

THE HIGH COURT

2007 1899 P

BETWEEN

MARY O'TOOLE

PLAINTIFF

AND

COUNTY OFFALY VOCATIONAL EDUCATIONAL COMMITTEE

DEFENDANTS

JUDGMENT of O'Neill delivered on the 15th day of April, 2011

1. The plaintiff in these proceedings is a Secondary School teacher, employed by the defendants, since 1984, initially, in Edenderry Vocational School and then in Tullamore College, and since 2001, in Ferbane Vocational School. The plaintiff was born in 1962, and is married with one child. Her husband is also a teacher employed by the defendants.
2. The plaintiff sues the defendants in these proceedings for damages for injury to her mental and physical health, which, she alleges, has been caused by the defendants, its servants or agents, in the intentional or reckless infliction of emotional suffering on the plaintiff by harassment, sexual harassment, intimidation and abuse by the defendants, its servants or agents. The plaintiff's case against the defendants centres around her allegations of sexual harassment of her by another teacher, Mr. Jim Mooney, the defendants, servant or agent. She claims that the defendants failed to provide her with a safe place or system of work, free of sexual harassment, abuse and bullying. She further alleges that the defendants were in breach of s. 1 and s. 23 of the Employment Equality Act 1993, and its own code of practices on sexual harassment, or in dealing with discrimination or, in particular, sexual discrimination, harassment and bullying in the workplace, and that the defendants failed to properly, or at all, investigate the plaintiff's complaints of sexual harassment and bullying by Mr. Mooney. The plaintiff also makes the case that the defendants improperly or unjustly caused or allowed or permitted the plaintiff to be implicated as a perpetrator of an arson attack on Tullamore College, in or about June 2001. The plaintiff also alleges that the defendants failed to adhere to custom and practice in Tullamore College, whereby when a teacher took on a position of 'Acting Year Head, a grade promotion would follow, as a consequence of which, the plaintiff claims she was denied a promotion to which she was entitled.
3. The plaintiff's complaint of sexual harassment against Mr. Mooney commenced at a Christmas party in Kinnitty Castle, for the staff of Tullamore College. She says that when she went to the bar to purchase drinks, Mr. Mooney looked into her eyes, putting on a pout on his face, as if he was coming on to her. Much of her complaints of sexual harassment concern the term from January 1997 to Easter of that year. During that time, the plaintiff, as part of her duties, was obliged to distribute the register or roll to various teachers. This brought her into contact with Mr. Mooney during that period. On one occasion, she said he, *"Slithered down the wall, he opened his legs, and he put on this really sexually suggestive face, like, I am, you know, I am interested, if you are"*. She described this incident as making her feel like a piece of meat instead of a human being, and that she was very upset by it.
4. She said on a few occasions, as she was walking home for lunch, Mr. Mooney, as he was going by in his car, would let the window down and he would say, *"Mary, would you like a ride"* and he would grin as he was saying this. To avoid these situations, the plaintiff says she would wait at the back door until she saw his car leave before walking home.
5. The plaintiff said that in the Common Room, on a number of occasions, at this time, when she would go to the sink to make a cup of tea for herself, Mr. Mooney would come over and he would put his hand on her back and leave it there for a few minutes, and rub her back. She would look at him and he would say, *"Sorry, Mary, I'm just getting a knife"*. The plaintiff regarded this touching of her by Mr. Mooney as inappropriate.
6. On the last day of this term, coming up to the Easter holidays, there occurred an incident which greatly disturbed the plaintiff and which she concluded was contrived by Mr. Mooney to, in effect, force contact on her and humiliate her. When she went to collect her paycheck, it was not in her pigeonhole. Her pigeonhole was immediately beside Mr. Mooney's pigeonhole. She went to Mr. McEvoy, the School Principal, who confirmed that she had been paid and advised her to go back and check again. She did this, but there was no paycheck in her pigeonhole, and because of the way Mr. Mooney had been behaving toward her, she thought that it was possible that he might have interfered with her paycheck as a way of bullying her or making her feel small. She went down to Mr. Mooney's classroom, went in and said, *"Excuse me, Mr. Mooney, did you take my paycheck by mistake?"* She approached the matter in this way because she did not want to accuse him. She described Mr. Mooney as acting in a very cool, casual manner towards her. She described her paycheck, because she was still paid by cheque and not by an automated paypath system, as different in appearance to that of Mr. Mooney's. In any event, Mr. Mooney started fumbling in his pocket and he brought out the plaintiff's paycheck and envelope, which was torn at the top and rolled up. The plaintiff could clearly see her name written on the top of it. She regarded his behaviour at the time as unbelievable and cheeky and she said to him, *"We need to talk"*. She asked him to come outside the door and said to him, *"Now listen to me . . . you took my paycheck"*. She then said, *"You've been putting your hands on me in the Staff Room and I want it to stop"*. She said, *"I am a married woman"*. He responded by saying, *"Listen, I won't talk to you here, I'll meet you after school. Will you meet me after school?"* To which the plaintiff responded, *"I have no intention of meeting you anywhere"*. The plaintiff said that at that stage, he started to grin, and said, *"Cool it, cool it, nothing happened"* and with that, he walked back into the room and the plaintiff walked away. The plaintiff firmly believes that the taking of the paycheck by Mr. Mooney was not an honest mistake because of the obvious difference between the envelopes in which the respective paychecks came. The plaintiff was very bothered and upset by this incident and wanted to sort things out with Mr. Mooney. She wanted to tell him, *"Look, Jim, you know, stop this. You are disrespecting me. I don't like it. It's making me feel bad. I am not sleeping at night; I am, you know, I'm starting to have to go on anti-anxiety medication"*. The plaintiff felt that if she could have had two minutes of conversation with Mr. Mooney, that she would feel a lot better and they could draw a line under it.
7. This led into the Easter holidays of 1997. After Easter, the plaintiff was still 'Assistant Year Head', which meant she was allowed to

