Neutral Citation: [2014] IEHC 151

THE HIGH COURT

JUDICIAL REVIEW

[2013 No. 203 JR]

BETWEEN

N.L.

Applicant

AND

THE HEALTH SERVICE EXECUTIVE

Respondent

JUDGMENT of Mr. Justice Keane delivered on the 20th day of March 2014

Introduction
1. This is an application by the board of management of a particular national school ("the school board") to be joined as a notice party to these proceedings. The application is made pursuant to the terms of Order 84, rule 22(2) or (9) of the Rules of the Superior Courts ("RSC"), as amended. The underlying proceedings concern an application for Judicial Review by N.L., a teacher in that national school, against the Health Service Executive ("the HSE"). In those proceedings, N.L. seeks a number of reliefs in relation to the investigation and finding by the respondent in respect of certain allegations of child sexual abuse in that school that have been made against him. N.L. opposes the application of the board to be joined to the proceedings. The HSE neither consents nor objects to it.

The background
2. N.L. is a national school teacher who was, at all material times, employed as such in the national school concerned. In June 2004, he was placed on administrative leave in consequence of the receipt by the school board of a complaint from the parents of a child who had been taught by N.L. in third class during the school year 2003-2004 that N.L. had inappropriately touched the child.

The Health Board investigation
3. The school board reported the matter to the relevant Health Board for investigation. From the outset, the school board sought to reserve its right to carry out its own investigation after it had "seen the outcome of whatever investigations (if any) are carried out by the Health Board and/or the Gardaí."

4. The relevant Health Board, now subsumed within the Health Service Executive ("the HSE"), asserts that its investigation was carried out pursuant to various duties placed upon it in respect of the care and protection of children under the Child Care Act 1991. In that context, the Health Board conducted a Child Protection Case Conference on the 20th July 2004 that was attended by three social workers, two members of An Garda Síochána, the school principal, the child's mother and a minute-taker. One of the decisions made at that case conference was to accept the contents of a Child Sexual Abuse Assessment Report that had been prepared by two of the three social workers present at the meeting, based on three interviews conducted with the child concerned in late June and early July 2004. The school principal abstained from that decision.

5. A fundamental conflict arose between N.L. and the HSE on the significance and validity of that decision, which both sides agree was taken without reference to N.L. and without interviewing him. The HSE contends that the decision was merely an acceptance that, on the balance of probability, the child's complaint was credible, and that as such it did not amount to a judgment or decision in relation to N.L. N.L. asserts that it was a decision taken against him in breach of his entitlement, in accordance with natural and constitutional justice, to rebut or address that complaint.

The first set of proceedings
6. By Order of the High Court (*per* Quirke J) made on the 16th June 2005 in proceedings between N.L. and the Health Board bearing the record number 1160 JR of 2004, and on consent between the parties, "the decision of the [Health Board] (and any materials in relation to that decision) at a Child Protection Case Conference dated the 20th July 2004 [were] quashed by way of Order of Certiorari in so far as [that decision] relates either directly or indirectly to [N.L.]."

The second set of proceedings
7. It appears to be common case that the HSE resolved to conduct a further Child Protection Case Conference, and that an issue arose between the parties concerning the material that was to be relied upon, or which was to be furnished to N.L., for that purpose. This resulted in a further application for judicial review. Subsequent to the institution of those proceedings, two events occurred. First, certain documentation was provided to N.L.'s solicitors under cover of a letter, dated the 19th June 2006, from the HSE's solicitors. On that basis, the judicial review proceedings just mentioned were struck out on consent between the parties by Order of the High Court (*per* Quirke J.) made on the 11th December 2006. Second, a number of criminal charges were preferred against N.L. In light of that development, N.L. requested, and the parties appear to have agreed, that the HSE's investigation would be deferred, pending the outcome of those criminal proceedings.

The criminal prosecution
8. N.L. was acquitted of all charges against him in relation to the child concerned in July 2009. N.L. had been charged with offences of a similar nature in respect of two other child complainants as a result of the investigation into the complaint of the first child. The allegations made in respect of each of those two other children were the subject of two further trials. N.L. was acquitted of those offences also on the 13th May 2010 and the 15th October 2010.

Events preceding the present set of proceedings
9. The school board wrote to N.L.'s trade union representative on the 24th January 2011 indicating that it intended to proceed with its own disciplinary investigation into the original complaint it had received in respect of the first child. The school board proposed to

follow the disciplinary procedures for schools agreed pursuant to section 24(3) of the Education Act 1998 that were then applicable.

10. The HSE's solicitors wrote to N.L.'s solicitors on the 15th February 2011 stating that the HSE now wished to conclude "the investigation and assessment that was underway some years ago." It was proposed to furnish N.L. with "the relevant documentation that exists to date" and a series of questions, which could be answered either in writing or verbally at a proposed inquiry before an assessment team. The ultimate question for that inquiry was identified by the HSE as whether N.L. posed or continues to pose a risk to children. The letter stated that, as the HSE only had direct information on foot of the complaint received from the first child's parents, only the matters the subject of that complaint would be considered. The concluding paragraphs of that letter noted that the school board's solicitors had written to the HSE requesting a copy of its report and inviting the authors of the report to attend the school board's proposed disciplinary inquiry, in circumstances where it was hoped to hold that disciplinary inquiry in early March of that year (2011).

11. On the 28th February 2011, the school board's solicitors wrote to N.L.'s trade union representative re-iterating that it had always been the school board's intention to carry out its own investigation after the conclusion of the criminal proceedings against N.L. However, that letter went on to state that the first child's mother had indicated by way of a telephone call to the school board that neither she nor her son wished to participate in the school board's disciplinary inquiry.

12. On the 5th July 2011, the HSE's solicitors wrote to N.L.'s solicitors, requesting that they be furnished with a copy of the book of evidence in respect of the unsuccessful criminal prosecution of N.L. On the 26th July 2011, the HSE's solicitors again wrote acknowledging that N.L. was not obliged to provide a copy of the book of evidence but asserting that they were certainly entitled to request that he do so. The letter referred to the earlier criminal investigation, in respect of which it asserted "it is a fact that several other children came forward and made allegations against [N.L.]." The letter noted that the HSE had not been assured of co-operation in the matter of assessment by those other children but went on to reference "the overarching obligation [of the HSE] to examine whatever information is there in relation to these several matters so that a fair conclusion can be reached", by reference to the HSE's statutory obligations in the general area of concern for child safety. The letter concluded that any refusal by N.L. to comply with the request that he furnish a copy of the book of evidence would be noted but would not be regarded as an influential matter in its client's deliberations.

