

THE HIGH COURT

[2018 No. 932 JR]

BETWEEN

EO'C

APPLICANT

AND

TUSLA CHILD AND FAMILY AGENCY, PAUL HARRISON AND LIZ OAKES

RESPONDENTS

JUDGMENT of Mr. Justice Meenan delivered on the 2nd day of September, 2019

Introduction

1. The applicant is a secondary school teacher employed by a particular Educational Training Board (formally a vocational education committee) and at the material time was working as a chaplain/teacher in a school in Munster. In these proceedings the applicant challenges a finding made by the first named respondent that, following a complaint by a pupil in the school, what occurred represented child sexual abuse. This finding was upheld by the second and third named respondents, who comprised an appeal panel.
2. The seriousness and consequences of such a finding by the first named respondent that the applicant, a secondary school teacher, had been involved in child sexual abuse cannot be understated. One would have expected the first named respondent, in reaching its conclusion, to have afforded the applicant basic fair procedures. Unfortunately, this was far from the case. The second and third named respondents had an opportunity to remedy the situation but failed to do so.
3. In the course of this judgement I will set out the background to the allegation which was made against the applicant in December, 2015. However, I will commence with an earlier allegation of 2011. It will be seen that the applicant himself, through poor judgement and, on occasion, low professional standards, contributed to the situation he was faced with but this in no way excuses the failures of the respondents.

2011 allegation

4. On 9 February 2011, on the bus home from a major sporting event with the girls' team from the school, a female student claimed that the applicant had made her feel uncomfortable by sitting beside her on the bus. The applicant said to the girl that he wished she was his daughter. Shortly after this complaint had been made the same student complained that a year beforehand the applicant had rubbed her leg at a musical in the school.
5. This complaint was reported, correctly, by the then vocational education committee to the first named respondent who carried out an inquiry. The applicant accepted that he had said those words but denied any improper physical contact with the school student involved. He said that he sat beside her on the bus because she suffered from travel sickness and did not observe her being in any way uncomfortable.
6. The conclusion of the inquiry carried out by the first named respondent was that there was no evidence of sexual abuse perpetrated by the applicant but there was a concern

around the applicant's lack of boundaries. There was a further concern around his motivation in singling the particular school student out for special attention and touching her in an inappropriate manner. At a subsequent meeting the applicant was informed that the complaint of sexual abuse was unfounded but that there was inappropriate professional conduct that needed to be addressed.

7. It appears that this inappropriate professional conduct was referred to the Granada Institute for a risk assessment.

2015 allegation

8. In December 2015, the applicant was informed that a complaint had been made against him by a female school pupil in the school. The complaint was set out in a letter to the applicant from the particular Education and Training Board. The allegation of inappropriate behaviour was that the applicant had "*allegedly smacked her on the bottom*" together with an allegation of an inappropriate whispered communication. Later in this judgment I will consider, in detail, the substance of the complaint, the manner in which it was investigated and the conclusion reached by the first named respondent.
9. The complaint of the school student was referred to the first named respondent where it was set out in a document titled "*standard report form*". Following consideration of the complaint, the relevant details were set out in a document titled "*intake form*".
10. The complaint was also referred to An Garda Síochána for investigation. At this stage the applicant was suspended from the school.
11. By letter dated 4 October 2016, from the first named respondent to the applicant, details of the allegation were set out. The letter set out the procedures that would be followed in investigating the allegation and in reaching a conclusion. This included arrangements for a meeting to be held with the applicant on 10 October 2016 where he would have an opportunity to give his response. Following this meeting there would be a further assessment and then a "*provisional conclusion*" would be reached. The applicant would be given a further opportunity to respond and thereafter a final conclusion would be reached. Finally, the letter informed the applicant in the event of a final conclusion that the allegation was "*founded*" that there was a right of appeal.
12. The meeting referred to in the letter duly took place on 10 October 2016. It was at this meeting and in a subsequent letter dated 18 October 2016 that the applicant set out, in detail, his response to the allegation.
13. On 9 December 2016, the social worker, employed by the first named respondent, who was involved in the investigation, interviewed the school pupil who had made the complaint.
14. On 8 February 2017, the first named respondent held a "strategy meeting" out of which emerged the "*provisional conclusion*" which upheld the complaint and a finding that what had occurred represented child sexual abuse on the part of the applicant. The applicant was invited to respond by letter, dated 28 March 2017.

