Neutral Citation [2012] IEHC 591

THE HIGH COURT

[2006 No. 890 J.R.]

BETWEEN

P.D.P.

APPLICANT

HEALTH SERVICE EXECUTIVE

RESPONDENT

JUDGMENT of O'Neill J. delivered on the 21st day of December, 2012 (see also addendum)

1. This is a claim for damages which arises out of earlier judicial review proceedings between the applicant and the HSE and the Board of management of a school in which this court delivered judgment on 20th May, 2010.

2. In those judicial review proceedings, the applicant claimed orders of *certiorari* and declarations in relation to the conduct and findings of the HSE in an investigation carried out pursuant to s. 3(1) of the Childcare Act 1991, by the HSE into allegations of child sex abuse made against the applicant by a former pupil, namely, RK of the school where the plaintiff was a teacher. The judicial review proceedings were commenced in July 2006. In December 2006, through its counsel, the HSE indicated that it would be conceding several of the reliefs claimed by the applicant in due course. In its statement of opposition, the HSE consented to orders of *certiorari* quashing the decision contained in the social worker report of 27th March 2006, that the applicant posed a potential risk to children, in particular the children in the school in which he thought and also an order quashing the conclusion reached in a letter dated 19th December 2003, from the HSE that the allegations made against the applicant had been validated. The HSE filed its statement of opposition in January 2007, and this was verified by an affidavit of NQ which averred, *inter alia*, that the HSE intended to commence a new investigation into the allegations made against the applicant. In pursuance of this, arrangements were made to interview the complainant, RK, in London in July 2007. For this purpose, two meetings took place with the complainant. The second of these meetings was, in effect, a detailed interview conducted by two social workers of the HSE with the complainant. Detailed notes of this interview were taken and in due course, although the complainant would not sign a statement, he acknowledged that the note of the interview represented his complaint.

3. In due course, the applicant applied to the court for leave to amend his statement of grounds to include a claim for an order of prohibition, preventing the HSE from continuing any further investigation into the claims made by RK against the applicant. His application was granted.

4. When the matter came on before me for hearing in December 2009, at that stage, the only contentious matter left in the proceedings was the applicant's claim to the foregoing order of prohibition, the substance of the reliefs claimed by the applicant in relation to the earlier investigation having by then been conceded by both respondents. For the purpose of considering the application for an order for prohibition, it was necessary for the court to review the entire conduct of the investigation by the HSE and in my judgment of 20th May 2010, I reviewed in detail the conduct of that investigation and concluded that in the course of same, there had been many and egregious breaches of the applicant's right to fair procedures and natural justice. Notwithstanding this, as set out in my foregoing judgment, I refused the order of prohibition concluding that the balance of justice lay in favour of the public interest in the continuance of the investigation into the allegations made by RK but subject to certain minimal requirements in order to protect the applicant's right to natural justice and fair procedures.

5. Since then, the applicant has pursued the claim for damages which was made initially in the judicial review application. By its order of 17th May 2011, this court directed that the proceedings be converted into a plenary hearing and directed the exchanges of points of claim and defence and made orders in relation to exchange of particulars and expert reports.

6. When the damages claim came on for hearing before me on 3rd July 2012, Counsel for both sides informed me that all of the documents which had been discovered were admitted into evidence by agreement between the parties. This agreement was concluded by a letter dated 29th June 2012, from the solicitor for the respondent to the solicitor for the applicant. In the course of the hearing, evidence was given by the applicant, by a Mr. C. O'G, a friend of the applicant, a Mr. J. M, a friend and former teacher colleague of the applicant in the school, and by Ms. Moira Leydon, an Assistant General Secretary with the responsibility for education and research of the Association of Secondary Teachers of Ireland (ASTI). No evidence was called at all by the respondent and it is an unusual feature of this entire judicial review proceeding that no affidavit was sworn by or any evidence given by any of the social workers that were involved in the investigation of the allegations made by RK against the applicant.

7. Whilst the history of the matter is set out in some detail in my judgment of 20th May 2010, the oral evidence given to the court in this damages hearing and an examination of the documents discovered and put in evidence by agreement have brought to the attention of the court additional material which I will comment on in due course.

8. In pursuit of this claim for damages, the applicant seeks to set up several causes of action as the basis of his claim. These are negligence and breach of duty, breaches of statutory duties, namely, breaches of s. 3(1) of the Childcare Act 1991, and a breach of s. 2 of the Data Protection Act 1988, as amended by s. 3 of the Data Protection Act 2003, and s. 7 of the Data Protection Act 1988, breaches of the applicant's constitutional right to natural justice and fair procedures, his constitutional right to his good name and his constitutional right to earn his livelihood, and his right to privacy, the applicant's constitutional right to reasonable expedition in the conduct of the investigation, and breaches of Articles 6, 8 and 13 of the European Convention on Human Rights, and finally, misfeasance in public office.

9. The respondent initially objects to the scope of the causes of action relied upon on the basis that these extend far beyond the scope of these judicial review proceedings as initiated. The respondent contends that the scope of the assessment of any liability of the respondent to compensate the applicant in damages is confined to the factual and legal matters raised in the judicial review proceedings and in respect of which judgment was given by this court on 20th May 2010, and that the only proper subject matter that can sound in damages, can flow only from the findings of fact made by this Court in its judgment in the judicial review proceedings.

10. There are a number of reasons why I do not see merit in this procedural objection of the respondent. In the first place, it has to be remembered that the applicant first learned of what had happened in the course of the investigation of him by the HSE from the discovery of documents by the HSE which occurred in 2009, almost three years after the commencement of the judicial review proceedings. By this stage, the HSE had conceded critical parts of the relief sought against them as also had the other respondent, the school. Thus, insofar as the initial judicial review application was concerned, this court did not have to adjudicate on contested issues and as mentioned earlier in the hearing of the judicial review application the only contested issue was the application for an order of prohibition of the renewed investigation by the HSE of the applicant, which did entail a review of the conduct of the investigation, but not in the context of making findings of fact where these facts were in dispute. Because of the concessions made by the HSE, there was no such dispute. This being so, it cannot be said in my view, that this court, in adjudicating on the damages claim is confined solely within what the respondent characterises as "*findings of fact*" in its judgment in the judicial review proceedings. In my view, the court would not only be entitled, but obliged in the hearing on the damages claim to make such other findings of fact, and indeed, if appropriate, different or contradictory findings of fact if the evidence properly adduced in the hearing on the damages claim so warranted. This, of course, could be in ease of the respondent who, if they so wished, could, for the purposes of the damages claim, have called evidence to either dispute or clarify matters which they had not disputed in the earlier judicial review proceedings where the reliefs being sought were public law reliefs.

11. As noted earlier, by order of this court, the judicial review proceedings were for the purposes of the damages claim converted into a plenary hearing with the usual pleadings that go with that procedure. Thus, in my view, in the trial which took place on the damages claim, it was open to both sides to adduce such evidence as they saw fit to advance the claim or to defend the claim, and it was the task of this court to adjudicate upon that evidence and make appropriate findings subject only to the restraint of the doctrine of res judicata, or in other words, the court could not depart from findings of fact made earlier on a contested matter.

12. The real issue, insofar as the cause of action or range of cause of actions available to the applicant in this damages claim, is substantive rather than procedural. The respondent has not disputed by evidence at any stage of these proceedings, or indeed at all challenged the evidence of the applicant as to the many and very serious breaches of his constitutional right to natural justice and fair procedures that occurred during the course of its investigation of the allegations of RK against the applicant. Thus, the bedrock of fact upon which the applicant's causes of action are sought to be based is not in dispute.

13. The respondent submits that the relevant factual matrix could only support one cause of action, namely, misfeasance in public office, and that none of the other causes of action advanced by the applicant are available to him. Insofar as misfeasance in public office is concerned, the respondent says that the evidence falls well short of establishing *mala fides* or recklessness on the part of the HSE social workers in the conduct of the investigation, and hence, it is submitted that the applicant has failed to establish that this tort has been committed by the HSE.

14. The core issue, insofar as the range of causes of action pleaded by the applicant is concerned is whether and in what circumstances a public official such as the HSE social workers in the this case, can be held liable in damages, for injury and loss caused by unfair and unlawful acts in the course of the discharge by them of their public duty. In this case, the public duty being discharged was an investigation under s. 3(1) of the Childcare Act 1991, to ascertain the truth or otherwise of the allegations of child sex abuse made by RK against the applicant. These are undoubtedly very difficult investigations to carry out which have the potential to affect a variety of separate interests, namely, the person making the allegation, the person against whom the allegation is made, all other children who may be at risk because of the alleged abusive behaviour, and the general interest of the community in the carrying out of investigations of this kind which are effective in the sense of reaching a correct conclusion on the allegations made, which, of course, necessarily includes affording a fair and reasonable opportunity to the person against whom the allegations are made to fully contest the allegations. There are obviously many similarities between investigations of this kind and those carried out by An Garda Síochána into the commission of crimes.

15. It is, in my view, well settled in Irish law that for reasons of public policy, duties of care to parties potentially affected by the conduct of these types of investigations and their outcomes are excluded. In this respect, see *W. v. Ireland (No. 2)* [1997] 2 I.R. 141, *L. v. Ireland* [2011] 1 I.R. 374 and *L.N. v. The Commissioner of An Garda Síochána* [2011] I.E.H.C. 14. Although these cases related to the investigative and prosecutorial functions of An Garda Síochána and the DPP, and also the functions of the Attorney General under the Extradition Act 1965, I am of opinion, that because of the similarity of public duty involved, the reasoning upon which these judgments are based applies with equal force to investigations carried out by the HSE or its predecessor Health Boards under s. 3 of the Childcare Act 1991. Accordingly I am quite satisfied therefore that the applicant has failed to establish a duty of care on the part of the HSE to him. That therefore rules out the tort of negligence and breach of duty, including also breach of the statutory duties involved in the discharge by HSE of its function under section 3.

16. Whether there had been a breach of the applicant's rights under the Data Protection Acts 1988, was not pressed with any great vigour in the hearing. The two grounds advanced in respect of this claim, namely, the disclosure of confidential and highly sensitive information in respect of the investigation to the claimant's mother, JK, and the loss of the original investigation file, could not impose a liability in damages on the respondent. So far as the first of these grounds is concerned, manifestly, communications between the complainant RK and the HSE were conducted through the complainant's mother, JK. Until 2005, RK was still a minor, and having regard to that and the manner in which it is alleged these disclosures were made, communications between the HSE and the complainant's mother were unavoidable. The loss of the original investigation file did not, in itself, lead to any discernible loss suffered by the applicant, and therefore it is not a matter which would sound in damages.

17. The applicant claims that a number of his constitutional rights have been breached as a result of which he has suffered loss which should be compensated in damages. These include his right to his good name, his right to privacy, his right to earn his livelihood and his right to reasonable expedition in the conduct of the investigation. It is well settled that a person's constitutional rights can be adequately vindicated through the pursuit of existing common law remedies. The following passage from the judgment of Barrington J. in McDonnell v. Ireland [1998] 1 I.R. at 134, illustrates the point:-

> *"No doubt also there have been cases where the common law provided no adequate remedy for a breach of constitutional rights and where the courts have been prepared to fashion a remedy on the principle of ubi jus ibi remedium . . . .*
>
> *If, however, a practical method of defending or vindicating the right already exists, at common law or by statute, there will be no need for this court to intervene . . . There is no doubt that constitutional rights do not need recognition by the legislature or by common law to be effective. If necessary the courts will define them and fashion a remedy for their breach. . . .*
>
> *But, at the same time, constitutional rights should not be regarded as wild cards which can be played at any time to*

defeat all existing rules. If the general law provides an adequate cause of action to vindicate a constitutional right it appears to me that the injured party cannot ask the court to devise a new and different cause of action. Thus the Constitution guarantees the citizen's right to his or her good name but the cause of action to defend his or her good name is the action for defamation. The injured party, it appears to me, has to accept the action for defamation with all its incidents including the time limit within which the action must be commenced. Likewise the victim of careless driving has the action for negligence by means of which to vindicate his rights . . . .”

18. In this case, the applicant has not attempted to set up a claim in defamation, and indeed, if he had, it would undoubtedly be met by the very obvious defence of qualified privilege.

19. Insofar as the applicant's right to privacy based on the Constitution is concerned, any injury to that right can be the subject matter of compensation in the tort of misfeasance of public office, and hence, there is no need for a direct reliance upon a constitutional tort to obtain damages for the various ways in which the HSE conducted the investigation, causing injury to the applicant in his private life.

20. Similarity, there is no need for the applicant to rely upon his constitutional right to earn his livelihood, to obtain damages for injury to his capacity to earn his livelihood. His claim for loss of earnings and pension rights resulting from the withdrawal from him of his salary in September 2007, because he did not resume teaching in the school then, can be accommodated as a head of damage in any of the common law causes of action available to the applicant and in particular the tort of misfeasance in public office.

21. The applicant's reliance upon the breach of his right to reasonable expedition in the conduct of the investigation, as a separate constitutional tort entitling him to damages is also unnecessary, as any loss attributable to inordinate and inexcusable delay in the conduct of the investigation may be the subject matter of compensation, where the applicant can rely upon established common law torts.

22. Insofar as the applicant claims damages for breach of his constitutional right to natural justice and fair procedures, because that claim relates to the manner which the social workers of the HSE carried out the investigation under s. 3 of the Childcare Act 1991, namely, the discharge of a public function, the law in Ireland does not acknowledge an actionable cause of action for loss caused by the manner in which a public official discharges a public function, unless the requirements necessary to establish the tort of misfeasance in public office are met, even where it is clearly established, as it is in this case, that there have been serious breaches of a person's constitutional right to natural justice and fair procedures.

23. The tort of misfeasance in public office is essentially concerned with the abuse of power by persons under a legal duty to carry out a public function provided for and prescribed by law. The following are a selection of judicial statements describing the essential elements which must be present to establish that the tort has been committed. In the case of *Glencar Explorations plc. v. Mayo County Council* [2002] 1 I.R. 84 at 98, Kelly J. adopted the following statement of the High Court of Australia in the case of *Northern Territory v. Mengel* as an accurate summary of the law:-

“Misfeasance in public office consists of a purported exercise of some power or authority by a public officer otherwise than in an honest attempt to perform the functions of his or her office whereby loss is caused to a plaintiff. Malice, knowledge and reckless indifference are states of mind that stamp on a purported but invalid exercise of power the character of abuse of or misfeasance in public office. If the impugned conduct then causes injury, the cause of action is complete.”

24. In *An Blascaod Mor Teo and Others v. the Commissioner of Public Works and Others* (No. 4) [2003] 3 I.R. 565, Budd J. also cited the foregoing passage from the judgment of Brennan J. in the High Court of Australia with approval.

25. In *Kennedy v. The Law Society (No. 4)* [2005] 3 I.R. 228, Kearns J., having comprehensively reviewed the relevant law, approved the following passage from Butterworths, *'The Law of Torts'* (2002) (Grubb Ed.) at para. 17.54:-

“Finally, reckless indifference as to the illegality and its probable consequences is sufficient to ground the tort in its second form. This recklessness must, however, be subjective. It follows that the officer must be shown not to have had an honest belief that he was acting lawfully, meaning that he either knew his act was unlawful or that he wilfully disregarded the risk that it was.”

26. In the *Kennedy v. The Law Society (No. 4),* the Supreme Court upheld the decision of Kearns J. in the High Court, approved the decision of the House of Lords in *Three Rivers DC v. Bank of England (No. 3)* [2000] 2 W.L.R. 1220, in which the House of Lords recognised two different forms of misfeasance. One being “*targeted malice*” by a public officer which was conduct intended to injure or which necessarily involved bad faith in the exercise of public power or an improper or ulterior motive and secondly, where a public officer acts knowing that he has no power to do the act complained of and that the act will probably injure the plaintiff or which involves bad faith in as much as the public officer does not have an honest belief that his act is lawful, and Geoghegan J. in the Supreme Court in this case, following the approach of Lord Steyn in the *Three Rivers DC* case, recognised that reckless indifference as to the consequences of a public officers actions was a sufficient state of mind to ground the tort saying the following at 261 at 263:-

“I do not think that there is any Irish authority which prevents the element of subjective recklessness being introduced into the ingredients of the tort of misfeasance in public office (a tort which has not received much judicial consideration in this jurisdiction at any rate). I would, therefore, favour acceptance in this jurisdiction of that concept in the context in which it is introduced by Clarke J. and, ultimately, in the House of Lords by Lord Steyn.”

27. Later, in *Omega and Leisure Limited v. Superintendent Barry* [2012] I.E.H.C. 23, Clarke J. clearly emphasised the distinction between subjective and objective recklessness, the former being necessary to establish the tort.

28. The tort is described in De Smith, Wolf and Jowell, 'Judicial Review of Administrative Action' (6th Ed. 2007), p. 938 as follows:-

“(1) First, there is the situation where the unlawful exercise of the power is motivated by malice targeted at and intended to injure the particular claimant. A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise. Bad faith is demonstrated by knowledge of probable loss on the part of the public officer.

(2) Second, there is the situation where a decision maker acting unlawfully does so 'with the state of mind of reckless

indifference' or 'blind disregard' to the legality of his act, and an awareness that the act will in the ordinary and probable course of events cause injury to a person or a class of persons . . ."

29. In light of the foregoing, it is necessary to consider the conduct of the investigation by the HSE to determine whether the undoubted breaches of natural justice and fair procedures already detailed in the judgment of this court of 20th May 2010, amount to a misfeasance in public office as described above.

30. The evidence before this court, including all of the discovered documents, which were put in evidence by agreement, disclose additional relevant evidence to which the attention of the court was not drawn in the course of the judicial review hearing, no doubt for the obvious reason that the issue to be determined there is different to the issue which must now be confronted.

31. The process of the investigation under s. 3 of the Childcare Act 1991 began in an email dated 23rd November 2001, addressed to CD, an acting team leader, from JK, the complainant's mother. In this email, she disclosed that the complainant had revealed to her a complaint of being sexually abused by the applicant, but that she did not have the full details of this complaint. At the time, the complainant was in a form of secure residential care in the United States where he lived with his mother, JK. Over the next few weeks, there were a number of phone calls between JK and CD in which JK relied on further information gleaned from the therapy which RK was undergoing. It is implicit from the record of these phone calls that JK had an unshakable belief in the truth of the allegations made and expected the South Western Area Health Board (SWAHB) to proceed accordingly.

32. Very soon after the receipt of his complaint from JK, an attempt was made to allocate the case to a different area, for the reason that JK, who was by profession a social worker, and whilst living in Ireland for approximately two years, had worked for the SWAHB in the area which ordinarily would have had responsibility for dealing with this complaint. Notwithstanding several efforts to relocate the case, this does not appear to have been successfully accomplished until early in 2003 when JOD, a social worker took up the case. During 2002, very little seems to have happened. The only significant event recorded in the discovered documents was a contact by AMcC, a social worker with MK, a child and adolescent counsellor who was acting as a counsellor to RK in the course of his therapy in the United States and to whom it would appear he made a full disclosure of his allegation of sexual abuse against the applicant.