13. On the 4th August 2011, the HSE's solicitors again wrote to N.L.'s solicitors. They stated that the fullest co-operation concerning the provision of the book of evidence in the prosecution against him should be the least that the HSE could expect in the matter because, while mindful of N.L.'s entitlement to fair and due process and to the protection of his good name, the HSE's primary concern is the safety of children. The letter went on to express the HSE's understanding that other children had made allegations of inappropriate behaviour towards them by N.L., which had not been made known to the HSE, but that neither those other children nor their parents "wish to be concerned with any outcome following the conclusion of the prosecution." The letter then stated that this placed the HSE in considerable difficulty because it had knowledge in a general sense that other complaints had been made (in a criminal context) but had no detail of those complaints. Notably, the letter went on to state: "It would be entirely deficient to confine any further interview with [the applicant] solely based on the allegations made by [the first child]", which statement may be contrasted with that in the HSE solicitors' letter of the 15th February 2011, already referenced above, that, as the HSE only had direct information on foot of the complaint received from the first child's parents, only the matters the subject of that complaint would be considered

14. On the 21st September 2011, the HSE's solicitors wrote to N.L.'s solicitors once again. In that letter, N.L. was informed of a proposed meeting with the Social Work Department for the area in question at a specified location on the 29th September 2011 and was asked to confirm his attendance. A list of thirty-four questions that it was proposed to put to N.L. was enclosed with that letter and he was asked to reply to those questions in writing in the event that he was unavailable to attend the meeting. One of the questions posed was whether N.L. would object to the HSE having access to the book of evidence that had been served on him by the DPP. Another was whether N.L. was aware of any other complaints or allegations that had been made against him that were similar in nature to the allegations made by the first child and, if so, could N.L. identify the relevant complainant(s).

15. N.L.'s solicitors replied by letter dated the 22nd September 2011. In that letter they objected to the arrangement of the meeting proposed, in circumstances where they asserted that the HSE had not yet provided N.L. with the documentation relevant to its investigation as the HSE's solicitors had stated it would in their letter of the 15th February 2011, despite a letter of reminder in that regard from N.L.'s solicitors dated the 8th June 2011. The letter concluded that N.L.'s solicitors would revert to the HSE's solicitors concerning the list of questions that had been furnished once the HSE had provided the relevant documentation to N.L.'s solicitors and once they had had an opportunity to discuss matters with N.L.

16. The HSE's solicitors replied to N.L.'s solicitors by letter dated the 28th September 2011, stating:

> "We do not know what documentation exactly you are referring to. May we respectfully remind you that you have documentation in this matter from its very commencement and what you are now presented with is a series of questions that arise from the known history of the matter."

The letter culminated in a repetition of the request that N.L. confirm whether or not he would furnish a copy of the book of evidence in the prosecution against him to the HSE.

17. On the 30th November 2011, the HSE's solicitors wrote again requesting confirmation concerning whether N.L. would provide answers to the list of questions, whether he would provide a copy of the book of evidence in his criminal prosecution as requested, and whether he would attend a case conference on either the 7th February or 14th February 2012. N.L.'s solicitors replied by letter dated the 7th December 2011, asking the HSE to confirm what status it was proposing to attribute to the contents of the book of evidence, and what use it was proposing to make of the contents of the book of evidence, if provided. N.L.'s solicitors also clarified that the documentation that they were seeking on his behalf was the "relevant documentation that exists" that the HSE's solicitors had been proposing to furnish to N.L.'s solicitors when the former wrote to the latter on the 15th February 2011.

18. The HSE's solicitors replied by letter dated the 8th December 2011, stating: "It is entirely probative that there may be information contained in the Book of Evidence which could be highly persuasive in the matter of any reasonable conclusion as to whether your client was in the past a risk to children…. In that regard it is believed that the Book of Evidence will contain information which our clients would be entitled to take into account in coming to any determination."

19. By letter dated the 9th February 2012, the HSE solicitors again wrote to N.L.'s solicitors. In that letter, they sought to clarify that what they were saying in their letter of the 15th February 2011 - in stating that "all relevant information which is in documentary format will be furnished to [N.L.] prior to any meeting" - was that they would comply with best practice (presumably, in relation to

advance disclosure) when the meeting that they envisaged between the relevant social work department and N.L. had been arranged. The letter concluded by stating, in essence, that the HSE was not aware of any other relevant documentation beyond that already in the possession of N.L. and that: "What is relevant is the Book of Evidence."

20. In the meantime, the school board's solicitors had written to N.L.'s solicitors on the 21st November 2011, stating that they had been advised by the HSE's solicitors that N.L. had:

> (a) Refused (through his solicitors) to provide the HSE with a copy of the book of evidence.
>
> (b) Refused to attend a meeting with the HSE on the basis that not all documentation had been furnished to his solicitors, although the HSE's solicitors had described N.L.'s position in that regard as "disingenuous".
>
> (c) Failed to respond to a list of questions that the HSE had put to him.

21. The letter goes on to state that the HSE's solicitors had concluded in their letter to the school board's solicitors that: "It appears therefore that a reasonable view to be taken of this is that this is an exercise in prevarication." Having noted that this was a serious allegation, and that N.L. had given an undertaking through his solicitors that he would co-operate fully with the HSE investigation, the letter continued by stating:

> "[I]t would appear that [N.L.] is not co-operating with the HSE investigation. We consider the direction from our client to [N.L.] to co-operate with the HSE investigation to be reasonable in the circumstances. Failure to comply with this reasonable directive could result in a disciplinary investigation."

22. That letter from the school board's solicitors to N.L.'s solicitors elicited a response from N.L.'s trade union representative, by letter dated the 30th March 2012, asserting that N.L. was cooperating fully with the HSE investigation and assessment. The letter continued by stating that complex legal issues had arisen on foot of the HSE's request that N.L. furnish it with a copy of the book of evidence in the criminal prosecution against him in circumstances where the HSE was proposing to place reliance on, or accord probative value to, the contents thereof. N.L.'s trade union representative went on to object to the school board's alleged intervention in the communications between N.L.'s solicitors and those of the HSE, which interventions, it was contended, were wholly improper. The letter concluded by reiterating on behalf of N.L. that there was no basis for the school board to contemplate holding a separate investigation into the complaints against N.L. as those matters had already been the subject of the investigation by both An Garda Síochána and the HSE.

23. Earlier, on the 13th March 2012, N.L.'s solicitors had written a lengthy letter in reply to the HSE's solicitors. In that letter they expressed their grave misgivings about the reliance that the HSE was proposing to place on the contents of the book of evidence. They stated that N.L. did not admit the contents of the book of evidence. They asserted that the book of evidence proves nothing and has no standing other than as a transitional document in the context of a criminal trial. They did not accept that the book of evidence could be regarded as having any "probative value", as asserted on behalf of the HSE, or that it could properly be characterised as "highly persuasive" on the question of whether N.L. was in the past a risk to children. The letter continued that any probative value the book of evidence might have was outweighed by the prejudicial effect of accepting its contents, such that any conclusions reached in direct or indirect reliance on those contents must be regarded as fatally flawed and grossly unfair.