15. The applicant, through his Solicitor, responded by letter dated 25 April 2017. In the course of this letter the first named respondent was informed that as the applicant was now facing criminal proceedings in the District Court that he would not engage further with the first named respondent until these criminal proceedings had been brought to a conclusion. The applicant did not wish to engage in a parallel process which could possibly prejudice his defence to these criminal proceedings.
16. Three days later, by letter dated 28 April 2017, the first named respondent informed the applicant that the "*provisional conclusion*", was now a "*final conclusion*". The applicant was advised of his entitlement to appeal this conclusion.
17. The applicant engaged in the appeal process which was carried out by the second and third named respondents.
18. In the course of the hearing of the appeal there were lengthy exchanges between the Solicitors involved concerning the nature and scope of the appeals process. Ultimately, the conclusion reached by the second and third named respondents was: -

"the appeal panel upholds the conclusion of the social workers that (EO'C) sexually abused the complainant."

Application for Judicial Review

19. On 9 November 2018, the High Court (Noonan J.) gave leave to the applicant to apply, by way of an application for judicial review, for certain reliefs. At this stage the second and third named respondents had not been joined to the proceedings. The reliefs sought against the first named respondent were, *inter alia*: -
 1. An order of *certiorari* quashing the determination of the first named respondent on 28 April 2017;
 2. An order of *certiorari* quashing the determination of the appeal panel (now represented by the second and third named respondents);
 3. A declaration that the determination of the first named respondent of 28 April 2017, and of the appeal panel of 13 August 2018 was *ultra vires* the first named respondent and in breach of the constitutional rights of the applicant, and of the principles of constitutional and natural justice; and
 4. If necessary, an order extending the time for challenging the decision of the respondent of 28 April 2017.
20. In the "*statement of grounds*" the applicant sets out in detail the various criticisms which he makes of the procedures followed by the respondents. It is entirely clear from these grounds that what is in issue is, that in reaching its conclusion, the first named respondent failed to afford the applicant fair procedures and were in breach of his constitutional rights.

21. The claim against the second and third named respondents is that, in conducting the appeal, the appeal panel significantly departed from the stated appeal process which was:
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"An appeal is a new and impartial examination of the work undertaken by the social work team which reached the conclusion that abuse or neglect had taken place. It will examine the professional decision making informing the conclusion that abuse or neglect occurred and will establish whether fair procedures were applied."

"Policy and procedures for responding to allegations of child abuse and neglect" (September 2014) (policy and procedure document)

22. The first named respondent, in investigating and reaching its conclusion on the 2015 allegation, stated that it followed the policy and procedure document. This document is both lengthy and detailed and I will refer to the relevant provisions. Under the heading "*Introduction and scope of policy*" it is stated: -

"1.2 Any individual against whom allegations of abuse are made has a right to fair procedures; however at times this right may need to be secondary to the protection of children at risk. The right of fair procedure applies equally to adults, adolescence and children who have allegations made against them."

Under the heading "*Policy*" it is stated: -

"2.2 The Child and Family Agency must ensure that all persons who have allegations made against them are treated fairly, with due consideration given to their right to know who has made the allegations, the nature of the allegations and the right to reply to them. No final conclusion in respect of the allegations should be made until such time as the alleged abuser has had the opportunity to reply and participate in the social work assessment process."