distribute the Registers or Rolls, which meant some contact between herself and Mr. Mooney. Although she had told him in the discussion after the paycheck incident not to put his hands on her again, on one occasion, as she was coming out of Room 6, he was coming against her, and he put his two hands on her shoulders and moved her out of his way. He did not say, "Excuse me, Mary" or anything like that. He simply moved her out of his way, in a way which she felt was disrespectful.

8. At around this time of April or May 1997, the plaintiff attended her General Practitioner, Dr. Keane, whom she said put her on anti-anxiety medication. The plaintiff felt that before the summer holidays came, she needed to sort matters out with Mr. Mooney, so that when they came back in September 1997, they could resume normal relations as colleagues.

9. On about 29th or 30th May, 1997, on a Sunday evening, coming up to the end of term, the plaintiff had an arrangement to meet a friend of hers for a drink that evening. Before going to meet her friend, the plaintiff decided to call to Mr. Mooney's house, which was close to the plaintiff's house, about five minutes walking distance away. She called at the door and it was answered by a man who informed the plaintiff that Mr. Mooney was out and that she could find him in any one of a number of pubs downtown. This was about 6.00pm in the evening.

10. The plaintiff left and met her friend and had a few drinks with this friend and drove home. The plaintiff described herself as feeling, on the occasion, a little bit "squiffy". She decided, on the way home, to call again to Mr. Mooney's house. She parked her car at the gates of the house. She knocked on the door. The man who had been there earlier answered and informed her that Mr. Mooney was out the back playing pool, and he brought her through the house, and she encountered Mr. Mooney as he was coming out of the poolroom, which was a converted garage. The plaintiff said to Mr. Mooney, "Jim, I need to talk to you, I need to sort things out with you". He responded by pulling her around to the side of the house, and he said to her, "Not in front of the lads". The plaintiff says that when he pulled her around to the side of the house, he put his arms around her, and started to try to kiss her and hug her and caress her. The plaintiff said, no, and she pulled him around to the front of the house. At that stage, he said, "Not in front of the lads" and he bundled her into his car and drove her home. During the course of this short journey, there was no conversation at all. When the plaintiff got home, she realised that she did not have her car keys, that her husband needed the car the next day, so she walked back down to Mr. Mooney's house. She could not find the keys. She went to the door of the house and knocked, and a man opened an upstairs window and said, "Jim Mooney is gone to bed, and if you don't go home, I'm going to call the guards". The plaintiff replied, saying, "Look, I can't find my keys, could somebody just give a flashlamp". The plaintiff says that at that stage, this other man was downstairs and he was on the telephone and he was calling the guards. The plaintiff walked back to the car and, as she did, she saw the keys on the ground in front of the car, so she drove the car back home.

11. The plaintiff slept poorly that night, she was terribly upset, embarrassed and humiliated. In particular, she was wondering what Mr. Mooney must have said to the other man that caused him to call the guards. She was also upset by the fact that when she went to try to sort things out with Mr. Mooney, all he wanted to do was put his arms around her. She also realised that she would have to tell all this to her husband in the morning, and she was further upset by this. She felt worse the next day, and she was very distressed, upset and feeling humiliated and embarrassed.