24. The said letter went on to assert that the book of evidence, which N.L.'s solicitors had recently obtained from the separate firm of solicitors that represented N.L. in respect of the criminal charges against him, includes material, notably the Child Sexual Abuse Assessment Report prepared by the HSE and dated the 20th July 2004, which was the subject of an Order of Certiorari made by Quirke J on the 16th June 2005. This is a separate document from the one entitled "Minutes of Child Protection Conference held in respect of the [first child in the relevant HSE office] on Tuesday, July 20th, '04 at 10.30 a.m.", which includes a section headed "C.S.A. Report by [the two social workers involved]", and which had been furnished to N.L. by the school board under cover of a letter dated the 27th August 2004. The "Conclusions" section of the C.S.A. report, which has now been exhibited to an affidavit sworn by the applicant on the 14th March 2013, culminates in the statement: "The authors are of the opinion that sexual abuse took place in the manner described by [the first child]." It will be remembered that the Order of Quirke J., made on consent between the parties on the 16th June 2005 in the applicant's first set of Judicial Review proceedings bearing the record no. 1160 JR of 2004, was that the decision of the Respondent (and any materials in relation to that decision) at a Child Protection Conference dated the 20th July 2004 were quashed by Order of Certiorari insofar as it relates either directly or indirectly to the applicant.

25. The said letter goes on to acknowledge that charges had been preferred against N.L. in respect of five different complainants, although charges in respect of just three of those complainants were proceeded with and N.L. was acquitted in respect of each. Each of the three complainants whose allegations went to trial is identified in the letter. The letter concludes by indicating that N.L. was willing to disclose the book of evidence in those prosecutions to the HSE, subject to the provision by the HSE of certain undertakings concerning its retention and use.

26. The letter just described does not appear to have elicited a direct response. However, the HSE's solicitors again wrote to N.L.'s solicitors on the 18th July 2012. The letter stated that a proposed interview with N.L. had been tentatively arranged for the 31st July 2012. The two persons who were to be present at that interview on behalf of the HSE were the two social workers who had authored the Child Sexual Abuse Assessment Report dated the 20th July 2004, in which they had expressed the opinion that sexual abuse did occur in the manner described by the first child. Although the text of the letter referred to a list of seventeen questions enclosed with it, the enclosure concerned included only five questions. The full list of seventeen questions was subsequently provided under cover of a further letter dated the 30th July 2012. Those questions were similar to, though not identical with, certain of the thirty-four questions enclosed with the HSE's letter to the N.L.'s solicitors of the 21st September 2011. Copies of notes of interview with the first child similar to, though not identical with, those that had previously been furnished as part of the discovery made to N.L.'s solicitors under cover of letter from the HSE's solicitors dated the 19th June 2006 were also enclosed with the said letter. Finally, an undated three-page document headed "Synopsis of Child Sexual Abuse Assessment in relation to [the first child] and allegations made by him in respect of [N.L.]" was also enclosed. The authors of that synopsis document are the two social workers that authored the Child Sexual Abuse Assessment Report dated the 20th July 2004. The synopsis document concludes with the statement: "It is the author's professional opinion that, on the balance of probabilities, sexual abuse took place in the manner as described by [the first child]." The letter is silent on the HSE's previous requests for a copy of the book of evidence and on N.L.'s agreement to furnish it subject to the provision by the HSE of certain undertakings concerning its retention and use.

27. N.L.'s solicitors responded by letter dated the 27th July 2012. They noted that the interview was to be conducted by the two social workers that had been concerned in the HSE investigation from the outset and further noted the statement attributed to those social workers in the synopsis document that had been provided. They expressed astonishment that such a document existed in light

of the consent Order that had been made in respect of N.L.'s first set of judicial review proceedings. They stated that those facts, in addition to the fact that the original Child Sexual Abuse Assessment Report dated the 20th July 2004 had been included in the book of evidence, raised questions concerning the conduct of the HSE investigation that they would have to give additional consideration to before responding further.

28. The HSE's solicitors wrote again on the 1st August 2012. They asserted that, prior to N.L.'s first set of judicial review proceedings, the two social workers concerned had simply reached the preliminary conclusion that the allegations of the first child were credible, and that the attribution of credibility to the first child's allegations after the initial interviews conducted by those social workers "is not proof of the offensive actions alleged against the individual." N.L. was again requested to attend an interview on a time and date to be agreed, presumably with the two social workers concerned and, presumably, in order that they could put the HSE's list of questions to him.

29. N.L.'s solicitors wrote once again on the 7th September 2012. They refused to accept the assertion that the two social workers conducting the HSE inquiry had gone no further than deeming the first child's allegations against N.L. credible, in light of the conclusion reached by those persons in the synopsis document that, in their professional opinion, on the balance of probabilities sexual abuse took place in the manner as described by the first child. They asserted that the creation and use of the undated synopsis document was a clear breach of the consent Order of Quirke J. made on the 16th June 2005 quashing the decision made at the Child Protection Case Conference on the 20th July 2004 in so far as it relates directly or indirectly to N.L., "and any materials in relation to that decision". They asserted that the creation of that document was an impermissible device to circumvent that Order. They raised again their concern, in light of that Order, that the Child Sexual Abuse Assessment Report dated the 20th July 2004 had been furnished to An Garda Síochána and the Director of Public Prosecutions (and that it had been included in the book of evidence served on N.L.).

30. The letter concluded by asserting that the HSE inquiry was irredeemably tainted by pre-judgment and a breach of the principles of natural and constitutional justice and that the matters complained of on behalf of N.L. reflected "an objective impasse" that had been reached in that inquiry. For those reasons, the HSE was urged to proceed no further but to confirm instead that the allegations against N.L. "have not been established."

31. The HSE's solicitors replied by letter dated the 13th December 2012. That letter included the following passage.

> "Because of the order made on [your client's] application for Judicial Review, the materials arising from the original stage of the HSE's investigation were quashed.
>
> You made this point very forcibly on his behalf and it has to be acknowledged.
>
> He has failed to meet with the HSE Child Protection Staff.
>
> In the circumstances, therefore, the matter had to be drawn to a conclusion."

32. On the 14th December 2013, a principal social worker with the HSE wrote to the school board regarding N.L. on the HSE's behalf. That letter states in material part:

> "To conclude the investigations which commenced upon the receipt of allegations made by one child against [N.L.], the HSE is now in a position to announce the outcome of its assessment.
>
> Following an assessment of the allegations in the initial stages of the investigation, the HSE deemed them to be credible.
>
> The HSE endeavoured to proceed on the basis that the allegations, although deemed credible, were regarded as allegations that were capable of belief but which were untested and untried. In short, the HSE's position was and remains that the allegations were not regarded as absolute proof of the matters alleged.
>
> ….
>
> [N.L.] has refused an invitation to meet with this Department in respect of the allegations. The HSE acknowledges his right to do so in the circumstances.
>
> In conclusion, taking into account the Social Work Assessment but having regard to the rejection of all of the allegations made against him, it is still the considered view of the HSE that on balance the outcome of the allegations is inconclusive."