33. By letter of 3rd June 2002, MK wrote to AMcC as follows:-

"Please accept this letter as validation that RK has made a verbal outcry of sexual abuse by P.D.P. while attending . . . Secondary School in . . ., Ireland. If you require information or assistance please do not hesitate to contact me at the address listed below."

34. Apart from this exchange, nothing else appears to have happened in the year 2002, in the investigation into these allegations.

35. In January 2003, the case was taken over by JOD. From a document created by JOD on 14th January 2003, and countersigned by DM, team leader, the following information appears to have been obtained from AM and filled into a form type document which commences with the heading '*Client Name'*. There are two columns in the document, one headed '*Issues*' and the other headed 'Decisions', the information recorded in each column seems to correspond with the other column and is as follows:-

"Issues

Info received from Area 9 Re allegation against school teacher, . . .

Decisions

Spoke AM stated allegation against teacher prior – very difficult to work with, advise gardaí to do investigation.

Teacher still in contact with children.

Made contact with MK counsellor in . .

Texas. Attempt to get relevant info re disclosure

Contact mother re intro.

Contact OG link with Area 9 Re previous allegation and gardaí appropriately. 'CPN' S/W needs to inform alleged offender of investigation.

Police in the USA have not yet interviewed R gather info from police or Garda Síochána.

Gather info contact re same Initial CPN re above"

36. In a box entitled 'Long Term Plan for Case', the following is recorded:-

"Social work assessment and investigation of allegation.

Inform gardaí for their investigation."

37. In fact, the gardaí had been notified in January 2002 of the allegation.

38. In a file note dated 24th January 2003, JOD records the following:-

"TICIT Anna Crossen Solicitor

- advised of situation to date

(1) Contact USA, who has seen this child?

Validation report will be required.

Written statement of alleged assaults when, where, context of situation etc.

Role of S/W protect children in their area – is this alleged perpetrator a risk to other children?

NB Make assessment of risk.

Gardaí prosecute offender – may have to link in with USA.

HB does not have adequate info at present – Board must protect children but give opportunity to meet alleged perp (unless HB feels that there is an immediate and serious risk to others) allow alleged perp to discuss allegations.

Gardaí – request advice, USA police?

Mother made contact.

Require validated report. What is being alleged? What follow up in USA?

(2) Establish information re allegation from USA. When the nature of the same is clear, make contact with alleged perp and arrange meeting.

- must have info prior to this as meeting cannot be conducted without appropriate information."

This document was signed by JOD.

39. On the 20th February, 2003, a second document commencing with the words 'Client Name' was completed by JOD and countersigned by DM, team leader.

"*Issues Decisions*

Allegation of CSA against school teacher Awaiting official report from USA. Has been discussed in A9 and CCM in A4 T/L to discuss with A/P/SW.

CPN A9 did CPN but did not give details of alleged perpetrator. A4? T/L – talk PSW and how to progress.

Barr judgment CCM asked for validated report from USA, who is making allegations, ground allegations to see if they are substantiated before contacting alleged perpetrator.

Joint approach with gardaí and health board to be considered."

40. By letter of 5th February 2003, JOD wrote to MK introducing herself and informing MK that she had been allocated the file in the case and that she was trying to gather relevant information regarding the allegations made. She concludes the letter by requesting a "*validated report of R's verbal outcry and sexual abuse by Mr. P. D.P. and any other information you have pertaining to R*".

41. This letter was responded to by letter dated 6th March 2003, from MK which is the following terms:-

"The following is in response to your written request dated the 5th February, 2003, for information pertaining to RK's outcry of sexual assault by Mr. P. D.P. while attending . . . School in . . . Ireland. Additionally here is the most recent address for R and his mother J: [address, telephone number].

If you have any questions or require additional information regarding this matter please do not hesitate to contact me."

42. There is no mention of any enclosure with this letter nor as is obvious from the content of it, is there either a validation of RK's allegations or any other information provided. There are entries on 20th March 2003, a second entry on 21st March 2003, and an entry on 24th April 2003, in RK's file sheet noting that required information and report had not yet been received from MK.

43. A case note dated 19th May 2003, was created by JOD and countersigned by DM in the standard form:-

"*Issues Decisions*

MK report Received three A/C's of sexual abuse

Barr judgment letter to Mr. P.D.P. Meet to discuss allegations

Gardaí to be informed and request - check out alleged perpetrator

joint visit

Inform Area 9 Child protection place is Area 9"

44. Straddling both boxes is the following:-

"T/L feedback from ASPW re Barr judgment

S/W contact 9th July 2003"

45. Headed in the box, 'LONG TERM PLAN FOR CASE?', there is the following:-

"• *Barr judgment letter*

• *Inform gardaí"*

46. There is no correspondence of any description dealing with the receipt of any report from MK. I infer however that what is described as the "*confidential report of MK*" discovered at Tab 69 of the "Safe Place Documents" is the report recorded as having been received by JOD and DM in the case note dated 19th May 2003.

47. On 17th June 2003, JOD records in a file sheet the following, inter alia:-

> *"Name child if so wish as child has left jurisdiction and subsequently disclosed to adolescent counsellor in USA.*
>
> *Info from USA, do gardaí counterparts need to interview child? US police or An Garda Síochána?*
>
> *Has mother informed US police and/or Social Services?"*

48. A further entry in the file sheet of the same day by JOD reads as follows:-

> *"TICIT Duty Social Worker Service Naas"*
>
> *Requesting correct info for Mr. P.D.P. from previous file to ensure correct spelling of name and address.*
>
> *TICIF Duty Social Work Services most recent known address.*
>
> *. . . "*

49. A case note dated 8th July 2003, is signed by DM and CMcL. Under the heading of 'Issues' is the following paragraph:-

"*Issues Decisions*

APSW to give feedback on Barr judgment Don't name alleged victim.

letter attached. Between alleged CSA, give rough age, give nature of Beh, state oral fondle etc but not exact sequence but don't state exactly in bullet points.

Leave out from

Wait until interview give detail."

50. In the box headed *'LONG TERM PLAN FOR CASE'*, there is the following:-

> *"To inform Area 9 of outcome of mtg as case is their responsibility."*

51. There is an entry dated 10th July 2003, in a file sheet which though not signed is in the familiar handwriting of JOD and it records the following:-

> *"TICIF DM . . . shouldn't name child in letter*
>
> *- don't share all info*
>
> *- give nature of alleged behaviour oral, fondling but not detailed*
>
> *See letter*
>
> *Bullet point oral, fondling, anal, etc.*
>
> *invite next week to meet with (…)*
>
> *feedback info to A9."*

52. The letter of 14th July 2003, from SWAHB to the applicant was sent and received by the applicant and responded to by the applicant in his two letters; the first of 16th July 2003, and the second of 21st July 2003, in which he vehemently denied the allegations made and the second letter makes nine requests for information, and declines to attend the proposed meeting with the SWAHB until they reply to his request.

53. A case note created on15th August 2003, and signed by DM, team leader, and CMcL has the following entry which straddles both of the usual columns in the form and is unmistakably in the handwriting of DM and reads as follows:-

> *"P.D.P. alleged perpetrator, I advised J to send out second apt letter for end August 2003 and do we then move to inform third parties.*
>
> *I believe responding as P.D.P requestsi.e QUS 1-9in that order etc. will hamper our follow up of allegations*

54. A further entry on the form which appears to be in the handwriting of CMcL reads as follows:-

> *"C to reconsider situation + Barr judgment + then discuss with D.*
>
> *C + J to discuss with OG."*

55. This latter entry appears to have the date of 25th August 2003.

56. By letter dated 23rd July 2003, signed by JOD and DM, the SWAHB replied to the applicant's letters of 16th and 21st July 2003, and completely ignored his requests for information in his letter of 21st July 2003, and proposed a further meeting on the 29th August 2003. By a letter dated 22nd August 2003, the applicant wrote to Mr. Pat Donnelly, the CEO of the SWAHB protesting that the contents of his letter of 21st July were ignored in their entirety and requesting that such directions as were appropriate be given to

the staff in dealing with the applicant's case.

57. It is worthwhile at this stage to pause and reflect on the state of the investigation as of the end of August 2003.

58. To recap, the investigation was commenced or triggered by an email sent by JK directly to a former colleague making an allegation of child sex abuse of the most serious kind against the applicant. Very little was done to effectively progress the investigation during the year 2002. Eventually, in 2003, the investigation was revived and contacts were made with MK in the United States and JK. A "*validation*" report was sought and all other information. It would appear, although not documented in correspondence, that a lengthy "*confidential*" report was received from MK in May 2003. Earlier, in June 2002, a letter was received from MK purporting to "*validate*" RK's allegations of child sex abuse. By a letter dated 17th July 2003, written by JOD, the report of MK containing the allegations of child sex abuse was sent to An Garda Síochána. After the receipt of MK's report, it is apparent from the SWAHB documentation that consideration was given as to how to proceed and there are a number of references in that documentation to what is called "*the Barr judgment letter*". This in due course, turns out to be the letter of the 14th July 2003, sent to the applicant informing him for the first time of the existence of these allegations against him. Before that letter is sent out, it is apparent from the documentation discovered that a decision was taken to withhold the name of the complainant and to provide as little detail as possible and to not disclose the sequence of alleged abuse and to await an interview before giving any of that kind of detail. Against this background, the content of the letter of the 14th July can be clearly understood. It is difficult to understand this approach, other than as an attempt to wrong foot the applicant, had he been sufficiently ill informed, ill advised and unfortunate enough to have accepted the invitation to attend the meeting proposed.

59. When the applicant responded as he did in his two letters of 16th and 21st July 2003, it would appear he created what may have been an unexpected problem for the SWAHB. Their response is clearly illustrated in the case note of 15th August 2003, quoted above. This response amounts to a conscious and deliberate decision to refuse or ignore the applicant's entirely relevant, reasonable and legitimate requests for information. The extraordinary feature of this ignoring or refusal is the reason expressed for it, *"I believe responding as Mr.D.P.requests QUS 1 – 9 in that order etc. will hamper our follow up of allegations"* (emphasis added).

60. As of the end of August 2003, there was an allegation of child sex abuse of the most serious kind against the applicant. There was an investigation by the SWAHB into that allegation which should have been an independent and impartial inquiry to establish the truth or otherwise of these allegations, but a decision was taken to deny the applicant essential information with regard to these allegations to which the applicant was clearly entitled. He was entitled to such information that the SWAHB had concerning these allegations. There was no issue of child safety which warranted withholding any of this from him. The complainant was safely located in another jurisdiction several thousand miles away. In expressing as the reason for withholding this information that the giving up it would hamper the follow up of the allegation, there is revealed on the part of the SWAHB, at best, an alarming degree of confusion as to the purpose of, and the appropriate way to properly carry out an independent and impartial inquiry to ascertain the truth. It must have been apparent to the SWAHB, with their undoubted wealth of experience of investigating allegations of child sex abuse, that after receipt of the allegations and all information pertaining thereto, the next essential step in the investigation was, if possible, to obtain a response from the person against whom the allegations are made. It was essential, in order to ensure the effectiveness of the inquiry, that a person against whom the allegations were made was given the best possible opportunity to respond fully and effectively in their own defence. To impair the fullness and effectiveness of the accused person's response was, in the first instance, to put at risk a proper and correct outcome of the inquiry and in that process to risk doing grave injustice to the person accused and also to a victim of child sex abuse and often other members of their family and others who might be at risk. Any attempt by persons carrying out the inquiry to promote the allegations or protect the allegations from appropriate scrutiny from the accused person was, where that attempt was conscious and deliberate, could only be considered a biased exercise. The task which the SWAHB had was to conduct the inquiry properly in order to get the correct outcome and not as appears to have been their belief to "*follow up allegations*". Implicit in this expression, in my view, is a prejudgment on the allegations and a biased and improper effort to see these allegations prevail regardless of the public interest in a proper outcome to the inquiry. There was also a complete disregard of the applicant's constitutional right to natural justice and fair procedures.

61. As is apparent from the documents discovered, the strategy of the SWAHB was to tell the applicant as little as possible and get him to come to a meeting at which they said relevant detail would be disclosed. This was a wholly inadequate approach both from the point of view of advancing their inquiry and giving due observance to the applicant's constitutional rights. Without knowledge in advance of the detail of the allegations against him, the identity of the complainant and the professional reports (if any) supporting the complaint, the applicant could not in any way prepare for the proposed meeting nor could he get any professional advice that might assist him. The strategy pursued by the SWAHB was to get him to come into a meeting defenceless and because of his disadvantage thereby to put himself at risk of a rush or stampede to an erroneous judgment by the SWAHB. It is hard to credit that an institution with the knowledge and experience of the SWAHB could think that putting a person such as the applicant against whom the most serious allegations of child sex abuse were levelled in the position in which they sought to put the applicant could lead to an outcome of the inquiry that was either satisfactory in terms of its ascertainment of the truth or fair in terms of its treatment of the applicant.

62. If the applicant had been given, as he requested, all of the relevant detail and materials available to the SWAHB, he would have had the opportunity to compose a considered response to the allegations made. This would, undoubtedly, have included, *inter alia*, pointing out the inconsistencies in the allegations made, the impossibility of at least one aspect or one version of the allegations, namely, the telephone call to his house; the prior relationship between the complainant and the applicant as the teacher with responsible for disciplinary issues concerning the complainant and the fact that very serious disciplinary issues had arisen which had to be dealt with by the applicant. No doubt, he would have been able to have raised the issue of the appropriate weight to be attached to the fact that these allegations were being made from the safe haven of a foreign jurisdiction.

63. It might have been expected that having regard to the established personal and professional connection between JK and the SWAHB, particularly area 9, and having regard to the fact that in that same area, a prior unsubstantiated allegation of child sex abuse against the applicant had been dealt with, that particular care would have been taken to ensure that the inquiry was scrupulously fair to the applicant. In reality, what should have been an independent and impartial inquiry became simply a hunt.

64. There is, in the discovered documents mentioned, a number of references to the "*Barr judgment letter*". From these references, I infer that it was intended by the SWAHB that the letter of 14th July to the applicant was a compliance with the natural justice requirements set out in the judgment of Barr J. in *McQ v. Gleeson* [1998] 4 I.R. 84. If that was the intention, then, manifestly, the content of the letter, reflecting the decision to provide as little detail as possible and, if anything, to disguise the alleged sequence of events, and the subsequent decision to ignore the applicant's request for information, rendered their approach or strategy a grotesque parody of the judgment of Barr J. Not surprisingly, no such case has ever been advanced by the HSE at any stage of these proceedings.

65. Returning to the events as they unfolded after August 2003, there is an entry dated 26th September 2003, in a file sheet in the handwriting of JOD as follows:

> *"C.McL APSW - requested K file - as she and O wish to examine in order to make decision on how to proceed."*

66. The next entry on the same file sheet is 29th September 2003, again in the handwriting of JOD. This reads as follows:

> *"RK file to Old County Road HC for C.McL."*

67. The next entry on the same file sheet is dated 2nd October 2003, and again is an entry by JOD which reads as follows:

> *"Discussion OG, CCM, McL, APSW, DMTL, JOD, SW re progress with K.*
>
> *CCM and APSW - check out A9.*
>
> *CPN, case responsibility - before decision re [?]*
>
> *J to request clear 'validation report' from MK, similar to what is provided from St. Louise's etc. CCN and TL, APSW meeting 8/10/W/A. J voiced her concern about length of time and further delay in progressing due to the risk that may be presented to children who have . . ."*

68. A further meeting was scheduled by SWAHB for 5th November 2003. The letter which notified the applicant of this meeting was dated 28th October 2003, and contained the following paragraph:

> *"You raise a number of queries in your correspondence; appropriate questions will be answered at this meeting."*

69. The letter goes on to threaten that if the applicant does not attend, a decision will be made in his absence whether to inform third parties, including his employer, family members and neighbours of the allegations.

70. The applicant responded to the letter of 28th October 2003 by a letter written on 3rd November 2003, addressed to Mr. Michael Lyons, regional chief executive of the Eastern Regional Health Authority. In this letter, he protested at the fact that his correspondence was being ignored and asked which, if any, of his nine questions were the SWAHB minded to answer. He goes on to protest that he was still denied knowledge of the name of the student who made the allegations. He draws attention to the fact that because of this, he may still be teaching the pupil in question.

71. The applicant did not attend the meeting on 5th November 2003. This fact, *inter alia*, is recorded in an entry in a file sheet dated 5th November 2011, in the familiar handwriting of JOD as follows:

> *"Office meeting scheduled for 4.00pm at -------- Health Centre.*
>
> *JOD, S/W and DN T/L present until 4.40pm.*
>
> *Mr. D.P. did not attend meeting.*
>
> *DN telephoned to C.McL APSW re informing school. D stated that she believes that A4 have completed their task, as requested by A9, to meet with alleged perp.*
>
> *Decision made to inform school.*
>
> *However, C said this now A9's responsibility as school in their area.*
>
> *C.McL to inform AM PSW A9 of same on Mon 10/11/03 and inform S/W of outcome."*

72. A case note dated 10th November 20003, signed by DM, team leader, and C.McL/PSW records the following:

> *"C to negotiate with AM PSW A9, A9 now taking responsibility for sharing info with school as we've done our piece as requested with alleged perp.*
>
> *D check J's file up to date to transfer back file to A9."*

73. In the meantime, JOD had written to MK a letter of 8th October 2003, in the following terms:

"Dear M,

> *Hope you are keeping well.*
>
> *I recently met with the principal social worker and child care manager in terms of planning an appropriate response to R's disclosure abuse.*
>
> *In your report, you have informed me of the details R shared with you regarding the abuse he suffered.*
>
> *In order to further pursue the allegations, we are asking you in your professional opinion, or in terms of the information R shared, if you determine R's disclosure as a validated account of sexual abuse?*
>
> *I would greatly appreciate if you could reply to the same by Monday 6th October by fax.*
>
> *My apologies for the short notice but we are meeting again early next week to discuss this case."*

74. By letter dated 9th October 2003, MK replied in the following terms:

> *"Dear Ms. O'D,*

As a licensed Master Social Worker working in the field of children and families and specialising in the emotional and behavioural impact of sexual abuse and assault on children and adolescence, I submit this letter as formal confirmation that I unreservedly determine that RK's disclosure of sexual abuse by Mr. P. De P and all subsequent information discussed our counselling sessions pertaining to said disclosure, constitute a validated account of sexual abuse.

If you have any questions or require additional regarding this matter, please do not hesitate to contact me."

75. The internal documents discovered by the HSE do not contain any record of receipt of or any discussion of the letter of 9th October 2003, from MK apart, perhaps, from an entry dated 23rd October 2003, in a file sheet in which a note appears to have been made by JOD and is in the following terms:

"TICIT SWAHB MILLENIUM PARK RE VALIDATION OF CREDENTIALS

E at NSWQB 'Policy' on 2nd floor, 8-10 Baggot Street, Dublin 2, telephone number www.nswub.ie

TICIT ABOVE - E will check out info in Texas but believes that L.N.S.W. would be qualified (esp. with specializing) to give a validation CSA . . ."

