

Submissions on behalf of SND 49

1. Consideration of the allegations made against SND 49 by HIA 121 should have regard for the fact that HIA 121 gave evidence to the Inquiry before SND 49 had made his statement and thus the denial of the incident was not put to HIA121
2. HAI 121 allegations were limited, vague, contradictory and inconsistent.
3. So far as the allegations made by HIA 121 are concerned, they were not tested in cross examination and HIA 121 was not furnished with SND 49's account prior to giving his evidence. In general terms HIA 121 was not afforded an opportunity to present a response of SND 49's rejection of the allegations made against him nor to comment on the matters raised in the statement of SND49 and his subsequent direct evidence.
4. In order to assess the credibility and truthfulness of the allegations against SND 49 made by HIA 121 the Tribunal is required to consider and assess the accuracy, delivery and recall of matters from HAI 121
5. In the judgement of Mr Justice Gillen in Thornton v N.I.H.E. delivered on 11th January 2010 (GIL) at paragraph 13 thereof gives some guidelines for the assessment of such evidence

*“ 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”*

6. SND 49 maintains that he has no desire or inclination to return either publicly or privately to his childhood experiences. In essence it was a time which holds few happy or good memories and those memories remain locked in his past. SND 49 does not live his life with reference to those experiences.
7. SND 49 chose to become involved in the enquiry because the allegations as described had been made against him. He choose to assist the enquiry to categorically deny any such incidents occurred.
8. The Panel will be aware that the allegations made against SND 49 have been made by a single person who has made both contradictory and inconsistent accounts of the alleged

abuse which emanated from SND49. HAI 121 has made a number of various complaints of abuse generally in various degrees of detail and depth.

9. HIA 121 describes SND 49 as a paedophile but does not describe or allege any such behaviour against SND 49. HIA describes an incident with a physical assault involving a ladle which the occurred because alternatively HAI 121 saw an incident of abuse as he stated in his evidence, or as stated in paragraph 18 of his statement of evidence, it was because he personally fended off a sexual attack from another male.

It is suggested that the incident of abuse is described differently in the statement of evidence and in the evidence itself.

10. The Panel should not discount the real risk of a conflation of incidents, abuses and individuals with respect to the complaints made against SND 49

11. In his evidence HAI 121 frequently used dramatic and florid language and delivery which may be suggestive of unreliability or inaccuracy.

12. The written evidence of records at the time are inaccurate, brief and ambiguous. In the extract relating to SND 49, there is a reference to working on a farm which SND 49 states was off the Termonbacca site and that he aspired to get a job as "a conductor" which is wholly inaccurate. There are no apparent notes of HAI 121 illness or assault as described. There is serious doubt over HAI 121 ability to accurately date this incident relative to SND 49's time at Termonbacca.

13 HAI 121 has related a graphic tale of abuse and deprivation of his time at Termonbacca and the long term consequences of that treatment. SND 49 has few happy memories of his time at Termonbacca but SND 49 has at all material times denied any and all of the allegations made against him.

14. In his evidence to the Inquiry on 1 May 2014, SND 49 responded to each of the questions put to him by Counsel to the Inquiry, relating to the main issues regarding the failings of the particular Institution, namely:

- (i) Treatment at Termonbacca including the care given by staff, chores/work delegated by staff to children and the receipt of any gifts;
- (ii) Sexual, emotional and physical abuse;
- (iii) Being referred to as a number;
- (iv) Bedwetting
- (v) Bathed in jeyes fluid;
- (vi) Visits by family or others and not being informed of family history and/or the presence of other siblings in the institution.

The Inquiry is asked to note that SND 49 has little to say about (i)-(v), however, he has confirmed that he was never informed about parents or siblings and in fact it was only upon receipt of papers from the Inquiry that it came to light that his mother died on [REDACTED] 1958. Until this time, he never knew of any history whatsoever of his family despite attempting to trace them a number of years ago. In addition, he also gave evidence to the Inquiry when asked about other children going to Australia that he recalled another boy called Tony Hassan going to Australia. This unlocked an emotional and

upsetting experience of the past, perhaps indicating he experienced a separation anxiety or grief at the loss of a friend, considering any friendships between the children in the institution were similar to that of a sibling relationship. Despite unhappy memories, it was the closest to a family environment they would ever experience in their childhood. It is unknown if these friendships were ever taken into account when deciding to separate children and/or send them to Australia.

Sean O' Hare BL

Dated this 1st day of May 2014

Instructed by Cleaver Fulton Rankin Solicitors for SND 49