33. The chairperson of the school board wrote to N.L. on the school board's behalf on the 11th January 2013 stating (in relevant part):

> "The Board met on Tuesday, 8th of January, which was the earliest possible date the Board could meet following receipt of the letter of notification from the HSE. The Board welcomed the final outcome of the HSE investigation. The Board noted that it was not on notice of any complaints against you which required to be investigated by the Board of Management as your employer. In the circumstances, the Board has decided that your administrative leave should be rescinded at the earliest opportunity and that you should resume your full teaching duties in [the national school concerned] at the earliest possible opportunity.
>
> The Board has noted that you have been through an extremely arduous process. The Board welcomes the fact that the HSE investigation has concluded. On behalf of the Board, I am very pleased to welcome you back as a teacher in our school. I suggest that you liaise with the Principal… in order to make the necessary practical arrangements regarding your resumption of your full teaching duties. I confirm that the Department of Education and Skills will be notified of the Board's decision in the matter as soon as possible.
>
> Finally, I would like to thank you for your co-operation in this long-running and difficult matter."

34. N.L.'s solicitors wrote to the HSE's solicitors on the 7th February 2013. In that letter, they expressed astonishment that the HSE had proceeded with its investigation and had purported to draw conclusions, in circumstances where, they contended, the concerns expressed and issues raised in their letter of the 7th September 2012 had never been addressed. They asserted that N.L. had not

been afforded an opportunity to properly address the complaints made against him (in not having been furnished by the HSE with the appropriate information and clarifications to enable him to do so) and that N.L. had been deprived of his entitlement to have that investigation properly conducted and adjudicated upon (in the circumstances already alleged by N.L.'s solicitors on his behalf). In particular, N.L.'s solicitors stated: "[N.L.] never refused to attend any interview arranged by your client and was entitled to all information pertinent to your purported investigation in advance of doing so." The letter concluded by calling upon the HSE to rescind the finding contained in its letter of the 14th December 2012 and to make proposals to compensate N.L. for the damage thereby caused to his reputation and health, failing which N.L. reserved the right to institute the appropriate legal proceedings.

35. The HSE's solicitors replied by letter dated the 22nd February 2013. That letter stated in relevant part:

> "Our clients investigation, which might have been conducted and concluded in the normal way, was curtailed and limited by the fact that the materials produced up to a certain point were quashed and could not be used.
>
> Nevertheless, the information supplied by the child could not be expunged from the memories of the two social workers who took the complaints. However, the documentation produced at the time or any documentation that might be produced thereafter, was quite simply quashed by virtue of the first Order of Prohibition (sic).
>
> We sought but did not receive a copy of the Book of Evidence.
>
> Your client was asked to attend for interview and was given a series of questions. You, on his behalf, clearly refused this engagement.
>
> You made the succinct point that the information, or at least the documentation, produced could not be acted upon, nor could it be used.
>
> Accordingly, therefore, any meeting with your client, unless he agreed to come to a meeting without any preconditions which having regard to the frequency and tone of your correspondence, was regarded as something that would not ever happen.
>
> That, therefore, brought the HSE to the point where it had to conclude the matter. Because of the unsatisfactory state that had been arrived at, the only reasonable conclusion was that there was no conclusive result but at the same time your client's acquittal of the criminal charges had to be acknowledged. It was therefore an inconclusive finding.
>
> …
>
> Finally, it is not possible for the HSE in the circumstances of this case, to make a declaration that third parties could regard as reliable that N.L. was to be regarded as entirely safe in the company or care of children."

The present set of proceedings

36. N.L. was granted leave to issue the present proceedings by Order of Peart J. made on the 15th March 2013. As part of the Order granting leave, Peart J. directed that the applicant be identified by his initials only, presumably in order to protect the anonymity of the minor complainants in the earlier criminal proceedings lest otherwise they be identified by association with N.L., their former teacher. N.L. has been permitted to seek twenty separate substantive reliefs (in addition to three ancillary reliefs comprising an extension of time (if necessary), an order for directions, and an order for costs). In broad terms, it appears to the Court that the substantive reliefs sought can be broken down into the following categories. Six relate to an alleged breach by the HSE of the consent Order of Quirke J. made on the 16th June 2005 quashing the decision of the HSE (and any materials in relation to that decision) at a Child Protection Case Conference dated the 20th July 2004 in so far as they relate directly or indirectly to N.L. One relates to an alleged breach by the terms of settlement between N.L. and the H.S.E. - by reference to which settlement the judicial review proceedings taken by the former against the latter were struck out by Order of Quirke J. made on the 11th December 2006. Of the remaining, thirteen, ten seek, in essence, to quash the result of the HSE inquiry that was communicated to the school board in the HSE's letter of the 14th December 2012 and one seeks an Order of Prohibition in respect of the continuation of that inquiry. Another seeks an Order of mandamus directing the HSE to request that all materials arising out of its inquiry into the first child's complaint against N.L. and submitted to the proposed National Vetting Bureau Database System be withdrawn from that system.

37. The single other substantive relief sought is an Order for whatever relief is appropriate "to ensure that the allegations of sexual abuse at issue in these proceedings are expunged from [N.L.'s] personnel file at [the national school concerned] and from the proposed National Vetting Bureau Database System." When it was suggested in the course of argument during the present application that the school board would be affected clearly and directly by (or would have a vital interest in) an application for a direction that material be expunged from the personnel file of a teacher employed by the school board, Counsel for the applicant furnished an undertaking on behalf of N.L. that the relief concerned would not be pursued at the trial of the application.

38. A notice of motion issued on behalf of N.L. on the 15th March 2013 seeking the reliefs just described, which motion is grounded on N.L.'s Statement of Grounds of the same date and a grounding affidavit of N.L. sworn on the 14th March 2013. The HSE filed a Statement of Opposition on the 20th July 2013 in which it denies any breach of the Order made by the High Court on the 16th June 2005 in the first set of judicial review proceedings; denies any breach of the terms of settlement on foot of which the second set of judicial review proceedings were struck out by Order of the High Court made on the 14th December 2006; denies that the HSE's letter to the school board contained any finding or decision in relation to N.L. (in stating that "the outcome of the allegations is inconclusive"); denies that the relevant conclusion is in any way unreasonable or *ultra vires* the HSE; denies that the relevant conclusion was reached in any way in breach of N.L.'s entitlement to natural and constitutional justice and fair procedures; denies that the HSE is in any way in breach of any duty of candour or disclosure that it owes as a public authority to N.L.; denies that it has engaged in any misuse of public office; and denies that N.L. is entitled to the relief that he claims or to any relief. That Statement of Opposition is grounded on an affidavit of the principal social worker with the HSE who wrote the letter of the 14th December 2013 to the school board on the HSE's behalf, which affidavit was sworn on the 26th July 2013.

The application to be joined as a notice party

39. The school board has brought the present application to be joined as a notice party to the proceedings by motion issued on the 25th July 2013. That motion is grounded on the affidavit of the present chairperson of the board ("the chairperson"), sworn on the 24th July 2013. The chairperson swore a supplemental affidavit on the 18th September 2013. N.L. swore an affidavit in reply on the 8th October 2013 and N.L.'s solicitor also swore a replying affidavit at broadly the same time.