76. None of the internal documents discovered by the HSE disclose any discussion of the "*validation*" report from MK until the minute of a record of the meeting on 22nd December 2003, between the school Principal and CF and GB. It would appear that by that time, responsibility for the case had been handed back by Area 4 to Area 9. Indeed, that fact appears to be recorded in the following entry dated 19th November 2003, in a file sheet, again the note appearing to be in the handwriting of JOD, in the following terms:

"T/C/T DM: FILE TO BE RETURNED TO CMcL APSW to be given to AM PSW tomorrow 20/11/03.

I discussed with DM the possibility of contacting JK to acknowledge the distress she and especially R have experienced since the time of R's abuse, But also to inform the victim and family that A4 completed the tasks that were requested from A9, i.e. gathering info and attempting to meet the alleged perp - dissemination of information is now the responsibility of A9 to address.

To discuss finishing piece with CMcL, APSW on 19/11/03."

77. There is a further note on the same file sheet dated 5th December 2003, again in the handwriting of JOD, in the following terms:

"T/C/F DN requesting date to meet to draft letter re. Barr judgment to third parties - DM writing to P.D.P. informing of dissemination."

78. The obvious remarkable feature of the note made on 19th November 2003, is the state of mind revealed on the part of the SWAHB. There is no doubt at this stage that the allegations of abuse by RK are now an established proven fact so far as the SWAHB is concerned, as evidenced by their concern to express sympathy for the distress of RK and JK for the abuse suffered.

79. By a letter of 5th December 2003, the SWAHB wrote to the applicant as follows:

"A Chara,

I am writing to inform you that the SWAHB has determined that allegations made against you of child sexual abuse will be shared with your employers, ...Secondary School,. . . .after 15th December 2003, as you have not attended meetings set up by the SWAHB to discuss these allegations."

80. The letter was signed by DM Social Work Team Leader.

81. The applicant responded to this letter by a letter dated 15th December 2003, in which he notes that notwithstanding the fact that the letter of SWAHB is dated 5th December 2003, it did not reach him until the afternoon of Wednesday 10th December 2003, thereby leaving him little or no opportunity to respond before the deadline set. He also protests at what he describes as an incorrect variation on the correct address and he informs DM that he is writing to Mr. Michael Lyons, regional chief executive of the Eastern Region Health Authority.

82. A meeting was arranged between GB and CF on behalf of the SWAHB and Mr. M, the Principal of the school, where the applicant taught. The case note or minute of the meeting on 22nd December 2003 is brief and is in the following terms:

"The outcome

We advised Mr. M of the history of our involvement, that CCA4 were involved to interview Mr. D.P, given Ms. K being a former employee of this Department.

We advised Mr. M of the specific nature of the allegations and the validation received from a social worker in America who specialises in working with victims of CSA.

We advised Mr. M of efforts to meet Mr. D.P. and Mr. D.P's failure to attend appointments.

Mr. M was very shocked and his initial reaction was one of disbelief. He spoke to Mr. D.P earlier in the day regarding the letter. Mr. D.P reacted in a shocked way according to Mr. M and his reaction suggested that he did not appear to be aware of the allegations made against him.

We advised Mr. M that on the balance of probabilities, we believe this abuse has occurred and that Mr. D.P poses a potential risk to other children. We advised Mr. M to contact his board of management and legal representatives regarding this information.

Mr. M is aware that the alleged abuse has been reported to the gardaí for investigation.

Mr. M has been given the names of our legal representatives and the office number of S . . . and the name and office

number of the principal social worker should he have further queries."

83. It is worthwhile to pause at this stage in the process to consider the state of the investigation. It is clear that the decision of the SWAHB made in July and August 2003, to tell the applicant as little as possible and to ignore his queries unless he attended a meeting, has come to be the dominant influence over the progress of the inquiry. The other obvious dominant influence is the obtaining from MK of a "*validation*" of the allegations made by RK. This latter feature requires some attention at this stage.

84. It must have been, and I am quite satisfied, it was plainly obvious to the SWAHB, that the relationship between RK and MK was a professional therapeutic one in which RK had sought the counselling services of MK with regard to mental health-type problems he was suffering towards the end of 2001. In the course of his sessions with MK, he made complaints of child sexual abuse against the applicant. Of course, it was entirely proper of MK to report these allegations to appropriate authorities and to continue to offer appropriate therapy to RK.

85. The process of validation of a complaint of child sexual abuse is an essentially different thing, necessarily involving, as it must, an independent evaluation by an appropriately qualified professional, to assess the credibility of the allegations made. Manifestly, MK, because of her role as counsellor and therapist to RK, lacked the necessary independence to take on the task of validating RK's allegations. All of this must have been, and I am certain, was readily apparent to the social workers of the SWAHB at all times during the investigative process under s. 3 of the Childcare Act 1991. Indeed, in the note already referred to, made on 2nd October 2003, JOD was tasked to request a clear "*validation report similar to what is provided from St. Louise's*", namely, an independent evaluation of the allegations made. It must have been absolutely clear to all involved in this process that MK was not a person, because of her connection to RK, who could give such a report. Nevertheless, this is precisely what was sought from MK in October 2003, and whether by reason of confusion or lack of experience or lack of appropriate skill and qualification or experience, MK acceded to that request.

86. The decision by the SWAHB to treat the report from MK as a "*validation report*" and to treat the allegations of RK apparently as well founded because the applicant would not attend their proposed meetings, and their decision to disseminate the allegations to the school, in effect, treating their inquiry as finished are extraordinary decisions which, in the absence of any evidence by way of explanation of them, leaves this court with no option but to draw the inferences that seem to obviously arise. Before doing that, I would like to draw attention to the content of the record of the meeting on 22nd December 2003.

87. First, Mr. M was informed of the nature of the allegations and that these had been validated by a person who specialises in working with victims of CSA. This communication, without any doubt, could only have grossly misled Mr. M into believing that the allegations of RK had been reliably professionally validated. CF and GB knew that this was untrue. I must regretfully conclude that CF and GB deliberately misrepresented the truth of this situation.

88. The note then goes on to say Mr. M was advised of efforts made to meet with the applicant and of his failure to attend appointments. Nowhere is there any mention whatever of the applicant's requests for information or of his reasons for not attending meetings. Thus, I am quite satisfied that CF and GB, knowing the decisions that the SWAHB had taken with regard to the applicant's requests for information, deliberately misrepresented, in a most prejudicial way, the applicant's position.

89. The note goes on to say that CF and GB advised Mr. M that they believed the abuse had occurred and that the applicant was a potential risk to other children. Having regard to the manner in which the investigation had been conducted up to that point, this statement represents, at the very least, a wholly impermissible prejudgment in the inquiry and, indeed, it is very hard to avoid the inference that this conclusion was the result of conscious and deliberate denials of the applicant's constitutional rights, probably actuated by actual bias against the applicant.

90. A case note dated 22nd December 2003, contains a record of a telephone conversation between CF and Inspector SL in which CF informed Inspector L that the school had been informed and that the SWAHB would be sharing information with them. CF goes on to record:

> *"S is aware of the validation from the Master Social Worker in . . . but he does not think that this is enough for a prosecution and he is awaiting advice from the DPP."*

91. As the SWAHB was the only party in receipt of the communications from MK, it is to be inferred that CF conveyed to Inspector L that there had been "validation" from the "*Master Social Worker*" in the US. The representation that there had been "validation" was in itself untrue and the added description of the source of the validation as the "*Master Social Worker*" can only have been for the purposes of emphasising the misrepresentation to ensure its acceptance by Inspector L.

92. A case note dated 22nd December 2003, records the formal handing over of the RK file from Area 4 to Area 9, in other words, back to the geographical area in which the complaint had arisen. From here on, it would appear that the matter appears to have been dealt with on behalf of the SWAHB, primarily by CF, a social worker team leader. However, notwithstanding this, there is no record of any activity on the case in the SWAHB file until 12th December 2005.

93. During 2004, apart from a flurry of emails in the first weeks of 2004 between JK and GB, very little appears to have happened.

94. These emails are interesting in themselves in the light they shed on the relationship that existed and developed between JK and the SWAHB.

95. The first of these emails is from GB to JK dated 5th January 2004, and reads as follows:

> *"Hi,*
>
> *Hope things are going well and that Christmas went well. We had a ball and I'm glad to be back to work for a rest. Just to let you know that CF and I have met with the Principal of the school and things are moving at that level now."*

96. This is replied to by an email of the same date from JK in which she says:

> *"Thank you G AND God!!! Is it the CF that I know? What is happening?"*

97. This email in turn was replied to by GB on 8th January 2004, as follows:

"Yo!

Yes is the same CF.

The allegation was put to the perp but he refused to meet with the social workers so the info went to his employer.

We met with the Principal of the school on Christmas Eve and was given the appropriate advice re suitability so we are awaiting him getting back to us. It will be slow but hopefully not as snail as up to this point."

98. On the same day, JK replied to GB's email saying:

"So - - - - what's the next step??"

99. On 9th January 2004, GB replied, saying:

"We have no power to do anything but we need to see that the school follow their procedures in assessing his suitability or not as a person who has contact with children. I would say that a case conference could be called depending on outcome of the school investigation."

100. JK replied on the same date as follows:

"What did Mr. M say???"

101. GB replied to this on Monday 12th January 2004, as follows:

"He was a bit shocked I'd say since he knows the man and he was going off to talk to his Board Chairman and legal adviser. That's all we know so far."

102. The final email in this series was of the same day from JK saying:

"Did he seem to believe you?"

103. On the same day, 12th January 2004, a letter was written by Messrs. Cullen & Company, solicitors acting for JK addressed to Roger Green & Company, solicitors acting for the Eastern Regional Health Authority which included the SWAHB and was in the following terms:

"Dear Sirs,

We write to confirm we act on behalf of JK, mother of RK, who has made serious complaints against Mr. D.P, her teacher at the . . . . Secondary School . . . .

I enclose herewith a copy of our client's authority and we should be obliged if you would please let us have a report on all actions taken by the Health Authority since the complaints made by our client's son."

104. A further letter was written by Cullen & Company, solicitors, on 10th June 2004, to Roger Greene & Company in which the following is said:

"Dear Sirs,

We refer to your letter of 16th April 2004 and enclose herewith emailed consent of R and JK.

We await hearing from you further regarding the matter."

105. With that letter, there was enclosed the following email from JK dated 8th June 2004, which said:

"I hereby consent to the release of my statement and the release of Miss K's report to the Principal's Secretary of the Board of management of . . . School. . . and to Cullen & Company, solicitors, 86/88 Tyrconnell Road, Inchicore, Dublin 8."

106. The letter dated 16th April 2004, from Roger Greene & Company to Cullen & Company appears to have escaped discovery and therefore it cannot be known with precision what problem had occurred with regard to the conveying of the consent sought. It is probably reasonable to infer that the "client's authority" referred to in the letter of 12th January 2004, from Cullen & Company was probably not enclosed. In the event, an explicit consent to the release of MK's report and JK's statement to the school was furnished as of 10th June 2004.

107. Why all this arose, in the first place, was because of a letter dated 8th January 2004, sent by SM, Principal of the school, to CF in the following terms:

"Dear Ms. F,

I refer to the letter from Ms. JOD and Mr. DM, social workers in the SWAHB in Tallaght dated 19th December 2003, which I received on 22nd December 2003, and also to my subsequent meeting with you and your colleague, Mr. GB, on the evening of 22nd December at . . . . .

Having since discussed the matter with the Chairperson of our Board of management, we are shocked and appalled that while the matter of the alleged abuse was first made known to the alleged perpetrator in July 2003, the Health Board failed to notify the school authorities until over four months had elapsed.

We now request, following legal advice, that the Health Board furnish us with copies of all statements and reports to substantiate these allegations, including copies of any correspondence with the gardaí in the matter.

In view of the fact that the Health Board has all the information, what direction would the Health Board give in respect

of this person continuing as a teacher in our school, based on the fact that the Health Board is the statutory authority charged specifically with the function of promoting the welfare of children under the 1991 Childcare Act.

In view of the serious nature of the allegations, an immediate response to all of the matters raised in this letter is essential to enable the Board of management to make an informed decision which takes account of the welfare of children in our care and which respects the rights of our employees."

108. This letter was replied to by CF on 19th January 2004, by letter in which she says:

"Dear Mr. M,

Thank you for your letter dated 8th January 2004 in relation to concerns received by our Department about Mr.D.P.

I have given your letter to our principal social worker, Ms. AM, who is forwarding it to our solicitors for a response.

Should you have any further queries, you may contact Ms. Moran at [phone number]."

109. By a letter dated 27th January 2004, the Principal of the school, SM, wrote to Ms. AM as follows:

"Dear Ms. M,

Thank you for your letter of 16th inst. in reply to my letter of 8th inst.

Bearing in mind the serious nature of the allegations made in previous correspondence from the Health Board, it is imperative that we receive the information sought in our letter of 8th January without any further delay. In that regard, we note that you have furnished our letter to your legal advisors for their opinion and surely by now you are in a position to advise, and indeed furnish us with the information requested.

In the circumstances, and as set out in our letter of 8th inst, that in view of the serious nature of the allegations an immediate response to the matter raised is essential to enable the Board of management to make an informed decision which takes account of the welfare of children in our care and respects the rights of our employees."

110. Notwithstanding the fact that the consent of JK to the release of the information sought was obtained from JK and forwarded to the solicitors for the SWAHB by letter of 10th June 2004, there was no response whatsoever from the SWAHB to the requests from the school to supply that material until 12th December 2005.

111. Before taking up the story again at that point, it is necessary to go back a little bit in time to look at the communications involving An Garda Síochána.

112. Insofar as the discovered documents are concerned, the record appears to commence on 17th July 2003, when JOD wrote to Superintendent TN as follows:

"Re RK

A Chara,

As you may recall, I spoke to you on the telephone regarding the above named child and allegations of child sexual abuse.

I have enclosed a copy of the report I received from the child's counsellor in the USA.

I have invited the alleged offender to meet with me on Monday 21st July to discuss the allegations.

I will liaise with you following this meeting."

113. The next communication to An Garda Síochána, this time to Superintendent JM, is a letter dated 17th October 2003. This letter provides the name of the applicant, both in its Irish and English form and his address. The text of the letter reads as follows:

"Please find attached validated disclosure of child sexual abuse by R against Mr. D.P. Mr.D.P. is currently a teacher. . .

The SWAHB has forwarded a Child Protection Notification to . . . garda station in February 2002. We are making plans to meet with our legal firm and Senior Counsel in relation to this matter and request that you, or a designated garda, be present for this meeting which we hope to schedule for next week . . ."

The letter is signed by CMcL, a principal social worker.

114. The next communication with the gardaí was an email dated 26th October 2003, from JK to Superintendent JM, and reads as follows:

"Dear Superintendent M,

I am writing to make a formal complaint of the rape of my son, RK, by Mr. D.P, a teacher at . . .Secondary School. . . It is my understanding that the HB has the statutory responsibility for garda notification. Mrs. AM, principal social worker in Naas, has been aware of this complaint since November 2001. Certainly, the garda notification should have been done before now. Mrs. M has been remiss in getting this done, and as a result of her negligence, Mr. D.P. has continued access to vulnerable young boys for the past two years.

To the best of my knowledge, the rapes occurred on at least three occasions between November 2000 and May 2001. The rapes involved anal and oral intercourse along with sadistic sexual beatings of my son, R (then aged 13), by Mr. D.P. Mr. D.P. also exposed R to pornography. These incidents happened in Mr. D.P's home. R also may have been sexually assaulted by Mr. D.P. at school. R has suffered greatly as a result of this trauma and was hospitalised four times for

suicide attempts. I do not have knowledge of the exact details of the incident as his therapist advised me that it was best for R that he did not share these details with me. R made a comprehensive statement to his therapist and his outcry of rape was validated. JOD has a copy of his outcry of rape and sexual abuse. She can be reached at [telephone number].

I hope that your involvement in this case can eventually bring justice to us. My family has suffered immense trauma as a result of this sick, sexual predator.

Thank you so much for your help."

115. This email appears to have been replied to by one also dated 26th October 2003, from Superintendent JM, in which he says:

"Hi J,

Sorry for the delay in getting back to you, technical problems. We got some correspondence from the Health Board last week and SL (Inspector) attended a meeting in Dublin last Tuesday. I was not aware of this on Friday. To follow up the matter, can you send me as much detail as you can of the incidents, dates, if possible, if not, as near as you can, times, places and as much detail of what occurred as you can supply . . ."

No further communication appears to have been received by An Garda Síochána from JK. The next communication to An Garda Síochána came from AM, principal social worker, and is a letter dated 16th April 2004, addressed to Inspector SL and reads as follows:

"Re RK/P D.P.

Dear S,

In relation to the above case, the Principal of the . . . Secondary School was notified of the allegations made against Mr. D.P, in the context of the nature of Mr. D. P's employment and the Board's responsibility to protect children. In order to manage this information and a response to same, the school has requested copies of statements relating to the alleged abuse which the Health Board has on record. The information on record includes a written account by Ms. JK, the young person's mother, to what was told to her, and the report of Ms. MK, social worker. Is there any reason relating to your investigation why these reports should not be forwarded to the school at this time?

Is it likely that Mr. De P will have direct access to these reports should they be forwarded?

I would appreciate if you could let me have an update regarding this case at this time."

116. This letter was replied to by Inspector SL by a letter dated 26th April 2004, in which he says:

"Dear A,

I acknowledge receipt of your recent letter. Please note that RK declined to be interviewed or make a formal statement of complaint in this matter and wishes to have the matter dropped. The gardaí will be taking no further action.

I will be having the Principal at . . . school informed accordingly."

117. A curious feature of the letter of 16th April 2004 from AM is revealed in the last sentence of the first paragraph where she evinces an obvious concern about the applicant having direct access to materials sought by the school. In the context of the natural justice obligations of the SWAHB to the applicant, the concern evinced here is extraordinary and reflects the reluctance, and indeed, not just reluctance, the downright refusal of JK to countenance the release of these materials directly to Mr. De P as is revealed in the later emails.

118. As stated in my earlier judgment in this matter of 20th May 2010, the SWAHB, through its various social workers, seemed to have entered into a wholly inappropriate relationship with JK which involved the SWAHB, acting as if RK/JK were clients from whom they took instructions, in total disregard of their statutory role as independent and impartial investigators, and indeed it would appear to go further, insofar as some of the social workers were concerned, and in particular, CF, where the character of the relationship appears to have been a personal one as well, all of which was obviously wholly inconsistent with the discharge of the duties imposed upon them by the Childcare Act 1991.

119. Although an attempt was made to overcome the conflict that arose because of JK's former employment in Area 9 and the resultant personal connections there, the transfer of the case to Area 4, it is apparent, from the documents was wholly ineffective in introducing a necessary degree of independence and impartiality to the inquiry. The conduct of JOD and DM of the inquiry during 2003 was, as indicated above, remarkably deficient of any sense of what the true nature of the inquiry was or should have been, and seemed to me to be coloured from the outset by a strong predilection against the applicant characterised by treating him as, at best, a difficult person, whose requests for reasonable information were viewed as attempts to hamper the inquiry, or, as they expressed it, *"hamper our follow up of allegations*". In effect, there was an inexorable movement by the SWHAB to a desired conclusion, i.e. that the allegations of child sex abuse relayed by their former colleague in relation to her child were well founded.