Under the heading "*Post-initial interview*" it is provided: -

"24.1 (b) An alleged abuser may request an opportunity to put questions to a person (for example, a complainant or a witness) about the allegations. A balance should be drawn between the right of the complainant, the legal obligations of The Child and Family Agency under section 3 of the Childcare Act 1991 and the need to afford fair procedures to the alleged abuser. If such a request is made, the social worker should discuss it with their line manager, and the particular circumstances of each individual case should be taken into account."

Under the heading "*Provisional conclusion*" it is stated: -

"25.5 Remember that the determination is based upon balance of probability. The detail and judged likelihood of the allegations being true will have to be weighed further. It is important that no opinion is reached as to the likelihood of the allegations being true until all information is carefully assessed and the process which the alleged abuser has been completed."

Procedures followed by the first named respondent in reaching its conclusion on the 2015 allegation

23. It is necessary to start by looking at the statement that was made by the school pupil who made the complaint. For reasons which will become clear, I will set it out in full: -

"14 – 12 – 2015

(Name of complainant)

About two weeks ago I was getting my lunch and when I was going back to my locker EO'C stopped me and whispered into my ear "call me tonight at ten thirty, I've the house to myself." I didn't know what to say or what to feel.

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I went into class and put my bag at my desk and I went to ask EO'C could I go to Ms. -, but before I... asked him he said "[name of complainant] stop calling me my wife is getting worried". I didn't know what to say so I just asked him could I go see Ms. -. He said "you can but I don't know if she is in". I went to leave the classroom when he slapped on my bottom. I left. I returned and my friend - asked did he just hit me. I said yes then I went back to my seat.

It was said to me three times about the "call me".

24. Other statements were made by pupils concerning the alleged incident but these differed in material respects to the statement of the complainant. The contents of the complainant's statement were the primary "*evidence*" against the applicant.
25. The social worker, on behalf of the first named respondent, filled out an "*intake form*" which purported to record the complaint against the applicant as follows: -

"- year girl - of - was upset that EO'C had approached her, made verbal advances to her – stating she should "come to his house while his wife was out", and he also "slapped her bottom". – was very distressed following these events and said she felt unwell and did not attend school for one week. Her parents were appropriate and supportive when the principal advised them of the incidences..."

It can be seen that this version of the complaint is different to what the complainant had set out in her own statement. This version of the complaint was set out in the letter from the first named respondent to the applicant, dated 4 October 2016, which set out the allegation as follows: -

"A – year girl – was upset that EO'C had approached her, made verbal advances to her – stating she should "come to his house while his wife was out", and he also "slapped her bottom". (Name of complainant) was very distressed following these events."

26. It is clear to me from the foregoing that from the outset the process of investigating and reaching a conclusion on the complaint had been undermined in that the complaint, as formulated by the first named respondent into an allegation, was unsupported by the written statement of the complainant. In other words, the applicant was being required by the first named respondent to defend himself against an allegation that had not been made.
27. The next step in the process was a meeting held on 10 October 2016 between the social worker acting on the part of the first named respondent and the applicant. At this meeting, the applicant stated that he would never have said to the girl to *"call to his house when his wife was out."* He advised that any conversation had was of *"a jovial nature"* and that *"he would be having a bit of banter"* and would have said *"stop ringing me at home, my wife is getting worried."* The applicant accepted that he should not have made such a comment, he said that the girl at the time was in the company of a couple of other girls, that there was no sexual intent on his behalf and it was not malicious in any way. The applicant informed the social worker that he understood why the girl was upset and that he, the applicant, was very upset that the girl had been affected by this but that it was picked up the wrong way.
28. In terms of the allegation of the slap on the bottom, the applicant said that he recalled a large group of students entering the classroom and that the girl had come up to him asking to go to see the year head, he signed her journal and she left. Students were still entering the classroom as she was leaving and it was quite possible that she brushed up against him, but that he did not slap her. The applicant also advised the social worker that dealing with the allegation was *"devastating for him."* It should be noted that the aforesaid account of this meeting is taken from a written note of the meeting by the social worker involved.
29. During the said meeting, the applicant was also questioned concerning the 2011 allegation. The social worker stated that consideration needs to be made as to whether the complaint of 2015 reaches the threshold for sexual abuse.
30. The meeting of 10 October 2016 was followed by a letter, dated 18 October 2016, from the applicant to the social worker involved. In the course of this letter, the applicant again referred to the allegation that he had slapped the complainant. He said: -