40. On behalf of the school board, the chairperson avers in her affidavit sworn on the 24th July 2013 that it is directly affected by any contest N.L. makes over the HSE's findings relating to a complaint or complaints of child sexual abuse against N.L. It is contended that the school board has an interest in being party to the proceedings insofar as it owes a clear and obvious duty of care to its students. It is baldly asserted that the school board cannot be ignorant of matters such as will be litigated in these proceedings.

41. While it is beyond dispute that the school board owes a duty of care to its students, it is by no means clear that the existence of that duty of care gives the school board an interest in these proceedings. The school board has at all material times no doubt quite properly reserved to itself the right to conduct its own disciplinary inquiry into the complaint of the first child. It has at no stage suggested, much less accepted, that it is bound to accept the conclusions of the HSE inquiry. A letter dated the 11th November 2010 from the school board to the HSE is exhibited to the chairperson's first affidavit. In that letter, it was stated on behalf of the school board that it then wished without further delay to proceed with its own investigation of the complaints referred to it in 2004 by the parent of the first child. The school board went on to invoke guidelines for dealing with allegations of suspicions of child sexual abuse that, according to the board, place an onus on the HSE to ensure that arrangements are put in place to provide feedback to employers in regard to the progress of child abuse investigation regarding an employee. Accordingly, the board requested a report from the HSE on the results of its inquiry. The Court has not been apprised of the nature or content of the relevant guidelines, but there does not appear to have been a suggestion at any stage that the school board would consider itself bound by any findings made by the HSE and communicated to the school board pursuant thereto.

42. The chairperson swore a supplemental affidavit on the 18th September 2013 in which she avers that, on receipt of the letter from the HSE dated the 14th December 2012:

> "the [school board] decided to reinstate [N.L.]. In taking the decision to reinstated N.L., the school board relied on the opinion of the HSE as set out in the letter of the 14th December 2012 that the outcome of its investigation into allegations made against N.L. had been inconclusive. In other words, the HSE had come to no adverse findings against N.L."

43. The chairperson exhibits a letter, dated the 14th May 2013, in which the school board's solicitors plainly state to the HSE's solicitors that the school board had treated the HSE's letter to it of the 14th December 2012 as confirmation that the HSE had made no adverse findings against N.L. But there is no explanation before the Court for the school board's decision to adopt the HSE's determination in that regard (as the school board perceived it to be) in substitution for the conduct of its own disciplinary inquiry. That the school board chose not to conduct its own inquiry is evident from the terms of its letter to N.L. of the 13th January 2013, already quoted above.

44. Conversely, the third (and present) application for judicial review that N.L. has been given leave to bring is plainly based on N.L.'s perception that the HSE's finding at the conclusion of its inquiry that "on balance the outcome of the allegations is inconclusive" falls short of a finding that the allegations against him "have not been established", to which finding he asserts he is entitled.

45. It would appear that subsequent events lend weight to N.L.'s apprehension that the HSE's finding (or non-finding, as the case may be) at the conclusion of its investigation into the complaints against him would not be viewed by others as one that he does not pose a risk to children, bringing into sharper focus his claim that the said finding is null and void on the grounds that he has advanced in the underlying proceedings.

46. The affidavits exchanged between the school board and N.L., in respect of the present application by the school board to be joined as a notice party to N.L.'s proceedings against the HSE, largely comprise averments on each side concerning events that have occurred since N.L. was granted leave to issue the present proceedings by Order of Peart J. made on the 15th March 2013.

47. It appears to be common case that N.L. resumed teaching at the national school concerned on the 30th April 2013. N.L. avers in his affidavit sworn on the 8th October 2013 that he co-operated fully with all of the requirements that the school board wanted to put in place as part of his return to teaching. He completed a Garda Vetting request. He attended for a health assessment. He requested, or agreed to, the installation of cctv monitoring equipment in his classroom and agreed that he would teach with the door of his classroom open.

48. In her supplemental affidavit sworn on the 18th September 2013, the chairperson avers that the school board received a number of e-mails and letters from eight separate parents on various dates between the 29th April and the 25th June 2013. The relevant correspondence, which is exhibited to the chairperson's affidavit, describes various conversations that each of the parents concerned state they have had with the principal social worker who signed the HSE's letter to the school board of the 14th December 2012. Various statements are attributed to that social worker in those letters broadly to the effect that his hands (or those of the HSE) have been, or are, tied, and that both he and the HSE are effectively gagged in relation to the HSE's investigation of the complaints against N.L. because of the former or current existence of legal proceedings between N.L. and the HSE; and that the social worker concerned was surprised by, and unhappy with, the school board's decision to reinstate N.L. in reliance upon the contents of the HSE's letter to the school board of the 14th December 2012, which the social worker concerned believes were wrongly construed by the school board.

49. The chairperson exhibits two letters written by the school board's solicitors to the HSE's solicitors on the 14th May and 25th June 2013. The second of those letters refers to a reply from the HSE's solicitors, dated the 14th May 2013, containing "welcome clarifications" but that reply is not exhibited. The second letter states (in material part):

> "These parents clearly formed the view having spoken to [the HSE social worker concerned] that he did not share the "considered view" of the HSE as set out in the letter from the HSE signed by [the HSE social worker concerned] dated 14th December 2012. The alleged content of these conversations is completely at variance with the outcome of the HSE investigation as communicated to our client by the HSE letter of 14th December 2012. If the reported conversations with [the HSE social worker concerned] are true our client is being told one thing on the record by the HSE whilst parents are being told something entirely different by the same HSE. This has created an appalling situation for our client. Parents are demanding of our client why [N.L.] was reinstated when the HSE (*i.e.* [the HSE social worker concerned]) is seriously concerned about him. Our client relied on the outcome of the HSE investigation as set out in the HSE letter of 14 December 2012, which was inconclusive and disclosed no adverse findings against [N.L.], in taking the decision to reinstate him. Either the HSE stands over its letter to our client of the 14th December 2012 or it does not. There can only be one HSE position in the matter.
>
> In your correspondence with us to date you have stood over the letter of the 14th December 2012 as has [the HSE social worker concerned]. However, that has not stopped [the HSE social worker concerned] from publicly undermining the very

letter he himself signed. There are only two possible options available to the HSE. Either the finding as communicated in the letter of the 14th December stands in which case we must insist that [the HSE social worker concerned] be silenced and/or be subjected to disciplinary procedures or the HSE withdraws the letter of the 14th December 2012. We must also insist on an apology to our client for the damage to our client from the contradictory positions adopted by the HSE in this case. The present situation is intolerable."

50. The HSE's solicitors replied by letter dated the 11th July 2013, stating:

> "You must be aware, but if you are not, we can now confirm to you that the teacher in question has brought Judicial Review proceedings against the Health Service Executive. Consequently, it is not considered appropriate to enter into further correspondence other than to say that [the HSE social worker concerned] acted appropriately at all times."