120. The transfer of case in December 2003 back from Area 4 to Area 9 was in itself an extraordinary decision. It would appear that the rationale underlying this decision was that the inquiry had been concluded and that therefore Area 4 had accomplished its part of the task and that for the purposes of resulting actions, no conflict of interests issues arose, if the matter was transferred back to Area 9. One can only observe that the reasoning apparently underlying this choice is simply absurd. In the first place, the inquiry was not completed and to any intelligent, impartial outsider, it was apparent it had not even begun. Secondly, critical choices that had thereafter to be made affecting the applicant, such as liaising with the school and the other third parties that needed to be informed, the supply of materials underlying the complaint and the advice that would necessarily have to be given to the SWAHB concerning the applicant were all functions involving the exercise of the discretion of the SWAHB and in respect of which the conflict of interest problem which was there from the outset was as acute in that phase of the process as at any time.

121. In the meantime, the request by the school in its letter of 8th January 2004, for information and documentation was being ignored by the SWAHB. That is until early in December 2005, almost two years having elapsed, when, for reasons that are not easy to understand, the matter was reactivated. There has been no adequate explanation of the cessation of activity on the case by the

SWAHB between January 2004 and December 2005. During that time, apart from the email of 8th June 2004, furnishing consent to the giving of reports to the school, there does not appear to have been any other communication from JK to the SWAHB. The only explanation advanced, which is in the letter of 24th March 2006, from CF to the applicant, is "*lack of resources*". On the face of it, having regard to the seriousness of the allegations made, and the fact that CF herself took up the case in December 2003, that explanation is wholly unconvincing. In the absence of any evidence emanating from the SWAHB to explain this, I can only infer that this inactivity was the probable result of the refusal of JK to allow her, or RK's statement or MK's reports to go to the applicant. It would appear that it was the request by the school for this material that seems to have brought about this situation.

122. The earliest record dealing with the revival of the investigation is an entry in the minutes of a meeting of the SWAHB on 15th November 2005. The subject matter of the meeting as gleaned from the head note to it is '*. . . . Local Health Office Case Reviews*'. Under the name of Complainant, the following is recorded:

> "• *Three year old - serious allegations against a teacher.*
>
> • *Area 4 dealt with case initially as allegation involved an ex-member of social work staff.*
>
> • *School were informed.*
>
> • *Child was living in the States at time of disclosure and Social Worker in States considered allegation to be credible.*
>
> • *Child did not make statement.*
>
> • *[Redacted]*
>
> • *Teacher possibly in system."*

123. Under the heading of '*Action*', the following is recorded:

> "• *HSE to be clear with school around their responsibility and protection, etc.*
>
> • *For closure in appropriate manner with legal advice."*

124. The next recorded event in the chronology, or at least as revealed by the discovery of documents, appears to have been an email from CF dated 30th November 2005, to MK in which CF says the following:

> *"Dear Ms. K,*
>
> *My name is CF and I am currently dealing with the file in the social work department in relation to RK and his allegations of CSA.*
>
> *I wish to send the reports that you sent to us to the school and their Board of management so that they can make an informed decision in relation to the teacher's future career.*
>
> *In order to do this, I would be really grateful if you could email me your consent, to share all your reports and correspondence to the school.*
>
> *Looking forward to hearing from you."*

125. That email was responded to by MK by way of an email of 2nd December 2005, in which she said:

> *"Dear Ms. F,*
>
> *You have my written consent to share said reports with the school. Should you require further information or assistance, please do not hesitate to contact me."*

126. The 12th December 2005 appears to have been a day of considerable activity in the case insofar as CF was concerned. On that day, at 11.44am, CF sent the following email to MK:

> *"Dear M,*
>
> *Thank you for your email. I am also requesting your consent to allow the alleged perpetrator to read the same reports.*
>
> *In order to be clear about your validation, can you give me some information about your role within Safe Place, do you undertake validations of sexual abuse as part of your role, are these done on behalf of the Statutory Child Protection Agency and who is the Statutory Child Protection Agency in your area and do you have a telephone number for them.*
>
> *Would any of your previous validations have been used in the court arena in terms of prosecutions? It would also be really great if you could send us some information in relation to the agency Safe Place itself.*
>
> *I am sorry about all the questions but we need to be clear when sharing the information with third parties about the validation process that you used and that it is compatible with our validation process.*
>
> *We are hoping to meet with the school next Wednesday so it would be terrific if you could respond prior to then.*
>
> *Also, I wonder if you have any current contact with J and K. I would like to let J know about this meeting and receive an update about how R is doing.*
>
> *Thank you for all your assistance in this matter."*

127. By a letter of the same day, i.e. 12th December 2005, CF wrote to the applicant as follows:

"Dear Mr.D.P.,,

Please find enclosed a copy of previous correspondence sent to you by the Health Service Executive detailing the nature of allegations made against you by a former pupil, RK. The Health Service Executive, having received the allegations, commenced an investigation in pursuance of its statutory obligations.

As you will recall, you were offered numerous appointments to meet and discuss these allegations, namely, 21st July 2003, 29th August 2003 and 5th November 2003. Following your non-attendance, the investigation was concluded in the absence of your input and the conclusion reached was that on the balance, the allegations were credible. A decision was made to inform your employer, the . . . Secondary School, of these allegations.

I subsequently met with Mr. SM, the Principal, on 22nd December 2003, and verbally shared the nature of these allegations.

The social work department are now requesting a meeting to take place next Wednesday 21st December to review the information with your employers. We have received written consent from R's mother, Ms. JK, and Ms. MK, Child and Adolescent Counsellor to release copies of written reports to the school detailing R's allegations and the professional assessment regarding their validity.

Should you wish to meet with me prior to Wednesday to discuss these allegations or examine the written reports, I am available to meet with you on Tuesday 20th December at 12pm in the social work department . . .

If you wish to bring legal representation to this meeting, please inform me in advance as I may have to change the date to accommodate this request."

128. Before passing on to the events of the following day, 13th December 2005, it is worth noting that it is clear from the email of CF to MK of 12th December 2005, that CK realised that what had been persistently described by her before then as "*validation*" was not that at all, unless, of course, MK could respond to her in terms which demonstrated that it was compatible with what is regarded as validation in this jurisdiction. No doubt, CF may have hoped that MK could rescue the situation in her response. CF's realisation, however, does not appear to have induced any sense of caution because she ploughed on regardless, and thus sent out the letter of the same date to the applicant, who, needless to say, must have been devastated by it, having heard nothing for almost two years and having assumed, reasonably, that the matter had gone away.

129. The next day, 13th December 2005, produced a curious exchange of emails between CF and JK. Up to this point, there is no record of contact between CF and JK since 2004. The first email from JK of 13th December 2005, is recorded as having been sent at 21.03, and in it, JK says:

"Hi C,

How are you? And everyone else? I hope well.

MK just forwarded your emails to me today. I would love to speak with you about this. My phone # at work is [phone number].

This is my email account. R doesn't use it so feel free to send whatever.

I hope to speak with you soon."

130. One would be inclined to infer from this email that up to the point it was sent, there had been no contact between CF and JK and JK's re-involvement in the process appeared to be triggered by CF's emails to MK who in turn forwarded these to JK.

131. However, at 22.31, approximately an hour and a half later, JK sent a second email to CF from the same email address and this email is headed '*Impact Statement by JK regarding RK*'. This is a lengthy email setting out in some considerable detail the allegations of abuse, including one not theretofore mentioned, and also setting out the effects of the alleged abuse on the complainant and on JK.

132. A curious feature concerning this email is that it was clearly a solicited communication. There is no record whatever of the request for it. It leads me to conclude that apart from the communications that are recorded in the documents discovered, there was some other communication between CF and JK. When one contrasts the tone and content of JK's earlier email, with that of the "*impact statement*" an hour and a half later, it is very difficult to avoid the conclusion that some additional contact occurred between JK and CF in which CF requested this "*impact statement*".

133. I am not deterred from that conclusion by an email sent by CF on 14th December 2005, at 11.47 which appears to be a response to JK's earlier email on 13th December 2005 sent at 21.03. In it, CF says the following:

"Hi J,

I am delighted to have made contact with you, I really hope that R and yourself are doing well and looking forward to Christmas.

As you mat (y) be aware from M, we are hoping to meet with the school next week to review the information and I am waiting for them to come back to me about this. I will definitely ring you, probably this evening or later on in the week. I am out all afternoon but will try to reach you this evening. The time delay is a pain.

Looking forward to talking later."

134. JK responds to this email on the same day at 20.01 as follows:

"No time delay. I am in the UK. I will be in the office all day tomorrow.

Work # is [number].

I look forward to talking with you."

135. It is to be noted that in the email above from CF, there is no reference whatever to the "*impact statement*", although it is probable that CF had received it by then. The following day, however, on 15th December 2005, by an email sent at 13.19, CF does acknowledge JK's emails containing the "*impact statement*" in the following terms:

> *"J,*
>
> *Thank you very much for this email, I cannot but begin to imagine how difficult all this has been for both R and yourself. As you know, I am hoping to meet with the school next week to reiterate our concerns in relation to R's disclosure and I would very much like your written consent to give them a copy of this impact statement, if we are legally able to do this. Can you email me your written consent for this?*
>
> *I tried to ring you at the number you sent me last night, but it just rang out. Unfortunately, I will not be in the office until Tuesday evening. You can call me on my home number at [number] if you want to discuss it. I will try and get you next week in any event.*
>
> *Talk to you soon."*

136. Returning to the correspondence between CF and MK, in a lengthy email of 14th December 2005, MK responded to the queries raised by CF in her email of 13th December 2005, as follows:

> *"Hi C,*
>
> *I apologise that this response has taken so long. I understand that you have J's contact information so the following is the remainder of the answers to your initial questions. Answer #2 is lengthy; I included information pertaining to your specific question, however, the latter (in bold and underlined) part of the answer is mostly likely what you need. I will be on vacation from 19th December 2005 to 3rd January 2006 . . .*
>
> *Thank you.*
>
> *i) Permission for the alleged perpetrator to have access to my reports will have to be given by JK. Additionally, I wanted to know what your agency's policy is about allowing perpetrators to have access to this kind of information.*
>
> *Ii My position at Safe Place is that of a Child and Adolescent Counsellor; my role is solely to provide therapy and advocacy as needed, for my clients and their families. If a client makes an outcry of sexual abuse, physical abuse or neglect, I am required by both my Social Work licence and Texas State law to report said abuse/neglect to the Child Protective Services (CPS) which is a component of the Texas Department of Protective Regulatory Services. CPS (City of. . . Regional Office telephone number*
>
> *[ ]; State of Texas Office Headquarters, telephone number*
>
> *[ ]then investigates the report to determine validity of the outcry and what subsequent steps, if any, need to be taken to protect the child from further harm. CPS involves the . . . Police Department's Child Abuse Unit in cases involving criminal activity (e.g. sexual assault of a child is a criminal offence, second degree felony, in the State of Texas; improper contact between an educator and a student is also a second degree felony in Texas). HOWEVER, in R's case, due to the alleged sexual abuse occurring in Ireland and the outcry occurring in the United States, the Attorney General of Texas became involved as a result of being contacted by Interpol (I am not certain of the details but I know that Interpol was connected with the Attorney General's office involvement in the case; the Sergeant Investigator will mostly be able to provide more information). In March 2004, I met with Sergeant Investigator FM with the Texas Attorney General's office [phone number]. Sergeant M had a statement ready for R to sign in regards to the allegation and in relation to potential legal action in Ireland. However, at the time, R was not in an emotionally secure place and was subsequently unwilling to sign the statement.*
>
> *iii) Safe Place is a non-profit agency whose mission is to end rape, sexual assault and domestic violence. The agency has a variety of components including counselling for both children/adolescents and for adults. Here is our website: . . . ; it should answer most of your questions about the agency."*

137. As is apparent, the information contained in this email is quite explicit and leaves not the slightest room for doubt but that what the SWAHB had taken for "*validation*" up to this point was not that at all and was no more than an endorsement or expression of support by the complainant's counsellor in respect of the allegations made. It was also made clear in this email that the validation process in Texas, as in this jurisdiction, involves independent evaluation of the allegations.

138. Once more, this exchange of emails reveals a willingness by the SWAHB to favour its relationship with the complainant and the perceived obligations it associated therewith over its role as an independent, impartial enquirer and the obligations of natural justice owed by it, to persons affected by the allegations.

139. MK sent a further email on 21st December 2005, in which she enquired:

> *"C,*
>
> *Can you please update me on how things went w/the school?*
>
> *Thanks*
>
> *M."*

140. To that email, CF responded by an email on 29th December 2005, saying:

> *"Dear M,*

Thank you for your email. Unfortunately, the school did not meet on the proposed date and requested that it be postponed until early January. Our plan is to meet in the week of 16th.

In relation to your email, am I correct in my understanding that you don't validate an outcry of sexual abuse but pass them on to the State agency for validation purposes, or were you saying that you reported and do the validation yourself? I am sorry, I wasn't sure.

In relation to the sharing of the report with the alleged perpetrator, there was a judgment called the Barr judgment in the courts of Ireland which stated that the accused must have all the information in relation to the allegations made against him in order to defend himself. In this instance, given that we are giving the report to the school, our legal advice is that we must share that information with the accused. In this instance, I am not happy to give him a copy of the report, but I have offered him an opportunity to meet and share the contents of the report. I have spoken with J, an advisor, regarding this.

I trust this answers your query.

141. MK replied to this email by an email of the same day, 29th December 2005, in which she said:

"C,

Thanks for updating me. Yes, your understanding is correct. As a counsellor, I do not validate outcries as this is done by Child Protective Services. Even if a child provides further details after his/initial outcry, I am obligated to report this additional information to CPS for them to confirm.

Thank you for answering my questions about your legal requirements to share report with alleged perpetrator . . ."

142. The next email in the correspondence between CF and MK was an email of 11th January 2006 from CF to MK in which she says:

"Dear M,

Thanks again for your reply. The concern I have is that R's disclosure is not validated by an agency that undertook this work. Nevertheless, you have stated in a previous letter dated October 2003 that you unreservedly determine that R's disclosure constituted a validated account of CSA. Are you happy in your role as a counsellor to determine this view?

Also, M, as you can probably understand, we are being asked for verification of your qualifications from the alleged perpetrator and the school. I wonder would it be possible to have confirmation of your qualifications and experience working the field of sexual abuse from your director.

The meeting with the school has been postponed until mid-January so it would be useful if I could have the above before then, if possible.

I didn't contact Investigator M, but I have spoken with the Inspector in Ireland who has given me the information in relation to Interpol's involvement.

Thank you again for all your assistance in this matter."

143. This email was responded to by MK by an email of 12th January 2006, in which she says:

"C,

Thank you for reminding of the Oct.2003 letter; I apologise for the confusion. In our recent correspondence, I viewed the word 'validate' to mean that I had investigated and legally determined R's outcry to be true. My recent emails to you are based on the fact that the investigation aspect of the child sexual abuse case is not my role as a counsellor but rather falls to the Child Protective Services and law enforcement officials.

However, I did indeed write that I determined that R's disclosure was a validated account of CSA. My determination is based in regards to the details of his outcry, the consistency of his reports, the subsequent behavioural and emotional difficulties that he experienced after he reported CSA, all of which are consistent with my knowledge and experience of working with children who have been sexually abused. As a counsellor, this determination (which is again based on my experience, not on an investigation) of R's outcry remains the same.

Regarding the verification of my qualifications, I do understand and this will be no problem. My supervisor will have said qualification prepared no later than 11/13/05 and I will fax it to you then.

Again, I am sorry for the confusion. I hope I haven't made things difficult for you or for R's case.

Please let me know if you require further information."

144. By a letter dated 13th January 2006, from Safe Place and signed by S.A.S. counselling services manager, the following is said:

"Dear Ms. CF,

I am responding to your request of January 12th 2006 to verify the credentials of one of our Safe Place counsellors, Ms. MK.

I am able to confirm that I have first hand knowledge that Ms. K did complete her Master's Degree in Social Work from the University of Texas in . . . in 2001. The University of Texas School of Social Workers is accredited by the Council of Social Work Education.

She also was granted a licence as a Master's Level Worker (LMSW) by Texas State Board of Social Worker Examiners following her graduation in 2001. This licence allows her to practice social work in the State of Texas.

Before completing her Master's Degree, she was employed for five years by Helping Hand Home for Children in . . . Texas. This is a facility providing residential treatment to latency age children. Most of the children living at this home have experienced sexual abuse.

Ms. K has worked for four years since completing her MSSW as a Child and Adolescent Counsellor at Safe Place. She provides individual and group counselling to children who have experienced either both domestic violence and sexual abuse. Approximately one-half of our clients at Safe Place are victims of sexual abuse."

145. Returning to the email correspondence between CF and JK, in an email dated 29th December 2005, from CF to JK, she says the following:

"Dear J,

I hope you had a lovely Christmas.

Unfortunately, the meeting with the school did not go ahead as scheduled, they requested that we postpone it until early in the New Year. We are hoping to reschedule it for the week of 16th.

I won't be sharing your impact statements with the school or the alleged perpetrator following legal advice.

I will let you know once we have met with the school."

146. JK responds to this by an email dated 30th December 2005, in the following terms:

"Merry Christmas and Happy New Year.

Thanks for the update.

Did he show up to meet with you?

What's the reason for the legal advice?

Have a great long weekend."

147. Next to be considered is the interaction between CF and the school in December 2005.

148. By a letter dated 15th December 2005 from CF to Mr. POR, the Principal of the school, the following was said:

"Dear Mr. O'R,

Further to our telephone conversation on 12th December, I am requesting a meeting with yourself and a representative from the Board of management to review the information regarding allegations of sexual abuse made by a teacher in your school.

The Health Service Executive, having received these allegations, commenced an investigation in pursuance of its statutory obligations.

Mr. D.P. was offered several appointments to meet with the Health Service to discuss these allegations. Unfortunately, he declined to do so.

Following his non-attendance, a decision was made to inform his employer, the . . . Secondary School. A meeting was held on 22nd December 2003 with Mr. SM, formerly school Principal, and the nature of the allegations were verbally shared. Subsequent to this meeting, Mr. M requested the release of the reports pertaining to the allegations.

I have now obtained written consent from the pupil's mother and his counsellor in Texas to release these reports. I am happy to make them available to you.

I am requesting to meet next Wednesday 21st December at 10.00am in . . . House. The purpose of this meeting is to review the information and reiterate our concerns in relation to Mr. D.P. The childcare manager, Ms. MF, and myself will be in attendance.

I have written to Mr. D.P. informing him of the above. I have also offered him an appointment to meet prior to this. I look forward to hearing from you regarding this request."