"As you can understand, a lot of her classmates would have been entering the classroom at that time, as well as a lot of movement going on for the preferred seats, it is very possible that one of her peers bumped off her at that time without realising it with their bags on their backs. To prevent the student from toppling into me, I may perhaps have raised my hand in all innocence to prevent such action happening.

I want to reiterate that at no time was there ever, as outlined in the complaint, a striking action on my part with premeditation, or any other untoward intent on my part directed to the said student."

31. On 7 December 2016, one of the social workers who was carrying out the investigation met with the complainant. This was a clear opportunity for the first named respondent to put to the complainant the applicant's account of events. This did not happen. The following is a record concerning an interview by the first named respondent with the complainant on 9 December 2016: -

"- advised that EO'C was her religion and SPHE in first and second year. The issues started about a month after starting second year. He would approach her around lunchtime and whisper something to her like "call me tonight at home 10.30, I'll have the house to myself." (The complainant) did not have his phone number and used to think it was very strange. He then, when in class, maybe when she would be entering the classroom, he would be saying – (the complainant) stop calling me at home, my wife will be getting worried. The other students might have laughed, but it kept happening.

On the 24th of November – (the complainant) was going to (USA). She wanted to inform her year head about being off, it was first class in the morning and she went to the top of the class and informed EO'C that she needed to go out to the year head, he walked her out towards the door and he slapped her on the bottom and she closed out the door. She was shocked and when she came back into class, her friend - then said to her when she came back in "did he really do that?? He hadn't realised that someone else saw it".

It is clear from this account of the interview that the applicant's version of events was not put to the complainant. In my view, this is a very serious departure from fair procedures. I do not see how the first named respondent could reach a fair conclusion as to whether the allegation was true or not without taking this basis step.

32. It was pointed out to the court that the applicant had not sought to exercise his right under 24.1(b) of the Policy and Procedure document, as set out at para. 22 above, where he could request an opportunity to put questions to the complainant. Further, reliance was placed on the decision of McDermott J. in *TR v. Child and Family Agency* [2017] IEHC 595. I will now consider this decision.
33. In *T.R. McDermott J.*, in a detailed and comprehensive judgment, reviewed the policy and procedures document and earlier authorities in particular the decision of Barr J. in *M.Q. v. Gleeson* [1998] 4 I.R. 85. In this decision Barr J. set out the principles that apply to the application of fair procedures in an investigation such as this. McDermott J. stated: -

"The 2014 Procedure reflects the principles set out in *M.Q.* The wide ranging nature of the circumstances in which issues of child protection may arise are reflected in the judgment of Barr J. and in the assessment procedures set up under the Procedure. The cases which require intervention or assessment will vary. There are cases in which there is an immediate risk perceived based on a reasonable suspicion which require immediate communication to An Garda Síochána, and/or third parties and in respect of which it would be wholly inappropriate to give notice

of the allegation or enter into a dialogue at that stage with the alleged abuser because of the dangers which that might pose to the child or children concerned. This type of case is provided for in the paragraphs of the Procedure which allowed for early and immediate intervention upon receipt of the complaint. If the case is not one that requires urgent intervention or action to protect the complainant child as in the case of the retrospective allegation of child sexual abuse by an adult, the assessment may be conducted within a more extended timeframe which allows for a greater engagement with the alleged abuser, especially where no immediate serious protection issue arises in respect of any other children. This scenario is also addressed within the 2014 Procedure.