51. The chairperson has averred:

> "In the circumstances I am enormously concerned that [the HSE social worker concerned] appears to be of the view that [N.L.] may pose an unacceptable risk to the health and safety of the children in the care of the Board of Management and that for that reason he should not have been reinstated by the Board of Management last May. As Chairperson of the Board of Management, I contacted [the HSE social worker concerned] about his reported conversations with parents. I put it to him that what he was reported as saying to the parents was at variance with what he stated in his letter to the Board of Management dated 14th December 2012. [The social worker concerned] responded by saying "*I know*"."

52. The chairperson has exhibited a letter dated the 27th August 2013 that she then wrote in her capacity of chairperson of the school board to the HSE "Child Care Manager" for the relevant area. In that letter she quoted extensively from, and enclosed a copy of, the correspondence that the school board had received from various parents. That letter concludes by stating:

> "I have discussed the concerns expressed by the parents in this correspondence with the Principal as the Designated Liaison Person under the Child Protection Procedures. He agrees with me that the appropriate course of action is to refer the concerns expressed in this correspondence to the HSE in the first instance for investigation under the child protection procedures published by the Department of Education and Skills in 2011. The Board of Management does not know whether the nature of the concerns expressed by [the HSE social worker concerned] warrants the absence of the teacher concerned from [the school concerned] while the matter is being investigated and for that reason the Board wishes to consult with the HSE under paragraph 5.4.6 of the child protection procedures as to what action the HSE considers necessary in the circumstances."

53. The chairperson has also exhibited a letter of the same date that she sent to N.L., apprising him of the referral by the school board of the parents' expressed concerns to the HSE for investigation. Those expressed concerns are, of course, the ones arising from comments that the parents ascribe to the relevant HSE social worker in relation to the result of the HSE inquiry into the first child's complaint against N.L. in respect of events alleged to have occurred in the academic year 2003/2004.

54. The chairperson's letter to N.L. goes on to state:

> "I have been advised by our solicitors that the HSE has in certain cases recommended that Boards of Management carry out a risk assessment on teachers against whom allegations of child sexual abuse have been made to ascertain the extent to which they may constitute a risk to the health and safety of the children in the care of the particular school. I am considering putting a recommendation to the Board of Management that you should be the subject of such an assessment by the Board of Management. I have in mind that you would be assessed initially by a clinical psychologist nominated by the President of the Psychological Society of Ireland."

55. In the preceding paragraph of that letter, the chairperson had stated:

> "We became aware some time ago of the fact that you had initiated judicial review proceedings against the HSE. As we have an interest in the matter both as your employer and the statutory body charged with safeguarding the health and safety of the children in our care we instructed the Board's solicitors to request a copy of the legal pleadings from your solicitors…. I was somewhat surprised and disturbed to be advised by our solicitors that their request was refused and the matter is now being contested in the High Court."

56. The chairperson goes on to exhibit the letter in reply dated the 3rd September 2013 that she received from N.L.'s solicitors. That letter states in material part:

> "Please advise the basis on which you say that the hearsay concerns expressed in the [parents'] correspondence warrant your inviting the HSE to investigate under the child protection procedures established by the Department of Education and Skills in 2011. No new allegations are disclosed in the letters from the parents.
>
> Not merely did N.L. resume teaching on foot of your letter of 14 January 2013 but you commented in that letter that the Board had noted that N.L. had been "through an extremely arduous process." You might advise what obligations you believe the Board are under to [N.L.] arising from the letter and the acknowledgment contained in it and arising from the duty owed to [N.L.] to maintain the trust and confidence of the employment relationship.
>
> It appears that as a result of some observations of an informal kind allegedly made by an officer of the HSE you are now seeking to re-open on two fronts what you referred to as "the extremely arduous process" that the Board was happy had been brought to an end. You will appreciate that there is a substantial onus on the Board of Management after all that has transpired to warrant such action on the part of the Board of Management."

57. N.L. has exhibited to his affidavit sworn on the 8th October 2013 a letter that his solicitors wrote to the HSE's solicitors on the 3rd September 2013. In that letter, N.L.'s solicitors drew to the HSE's attention the parents' correspondence that the school board had copied to N.L. under cover of the chairperson's letter to him of the 27th August 2013. N.L.'s solicitors raised a number of queries including whether the HSE accepted that the statements attributed to the HSE social worker concerned had been made by him and, if so, whether the HSE social worker concerned was authorised to make those statements. The letter went on to seek an immediate undertaking that the HSE would refrain from making any further such statements.

58. N.L. exhibits the reply to that letter, dated the 17th September 2013. In it, the HSE's solicitors state that they had not had an

opportunity to discuss the matters raised with the HSE social worker concerned as, unfortunately, he had suffered a serious medical event shortly after his annual leave, which commenced at the beginning of August. The letter continued:

> "[The role of the social worker concerned] as Principal Social Worker was to meet with any parent who expressed a concern about the safety of their child and, in that capacity and by virtue of the HSE's statutory obligations, as created by Section 3 of the Child Care Act, he did meet to hear the concerns of the parents. When we spoke with him some time ago about this (before his illness), he did not accept the precise detail of the statements attributed to him."

59. That was where the evidence stood when the present application was heard by this Court at various times on the 14th, 18th and 29th October 2013. On the 14th October 2013, the Court ruled *ex tempore* that the school board should be furnished with a copy of the papers in the underlying judicial review proceedings for the purpose of allowing it to properly pursue its application to be joined as a notice party.

The law

60. The rules under Order 84 of the Rules of the Superior Courts, as amended, most obviously relevant to the present application are the following:

> 22. (1) An application for judicial review shall be made by originating notice of motion save in a case to which rule 24(2) applies or where the Court directs that the application shall be made by plenary summons.
>
> (2) The notice of motion or summons must be served on all persons directly affected….
>
> …
>
> (9) If on the hearing of the motion or summons the Court is of opinion that any person who ought, whether under this rule or otherwise, to have been served has not been served, the Court may adjourn the hearing on such terms (if any) as it may direct in order that the notice or summons may be served on that person.
>
> ….
>
> 27. (1) On the hearing of an application under rule 22, or an application which has been adjourned in accordance with rule 24(1), any person who desires to be heard in opposition to the application, and appears to the Court to be a proper person to be heard, shall be heard, notwithstanding that he has not been served with notice of the application.

61. Accordingly, although the factual matrix already described is elaborate and complex, the net issue that the Court must address is very simply stated. It is whether the school board is a person directly affected by N.L.'s application for judicial review against the HSE.