12. The plaintiff went into school the next day, a Monday, to supervise examinations. While she was doing this, she composed a letter to Mr. Mooney, which was the subject of much controversy in this case. This letter reads as follows:

"Jim,

I need to talk to you. I know you're cool, and you don't need to talk to me. I promise not to get intense - I promise, promise, promise. I'm sorry about last night, it was stupid, but when I have a few drinks, I'm crazy, but, heck, if the world was full of sane people, it would be a very boring place. I don't want anything from you except a few moments of your time.

We'll be on this staff together for a long time, and I'd like to sort this out with you before the summer hols.

Before the Easter hols, I tried to sort it out and I told you how I felt, because I thought suffering a few moments of humiliation would do the trick and all would be okay after that.

Jim, I am a typical woman, making a mountain out of a molehill, but that's me - for the sake of good staff relations (not that I give a toss about them), can we talk, sorry, can I talk, just explain, and I guarantee you, I'll disappear from the face of the earth after that - I'll never raise my eyes in your direction again, except to say hello, Mr. Mooney - I think you are a nice guy - you remind me of my brother, he's exactly like you, and out of all of them, he's the one I get on best with. I like you. I don't care what you're like, who you are, where you come from, even if you are an extraterrestrial. It doesn't matter to me even if you don't like me. I can cope with that - hell, I'm a big girl - just please can we talk some place where there's no one else around. I want to tell you why I've been behaving so crazily lately - then my conscience will be clear, and even if you never speak to me again, well, I can cope with that too - just please give me one opportunity to explain.

If you look at me coldly after this and say there's no need to - I'll die. Then you'll have to go to my funeral and that's more hassle.

Give me a lift home this evening at 3.30pm and I'd get the opportunity to explain - if you're in the Staff Room, I'll ask you for a lift, and I could have the few moments I want then. Please, please, please, Jim.

Then, no more hassle ever after that.

Please get rid of this, as, if it was found, the teacher from hell would be transferred to Siberia."

13. This letter was handed by the plaintiff to Mr. Mooney during that morning. Mr. Mooney made no response whatsoever, either then or later, to this letter. He did, however, retain a copy of the letter, which he subsequently disclosed to the defendants, as will be mentioned later.

14. The plaintiff explained the content of this letter as being an attempt by her to be conciliatory towards Mr. Mooney, in the hope that that approach would induce him to afford her the time and opportunity to speak to him about his conduct which was causing her so much upset.

15. In the event, this did not happen. Mr. Mooney did not reply at all to the letter and did not give the plaintiff the opportunity she so

anxiously desired to speak to him.

16. The summer months of 1997 went by, and during that time, the plaintiff experienced some respite from her troubles.

17. During the summer months, the plaintiff purchased a car. She had discussed Mr. Mooney's behaviour with her husband and they both agreed that she should have a second car to avoid giving Mr. Mooney the opportunity to offer her a lift, in the manner she had described and which caused her so much upset.

18. On return to school in September 1997, the plaintiff discovered that Mr. Mooney had been given the post of 'Transition Year Coordinator'. The plaintiff was one of the teachers who taught this class. This necessitated attending meetings in the Transition Year room. The plaintiff had a particular complaint, to the effect that Mr. Mooney, who called the roll for the transition year students at 9.00am, would delay in doing this so that the plaintiff, who was due to take that class immediately afterwards, would be kept waiting 20 or 25 minutes outside the door. When he would emerge, Mr. Mooney would walk out with his head in the air and there would be no, *"I'm sorry for holding you up"*. She felt that this was another bullying tactic by Mr. Mooney. Sometimes, instead of merely keeping his head in the air and ignoring her, he would give her a leering look. This leering look conveyed to the plaintiff that Mr. Mooney simply regarded her as a sexual object, and she felt very disrespected by it. The plaintiff continued to be very upset and on anti-anxiety medication.

19. The plaintiff also complained that in the course of meetings concerning transitional year students, Mr. Mooney was openly dismissive of the plaintiff's contributions and suggestions. On one occasion, in response to the plaintiff's suggestion that the students be taken on a trip, Mr. Mooney replied, *"I don't care where the fuck you take them"*. Mr. Mooney responded to other suggestions from the plaintiff by throwing his eyes to heaven and dismissing whatever was suggested. All of this happened in front of other teachers and the plaintiff experienced it as very hurtful and felt very belittled by it.