82. There is an important distinction between the investigative stage under the 2014 Procedure and the final conclusion reached. The first stage of the assessment is focused on the gathering of information. At the conclusion of the first stage, the social worker conducting the assessment determines whether or not to proceed with the assessment."
34. At the investigative stage the full panoply of fair procedures are not available to an accused. What is involved at this stage is the gathering and identifying of information relevant to the inquiry into the complaint in question. However, matters change on the move from the investigative stage to the stage where conclusions are reached. At the conclusion stage the person accused must be afforded fair procedures. However, these fair procedures have to be applied, in this case, in the context of child abuse. I refer to the following passages from McDermott J.: -
- "88. It is clear, therefore, that the 2014 Procedure envisages that in certain circumstances, the applicant will be afforded a facility whereby the complainant or witness may be subjected to questioning in relation to the allegations made. It is clearly envisaged that this issue may arise and be determined in the course of the second stage of assessment.
89. It is clear from the judgment in *M.Q.*, that there are instances in which the complainant may not be available or amenable to questioning by the alleged abuser or his legal representatives. There are many reasons why this may be so. The child may be very young. The fact that a child has been subjected to fear, intimidation, domineering behaviour, manipulation, trauma or suffers from a mental or physical disability or incapacity may render such a procedure impossible, and/or inappropriate. Furthermore, it cannot be the case that the respondent is not entitled to carry out or continue an assessment where the complainant is not competent or available as a witness even though it reasonably suspects that a person has engaged in child abuse or is in a position to expose any other child to such abuse. To end the inquiry because the alleged abuser must be afforded an opportunity to cross-examine the complainant in all circumstances would be an abnegation by the respondent of its statutory responsibility in respect of child protection. In *M.Q.*, Barr J. stated that if, following a reasonable investigation, the

evidence is deemed to be sufficient to create a significant doubt in the mind of competent experienced health board or related professional personnel that there has been abuse by a person, the health board could not 'stand idly by but has an obligation to take appropriate action in circumstances where a person whom the Board reasonably suspects has indulged in child abuse is in a situation, or is planning to take up a position, which may expose any other child to abuse by him/her.' It is precisely because the circumstances in which allegations of child sexual abuse arise vary so widely that it is appropriate that the facility to question a complainant or a witness should be the subject of a properly exercised discretion as provided under paragraph 24.1(b).

90. The assessor should also take into account under para. 24.1(b), the potential consequences of provisional and final conclusions adverse to the alleged abuser. These include the potential initiation of childcare proceedings or criminal proceedings against the alleged abuser or a decision to inform a relevant third party in respect of child protection issues that arise for example, in respect of employment. It should be noted, however, that the full panoply of fair procedure rights will be available if court proceedings in respect of childcare issues or criminal proceedings are initiated in respect of the children concerned and the allegations made. Ultimately, a determination will be made by a judge in accordance with the Constitution as to whether the allegations have been established to the requisite standard of proof in the proceedings initiated ..."
35. In the case of the applicant though the full panoply of fair procedures, including the right to question or cross-examine the complainant, may not be automatically available. This does not relieve the first named respondent of the duty of, at least, putting to the complainant the applicant's account of the events complained of. In this case, there is no suggestion that this was not done by reason of the disability or vulnerability of the complainant. It is noteworthy that the criminal prosecution against the applicant failed on the evidence of the complainant herself. The applicant stated, on affidavit, concerning the hearing of the prosecution against him in the District Court, the following: -