149. On the same day, there is a case note dated 15th December 2005, signed by CF. This note appears to be a record of a telephone conversation from POR to CF. Given that the phone call appears to have been from POR to CF, one would infer that PF's letter of 15th December 2005, presumably having been sent by fax, was received by then and POR was making the telephone call in response.

150. The note reads as follows:

"P told me that his predecessor, Mr. M and C, dealt with these concerns and as far as the school was concerned, the matter was closed. He also referred to a letter from the gardaí. Mr. OR also raised questions in relation to Mr. D.P. being afforded due process in the investigation.

I again reiterated to Mr. OR that Mr. D.P. declined to attend all appointments offered to him and was offered due process. I reiterated that my concern is in relation to the risk to children.

Mr. OR was anxious about making the right decision. He felt this decision belongs with the social work department and not the school.

I advised Mr. OR that I will give him our outcome - a credible account of CSA in writing. Nonetheless, I stressed again my view of the importance of meeting to discuss all of these issues. I explained we cannot recommend Mr. D.P. is removed from teaching as we are not his employers. Nonetheless, we feel there is a risk to be considered.

Mr. OR did raise a concern as to the possibility the allegations are false. I reassured Mr. OR that we believe they are credible and would not be informing the school if we believe they were false.

Mr. OR took on board the content of the conversation. He also acknowledged he accepts the need for child welfare issues to be raised. Following receipt of my letter, he will contact me with regard to our proposed meeting."

151. The striking feature of this note is that having informed Mr. OR on 12th December 2005, of the reactivation of the matter, but in the meantime, having learnt from MK that there had not been proper a validation process, CF not only makes no reference to this critical event, but indeed, appears in the conversation with Mr. OR to stress "*credible account of CSA in writing*" and apparently to emphasise that they i.e. the SWAHP believe the allegations to be credible and that they would not be informing the school if they thought they were false. In addition to this, there is the gross misrepresentation of the applicant's position i.e. that the applicant had declined to attend all appointments, and the assertion, wholly untrue, that he had been offered due process.

152. With regard to CF's dealings with the applicant and the gardaí in this period of December 2005/January 2006, the discovery has thrown up two very interesting and telling documents. Insofar as the gardaí are concerned, it is a document which is discovered at Tab 83 in Booklet No 2, but is undoubtedly incorrectly dated as 31st January 2002. This document is headed *'Short History of Contact with the Department'*. The incorrect date attributed to the document is taken from the first entry in the document which is '*Notification to Gardaí of Alleged CSA'*, which, of course, did occur at the end of January 2002. It is quite clear from the document, however, that it was compiled at a much later date because it details the chronological history in relation to the correspondence down as far as 22nd June 2004, the last entry being the emailed consent from JK for reports to be released to her solicitor and the school. The document appears to have been created by CF and relates RK's allegations of sexual abuse against the applicant. It goes on to say that the information which came to the SWAHB came in a report prepared by Ms. MK and goes on to say that in October 2003, Ms. K wrote a letter stating she "*unreservedly determined that RK's disclosure of sexual abuse by Mr. D.P constituted a validated account of sexual abuse*". The document then lists the chronological sequence of correspondence and documentation up to 22nd June 2004.

153. Although it is not clear when this document was given to the gardaí, I would infer that this must have happened after the matter was reactivated at the end of November or in early December 2005. The earliest recorded contact with the gardaí by CF is her letter dated 19th December 2005, written to Inspector SL in which she says the following:

"Dear Inspector L,

Further to your letter dated 26th April 2004, stating that R now wishes to have the matter dropped, I have had some contact with R's mother, JK.

J states that because R was not psychologically able to make statements due to the traumatic nature of his allegations, it was agreed that J would make a written statement on his behalf, and additionally Ms. MK, his counsellor, would do the same. J was of the view that the gardaí could proceed with an investigation based on these statements. I advised J of the content of your letter.

Perhaps you could contact J directly to clarify the matter. Her telephone number is [phone number]. J and R have since relocated. The file remains open to the social work department and I would be happy to discuss our involvement if you wish to talk to me."

154. There is a document discovered which bears the date of 10th January 2005, which I am satisfied was an error and should have been 10th January 2006, and it is a record of a telephone call from Inspector SL to CF. The record is signed by CF and is in the following terms:

"10th Jan 2005

T/C from Insp SL

Late 2003

Sent file to DPP seeking advice re pursuing complaint in relation to validated account from MK.

Reply DPP Jan 04 - formal statement needs to be sought from R.

Insp L sent request to Interpol to take statement from R. Interpol contacted gardaí in March 2004 to state they met MK. Had arranged to meet R, his mother contacted to say he was not emotionally able to meet and make statement.

- Letter from AMPSW April 2004 - re info on status on case - reply from Insp L.

Insp L cannot make meeting w/19th January 05, will try to reschedule for 24th January 2005.

Insp L agreed to contact J."

155. The meeting dates discussed seem to clearly correspond with the arrangements CF was trying to put in place in January 2006, and I would infer that the 2005 dates in that record are incorrect and should have been 2006.

156. This chronology is supported by a record dated 16th December 2005, of a telephone conversation between CF and JK. This record reads as follows:

"• I outlined to J what is happening now.

• Reasons for the questions I am asking MK.

• Discussed proposed meeting with the school.

• Discussed letter we received from gardaí.

Outcome

J is happy for all reports to be given to the school. She is happy for me to allow Mr. D P read them should he attend the appointment offered for Tuesday.

J expressed anger and disappointment with HSE, gardaí and school for their handling of this case and stated her intention to go public with the information.

J and R have moved to the UK. J talked about the disastrous effect of all this had on R and herself. She explained that R is unable to talk about what happened to her or to gardaí. According to J, AG office in Texas were in contact with her. She explained that R was unable to make a statement. It was agreed that MK would send statement to gardaí and this would suffice. I advised J of letter from Inspector L. J disputes that R wishes to have the matter dropped. I agreed to contact SL and give him her telephone number so he can make contact with J. I agreed to send reports on to J that I planned to share with the school. Her work address is."

157. It would appear that arising out of this conversation in which the letter of April 2004 from the gardaí was discussed, CF then initiated the contact with the gardaí by her letter of 19th December 2005.

158. In passing, it is interesting to note that in this telephone conversation between CF and JK, CF does not at all appear to have raised the critical events that had occurred in the previous few days, namely, the exchange of emails with MK in which MK unequivocally revealed that she had not validated the allegations of child sex abuse against the applicant.

159. There is a short typed case note signed by CF dated 10th January 2006, of a telephone conversation with Inspector L which seems to correspond with the longer handwritten note of the same date.

160. What all this suggests to me is that the document incorrectly dated 31st January 2002, which is a summary of the case, was probably prepared by CF and given to the gardaí after the resumption of contact with the letter of 19th December 2005, and almost certainly after the exchange of emails between CF and MK over 12th, 13th and 14th December 2005, which are not mentioned in this summary.

161. This brings me to the other curious document discovered and that is a copy of a letter dated 3rd February 2006, from CF to the applicant. This letter is in response to the applicant's letters of 19th December 2005, and in particular, his letter of 4th January 2006, in which he sought information not dissimilar to that which he had sought previously in July 2003, but with additional requests relating to MK, whose involvement in the process was made known to him in the letter of 12th December 2005. In it, he also makes requests arising from the fact that he was informed of the identity of RK and the fact that his allegations were made from another jurisdiction. The curious feature about this letter of 3rd February 2006, is that it is in almost identical terms to the letter dated 24th March 2006, sent by CF to the applicant. The only differences between the two are that the paragraphs in relation to the allegations of sexual abuse are slightly but not materially different. The one paragraph where there is a difference is the penultimate paragraphs in both letters. In the letter of 3rd February 2006, the following is said in that paragraph:

"We have scheduled a meeting with the school for 21st February 2006 to share all the information regarding R's disclosure. With regard to the scheduling of the meeting with yourself, I note your position and I await a response as regards whether you will attend such a meeting."

162. In the letter of 24th February 2006, the penultimate paragraph reads:

"We had a meeting with the school on 21st February 2006 and all the relevant information regarding R's disclosure was shared. With regard to the scheduling of a meeting with yourself, I note your position and I await a response as regards whether you will attend such a meeting."

163. It is quite clear that the discovery does not reveal, nor is there any evidence of a reply by the applicant to the earlier version, and I am satisfied that the reason for that is because the earlier version i.e. the letter of 3rd February 2006, was withheld and not sent out by CF. The sending of the later letter of 24th March 2006, coincided in time almost exactly with the report prepared by CF and given to the school which damnified the applicant, and of course it is apparent that because the applicant was kept uninformed by CF during that critical period, having finally had his queries addressed in the letter of 24th March 2006, he had absolutely no opportunity whatsoever to address the allegations against him before the inquiry was, in fact, conclusively determined by CF in her report dated 27th March 2006. I have no doubt that the withholding of this letter which was ready to be sent out on 3rd February 2006, until late in March was a deliberate contrivance on the part of CF to ensure that the applicant would not have any opportunity to get involved in the process before the matter was conclusively determined.

164. The interagency meeting did take place on 21st February 2006, and the minute of that meeting indicates that CF outlined the history of the referral to the social work department. In the course of giving that history to the meeting, the following is recorded at bullet point 3:

"• In February 2003, the case was allocated within the social work team in Community Care Area 4. The social work department in Area 4 made contact with J and Ms. K, R's counsellor. The report from Ms. K, in which she outlined R's disclosure and her professional opinion, that this disclosure constituted a validated account was received. Area 4 offered Mr. De P three separate appointments in writing to meet to discuss the allegations made against him. In the first letter, he was informed of the nature of the allegations made against him. Mr. D.P. failed to attend the appointments, however, he did correspond in writing. He was advised that his questions would be dealt with at a meeting.

• In December, given the serious nature of the allegations and the validation from Ms. K, together with Mr. D.P's failure to make himself available to be interviewed, the decision was made to inform his employers by the social work department in Area 4. Mr. D.P. was informed of this decision in writing. Subsequently, the school was sent a letter by Area 4. The case was subsequently transferred back to [location].

• On 22nd December 2003, Ms. CF and Mr. GB, team leaders, met with the school Principal, Mr. M, and outlined the

nature of the allegations and the content of Ms. K's report. The school subsequently requested the reports in writing.

• Ms. CF took up the file in November 2005 to review, and make contact with Ms. K and JK and received their consent to release all the reports to the school. JK reported that R had remained unable to make a statement and is unable to discuss his disclosure of abuse. He has never returned to school.

• Ms. F received confirmation of Ms. K's qualifications from her line manager and also made contact with the State Child Protection Services in . . . who confirmed that Safe Place is a legitimate organisation.

• Ms. F offered Mr. D.P. appointments to meet to discuss the allegations against him and to review the reports from Ms. K. It is the opinion of the social work department that it would not be appropriate to release these. Mr. D.P. declined to do so. Nonetheless, he has sent in letters to the Department and requested all reports."

165. In light of what CF knew from her emails with MK on 12th and 13th December 2005, and in light of the applicant's letters to her of 19th December 2005, and 4th January 2006, and her draft reply dated 3rd February 2006, which was never sent, one can only regard the information she conveyed to this meeting as contrived misrepresentation. There was a complete failure to disclose the full picture with regard to the validation process as she knew it. In her presentation, she continued to represent the reports of Ms. K as a proper validation, and her reference to confirmation of Ms. K's qualifications and also to contact with the "*State Child Protection Services*", of which there is no record in the papers, seems designed to confirm the impression that Ms. K's report were a proper validation of the allegations.

166. It can only be said that this record of the meeting reveals a reprehensible lack of candour on CF's part in her misrepresentation of and description of the so-called validation process that had occurred and her material non-disclosure of the content of the email exchange between herself and MK on 12th, 13th and 14th December 2005.

167. Her description of her correspondence with the applicant again wholly fails to convey a true picture of the content of that correspondence, namely, that the applicant sought reasonable information to which he was entitled and the inevitable impression that must have been conveyed to CF's listeners was that the applicant was being difficult or awkward or uncooperative. In light of the fact that CF had drafted a reply to the applicant's letter of 4th January 2006, for the first time in the entire process engaging in the process of answering his legitimate queries and knowing, as she did, that she had withheld sending out that letter until after this meeting on 21st February 2006, one could not but regard her portrayal of her dealings with the applicant as simply downright untruthful.

168. It is apparent from the record of this meeting that apart from MK's report, the correspondence between the applicant and the SWAHB/HSE and the email correspondence between CF and MK in December 2005 was not disclosed to the meeting.

169. The record of the meeting does record towards the end of the minute as follows:

> "*• The possibility of an independent professional review of Ms. K's report was raised as a possibility and will be considered by the social work department."*

170. The record does not disclose how this consideration arose. It is probable that some at the meeting, when seeing the content of Ms. K's report and realising the nature of the relationship between Ms. K and RK, may have considered this a wise precaution. All of this tends to reinforce the impression that the full truth concerning the validation process had been withheld from the meeting, as it is hard to imagine that if the full truth concerning this matter had been revealed, that the issue would have been passed over without much greater discussion and probably an entirely different outcome.

171. Nevertheless, pursuant to this recommendation, CF did, in due course, engage the services of KMcG, a subject to which I will return later.

172. After this meeting, CF set about preparing a report which was requested by the school from the social work department outlining the process to date and the opinion of the social work department regarding risk.

173. This report, which was dated 27th March 2006, was furnished to the school. Notwithstanding that this was the critical document which manifestly determined the inquiry pursuant to s. 3 of the Childcare Act 1991, by way of extraordinary omission, it was not included in the discovery of documents and was only made available immediately prior to the hearing of this action. As the document which concluded the investigation, it was, in effect, the judgment on the subject matter of the investigation, and it therefore requires some attention.

174. The document begins by outlining how the matter came to the attention of the SWAHB on 23rd November 2001, and the transfer of the case to Area 4 because of the connection to JK. There then follows a summary of RK's disclosure of child sexual abuse, each incident being described separately.

175. At the conclusion of the history of the allegations, there is the following paragraph:

> *"The above information was given to the social work department in a report prepared by Ms. MK, Counsellor, Safe Place, . . . in March 2003. Ms. K is a liased master in social work. She began counselling sessions with R on 10th January 2002.*
>
> *In October 2003, Ms. K wrote a letter stating that she 'unreservedly determine that RK's disclosure of sexual abuse by Mr. De P and all subsequent information discussed in her counselling sessions pertaining to the said disclosure, constitute a validated account of sexual abuse'."*

The report then goes into a section *headed 'Social Work Involvement in Community Area 4'*. In this section, the writers of the report, CF and AM, deal with the early correspondence in July 2003. The report states that in the applicant's letter of 16th July 2003, he stated he would not be in attendance at the scheduled meeting and would send in a more detailed response. It certainly would have been better and fairer if the report recorded the applicant's reasons for adopting a position of not attending the proposed meeting, namely, that he had insufficient time to prepare to deal with allegations of such seriousness and he wished to have time to take advice and to write a formal letter of reply.

176. In dealing with the applicant's letter of 21st July 2003, the following was said in the report:

"The letter of 21st July again reiterated his denial of the allegations made against him, and outlined nine questions that he wished to have answered prior to attending any meeting with the social work department. He also stated that he did not feel it necessary to meet to provide him with an opportunity to respond to the allegations, as he had stated in his correspondence that they were false."

177. I regret to have to observe that this last sentence as quoted is an untruthful misrepresentation of the applicant's letter of 21st July 2003. It is also a dangerous misrepresentation because it conveys the wholly untruthful impression that the applicant did not want an opportunity to be heard. His letter of 21st July 2003, which is couched throughout in courteous terms, begins by repeating his unequivocal and full denial of the allegations made against him. He sets out nine questions which, I have said many times in these proceedings, were reasonable and in respect of which he was entitled to answers. Apart from being reasonable requests, they were also requests that could have been very easily and quickly addressed, not one of which was in any sense onerous so far as the SWAHB was concerned. Having set out these questions, he then goes on as follows:

"Re: scheduling of any meeting at which you request my attendance.

I wish you to be very clear in your understanding as to my position in respect of any such intended meeting, as such will assist us both greatly.

I shall make no decision as to attending or not attending any such meeting, until I am more fully informed as to the intended process, in its entirety from beginning to end and thus in a position to take the matter under advisement in its entirety. I wish to provide you with whatever assistance that I can, but I shall only do so from a position where I believe that my own rights, as a falsely accused person, are adequately provided for and protected. There is only one person who is at risk in this particular matter and that is myself. There is no child at any risk, grave or otherwise, in this fabrication.

Arising from this position, I specifically request that you not get ahead of matters by scheduling any such meeting (i.e. at which you wish my attendance) until I have clearly communicated my prior consent by letter to you as to such proposed meeting(s).

No doubt, you do schedule such meeting(s) from the best of motives with an intention to provide me with some opportunity to respond to the allegations in your presence. You are now aware of my comments as to said allegations.

In the meantime, please keep me fully informed and updated by letter as to any and all developments in the case and according as such may arise over time . . ."

178. I have carefully considered the entire content of the applicant's letter and can find nothing in it to justify the aforementioned assertion to the effect that the applicant did not feel it necessary to provide him with an opportunity to respond to these allegations because he had stated in his correspondence that they were false.

179. It is quite clear from his letter that he first wished to have his queries addressed, to know the process in which he was engaged so that he could participate on a basis which protected his rights. It is also clear from his letter that he wished to participate in the process and be of assistance, but on the basis, which he stated, which of course was no more and no less than his constitutional and legal entitlement.

180. The report then goes on to list the various appointments that the applicant declined to attend, the only concession having been made to him in correspondence is that "*appropriate questions raised by him be answered at the meetings*". For the reasons already set out above, this was a wholly inadequate response on the part of the SWAHB.

181. The report then goes on to the decision to inform the school and recites "*The decision made to inform the school that R's account was credible based on the reports from Ms. MK*".

182. The report goes on to deal with the meeting on 22nd December 2003, with Mr. M, Principal of the school. It then goes from there to the letter of 8th January 2004, from the school requesting copies of all statements and reports.

183. It moves from there to the letter of 22nd April 2004, from Inspector SL saying that R declined to be interviewed and wished the matter to be dropped.

184. There is then the following paragraph:

"Between January 2004 and November 2005, due to resource implications, this case was unallocated. Ms. CF, team leader, took up the file in November 2005 to review the file and the outstanding issues."

185. This statement blithely ignores the fact that CF did not take up the file in November 2005, but had been actively engaged with it in December 2003 and into January 2004, and for reasons that have never been explained, the request of the school for the statements and reports substantiating the allegations seemed to bring the process to a halt.

186. The report records the fact that on 22nd June 2004, the SWAHB received consent from JK for the release of the reports to her solicitor and the school.

187. Then the report moves on to deal with matters under the heading *'Recent Involvement since November 2005'*.

188. In this section, there is a series of short bullet pointed paragraphs which purport to be a history of the matter since November 2005, and reads as follows:

"The following was undertaken by Ms. CF, team leader:

• Obtained consent from Ms. JK and Ms. MK counsellor to release the reports from Ms. MK to the school.