20. In December 1997, the Principal, Mr. McEvoy, came into the class to find the plaintiff in tears. He called her aside and brought her to his office. In response to Mr. McEvoy's queries, the plaintiff said she told him that somebody on the staff was bullying her and treating her badly. He enquired had she tried to sort it out, to which she replied she had tried everything, and then he suggested that she should go for a drink with the person and sort it out. Having obliquely guessed the identity of the person, he again suggested that she should try and sort it out with him. Mr. McEvoy did not indicate to her that there were grievance procedures that could be followed.

21. Coming up to Christmas 1997, the Social Committee in the school organised a meal in Kinnitty Castle again. Many of the teachers travelled there by bus. When the meal was over, a number of the teachers suggested going back to the plaintiff's house, to which she agreed. Mr. Mooney was on the bus but she did not invite him, and during the course of the party in the plaintiff's house, which the plaintiff said was going very well, somebody let Mr. Mooney in. In the course of banter involving Mr. Mooney and, it would seem, the plaintiff, the plaintiff says that Mr. Mooney said to her, *"you know something, all women are stupid"* and the plaintiff replied, *"why do you say that all women are stupid?"* The plaintiff made this enquiry because she was thinking that perhaps this was the reason why he was tormenting her, that he had this attitude towards women. The plaintiff's evidence was that Mr. Mooney replied to a query saying, *"You are stupid, and your fucking mother is stupid, too"*. The plaintiff was very upset by this exchange, and at that stage, another teacher intervened and removed Mr. Mooney. The plaintiff noted that Mr. Mooney had been drinking brandy during this party, and that the alcohol probably accounted for his abusiveness. The plaintiff, on the way out to the kitchen, learned that Mr. Mooney had been abusive to another male teacher that night.

22. The plaintiff was continuing on medication during this time and found it of considerable help. The plaintiff had been experiencing problems with her stomach and these became exacerbated. In January 1998, her GP referred her to a Consultant Gastroenterologist who had tests carried out and diagnosed a hiatus hernia. In February and March 1998, the plaintiff attended a counsellor or therapist, a Mrs. McManus. The plaintiff was put on treatment for her hiatus hernia. She was also on antidepressants, namely, Prozac.

23. From January to Easter 1998, the plaintiff kept out of Mr. Mooney's way. She had not, up to this time, made any complaint to the relevant authorities concerning Mr. Mooney, but she did report all of these things to her counsellor, Mrs. McManus. During this period, there was no incident involving Mr. Mooney, but she perceived him as sneering and sniggering if they passed in the corridor. She understood this sneering or sniggering to mean that Mr. Mooney regarded himself as having got away with his misconduct.

24. Nothing further happened between the plaintiff and Mr. Mooney until the end of the summer term at the end of May 1998. To mark the end of term, the school organised a lunch in the school provided by caterers. This ended at about 3.00pm. After this, a number of teachers, including the plaintiff and Mr. Mooney and a number of others went down to Pat's Bar for a drink. Later in the evening, a suggestion arose from a teacher to go back to Mr. Mooney's house. During the course of the day, Mr. Mooney had not been unpleasant towards the plaintiff. She decided to go back to his house and thought she might get an opportunity to have a discussion with him and to sort things out once and for all. Late in the evening, as the party was dispersing, Mr. Mooney put one of the teachers to bed upstairs. The plaintiff, at this stage, had her coat on, ready to depart, but Mr. Mooney asked her to stay. She agreed. Mr. Mooney was some time attending to the other teacher, and in the meantime, the plaintiff sat on the floor in the living room, reading a magazine. Eventually, when Mr. Mooney came down, he sat in an armchair, obviously close to where the plaintiff was sitting. Mr. Mooney opened the conversation saying, *"What do you want to talk to me about?"* To which the plaintiff replied, *"Jim, why can't we just be friends . . . not friends . . . who have long, deep conversations, but colleagues who can pass each other in the corridor"*. Mr. Mooney replied, saying, *"Mary, there's no point in being friends if we can't have sex . . . what about sex?"* The plaintiff said, *"I can't have sex with you"*. The plaintiff's evidence was that at that stage, Mr. Mooney lay back in the chair, opened his trousers and exposed his penis, and putting his hand on her head, and with his knees, nudged her towards his crotch area. He then lay back in the chair and said, *"Yes, yes, yes"*. The plaintiff got up and ran out and was followed by Mr. Mooney who said he would walk her home and she said, no, that she would run home.