"To my knowledge, this was the first time the complainant's version had been challenged and it transpired the complainant did not see me slap her bottom. It is incredibly frustrating that basic queries such as that were not asked of the complainant at first instance or on appeal."
36. Counsel for the first named respondent claimed that the prosecution failed as a result of the higher standard of proof required for a prosecution, rather than for the reaching of a conclusion on a complaint by the first named respondent i.e. "on a balance of probabilities". I cannot see how this explains the complainant telling the District Court that she did not see the applicant slap her. This was contrary to the statement which she had made which initiated the complaint.
37. The next stage in the process was the "*provisional conclusion*" which emerged following a "*strategy meeting*" held on 8 February 2017. This meeting was attended by social workers

of the first named respondent and also a member of An Garda Síochána who was investigating the complaint. The court was furnished with a written note, drawn up by the first named respondent, of this meeting. The document, having set out details of both the applicant and the complainant, commences under the heading "*Recent Causes for Concern*". The following is stated: -

"On 22/12/16 referral received from school stating that EO'C had behaved inappropriately towards [the complainant] in [name of school] and her mother reported that EO'C had asked her on several occasion to come to his home when his wife would not be there; and then said [the complainant] in the presence of other pupils to stop telephoning him at home, which [the complainant] had denied ever doing. [the complainant] also alleged that on one occasion EO'C had 'slapped her bottom'.."

This was a new version of the allegation the first named respondent had set out in its letter to the applicant of 4 October 2016 and was, in any event, unsupported by the witness statement of the complainant.

38. Under the heading "*Background Information*" the following is stated: -

"EO'C is known to social work, gardaí, and the school board of management having been subject to a previous allegation of concern by a school pupil at [name of school]. In 2011 EO'C was subject to an allegation and concern which involved him touching a female pupil on her leg and being overly familiar. This matter was assessed by social worker and the school and it was felt at that time to represent an inappropriateness of boundaries and professional conduct, rather than sexual abuse. Arising out of this the BOM (Board of Management) referred EO'C to the Granada Institute for Risk Assessment, the outcome of which was he represented a potential risk of child sexual abuse. The report highlighted that EO'C demonstrated poor insight and minimisation. The report recommended that he receive ongoing psychological support, and TC (psychological services director of the Educational Training Board) was identified to provide EO'C with individual counselling and support.."

39. The Granada report referred to never appeared in evidence before this court. However, the outcome of the investigation into the 2011 allegations stated clearly "*there is no evidence of sexual abuse..*". The document then states: -

"..TC advised that despite the previous events and all the work that had been undertaken she had been concerned about EO'C prior to this most recent allegation. EO'C had come upon a girl in school who had injured her leg and he had immediately got involved rather than waiting and involving other staff. EO'C had moved teaching classrooms and put up taken steps (sic) to cover up the windows he said to block out the glaring sunlight, but with the effect that no one could see in from outside. This was a concern to the school and was immediately remedied. As a

result of the ongoing concerns it was agreed by the school that EO'C should not be left in a position of being alone with children."

The fact is that the events which TC referred to above were never put to the applicant for his comments. This was a clear departure from fair procedures which, given the seriousness of what was being investigated, can only be described as being inexcusable.

40. Counsel for the first named respondent submitted that these matters, though mentioned, were not part of the reasoning that led to the "*provisional conclusion*." I do not accept this. The court was furnished with this document from the first named respondent in which it recorded, presumably, what was relevant to reach its "*provisional conclusion*." This is confirmed by the following concluding paragraph of the document which, having set out a definition of "*sexual abuse*", states: -

"The meeting took into consideration the previous concerns in relation to EO'C, the risk assessment, and ongoing individual work already undertaken and which had specifically focused on boundaries, conduct and the importance of him not engaging in any form of physical contact with school pupils. It was therefore concluded that on the balance of probabilities what (name of complainant) is alleged to have occurred represented a Founded outcome of child sexual abuse by EO'C."

41. The applicant was duly informed of the "*provisional conclusion*" reached by the first named respondent. His comments were invited for before the final determination was made. In response the applicant replied, through his Solicitor, by letter dated 25 April 2017. In the course of this letter the applicant stated that he was presently defending criminal proceedings before the District Court and was asserting his innocence to the allegations. He stated that he would engage with the first named respondent's investigation following the conclusion of the District Court proceedings and did not want to engage in any parallel process which might possibly prejudice criminal proceedings and his defence to same.
42. Three days later, in a letter dated 28 April 2017, the first named respondent informed the applicant that they had reached a final conclusion stating: -

"...this agency therefore concluded that on the balance of probabilities what (the complainant) is alleged to have occurred represented a Founded outcome of child sexual abuse."