• Obtained consent from both of the aforementioned parties to allow Mr. D.P. read the reports during an interview with the social work department.

• Contact was made with the school that an offer of delivering reports pertaining to R's disclosure was made. It was agreed that the most appropriate way forward was to have an interagency meeting with both the school and the gardaí in attendance.

• A letter was posted to Mr. D.P. on 13th December 2005 advising him that the social work department was requesting a meeting with the school to review the allegations. Mr. De P was advised of the student's name who made the allegations. An appointment was offered to Mr. D.P. to meet with the social work department prior to meeting with the school to discuss the allegations and afford him an opportunity to read the reports. It is the determination of this department that it would not be appropriate, and indeed could be abusive of R to send Mr. D.P. copies of the reports.

• We received a letter from Mr. D.P. on 20th December 2005 acknowledging receipt of our letter stating the he was not in a position to attend due to the short notice given.

• A letter was sent to Mr. D.P. on 22nd December 2005 advising him that the meeting with the school had been postponed until the New Year. He was advised that Ms. F would be very happy to meet with him prior to the meeting and suggested Mr. D.P. contact her department with a time and date suitable to meet.

• On 5th January 2006, a letter was received from Mr. D.P. This was quite a lengthy letter in which Mr. De P raised various questions. He also requested that we do not fix any further appointments to meet him until he had clearly and unambiguously clarified in writing that he would consider such a request or proposal.

• Ms. F made contact with Ms. MK, supervisor, in a Safe Place and obtained written confirmation of her experience and qualifications. Ms. F also made contact with the State Child Protection Services in . . Texas, and received verbal confirmation that Safe Place, where Ms. K works, is a legitimate organisation working with victims of violence or sexual abuse.

• An interagency meting was schedule and attended by the social work department, representatives from the school and the gardaí and legal representation on 21st February 2006. At this meeting, all of the information was shared."

189. In light of all of the material that I have dealt with earlier in this judgment, it is quite clear that, yet again, the misrepresentation of critical aspects of the investigation are continued in this report. Firstly, there is the reliance on reports of Ms. K, reinforced by the paragraph dealing with the confirmation of her experience and qualifications and the confirmation from the State Child Protection Services in . . . Texas that Safe Place was a legitimate organisation. Again, there is a complete material non-disclosure of the acknowledgement by MK in the email exchange on 12th, 13th and 14th December 2005, that the process she was engaged in was not a "*validation*" of the allegations.

190. Again, in this report, there is a complete misrepresentation of the correspondence between the applicant and the SWAHB and HSE with the intent that the applicant is again represented as uncooperative. With regard to the applicant's letter of 4th January 2006, which was received by the HSE on 5th January 2006, there is an acknowledgement that it is a lengthy letter in which the applicant raised various questions. Without at all intimating any detail of the content of these questions or their relevance to the inquiry, it goes on to stress the applicant's refusal to attend further appointments until he would consider such a request in writing. To anyone who had not read this correspondence, there is again the portrayal of the applicant as an awkward, difficult, obstructionist person. Quite remarkably, dealing with the correspondence, there is no mention at all of the fact that a reply was drafted to the applicant's letter of 4th January 2006, but not sent out, but was dispatched immediately prior to the sending out of the report itself. This is a critical omission because if the school had been made aware of the fact that the applicant had only just received for the first time replies to his queries, as a reasonable decision making body, they might very well have wished to afforded him an opportunity to consider the replies in the letter of 24th March 2006, before taking any decision in regard to the applicant. However, as a result of the deliberate concealment practiced by CF, they were denied that opportunity.

191. Before leaving this part of the report, I would like to draw attention to a quite remarkable statement contained in the last sentence of the fourth paragraph:

> *"It is the determination of this department that it would not be appropriate, and indeed could be abusive of R to send Mr. D.P. copies of the reports."*

192. This is undoubtedly a very revealing statement as to the state of mind of the HSE personnel conducting this investigation. It discloses an undoubtedly fixed view that the allegations of abuse are well founded and it is impossible to avoid the inference of actual bias against the applicant. It is clear that they regarded the applicant as a child sex abuser. In the context of this, the manipulative withholding of the letter dated 4th February 2006, until it was finally dispatched on 24th March 2006, can only be seen as sinister and reprehensible. They, and in particular CF, were clearly not going to give the applicant any opportunity to get away.

193. That their view of the applicant as a child sex abuser was a fixed view becomes clear from later emails between CF and JK. These emails were sent after the judicial review proceedings were commenced when one might have thought the existence of the proceedings might have led to more cautious expression.

194. In an email dated 27th October 2006, from CF to JK, the following is said:

> *"Hi J,*
>
> *I know this is not the email address that you are normally using but I don't have your new one.*
>
> *Regarding the judicial review, the school's solicitors are requesting that all the reports are released to Mr. D.P. I am resisting this as I believe this is a further abuse. I will keep you updated regarding this . . ."*

195. In an email dated 2nd November 2006, from CF to JK, the following is said:

> *"Hi J,*
>
> *Sorry I missed your call, it was a Bank Holiday and my phone was in work. I have your address but I don't have R's current address. The Board of management have started their own enquiries which they are obliged to do under their Department of Education guidelines. These guidelines state that they need to disclose to the employee all the*

documentation that they have relied on in taking their action. This obviously includes the reports of MK, KMcG and ourselves. I absolutely agree with you that these reports should not be disclosed to Mr. D.P. and that is my professional opinion. Nonetheless, the advice from our solicitors is that the documentation will probably be disclosed in the course of the proceedings . . ."

196. A further email of 10th November 2006, from CF to JK makes a similar comment as follows:

". . . In relation to the release of the reports to Mr. D. P, I have objected to this on the advice of our solicitors [redacted]. I am objecting to this and hence another consultation is to be arranged with our legal advisors.

J, I have to be honest, this is in the legal arena now, and I do not have control over what will be released, I will remain committed to my professional view that it is not in R's best interest to do so, but I believe that Mr. D.P. and the school have sufficient information to proceed . . ."

197. Returning to that section of the report headed *'Social Work Assessment and Conclusion'*. Once again, here there is a return to reliance upon MK's conclusion that R's disclosure constituted a validated account of child sex abuse. There is then this extraordinary paragraph included as part of the conclusion:

"Since the beginning of the social work investigation, numerous attempts have been made to meet Mr. D.P. for the purpose of investigating the allegations made against him. Mr. D.P. has refused all appointments to meet. He has, however, engaged with the Department through written correspondence. It is impossible from a professional viewpoint to undertake an assessment of Mr. D.P. through written correspondence and we have experienced the correspondence as an attempt to confuse the matter rather than an attempt to assist with the Health Service Executive's investigation in pursuance of its statutory obligation."

198. This last sentence is breathtaking in its untruthful and unjust characterisation of the applicant's correspondence and wholly misleading to any reader dependent upon the content of this conclusion.

199. The report winds up with the following:

"The social work department, following consideration of all the factors and information discussed in this report, believe that Mr. D.P. poses a potential serious risk to children, and in particular to the pupils at the school in which he teaches. This viewpoint is based upon the following:

• Ms. K's determination that R has been sexually abused.

• R's behavioural presentation following disclosure.

• Mr. D.P's refusal to meet for interview, and hence the social work department's inability to make any conclusion regarding his risk.

• It is unknown if Mr. D.P. has discussed the allegations with any supportive persons. The stress that the investigation must be creating and the possibility that he is isolated in terms of dealing with this raises the concern regarding the risk.

It is our conclusion that should the allegations be true that Mr. D.P. poses a serious potential risk to children. The social work department accepts Ms. K's report regarding the validity of the disclosures."

200. Thus, it is apparent that the central planks in the conclusion of the HSE were Ms. K's validation and Mr. D.P's refusal to attend interview. Insofar as both of these were concerned, it was well known to the HSE that Ms. K's validation was not that at all; it was merely a supportive opinion from RK's therapeutic counsellor. It was also well known to the HSE why the applicant would not attend meetings, namely, because the HSE had ignored his reasonable requests for information and they well knew that they had manipulated the correspondence by withholding the letter dated 4th February 2006, sending it out simultaneously with their report.

201. The reference at bullet point 2 to R's behavioural presentation following disclosure arises solely out of the content of MK's report. RK was never, at any stage of this process, in contact with any professional engaged by the HSE or the SWAHB, or indeed any professional in this jurisdiction. The only direct contact RK ever had with the SWAHB or the HSE was in July 2007, when two social workers interviewed RK in London in which he gave an account of the sexual abuse, which is obviously different in material respects from earlier accounts, and which he refused to sign but later acknowledged by email that these were his allegations.

202. The factors underpinning the conclusion to this report are, in the light of matters already discussed in this judgment, flagrant obfuscations of the truth. The final reference in the last paragraph, *"It is our conclusion that should the allegations be true. . ."* is no more than a hypocritical nod in the direction of the concept of truth which at every hand's turn in this inquiry was obscured, abandoned or denied by the HSE, and its predecessor, the SWAHB.

203. After this report was sent to the school, the inevitable sequence of events unfolded. First, the school demanded clarification with regard to the statement at the end of the report to the effect that Mr. D.P. posed a potential serious risk to children and in particular to pupils at the school at which he teaches.

204. By email of 3rd April 2006, the HSE clarified its advice in this regard as follows:

"It appears to our client, having considered the matter, that the only way to guarantee the safety of the pupils is to ensure that the employee is absent from the school."

205. Following upon these events, at a meeting of the Board of management held on 4th April 2006, a decision was taken to place the applicant on administrative leave of absence with immediate effect. The applicant was notified of this verbally and by way of written letter the following day, the 5th April 2006. It is to be noted in passing that once this matter was raised before the Board of management based on the material supplied, as discussed, by the HSE, there could only have been one outcome, namely, the decision taken. A further meeting of the Board of management was arranged for 19th April 2006, and the applicant was invited to attend that meeting. Prior to attending that meeting, although offered the opportunity to be verbally informed of the material underpinning the complaint, the applicant was not given the written materials which the HSE had had shown at the meeting on 21st February 2006, to the school. The applicant made a verbal presentation to the meeting on 19th April 2006.

206. It is to be observed that both the applicant, and indeed the Board of management, at this meeting were all in the dark as to the true state of affairs with regard to the investigation of RK's allegations of child sex abuse against the applicant. However, what the Board of management did have was the contrived prejudicial determination of the HSE in the report of 27th March 2006, against the applicant, and having little or no other material to go on, it was inevitable that the Board would take its decision to continue the administrative leave, which it did.

207. This brings me to a consideration of the involvement by the HSE of KMcG, an independent child welfare consultant. This arose out of the interagency meeting of 21st February 2006, and was pursued promptly by CF.

208. It is not clear how the initial instructions were given to Mr. McG. I am unable to find any letter containing any such instructions to Mr. McG in the discovered documents and therefore I must assume it did not exist. There is a case note dated 23rd February 2006, in the handwriting of CF which reads as follows:

> *"T/C with R McE, psychologist re possibility of a second opinion on MK's report re R's disclosure.*
>
> *[mobile telephone number] KMcG*
>
> *March Fax [address KMcG]*
>
> *Fees*
>
> *€120 an hour - short piece of work*
>
> *Text mobile."*

209. On paper, the process begins with the letter dated 28th February 2006, from Mr. McG. This letter is in the following terms and is addressed to CF:

> *"Re Second Opinion of Assessment of 'RK'*
>
> *Dear Ms. F,*
>
> *Thank you for referring the above matter to me for review. I have read the attached documents and would be happy to provide a full report in due course. However, there are a number of issues I first need to address.*
>
> *The task you have set me, as I understand it, is to offer a second opinion regarding how allegations of CSA of RK were addressed by Ms. MK (LMSW) in Safe Place Centre. . . Texas, and what credence attached to her conclusions. Before addressing this question, I would like to pose some further questions of my own, these are as follows:*
>
> *1. It is not clear to me from the papers I have read as to what was happening with the case between October 2003 when Ms. K wrote to you confirming that she had formed an opinion that the abuse was 'validated', and January 2006 when further correspondence took place with Ms. K's supervisor about Ms. K's level of qualification and credentials.*
>
> *2. Who is RK supposed to have first disclosed to? The reports indicate that it was to his mother, while he was in hospital in November '01, but did he also talk to other professionals, e.g. hospital social workers or police officers, at that time?*
>
> *3. Were the police in Texas officially informed in November 2001? It would surprise me if they were not notified, given that he is reported to have said these things in a hospital. If so, did they liaise with the Garda Síochána in Ireland?*
>
> *4. Has RK made a complaint to the Garda Síochána or has he been invited to do so?*
>
> *5. If so, what action have the Garda Síochána taken?*
>
> *6. Has there been a Child Protection Conference in relation to this case? If so, were representatives of the school in question involved?*
>
> *7. What are the current issues that make a second opinion necessary at this time?*
>
> *Before phoning Ms. K to discuss her reports, it would be useful to have some of the above details clarified as I obviously need to be able to place this case in its full context. The content of the reports by Ms. K raise very obvious child protection concerns, which clearly necessitated action to safeguard those who could possibly be at risk. It does not appear that these concerns have dissipated in the interim.*
>
> *I am out of Ireland at present but will return on March 7th. I am having this letter forwarded to you by my secretary in Ireland. In the meantime, you can contact me by telephone [number] or at the above email address."*

210. Mr. McG, though he refers to having read attached documents, does not list what these are. However, from the questions that he asks it is plainly obvious that he was given very little of the documentation that at that time existed in the case. I would infer from his letter that all he got at that stage was Ms. K's reports. He clearly was not given the minutes of the interagency meeting on 21st February 2006, and indeed he does not appear to have been aware that this had happened. He obviously was not given the emails between CF and Ms. K in December 2005, and it is clear he was not given any of the correspondence with the gardaí. I would think it highly probable he was also not given correspondence between the applicant and the SWAHB, later, the HSE. The limited task which he seems to have been set, as he describes it, was simply to offer a second opinion regarding how the allegations of CSA of RK were assessed by Ms. MK and it is quite clear he was given very little of the relevant material to enable him to form a proper opinion on the matter.

211. In a case note dated 10th March 2006, signed by CF, the following is said:

> *"T/C with KMcG - in response to his letter [see file].*
>
> *I verbally answered all the questions he posed. I agreed to email MK to advise of his work and also to forward on reports*

compiled to assist with his work."

212. In an email of the same date, 10th March 2006, CF says the following to MK:

"Dear M,

Thank you for all your assistance to date. We met with the school which was good and I am now in the process of writing a report detailing all the information to the school.

Given that you are not employed in the role of investigating child abuse allegations and the difficulty with you being in another jurisdiction, we have agreed to seek a second opinion from KMcG, independent child welfare consultant. K was employed for many years in one of the State units assessing child sexual abuse disclosures, in Ireland.

I have passed your details on to K and he will be in touch with you in the next week or so.

I trust this is acceptable."

213. The next event in this process was a letter dated 23rd March 2006, from KMcG to CF in which he says the following:

"Dear Ms. F,

Thank you for forwarding the additional documents in relation to this matter. Along with our telephone conversation of 10.03.06 they make the situation much clearer. I am now in a much better position to discuss the matter with Ms. K, which I will do by phone in the coming days. However, I suspect that my conversation with her will be largely a repeat of what has already been done. Therefore, my view of this case at this stage is as follows:

Given that there is no information available suggesting that RK has withdrawn his allegation or that it has been discredited by any independent evaluation, I think that the HSE is wholly justified in taking the matter very seriously and accepting that Mr. D.P. - the teacher against whom the allegations are made - has a case to answer. He is clearly not cooperating with you. Therefore, that avenue is not one that holds out any potential at this time.

In the absence of a garda investigation which is not likely to happen, the onus is on the HSE to use other means to address the obvious child protection issues that arise. This case bears comparison with the issues faced by the Diocese of Ferns when trying to address allegations made against priests in Wexford who were not cooperating, the gardaí had limited scope to act. As you are no doubt fully aware, the recommendations of the Ferns Inquiry are highly relevant to this case.

Accordingly, it seems to me that the HSE has to use all its influence to have the Department of Education take all appropriate steps to have Mr. D.P. suspended on full pay and without prejudice to his legal rights pending a fuller investigation. These are the logical steps, it seems to me, that can be taken at this time.

It is unfortunate that for various reasons, this case has not been expedited more quickly. Likewise, RK's refusal to make a garda complaint makes the case more complicated. These factors weaken the HSE's position. Nevertheless, regardless of the delays or RK's stance, I think you have no choice but to pursue the issue with vigour - as you are doing - and that requires a reciprocal response from the education authorities.

You are well aware that if this matter were to come into the public domain by way of a report in the media - which often happens when families feel that the matter is not receiving enough attention, the Department of Education would act immediately; as would the highest echelons of management within the HSE. It should not require the family to go to the media to get such a response, given both yourself and Ms. M have clearly and very accurately identified the seriousness of the issues presented in RK's allegations.

I will be in touch again after I have spoken to Ms. K."

214. On the same day, that is 22nd March 2006, KMcG emailed CF as follows:

"Dear C,

Please find attached my thoughts on the present situation. This will also be posted to you."

215. In the meantime, CF was, no doubt, completing the report which was ultimately dated 27th March 2006. It is somewhat of a surprise that there is no mention in that report of these communications from KMcG, if they had been received prior to the completion of the report.

216. By an email of 29th March 2006, CF responds to KMcG as follows:

"Dear K,

Thank you for your email in relation to your opinion thus far which was very helpful.

I have just one query and it is in relation to your opinion that Mr. D.P. should be suspended pending a fuller investigation. We are of the opinion that the investigation is concluded and there is nothing more we can do to investigate it further. I am wondering what your thoughts are regarding this and what you think a fuller investigation would consist of.

Following receipt of my report, the school are calling an emergency meeting with the Board of management and they are considering placing Mr. D.P. on administrative leave, which is positive.

I look forward to hearing from you regarding the above at your earliest convenience."

217. This exchange of emails drew the following response from KMcG by letter dated 3rd April 2006, in which he says:

"Dear Ms. F,

Further to previous correspondence and our most recent telephone conversation, I wish to confirm that on Thursday night last, I spoke by phone to Ms. MK, Safe Place . . . Texas, and was more than satisfied with the replies I got from her in relation to this matter. I will provide more details in my report which will follow.

In the interim, however, I wish to clarify what I meant in my last letter when I expressed the view the 'HSE should use all its influence to have the Department of Education take all appropriate steps to have Mr. D.P. suspended on full pay and without prejudice to his rights pending a fuller investigation'.

By 'further investigation', I did not mean that there was any need for the HSE to investigate this matter in more detail. It seems to me that you have quite accurately evaluated the risks in this case. What I think is required is that the school authorities need to follow their own Department of Education guidelines and place Mr. D.P. on administrative leave, on full pay, pending an investigation by the school, in relation to one of their staff against whom very serious allegations have been made.