25. The plaintiff described herself as extremely hurt and upset by this incident, that she informed her husband and Michelle Brooks and Tom Bracken of it, but did not do anything about it as she considered that Mr. Mooney was very drunk and she excused him on that account.

26. Over the summer holiday months, there was no contact whatever between the plaintiff and Mr. Mooney. During the summer months, the plaintiff got the good news that she was being asked to be Acting Year Head for the First Year students. Her evidence was that she was to be provided with an office for that purpose and was shown a room by Helen Wilson, the Vice Principal, and invited to choose colours for paint and carpets.

27. The plaintiff's next encounter with Mr. Mooney occurred at a social event organised by the Social Committee in the school in Spollen's Public House. There were about six or seven teachers present, including the plaintiff, Mr. Mooney and others. In the course

of banter concerning popular psychology and personality types, in which the plaintiff appears to have described Mr. Mooney as "phlegmatic", Mr. Mooney reacted by saying to the plaintiff, "yeah, and you are rude". To which the plaintiff replied, "Jim, why are you turning this into something nasty? Like, why are you saying I am rude?" Mr. Mooney replied, "You are rude" which he shouted at her. This greatly upset the plaintiff, who started to cry. She got up and went to the bathroom where she was consoled by Michelle Brooks. The plaintiff recovered and rejoined the gathering. Mr. Mooney left after a while.

28. The plaintiff was very upset by this encounter, she described herself as being in a very fragile condition at that time, that she was still on stomach medication and she felt that the whole thing was starting off again, that it was going to be another year of that kind of behaviour. When she went home, she was inconsolable. She told her husband what had happened. At this stage, the plaintiff felt she was walking around with a nervous breakdown. At this stage, the plaintiff did that which she described as something that was very irrational, that she just wanted to get Mr. Mooney back, that she wanted him to stop. She wanted to hurt him because he had hurt her for so long, and all she wanted to do was to hurt him back. On the evening of 12th October, 1998, about a week after the incident in Spollen's Bar, the plaintiff called to the home of Rosarie Mannion, a lady whom the plaintiff had shortly before then befriended, and asked to go for a drive. They left in Ms. Mannion's car and *en route*, the plaintiff requested Ms. Mannion to drive to Tullamore College. When they got there, or adjacent to it, the plaintiff got out and returned a few minutes later. The plaintiff had brought with her a meat skewer and she had noticed Mr. Mooney's car parked in the car park and punctured a tyre with the meat skewer, and as she was passing the car, leaving, she broke off the aerial. The plaintiff returned to Ms. Mannion's car and they drove off and returned to Ms. Mannion's house. Mr. Mooney was playing indoor soccer in the gym in the college at this time. The plaintiff described herself as having experienced a sense of relief, because it was "like, you know, you can't go on hurting a person indefinitely, getting away with it, smirking and sneering at them and just having to take it".

29. Another social event for teachers in the school took place after the midterm break in Lynch's Pub. The plaintiff attended this, as did Mr. Mooney. Because the plaintiff was not drinking, she was asked to be the designated driver, which she agreed to do. After the event in the pub, the group repaired to Mr. Mooney's house and the plaintiff also went there because she was the driver for a number of people. During the course of the evening, she had no contact with Mr. Mooney. Towards the end of the night, a taxi arrived to take a number of people home. At this stage, the plaintiff had her coat on. She went upstairs to go to the bathroom, and when she came downstairs, Mr. Mooney pulled her into the sitting room, which was located adjacent to the stairs, and pushed her against the wall. The plaintiff said to him, "Jim, this is not about sex". Mr. Mooney replied, "If it's not, then you can go home . . ." The plaintiff then left. The plaintiff described herself as delighted she finally had a chance to tell Mr. Mooney that she had no intention of having sex with him.

30. Early in November 1998, there occurred a number of meetings between the plaintiff, the school Principal, Mr. McEvoy and the Chief Executive Officer of the defendants, Mr. Diarmuid O'Neill. The first of these meetings took place on Monday 2nd November, 1998, at 9.20am. A note of this meeting prepared by Mr. O'Neill reads as follows:

"MEMO

MEETING WITH MARY O'TOOLE

MONDAY 2ND NOVEMBER, 1998, 9.20AM

Present:

Diarmuid O'Neill

Mary O'Toole

Edward McEvoy came in at late stage.

- Incident outside gym (a number of weeks back)
- Car damaged deliberately - the car belonged to Jim Mooney
- Criminal damage, criminal offence.
- Gardaí investigated the matter and have made significant progress in the matter.

The incident happened between 7.00pm and 8.00pm on Monday night during an indoor football session that I took part in.