62. In its recent decision in *Dowling v. Minister for Finance* [2013] IESC 58, the Supreme Court (*per* Fennelly J., with Clarke J. and MacMenamin J. concurring), affirmed the approach to the proper construction of the relevant rules previously adopted by that Court in the leading case of *BUPA Ireland Ltd. v. Health Insurance Authority* [2006] 1 I.R. 201:

> "35. …That case concerned judicial review proceedings brought by a health insurer, BUPA. BUPA wished to challenge the implementation of the scheme of Risk Equalisation under the Health Insurance Act, 1994. Implementation of the scheme would have resulted in the payment by other health insurers, including BUPA, of very substantial sums to the Voluntary Health Insurance Board ("VHI"). The case had an unusual procedural history. Initially, BUPA had sought judicial review of a recommendation made to the Minister for Health and Children by the Health Insurance Authority ("HIA"). In the same judicial review proceedings it challenged the constitutionality of the underlying legislation and its compatibility with EU law. The HIA recommendation was not accepted by the Minister so the issue of its validity became moot. The proceedings continued but were limited to an attack on the legislation as being both unconstitutional and contrary to EU law. That change persuaded the High Court that it was no longer a judicial review and it struck out VHI as a notice party. VHI appealed. VHI sought the status of notice party to the proceedings because, it claimed, it was the party entitled to receive the greater part of any funds which would become available as a result of payments directed by the Minister under the Scheme. This Court decided to restore VHI as a notice party.
>
> 36. The judgment of this Court was delivered by Kearns J. It is clear from a reading of that judgment that the Court was of the view that VHI ought to be permitted to remain as a notice party regardless of whether the proceedings were treated under the Rules relating to judicial review or those concerning civil actions. Firstly, Kearns J held that it was "*clear beyond question that the present proceedings have at all times been judicial review proceedings and continue now as such*." He cited the provisions of the Rules set out at paragraph 34 above. He referred to the decisions of this Court in *O'Keeffe v An Bórd Pleanála* [1993] 1 I.R. 39 and *Spin Communications T/A Storm F.M. v. Independent Radio and Television Commission* (Unreported, Supreme Court, 14th April, 2000).
>
> 37. The learned judge concluded that those "*cases demonstrate that where a party has a "vital interest in the outcome of the matter" or is "vitally interested in the outcome of the proceedings" or would be "very clearly affected by the result" of the proceedings, it is appropriate for that party to be a notice party in the proceedings*." That passage must not be misunderstood as laying down a test in the terms used by Kearns J. What it says that is that it is appropriate to join a party in the circumstances mentioned. Order 84, Rule 22(2) imposes an obligation to notify "*all persons directly affected…*"
>
> 38. *O'Keeffe v An Bórd Pleanála* was notable because the beneficiary of the planning permission had abstained from participation in the High Court proceedings. It had not been served with the proceedings but had been notified of them by letter. It had not applied to be joined in the High Court, but had applied to be joined as a notice party only at the stage of the appeal. Finlay C.J. was commenting on the omission to serve that party when he remarked, perhaps *obiter*, at page 78:
>
> *"If application is made for liberty to issue proceedings for judicial review and the claim includes one for certiorari to quash the decision of a court or of an administrative decision-making authority the applicant must seek to add as a party any person whose rights would be affected by the avoidance of the decision impugned. If liberty is granted the court should except for special reasons ordinarily add such person as a party."*

I would interpose the word "directly" before "*affected*" in that passage."

63. It seems to me that the issue therefore is whether the school board has a "vital interest in the outcome of the matter" or is "vitally interested in the outcome of the proceedings" or would be "very clearly affected by the result of the proceedings" or "would have its rights affected by the avoidance of the decision impugned."

64. In *Dowling*, the proposed notice parties were a holding company and related bank that had received a large cash injection from the State following a direction order of the Minister for Finance, who was the respondent in the underlying proceedings. The applicants in the proceedings were a number of shareholders in those companies. They challenged the reasonableness and, hence, the lawfulness of the Minister's direction. The proposed notice parties submitted that, since a successful challenge to the Minister's direction could, putting it at its lowest, give rise to an "at least theoretical" possibility that the capital might have to be repaid; or that the Minister would seek the repayment of the money by them; or that the monies concerned might be deemed to have been unlawfully provided and, therefore, subject to a repayment obligation; or that the proposed notice parties would have to indemnify various parties, including the Minister, if the payment was found to be unlawful, they plainly had a vital interest in the outcome of the proceedings and would plainly have their rights affected by the avoidance of the decision impugned.

65. In *BUPA*, as already noted above, VHI sought the status of notice party to the proceedings because, it claimed, it was the party entitled to receive the greater part of any funds which would become available as a result of payments directed by the Minister under the Risk Equalisation Scheme, in circumstances where the applicant was seeking to quash the recommendation that such a scheme be established and to strike down the legislation that permitted its introduction. In those circumstances, the Supreme Court found that the VHI was vitally interested in the outcome of the proceedings and allowed its appeal against the decision removing it as a notice party to the proceedings.

66. In *O'Keefe v. An Bord Pleanála* [1993] 1 I.R. 39, the proposed notice party was a company that had been granted planning permission to erect a radio transmission mast, which permission had been upheld subject to conditions by the respondent, An Bord Pleanála. The applicant was a local resident who brought judicial review proceedings seeking to quash the Board's decision. It was therefore, as the Supreme Court found, perfectly plain that the rights of the recipient of the relevant planning decision would be affected by the avoidance of that decision, such that, in granting liberty to issue the relevant proceedings, the court should except for special reasons ordinarily add such person as a party.

67. In *Spin Communications T/A Storm F.M. v. Independent Radio and Television Commission* [2000] 4 JIC 1408, Supreme Court, unreported (*ex tempore*), 14th April 2000, the notice party was a successful radio broadcasting licence applicant. An unsuccessful applicant sought an order of Certiorari to quash the decision of the respondent Commission to award the licence to the notice party on the ground of alleged pre-judgment bias on the part of a particular member of the Commission. Keane C.J. (McGuinness and Geoghegan JJ concurring) noted that that was a case in which the notice party, as indeed the High Court judge accepted, was a party with a vital interest in the outcome of the matter. Keane C.J. went on to observe:

> "As Chief Justice Finlay said in the *O'Keeffe .v. An Bord Pleanála* case, where you have a party such as the Notice Party in the present case who is vitally interested in the outcome of the proceedings, they must be joined as a party and will be joined by the Court if the applicant does not join them."

Conclusion

68. I turn now to consider the specific arguments that the school board has advanced in support of its contention, in essence, that it is "vitally interested in the outcome of the proceedings" or would be "very clearly affected by the result of the proceedings" or "would have its rights affected by the avoidance of the decision impugned."

69. The school board has submitted with some force that it is vitally interested in, and would be very clearly affected by, any order made "to ensure that the allegations of sexual abuse at issue in these proceedings are expunged from [N.L.'s] personnel file at [the national school concerned]", which, as has already been noted, is one of the twenty substantive reliefs sought by N.L. in these proceedings. However, having conceded that his claim for relief against the HSE has been "overpleaded" in that respect, N.L. has given an undertaking to the Court through Counsel not to pursue any such relief at trial. Accordingly, it seems to me that the issue is moot.