The letter further informed him of his entitlement to appeal this conclusion to an appeal panel.

43. As is clear from the previous paragraphs, the decision making process of the first named respondent, which led to a finding of child sexual abuse on the part of the applicant, was fundamentally and deeply flawed. The first named respondent failed to observe the most basic rules of fair procedures and this can be summarised as follows: -
1. The allegation against the applicant which the first named respondent set out in writing and communicated to him was unsupported by the written statement of the

complainant. Nonetheless, the first named respondent persisted with its version of the allegation;

2. Having obtained the applicant's account of the events complained of, there was a complete failure on the part of the first named respondent to put that account to the complainant for her comment. This did not necessarily have to be done by way of cross-examination;
3. In reaching its "provisional conclusion" and subsequent "final conclusion", the first named respondent took into account the early allegation of 2011 without attaching any or any sufficient weight to the fact that there was a finding of no evidence of child sexual abuse made against the applicant; and
4. In reaching its "*provisional conclusion*" and subsequent "*final conclusion*", the first named respondent took into account other alleged events without informing the applicant of such or seeking his response.

The appeal

44. The applicant exercised his right of appeal in respect of the "*final conclusion*", as was set out in the letter of 28 April 2017. In a letter dated 17 July 2017, the second/third named respondent, who comprised the appeal panel, set out the nature and scope of the "*appeal process*". It was stated: -

"An appeal is a new and impartial examination of the work undertaken by social work team which reached the conclusion that abuse or neglect had taken place. It will examine the professional decision making informing the conclusion that abuse or neglect occurred and will establish whether fair procedures were applied. The appeal panel, in the process of its deliberations, will review all documentation and submissions and will arrange to interview relevant social work personnel; and also meet with you if you are agreeable."

45. There was voluminous correspondence between the applicant and the second/third named respondents concerning the nature and extent of the appeal. This correspondence raised a number of issues which, for the reasons set out hereunder, I believe I do not have to consider.
46. Part of the appeal's process was to "*establish whether fair procedures were applied.*" In deciding this, the second/third named respondents would review all documentation and submissions. Presumably this was done.
47. The second/third named respondents gave its report in August, 2018. Under the heading "*Analysis of Fidelity to Fair Procedures*" it stated: -
 - "5.1 The sequencing of the social workers' actions adhered with policy and procedure for responding to allegations of child abuse and neglect (2014). Tusla responded appropriately to the allegations made in that they were put to EO'C at an early stage. The social work department conducted an assessment and brought the final

conclusion to the attention of EO'C. He was then informed of his entitlement to request an appeal."

In previous paragraphs of this judgment I have set out in detail what I consider to be a failure to observe even the most basic rules of fair procedure. This ought to have been clear to second/third named respondents in their review of all of the documentation. In my view, the decision of the second/third named respondents, to the effect that the applicant had been afforded fair procedures, is both irrational and unreasonable.

Extension of time

48. Insofar as it may be contended that the applicant's challenge to the decision of 28 April 2017 was out of time, I do not accept this. The applicant took part in the appeal's process which was stated to include whether the first named respondent had applied fair procedures. Further, as was stated by Hedigan J. in *EE v. The Child and Family Agency* [2018] IECA 159 where, having considered the process of investigation of child abuse, he stated: -

"...They should be conducted in one single set of proceedings and as expeditiously as possible to minimise these consequences. That is why parties should be advised that any investigation must be completed. It is only after completion, including the appeal process, that an application for judicial review should be considered.."

Conclusion

49. By reason of the foregoing, the applicant is entitled to the reliefs sought and I will hear counsel in respect of this.