 6). She said that she had not added this detail in either of her earlier written statements because she did not want to get HIA 321 into trouble (Day 16, pg.26, line 2).
10. When asked again about the basis of her identification of HIA 321 by the Chairman, HIA 113 added further detail. She now claimed to have actually looked at, and seen, and recognised the distinctive hair of HIA 321 while the abuse was actually happening (Day 16, pg.35, line 22).
11. It is submitted on behalf of HIA 321 that the Inquiry could not make a finding to any relevant degree of certainty on the basis of this allegation, for the following reasons;
 - a. The criticisms of HIA 113's written statements to the police and Inquiry, as set out at paragraph 7 above, stand.
 - b. HIA 113 took refuge in uncorroborated allegations (per Gillen J, assessment of credibility; *Thornton v NIHE* [2010] NIQB 4, para 13). When questioned about the basis of her identification of HIA 321 she gave not one, but two different and enlarged bases for her recognition.
 - c. Neither of these bases is corroborated even by her own witness statements, when she had said that the room was dark and made no reference to seeing the perpetrators.

- d. It is hard to see why HIA 113 would have provided the account of recognising HIA 321's voice to police if she had in fact seen him.
 - e. It is hard to see why she would have told Inquiry Counsel that she had seen HIA 321 come back to the door of her room later, if she had in fact seen him at the time of the abuse.
 - f. HIA 113's suggestion that she did not provide this additional detail to the police or in her Inquiry statement is that 'she did not want to get HIA 321 into trouble.' This suggestion is inherently improbable. HIA 113 had alleged digital penetration against HIA 321. She had named HIA 321 to the police. The additional mode of recognition did not serve to enlarge the allegation against HIA 321 or 'get him into additional trouble.' (Unless HIA 113 considered the evidential weakness of her accounts as a protection for HIA 321, which would suggest that she was untruthful in her written statements and possessed of an unlikely degree of sophistication.)
12. It can reasonably be submitted on behalf of HIA 321 that this allegation, again, the only one made against HIA 321, is a very weak one. It commenced weak evidentially, based on the statements. It then became weak in terms of credibility, based on the changing account of recognition given in evidence.
13. HIA 321, for his part, gave clear evidence denying the allegation at all times. He accepted having curly hair when young – but it is not denied that HIA 113 would have known this. HIA 321 does not deny knowing HIA 113, simply that he abused her.
14. As a result the Inquiry could not make a factual finding to any relevant degree of certainty that HIA 321 abused HIA 113, even were it to determine that it was relevant to do so.

Mark Reel

Bar Library

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