70. The school board also submits that it is vitally interested in, or would be clearly affected by, the present proceedings in that, among the reliefs sought by N.L. are various orders intended to enforce, or compel compliance with, the consent Order of Quirke J. made on the 16th June 2005 in the first set of judicial review proceedings between N.L. and the Health Board bearing the record number 1160 JR of 2004, whereby "the decision of the [Health Board] (and any materials in relation to that decision) at a Child Protection Case Conference dated the 20th July 2004 [were] quashed by way of Order of Certiorari in so far as [that decision] relates either directly or indirectly to [N.L.]." The school board contends that, since one of the materials upon which the decisions made at the relevant Child Protection Case Conference could be said to be based was the Health Board's own complaint form record of the first child's complaint referred to it by the school board, the school board must be vitally interested in, or clearly affected by, an application seeking to enforce the Order made in 2005 quashing, amongst other materials, that complaint form. On behalf of N.L. it is submitted that it has never been argued that the school board's original referral of the first child's complaint is invalid or that it should be quashed, nor has it ever been suggested or argued that the HSE cannot properly investigate any complaint referred to it by the school board, in general, or the complaint that gave rise to the Child Protection Case Conference decisions made on the 20th July 2004 that were quashed in 2005 and to the findings set out in the HSE's letter of the 14th December 2012 that are impugned in these proceedings, in particular. N.L. does not argue, nor could he be heard seriously to argue, that the risk assessment finding contained in the HSE's letter of the 14th December 2012 should be quashed on the ground that the original referral of the first child's complaint to the Health Board by the school board in 2004 was in some way invalid. While the Court accepts that the school board would be vitally interested in, and directly affected by, any application to quash the referral by the school board to the Health Board of the first child's complaint, I am satisfied that no such issue arises in the present proceedings.

71. Nor can the Court accept that the school board is vitally interested in or clearly affected by the proceedings by reference either to the requests made by N.L.'s solicitors that the HSE's solicitors disclose all communications between the school board and the HSE concerning the HSE's inquiry into the complaints against N.L, or to N.L.'s averment that the relevant correspondence was wholly improper. The context in which the relevant averment was made and the nature and scope of the reliefs sought in these proceedings make it quite clear that the only potentially relevant issue in that regard concerns whether such correspondence or communication was improper in the context of the conduct of the relevant inquiry by the HSE, not whether it was improper in the context of the purported exercise by the school board of its role or functions under the Education Act 1998.

72. This leaves only the question: to what extent is the school board vitally interested in, or clearly affected by, the application to quash the finding recorded in the HSE's letter to the school board of the 14th December 2012? In that context, the following seem to this Court to be pertinent considerations:

(a) The school board has, from the outset, reserved to itself the right to carry out a disciplinary inquiry into the first child's allegations against N.L. after it had "seen the outcome of whatever investigations (if any) are carried out by the Health Board and/or the Gardaí." It has never been suggested by, or on behalf of, the school board that it has delegated its own disciplinary role or functions to the HSE or that it would consider itself in any way bound by the HSE's findings.

(b) The HSE has at all material times asserted that its investigation was carried out pursuant to the various duties placed upon it in respect of the care and protection of children under the Child Care Act 1991.

(c) The school board wrote to the HSE on the 11th November 2010 stating that it then wished without further delay to proceed with its own investigation of the complaints referred to it in 2004 by the parent of the first child.

(d) In that correspondence with the HSE, the school board invoked guidelines for dealing with allegations of suspicions of child sexual abuse that, according to the board, place an onus on the HSE to ensure that arrangements are put in place to provide feedback to employers in regard to the progress of child abuse investigation regarding an employee. While those guidelines have not been disclosed to the Court, it would appear to be on that basis that the school board asserted an entitlement to be notified by the HSE of the results of its inquiry. There does not appear to have been a suggestion at any stage, nor is there any suggestion now, that the school board would consider itself bound by the findings of the HSE inquiry now at issue in the conduct of its own disciplinary inquiry or in the discharge of its duty of care to its students.

(e) The school board wrote to N.L.'s trade union representative on the 24th January 2011 indicating that it intended to proceed with its own disciplinary investigation into the first child's complaint pursuant to the disciplinary procedures for schools agreed pursuant to section 24(3) of the Education Act 1998 that were then applicable.

(f) On the 28th February 2011, the school board's solicitors wrote to N.L.'s trade union representative re-iterating that it had always been the school board's intention to carry out its own investigation after the conclusion of the criminal proceedings against N.L.

(g) After the HSE wrote to the school board on the 14th December 2012 informing it that it was the considered view of the HSE that on balance the outcome of the allegations against N.L. was inconclusive, the chairperson of the school board wrote to N.L. on the 11th January 2013 welcoming the final outcome of the HSE investigation, noting that the school board was unaware of any complaints against him which required to be investigated by it as his employer, and informing him that he was to be reinstated at the earliest opportunity. It has not been made clear on what basis the school board decided to adopt the finding of the HSE inquiry (as the school board interpreted that finding) in substitution for the conduct of its own investigation.

(h) In subsequent correspondence with N.L.'s solicitors, the HSE's solicitors described the HSE's finding as one that it is not possible for the HSE, in the circumstances of this case, to make a declaration that third parties could regard as reliable that N.L. was to be regarded as entirely safe in the company or care of children. N.L. interpreted that finding as a refusal by the HSE to confirm that the allegations against him had not been established. The school board interpreted the HSE's finding as one that the HSE had come to no adverse findings against N.L.

(i) On the 27th August 2013, the school board referred concerns expressed to it by parents about N.L., arising from conversations that those parents claim to have had with the HSE social worker concerned, to the HSE in the first instance for investigation under the child protection procedures published by the Department of Education and Skills in 2011. Those concerns appear to relate to whether N.L. poses a risk to the safety of children.

(j) Perhaps more significantly, on the same date the school board informed N.L. of a proposed recommendation to the school board that it carry out a risk assessment on N.L. as a teacher against whom allegations of sexual abuse have been made.

73. It seems to me to follow that the school board has never considered itself, and does not now consider itself, bound by the results of any HSE inquiry, nor precluded thereby from conducting any inquiry of its own that it may deem appropriate. The full extent of the interest that the school board asserts in respect of any HSE inquiry is the existence of an onus on the HSE to ensure that arrangements are put in place to provide feedback to the school board, as N.L.'s employer, in respect of that inquiry's progress (and, presumably, its conclusion). In that context, the school board does not stand in the same position in relation to proceedings challenging the conduct and findings of the HSE inquiry as does, say, a potential recipient of funds in relation to a challenge to the legislation or scheme providing for the transfer of those funds; or as does a company that has received a cash injection from the State in respect of a challenge to a Ministerial direction permitting or requiring that cash injection to be made; or as does the recipient of a favourable planning decision in respect of a challenge to that decision; or as does a radio broadcasting licence holder in respect of a challenge to the decision to grant that licence.

74. While the finding of the HSE inquiry concerning the first child's allegations of sexual abuse against N.L. is undoubtedly of considerable potential significance to the school board, the Department of Education and Skills, the present and any proposed future pupils of N.L., the parents of any such pupils, and any other educational institution or employer to which N.L. might apply in future, it does not seem to me that those persons are vitally interested in, or clearly affected by, the outcome of proceedings challenging the validity of that finding in respect of those allegations, as those terms are used to define the category of persons that it is necessary or appropriate to make a notice party to such proceedings.

75. For the reasons set out above, the application by the school board to be joined as a notice party to the present proceedings is refused.