In considering such a move, they must, of course, follow the rules of Natural Justice by giving Mr. De P an opportunity to put his side of the story. He must also have the chance to take legal and/or trade union advice. If Mr. De P has a satisfactory explanation as to how these allegations might have arisen and can satisfy all relevant parties (including the HSE) that there is no case to answer, then the matter can be closed. However, in your own dealings with Mr. D.P., he was less than forthcoming and he would need to behave in a markedly different fashion with the school authorities than he has done, heretofore, with the HSE.

It is possible that the school authorities may feel that they have unequivocal support and guidance from the HSE in relation to this step, which it seems to me they have been given thus far.

If it is of any assistance, you are completely free to quote me and/or use any correspondence from me when communicating with the school in relation with this matter. As I said in previous correspondence, I believe the issues arising in this case bear remarkable resemblance to those raised by the Ferns Inquiry and the recommendations for that Inquiry are entirely relevant in this instance."

218. It is to be noted in passing that Mr. McG's telephone conversation with Ms. MK took place on Thursday 30th March 2006, three days after CF and AM finalised and dated their report and no doubt dispatched it. Perhaps, given the fact that the reason Mr. McG was consulted was in relation to Ms. K's reports, as mandated by the interagency meeting of 21st February 2006, and that clearly, this was not done before the report was prepared, it was considered wise to not refer to Mr. McG's correspondence, existing at the time of the completion of the report.

219. Mr. McG's report is dated 11th April 2006, and obviously could not have influenced the manner in which the HSE conducted the final stages of the Section 3 investigation, it being concluded by the report of the 27th March 2006, and the clarification in the email of 3rd April 2006. In this report under the heading '*Terms of Reference of this Review'*, the following is said:

"To carry out an independent review of the relevant case records in this case, in particular the reports from Ms. MK, LMSW, Child and Adolescent Counsellor, Safe Place . . . Texas, and to offer an opinion in relation to what importance should be attached to her reports in the light of questions of child protection that might arise."

220. The next paragraph in the report is as follows:

"Outline of Tasks undertaken in this Review:

- *Initial liaison with Ms. CF, HSE.*
- *Examination of background reports and documents.*
- *Analysing the above, in particular the reports submitted by Ms. MK and discussing those directly with her by telephone.*
- *Preparation of a report."*

221. The next paragraph is under the heading *'Background Reports Supplied Included'* and is as follows:

"• *Commissioning letter by Ms. CF, HSE.*

- *Various background reports in relation to this case.*
- *Various pieces of correspondence and documentation with regard to the case."*

222. It is most unsatisfactory that Mr. McG does not properly disclose and list the materials upon which his report is based.

223. *Apropos* his contacts with Ms. K on page 5 of his report, he gives details of his telephone conversation with Ms. K which is dated 2nd April 2006. This is a curious discrepancy because he earlier reported this conversation as taking place on a Thursday which was 30th March 2006. At page 5 of his report, he goes into detail of the telephone conversation in which, inter alia, the following is recorded:

"While Ms. K is not, herself, an evaluator of allegations of sexual abuse (she is a provider of therapy to young people with abuse histories), she is - nonetheless - very familiar with local professionals who evaluate allegations of sexual abuse and works closely with evaluators in local child protection social services and police in . . .

• Ms. K was familiar with standard approaches to sexual abuse evaluation in the US and confirmed that she was aware of no information that RK had withdrawn his allegations or any other independent source of information suggesting that RK's allegations had been discredited in any way . . ."

224. Mr. McG's opinion about what was done by MK seems to be in the following terms at paragraph 6:

> *"In this particular case, RK has provided to a fully qualified and licensed social work professional, working in a specialist abuse treatment agency, an account of more than one incident of sexual abuse by Mr. D.P. The writer is satisfied that Ms. K acted in an appropriately professional manner in this case. He, therefore, sees no reason to question the value of her report. At its most basic, the report raises very serious child protection concerns regarding Mr. D.P."*

225. What is striking about this opinion is the compete absence of any reference to the core issue, namely, the fact that Ms. K purported to validate RK's account of sexual abuse, notwithstanding the fact that she was, prior to and during the course of his disclosure, acting in the capacity of a therapeutic counsellor to RK, and therefore obviously lacked the necessary independence to carry out an evaluation of the credibility of his allegations. Ms. K may very well have been an excellent counsellor and be amply qualified in that regard, but it is perfectly clear, and indeed it was noted by Mr. McG in his telephone conversation with her, that she did not do independent evaluations in these situations. Mr. McG attempts to glide over that problem by what can only be regarded as a self-serving reference to her familiarity with professionals who do carry out evaluation of allegations of this kind.

226. Because Ms. McG does not list documents with which he was briefed, it is not clear whether or not he was given the emails exchanged between MK and CF in December 2005. I would be inclined to the view that he probably was not, and if he had, it would seem to me to have been impossible for him to have avoided, as he did, reaching a conclusion on the core issue as I have described it.

227. Throughout his correspondence and in his report, he repeatedly refers to the applicant not cooperating. For example, in his letter of 3rd April 2006, he says:

> *"However, in your own dealings with Mr. D.P, he was less than forthcoming and he would need to behave in a markedly different fashion with the school authorities than he has done heretofore with the HSE."*

228. In his letter dated 22nd March 2006, he says the following:

> *"He is clearly not cooperating with you. Therefore, that avenue is not one that holds any potential at this time."*

229. In his report of 11th April 2006, he says the following at page 4:

> *"While Mr. D.P. denies the allegations, it was reported that he has not engaged with the HSE in any way that would allow HSE staff to take into account his perspective on this matter. There has been some written correspondence, but no direct dialogue, per se, in relation to this matter."*

230. Further on in the report, at page 7, he says the following:

> *"It is necessary that Mr. D.P. be given an opportunity to explain his side of the story and to cast any light he can in relation to the matter. It appears from reports provided by the HSE that Mr. D.P. has not engaged with them, so they are in no position to either plan further interventions or disregard the allegations, based on Mr. D.P.'s input."*

231. In fairness to Mr. McG, I assume that he was not given the correspondence between the applicant and the SWAHB, and later, the HSE, or an accurate description of it, in which the applicant requested information, and the purported replies to him withheld until 24th March 2006. If Mr. McG had been given all of this correspondence, I would have to regard his conclusions in respect of Mr. D.P.'s imput as grossly unfair and unreasonable.

232. Mr. McG does make reference several times to the applicant being afforded natural justice in the context of a disciplinary procedure to be carried out by the school. At paragraph 7, he makes the following statement:

> *"The one avenue that has not been followed to date, it seems to this reviewer, is the initiation of disciplinary procedures within Mr. D.P.'s school. In the writer's opinion, the justification for such measures is as follows."*

233. Mr. McG seems to be have been unaware of the fact that in January 2004, the school attempted to do precisely what he was recommending but were stymied from the word go by the refusal or failure of the SWAHB to make available to them the necessary underlying materials to carry out such an inquiry. It was apparent that Mr. McG was not provided with correspondence between the school and the SWAHB either.

234. He again, in his justifications for a school disciplinary procedure, says "*Mr. D.P. has to date not engaged with the HSE in any meaningful way*". Again, he repeats this in paragraph 4 of his recommendations where he says, "*however, in his dealings with the HSE up to this point, Mr. D.P. has been less than forthcoming and he would need to behave in a markedly different fashion with the Board of management than he has done heretofore with the HSE*."

235. It would seem to me to be probable that Mr. McG was given only a very limited amount of the necessary relevant documentation to enable him to carry out any kind of a meaningful review of what had transpired before then. As a result, his conclusions in respect of vital aspects of the matter, including the input or involvement of the applicant in the investigation and the role of MK, must be discounted. As far as the latter topic is concerned, namely, the role of MK, even without sight of the email exchange in December 2005 between CF and MK, one would have thought that he might address the obvious lack of independence of MK and the consequences of that for her purported validation. This failure on his part, together with the rather weak attempt to bolster MK's position by reference to her familiarity with professionals who do carry out validations, leaves me with the uncomfortable sense that, overall, this report has about it a self-serving element so far as the HSE was concerned.

236. There is a good deal in Mr. McG's report which might described as exortational to tackle the scourge of child sex abuse. For the past 25 years or so, society has been confronted with these dreadful crimes and those institutions in society that are charged with the care of children have had to make Trojan efforts to effectively protect children from this criminal behaviour. All right-thinking members of society would wholly support the efforts of all those involved in childcare to achieve the objective of fully protecting children from these predators, and in identifying them and bringing them into the criminal justice system where they can be dealt with appropriately.

237. In carrying out investigations under s. 3 of the Childcare Act 1991, the HSE has a vital role to play in the early identification of child sex abusers. In carrying out these investigations, however, it is essential that there is a realisation that in order to correctly identify child sex abusers, there must be forensic enquiries of high standard. This achieves two things: firstly, the correct identification of child sex abusers and also it avoids gross injustice to innocent persons against whom false allegations have been

made. The converse of this, namely, a badly conducted inquiry, does the opposite: it risks actual child sex abusers escaping detection and it also risks exposing innocent people to the gross injustice of being wrongly condemned for child sex abuse.

238. Whilst no one could have any disagreement with Mr. McG's exortational opinions, it is unfortunate that because of the limited view he appears to have been given of this investigation because of the obvious withholding from him of a great deal of the relevant documentation, the overall conclusions of his report cannot carry any weight.

239. In any event, it is clear that the HSE concluded the inquiry by its report of 27th March 2006, without any reference to Mr. McG's conclusions, and notwithstanding the fact that his report was imminent, it was not awaited by the HSE before completing the report of 27th March 2006, which leads me to conclude that its real purpose, so far as the HSE was concerned, was merely as a post hoc self-serving justification for actions that had already been taken.

240. I must next consider whether, having reviewed in detail the conduct of the inquiry and the many breaches of the applicant's rights, whether these establish for the applicant, a cause of action in the tort of malfeasance in public office, as that tort has been described and defined in the authorities open to the court and quoted above.

241. Going back to the beginning, to July 2003, we find the SWAHB deciding to limit the information contained in the first letter to the applicant to the minimum possible, including withholding the identity of RK, and to disguise the sequencing of alleged abuse. It has to be remembered that this letter was intended to be the only written statement of the allegations that the applicant was going to get from the SWAHB before having to face an oral confrontation with the SWAHB. Next, there is then the decision taken after receipt of the applicant's letter requesting information to not answer his requests because this would "*hamper follow up of the allegations*". There followed on from this a complete ignoring of the applicant's requests for information and repetitive demands to attend meetings without any further information being furnished.

242. I have already observed that these were conscious and deliberate decisions which had the obvious effect of denying the applicant's right to constitutional justice, and were, it seems to me, calculated to put the applicant at the maximum disadvantage in the proposed encounter between him and the SWAHB.

243. The question which has to be asked, then, is whether this conduct by the HSE could be considered to be an honest attempt by them to perform the public functions they were discharging, namely, the conduct of an impartial and independent investigation pursuant to s. 3 of the Childcare Act 1991.

244. In the absence of any evidence offered by the HSE to explain or justify these decisions, I am driven to the conclusion that these decisions taken by the SWAHB were not an honest attempt to discharge their public function, but rather, a deliberate denial of the applicant's constitutional right of fair procedures based upon wholly impermissible pre-judgment to the effect that the applicant has committed the child sex abuse alleged by RK.

245. Moving on in time, the SWAHB continued, through the autumn of 2003, to request the attendance of the applicant at meetings while at the same time continuing to ignore his requests for information, and also ignoring his protests in correspondence to the more senior levels of management about the treatment to which he was being subjected. The response of the SWAHB was simply to threaten and then to move ahead to inform his employers, which was done initially by letter, and then face-to-face in a meeting on 22nd December 2003, between CF and GB and the then Principal, Mr. M.

246. In the letter in question, namely, that of 19th December 2003, from JOD to the school Principal, there are material misrepresentations made, firstly, to the effect that the abuse had been validated, which the SWAHB, from their own knowledge and experience of these matters, and also by reference to their earlier recorded discussion, must have known to be untrue.

247. At the meeting which took place on 22nd December 2003, between CF and GB representing the SWAHB, and Mr. M, the then Principal of the school, material misrepresentations were made, the first being to the effect that the allegations were validated, and secondly, as to the applicant's position, it being said that he had failed to attend appointments, thereby creating the impression he was uncooperative. In respect of both of these misrepresentations, the persons making them knew, or must have known, that they were both untrue. The misrepresentation of the applicant as simply not having attended meetings, in light of the refusal of the SWAHB to address his correspondence, and given the easily available information to which he was entitled, was quite reprehensible. Similarly, the misrepresentation of the purported validation of MK as a proper validation must have been to the knowledge of the SWAHB, clearly untrue.

248. I am quite satisfied that the manner in which the SWAHB sought to notify the school in December 2003, in its letter and in the meeting, could not be considered to be an honest attempt to discharge their duties as impartial, independent investigators under s. 3 of the Childcare Act 1991, but was a further advance towards their improperly prejudged conclusions.

249. As discussed earlier, the investigative process came to an abrupt end when the school, by letters of 8th January 2004 and 27th January 2004, requested from the SWAHB the written statements and reports underlying the allegations made. It is very difficult to fathom what was going on at this stage and the reasons for the reluctance or refusal to furnish this material to the school. Clearly, the school had to investigate the matter, and equally clearly, both the school, and more particularly, the applicant, was entitled to this material. There could be no legal issue about this. The applicant had a crystal clear constitutional right to be furnished with this material and the school, in order to conduct its own investigation in accordance with the norms of natural justice, had to have it as well. Whilst the initial excuse for not handing over the material offered by CF was her recourse to legal advice, and we know nothing happened thereafter, I find it inconceivable that this material could have been withheld on the basis of legal advice. I am of the view that the probable explanation for the withholding of this material was the refusal of JK to allow it to come into the hands of the applicant and the SWAHB compliance with JK's position. The SWAHB, through its social workers, and in particular, CF, appear to have regarded their relationship with JK and RK as a client relationship in which the SWAHB, in effect, was acting for RK. This situation was, as a matter of probability, made worse by the established personal connections between JK and the SWAHB, in particular, CF and its social workers in Area 9.

250. When asked to explain the two-year delay, CF merely pointed to lack of resources and, specifically, that no social worker was allocated the case. On the face of it, this appears simply untrue. As of December 2003, clearly, CF had been allocated the case and actively pursued the matter until the end of January 2004, and indeed, emailed JK on 8th June 2004.

251. Having regard to the very serious nature of the allegations made and the fact that the applicant was continuing to teach, it is simply not credible that this case was left unattended due to lack of resources. As said earlier, I think it is probable the real reason that the case lay fallow was because JK would not countenance the report of MK and the underlying materials ending up in the hands

of the applicant, and when one sees the case revived late in 2005, this difficulty is still evident, but then overcome, on the basis of JK agreeing to materials being shown to the applicant at a meeting but not given to him.

252. It is clear from the report of 27th March 2003, and from the email correspondence later in 2006 between CF and JK, that CF shared JK's view that the applicant should not have these materials, describing it, as she did on a number of occasions, as a "*further abuse*".

253. The delay, then, in the progress of the case for two years must, in large measure, be attributed to the cooperation of CF with JK in resisting giving to the applicant that to which he was constitutionally and legally entitled.

254. In cooperating with JK in this fashion, could it be said that the SWAHB was advancing the investigation in an honest attempt to discharge its function? It is very difficult to believe, if not impossible, that a person who has the status of team leader would not know that adopting such a partisan posture in an investigation in which she was the adjudicator and which she had a duty to carry out impartially, was manifestly wrong and unfair. Thus, I have come to the conclusion that the two-year delay in the investigation was, in itself, the result of the partisan way in which this investigation was conducted by the SWAHB, and again, not an honest attempt by it to discharge its duty.

255. It might very well be asked what should the SWAHB have done with this investigation. The answer is perfectly clear. They should have answered the applicant's queries when they were raised. This would have taken a matter of days. They should have given him the underlying reports and any other material underpinning the allegations. As independent adjudicators, they were obliged to have rejected any claims by JK for confidentiality in respect of this material insofar as that kept that material away from the applicant. Had all of this been done, the applicant would have been in a position to meet the case against him and to bring to the attention of the SWAHB all of the relevant material of which he was aware which would bear upon the credibility of the allegations made. In the context of all of this, a fruitful meeting could have taken place between the SWAHB and the applicant well within the autumn of 2003, and the investigation brought to a proper conclusion then.

256. Returning to the chronology of events, we find ourselves late in November 2005, with the revival of the investigation, the school and the applicant having thought it had all gone away. It is not clear what brought about this revival, it appears to have emerged from a case review conducted within the SWAHB on 15th November 2005. No new material had emerged and so the revival of the investigation was merely dealing with the same material as was available in December 2003 and earlier.

257. CF got the process going again by corresponding with the various interested parties, namely, MK, the school, the applicant and the gardaí. It is evident from CF's emails to MK that CF realised there was a problem with the "*validation*" of MK, thus, she made the enquiries of MK as to her role in that regard and immediately got an unequivocal answer from MK to the effect that she did not do "*validation*", that her role was exclusively that of a counsellor and therapist. The upshot of CF's attempts for clarification of this is that MK reiterates her clarification but repeats her own opinion concerning the allegations of abuse. That, of course, did not alter the fact that validation, as it is understood in this jurisdiction, and also, it would appear, in Texas, had not, in fact, taken place, regardless of MK's opinion.

258. Although CF was well aware of this situation, nonetheless, in her correspondence with the other interested parties, she totally suppressed the true state of affairs with regard to the validation process and continued as if nothing had happened to maintain the posture that there had been a "*validation*" of the allegations.

259. CF's dealings with the applicant did not change. Initially, she asked him to come to a meeting at short notice without any further material being supplied and without any replies to his earlier queries and without any explanation of the two-year gap in the process. She did, however, for the first time, in her letter to him, identify the person who was making the allegations. This is, in itself, an extraordinary feature of the process. This only occurred a full four years after the SWAHB were first informed of these allegations. The applicant responded by writing two letters, one of 4th January 2006, in which he makes a variety of queries, again, entirely reasonable ones. As already mentioned, CF does reply, not only to the queries raised in this letter, but also to the queries initially raised by the applicant in his letter of 21st July 2003, but having prepared a letter dated 4th February 2006, this was not sent out until 24th March 2006, when a letter in almost exactly similar terms to the letter of 4th February 2006, was sent to the applicant, too late, of course, to enable him to do anything with it, to influence the inquiry.

260. In the meantime, CF makes the arrangements for an interagency meeting which ultimately is held on 21st February 2006. At that meeting, the underlying materials, namely, the reports from MK are presented, but it would appear little else by way of documentation. At that time, the HSE was in possession of all of the facts and all of the relevant information, material and correspondence. Thus, it was CF who made the presentation to the meeting, and as I have outlined earlier on, her presentation was untruthful in several respects, in particular in its total suppression of the true state with regard to the validation process and the grossly prejudicial misrepresentation of the applicant's position, particularly so in light of the correspondence between the applicant and CF in December 2005 and in January and February 2006. CF was well aware of the truth, both as regards the validation process and so far as the applicant's position was concerned and she suppressed that truth and misrepresented to the meeting an entirely different picture.

261. I am quite satisfied that her conduct in this regard could in no way be regarded as an honest attempt by her to discharge her public duty.

262. The withholding by CF of her letter dated 4th February 2006, until 24th March 2006, cannot, in my view, have been an oversight. It was, in my opinion, a stratagem to manipulate the correspondence so as, on the one hand, to appear to be answering the applicant's queries, but at the same time doing so at a time which ensured that he would have no opportunity to respond or get involved in the inquiry and influence its outcome, because simultaneously with the sending of this letter to the applicant, she was sending the report to the school which concluded the investigation.

263. The withholding of the letter of 4th February 2006, demonstrates, in my view, a determination on the part of the HSE to continue as they had done up to that point in the inquiry, to freeze the applicant out of any meaningful participation in the inquiry, and was anything but an honest attempt by the HSE to discharge its statutory obligation, to conduct this inquiry in an impartial fashion.

264. This brings me, finally, to the report of 27th March 2006. I have already detailed the crucial misrepresentations in this report and there is no need to repeat them here. I am satisfied, having regard to what was known to the authors of that report regarding the truth concerning the subject matter of the report, particularly with regard to the involvement of the applicant and also the validation process, the conclusions that were stated in the report were manifestly untrue and known to the authors to be untrue. There was, in

addition, a clear demonstration of bias in the conclusions, as already mentioned.

265. I have no hesitation in saying that the content of this report fell far short of an honest attempt by the HSE to discharge its duty.

266. This report and the clarification of it emailed on 3rd April, led, inevitably, to the applicant being removed from his teaching position by being placed on administrative leave, with all of the entirely predictable consequences that have flowed from that. The documentary evidence in the case demonstrates forcibly that from the outset of this investigation, its outcome was always pre-judged or determined, and the investigation was conducted in a manner calculated to ensure that the pre-determined conclusion would not be deflected or disturbed by any meaningful input by the applicant. In effect, RK's allegations were accepted as true from the outset, and the SWAHB and the HSE, at every step in the investigation, sheltered these allegations from appropriate scrutiny, thereby ensuring that the applicant did not escape his fate as a child sex abuser, as they saw him. There was evident throughout the inquiry a perverse calculated effort on the part of the SWAHB and the HSE to give effect to their prejudgment that RK's allegations were true.

267. In this way, the applicant was clearly targeted by the SWAHB and the HSE, and as the actions of these bodies were, as detailed above, grossly improper, dishonest and clearly wanting in proper motives and therefore malicious, I must regrettably conclude that the applicant was the victim of targeted malice in the conduct of the investigation.

268. In addition, I am quite satisfied that the SWAHB and the HSE conducted this investigation in a manner that was grossly reckless in every respect, namely, as to the wholly inappropriate relationship with JK and RK; its egregious disregard for the applicant's rights to fair procedure; its gross misrepresentations to other agencies and, in particular, the school, and finally, its reckless disregard for the achievement of a proper outcome of the inquiry consistent with the truth. In all of these respects, I am quite satisfied that the responsible officers of the SWAHB and the HSE must have known that what they were doing was wholly impermissible. As mentioned already, none of these officers have given evidence or sworn any affidavits in the proceedings. To avoid the foregoing conclusion, I would have to assume either an extraordinary litany of accidental mishaps, which it need hardly be said would be fanciful to the point of absurdity or an extraordinary level of incompetence on the part of these officials, which, for persons in their positions with the qualifications and experience they must possess, is simply not tenable. I am satisfied that the conduct of these officials in the inquiry was pervaded throughout the entire course of the inquiry with subjective recklessness.

269. I am quite satisfied that the applicant has established that the behaviour of the SWAHB and the HSE in the conduct of its inquiry under s. 3 of the Childcare Act 1991, into the allegations of child sex abuse made by RK against the applicant amounted to malfeasance of public office and that malfeasance of public office has consequentially and predictably been the cause of very substantial losses to the applicant.

270. The applicant claims general damages and also damages in respect of his financial losses which are almost exclusively his loss of earnings as a result of, in the first instance, giving up posts of responsibility, when these allegations were first alerted to him, and secondly, a total loss of earnings since 1st September 2007, when the Department of Education stopped paying his salary. The applicant was placed on administrative leave on 4th April 2006, but his salary continued to be paid thereafter. The Board of management of the school revoked his administrative leave in late January 2007, and the applicant was invited to return to his teaching post, but this he declined to do. Because of his refusal to resume his teaching duties, the Department of Education stopped his salary as of 1st September 2007, and since that time, the applicant has been without any income.

271. Insofar as the damages are concerned, the HSE made the case that the applicant failed to mitigate his loss by returning to his teaching post when invited to do so by the school after January 2007.

272. As the resolution of this issue affects both the quantum of special damages and general damages, I propose to deal with it first.

273. The applicant would not take up the offer to resume his teaching post after January 2007 because of the continuing investigation by the HSE into RK's allegations against him and also because of the refusal of the HSE to rescind its recommendation that the school ensure that the applicant be absent from the school premises during the investigation. Although the HSE conceded orders in terms of paragraphs C, E and F, and the declarations set out at G, H, I and J of the applicant's statement grounding the judicial review proceedings, the HSE refused to concede the relief sought at D, namely, an order of *certiorari* quashing the recommendation of the HSE communicated to the school on 4th April 2006, to the effect that the school should ensure that the applicant be absent from the school premises.

274. The applicant, in his evidence, was adamant that he could not have gone back to school while the investigation was continuing and the foregoing recommendation remained in position because he said that it was certain that if he returned to his teaching post, having been absent for a considerable period of time, it was inevitable that the reasons for his absence would become disclosed, and also that there was a continuing investigation into very serious allegations of child sex abuse and he was of the view that if this information emerged in the school community, it was certain it would lead to an outcry from parents, pupils and perhaps the wider community to have the applicant removed from the school. The continuance in force of the recommendation from the HSE to the effect i.e. that he be removed from school, reinforced that situation. The applicant's evidence in this regard was supported by the evidence of Ms. Moira Leydon, Assistant General Secretary of the Association of Secondary Teachers in Ireland (ASTI) and also by the evidence of Mr. J. M., a teacher in the school, now retired.

275. Whilst I would readily accept that the school, in revoking the applicant's administrative leave at the end of January 2007, did so in an anxious desire to undo what they undoubtedly probably perceived as an injustice to the applicant, and whilst I have no doubt that the Board of management, who by then were familiar with the conduct of this matter up to then, had continuing confidence in the applicant, there was, in my opinion, no reality to the applicant being able to resume his teaching post whilst the HSE investigation was not only ongoing, but being actively pursued and whilst the HSE refused to rescind its recommendation that the applicant be absent from the school. I am quite satisfied that the applicant's apprehensions to the effect that knowledge of the ongoing inquiry and of the HSE recommendation would inevitably become known in the school community were well grounded. In this respect, also, I am satisfied that his colleague teachers would have been likely to have required his removal in order to maintain the trust of the school community. I fully accept the evidence of Ms. Leydon in this respect which was to the effect that apart altogether from the recommendation of the HSE, the mere existence of this continuing inquiry into allegations as serious as those made against the applicant would have necessitated the removal of the applicant from the school, and indeed she went further to describe allegations of this kind, if not speedily resolved, as career ending. I also accept her evidence, and indeed that of the applicant, that it would, in effect, have been pointless to have applied to any other school for a teaching post while this investigation was ongoing, as inevitably, the required disclosure of the existence of this investigation would effectively have ruled the applicant out of contention for any post.

276. Having endured the humiliation of being placed on administrative leave in April 2006, and the dire social consequences that resulted from that, I think the applicant was absolutely right to refuse to resume his teaching post while this investigation was ongoing. No human being could be expected to face the same experience again. On the next and inevitable occasion, the issue would be one of public or community controversy within the school which would have had worse consequences for the applicant's wellbeing than the initial placing of the applicant on administrative leave, which was carried out by the school with maximum discretion.

277. As to the recommendation, it is clear from the correspondence from March 2007 onwards, that in spite of being pressed by the applicant to rescind the recommendation, the HSE declined to do so and refused to concede an order of *certiorari* claimed at paragraph D and the declaration relating thereto at H in the statement of grounds. It is apparent that the HSE was actively pursuing the investigation, having arranged to meet RK in London in July 2007, where two meetings took place between two social workers of the HSE and at the second at which legal advisors were available. I interpret the correspondence as being to the effect that the HSE, because of the continuing investigation, were unwilling to withdraw the recommendation that the applicant should not be present in the school.

278. Although the continuing existence of the investigation into allegations of such seriousness was, of itself, sufficient to have rendered the applicant's position as a teacher in the school untenable, the continuance of the recommendation tended to reinforce that.

279. In the judicial review proceedings, the respondent conceded the bulk of the reliefs sought in respect of the investigation prior to that time, and this court refused an order of prohibition to the applicant in respect of the continuing investigation. Thus, the HSE, after that judgment was delivered in May 2010, was entitled to proceed with their investigation. There is no evidence put before this court as to what happened with that investigation thereafter. At the commencement of the hearing in this matter on 3rd July 2012, a letter dated 2nd July 2012 from the solicitors for the HSE to the solicitors for the applicant was handed into court. It reads as follows:

> "***Matter: PDP v. Health Services Executive - High Court 890 JR/2006***
>
> *Dear Sirs,*
>
> *The HSE contacted the complainant in pursuance of their statutory obligations under the Childcare Act 1991, as interpreted by Mr. Justice Barr in MQ v. City of Dublin VEC & Ors. [1998] 4 I.R. P85, Mr. Justice O'Neill in this case, Mr. Justice Hedigan in Igbinogun v. HSE, Neutral Citation: [2010] IEHC 159, and Mr. Justice O'Keeffe in Cooke v. HSE, Neutral Citation: [2010] IEHC 503.*
>
> *The HSE set out to the complainant the process for dealing with the complaint in light of the judgment of Mr. Justice O'Neill. The complainant was not willing to participate in the process as outlined.*
>
> *The HSE considered the allegations unconfirmed and cannot pursue its statutory duty further in relation to the complaint. The investigation is now closed."*

280. Thus, until 2nd July 2012, the position of the applicant was that he was still under investigation by the HSE and now, even though the investigation is closed, he is left in the position that the allegations against him are merely "*unconfirmed*" and therefore he is denied the opportunity to have allegations against him adjudged to be without foundation.

281. As this court, in its judgment of May 2010, refused the applicant an order of prohibition of the investigation, it necessarily follows that the HSE was entitled to pursue that investigation from early 2007 onwards. It is, of course, to be inferred that had the process of investigation been commenced early in 2007, with the applicant placed in administrative leave from then on, his salary would have been paid by the Department of Education in the ordinary course of these things. It is apparent from the correspondence with the Department of Education leading up to the withdrawal of the applicant's salary as of 1st September 2007, that no one, and in particular, the HSE, informed the Department of the continuing investigation. Had that been done, it may very well have been that the Department would have continued payment of the applicant's salary, thus reducing the loss now claimed. This is not a matter which could, in reality, have been corrected by the applicant and the simple reality, and the HSE has not contended to the contrary, is that the proximate cause of the applicant's loss of earnings was the removal of him from his teaching post by placing him on administrative leave and the impossibility of him resuming his teaching duties whilst the HSE was continuing its investigation, notwithstanding the revocation of administrative leave, which, for the reasons I have already given, was ineffective to enable the applicant resume his teaching duties. Hence, although the Department of Education might have continued his salary after 1st September 2007, if told there was an ongoing investigation, the immediate or proximate cause of the loss of earnings to the applicant was that he could not resume teaching duties because of an ongoing investigation which should have been concluded no later than the end of 2003. By the time judicial review proceedings were disposed of and the order concluding them made in July 2010, the position with regard to the applicant either returning to his post in the school or seeking a job elsewhere, was, for all practical purposes, beyond recall. I am quite satisfied from the evidence, as of that time i.e. July 2010, there was no way the applicant could have resumed his teaching post in the school because of the ongoing investigation, and similarly, there was no reality in him applying for a teaching job elsewhere. As the investigation was continuing apparently post-2010, and up until 2nd July 2012, there was no reality in the applicant going back to work in his previous teaching post or in seeking a new teaching job elsewhere, between July 2010 and July 2012.

282. In the course of the hearing before me on 16th July 2010, for the purposes of finalising the court order arising out of the judgment delivered on 25th May 2010, I expressed the view that Relief D, which was an order quashing the recommendation of the HSE that the applicant remain absent from school, was moot in the context of the reliefs which were conceded by both respondents. Whilst it is undoubtedly the case that the applicant in his own mind was influenced by the continuance of this recommendation, the simple reality is, and always has been, that regardless of this recommendation, as was made clear in the evidence of Ms. Leydon, which I accept, the mere continuance of the investigation itself was more than sufficient to have prevented the applicant returning to his teaching post or applying for a new one. The unwillingness of the HSE to agree to the recision of this recommendation may have contributed to greater weight or importance being attached to this recommendation than it deserved, after all the other reliefs were conceded.

283. I am satisfied that the applicant has not failed to mitigate his loss as the earliest point in time at which he could feasibly have considered returning to work was 3rd July 2012, when it was made known to him that the HSE investigation was over. I am satisfied that he is entitled to recover from the HSE damages in respect of his loss of earnings since 1st September 2007, and I am also satisfied he is entitled to recover losses he suffered in giving up his post of responsibility because, as I have already indicated, had there not been malfeasance in public office in the conduct by the SWAHB in the investigation under s. 3 of the Childcare Act 1991, that investigation would have been concluded by the end of 2003.

284. I am satisfied that his decision to relinquish these posts was a reasonable one in the context of the position he was put in by the SWAHB in initially commencing the investigation with all of the flaws I have previously discussed and then leaving it in abeyance for two years.

285. Insofar as the figures are concerned for these losses, there is no disagreement between the parties and they are as set out in an actuarial report prepared by Mr. Brendan Lynch, Actuary, dated 27th June 2012. The figure for his net loss of earnings up to the date of this trial is the sum of €178,627. Interest pursuant to the Courts Act on that sum would amount to €29,265.

286. The question now arises is what is the future for the applicant, given that the HSE has said that the investigation is now closed. That, undoubtedly, removes any obstacle to the applicant returning to teaching. His evidence was that because of the history of events, he could not return at this stage to teaching in the former school. I would accept his evidence in that regard. He is left in the position of having been absent from the school for over six years. Inevitably, if he returns now, there will be questions as to the reasons for his absence, and given that the final status of the investigation is that the allegations are simply "*unconfirmed*", he would not be resuming his teaching duties as a person who had obviously been exonerated. This would be a most unsatisfactory position which would leave him open to the prospect of embarrassing, and perhaps humiliating encounters with ill-informed people. It would not, in my opinion, be in the interest of the applicant, or indeed, of the school that he should, in all of these circumstances, return to teaching in that school.

287. As to gaining employment in another school, he is now approaching 61 years of age. He is undoubtedly a highly qualified teacher with the best of teaching experience, particularly in subjects that are much sought after. However, he will be competing in a market where, at the moment, the supply of teachers is more than ample, where inevitably, in any interview process, he will be obliged to explain his six years of absence from teaching and the reasons for it.

288. In these circumstances, it would seem to me to be improbable over the remaining few years of his teaching life *i.e*. up to age 65 that he would be successful in getting another teaching post.

289. For these reasons, it would seem to me that he is entitled to recover his loss of earnings up to the date of his normal retirement at age 65 and he is, of course, entitled to recover the capital loss of any diminution in the value of his pension entitlements thereafter.

290. The capital value of his loss of earnings up until 31st August 2017, which is the end of the school year after his 65th birthday to which he would be entitled to serve is €188,089. The plaintiff is also entitled to recover his loss of pension entitlement and also the loss of any pension entitlement derived from the loss of his position as Assistant Principal and the allowance going therewith. This amounts to the sum of €30,358 in respect of the pension loss thereby derived, and €10,645 in respect of the diminution in gratuity, making due allowance for accelerated value.

291. This brings me to the question of general damages.

292. The applicant described himself as a teacher by vocation. From an early age, he did not want any other occupation. After qualifying as a teacher, he returned to teach in the school in which he had attended as a pupil. This is a well established tradition in the school. He taught there all of his professional life until these events occurred. He was an accomplished and valued teacher who, apart from teaching, engaged in all other aspects of the life of the school and, in particular, distinguished himself in sports coaching, particularly basketball, and in a variety of other activities associated with the school. He was also fully participant in many other activities in which the school associated itself with the surrounding community. Thus, every aspect of his life, vocational, personal and social was taken up by the school.

293. When he was placed on administrative leave on 4th April 2006, all of that changed utterly. All of his connections with the school ended, and because of his natural and reasonable fear of humiliation, he withdrew almost entirely from the community in which he lived, his sole social contact being the support of a number of very good friends who supported him throughout all of this, in particular, the two men who gave evidence for him, Mr. C. Ó G and Mr. J. M. In saying he withdrew from his local community, this was to the extent that he went to a different town to do his shopping, and apart from attending a gym on the edge of town, he kept away from his own town. For some time, he withdrew from his local Church, and when he returned to attending Mass, he would sit nearest the door so that he could be last in and first out.

294. The applicant is obviously a man of strong health and disposition, and notwithstanding the appalling experiences he has endured, his mental and physical health have not been affected and never were. Notwithstanding this, I am quite satisfied he endured extraordinarily high levels of stress and great mental anguish and suffering throughout this entire period.

295. Whilst the applicant did complain of very high levels of stress and worry in the initial period after he was notified of these allegations in July 2003, I discount that in the assessment of his general damages because that was inevitable in any event, even if this inquiry had been properly conducted. However, I am quite satisfied that all of his stress and suffering from the end of 2003 onwards are to be attributed to the malfeasance in public office of the HSE and he is to be compensated for all of that.

296. Although the inquiry is now closed, and no doubt, that is a considerable relief to him, he is understandably dissatisfied with the outcome because it does not vindicate him and he is left with the residual apprehension that it is always open to the HSE to recommence this investigation.

297. The circumstances revealed in this case as the subject matter for compensation are highly unusual, if not unique, and thus, comparison with other normally compensatable injuries does not give a clear guide to an appropriate award in this case.

298. If one looks to personal injuries cases, the range of general damages for catastrophic physical injury is generally between €400,000 and €500,000.

299. In defamation actions, serious defamations can attract damages in excess of €300,000.

300. I am satisfied that the malfeasance in public office of the HSE had the consequence of destroying, irreparably, the life which the applicant enjoyed in all its aspects, professional, social and domestic. Whilst the judgments of this court must go some considerable distance in redressing the wrong done to the applicant, the life that he has lost to date cannot be restored and in the future will not be adequately repaired.

301. I am quite satisfied that the applicant, in the absence of any adequate or proper vindication of his reputation out of the HSE

inquiry, will have to live with the consequences of the HSE's wrongdoing for the remainder of his life. No doubt, as time goes by, these things will fade but they will never altogether go away. There will always be, inevitably, unpleasant reminders.

302. Taking all of this into account, in my opinion, the appropriate sum to compensate the applicant by way of general damages is the sum of €300.000.

303. Thus, there will be judgment for the applicant for the sum of €736,984.