I was informed by the school caretaker that the damage had been carried out.

I saw the damage as I came out after the class at 8.00pm.

Two ladies who were parked, in the car park, and were still sitting in their car, saw the whole thing.

- Saw the car coming in
- Saw the person coming out of the car
- Saw the car turn
- Saw the person who damaged the car
- Saw the person get back into the car
- Saw the driver of the car
- Saw them leave
- Took the make, colour and Registration Number of the car.

The gardaí have made significant progress, and at this stage, they can make an arrest. An arrest and charge of criminal damage.

Gardaí:

They have the name of the person.

Mary O'Toole expressed total surprise at the information given and condemned the action as outrageous. She said that she had serious problems with Jim Mooney, cheque, and other issues. Diarmuid O'Neill requested her to report to him before 4.00pm today if she wished to discuss the matter further.

Diarmuid O'Neill

2nd November, 1998."

31. The plaintiff's account of this meeting is that at the outset of it, she was asked if she knew anything about damage to Jim Mooney's car; that the guards had been in contact with Mr. O'Neill and/or Mr. McEvoy. Her response was, "No, but I can tell you about what Jim Mooney has been doing to me and his campaign of harassment and sexual harassment of me". The plaintiff says that Mr. O'Neill indicated that she could not make allegations of that nature about a person, in their absence, but that she could tell them about her qualities and strengths. She then said to them, "why can't you bring him here now and we'll get to the bottom of this". To which the plaintiff says Mr. O'Neill replied, "It's not necessary". She says that they then changed the subject to an outing in which she was taking a group of students to the Dáil on 4th November, 1998, and, thereafter, the meeting ended. The plaintiff denied that she had said that the incident was outrageous, that she never used that word. The plaintiff said she told him that Mr. Mooney had been sexually harassing her, bullying her, tormenting her, and requesting sexual favours. She did not mention the incident where she says Mr. Mooney exposed his penis to her. The plaintiff denied that she was asked to report back at 4.00pm to discuss any further matters with them. The plaintiff said that she told them that Mr. Mooney had been leering at her; that he had been putting his hands on her in the Staff Room; that he had taken her cheque; that he had requested to meet her after school and that he had been sexually harassing her and bullying her over a period of time.

32. On 5th November, 1998, the plaintiff told Mr. Tom Bracken, her Union representative, that Mr. Mooney had tried to get her to engage in oral sex with him, and as a result of this disclosure, she met with Mr. McEvoy on that day, in the company of Mr. Bracken, and made this disclosure to Mr. McEvoy. Mr. Bracken has since died. On this occasion, the plaintiff says she also told Mr. McEvoy that Mr. Mooney had been sexually harassing her and requesting sexual favours.

33. On 6th November, 1998, the plaintiff says she told Helen Wilson, the Vice Principal, about Jim Mooney and his sexual behaviour towards her and exposing himself to her. She admitted to Helen Wilson that she had damaged Mr. Mooney's car and explained that she did it because he had been sexually harassing her. The plaintiff's evidence was that Mrs. Wilson's response was to the effect, "Mary, he fancies you, are you not flattered . . . I don't understand why you are upset . . ." The plaintiff replied that she was upset, "because I saw parts of his body that I shouldn't have seen". To which Mrs. Wilson replied, "Mary, men say that kind of thing to women all the time". The plaintiff felt that Mrs. Wilson was not sympathetic to her and was urging her to harden herself up, and was dismissive of her complaints.

34. On the evening of 6th November, 1998, the plaintiff went to the gardaí and made a statement admitting damaging Mr. Mooney's car. The plaintiff arranged to pay the cost of the repair to the car, and this was done in due course. The plaintiff was not prosecuted in respect of the damage done to Mr. Mooney's car.

35. On 9th November, 1998, the plaintiff's evidence was that Mr. McEvoy came to her classroom at about 9.15am and told her that Mr. O'Neill wanted to see her in the VEC office in about half an hour. The plaintiff went to the VEC office, and there met Mr. McEvoy and Mr. O'Neill. A handwritten note of this meeting was prepared and signed by the plaintiff, Mr. McEvoy and Mr. O'Neill, and it reads as follows:

"MEETING IN D. O'NEILL'S OFFICE, VEC OFFICES

MONDAY 9TH NOV. '98 - COUNTY OFFALY VEC OFFICES

Present:

Mr. D. O'Neill, CEO

Mr. E. McEvoy, Principal

Ms. Mary O'Toole

Mary has informed gardaí on Friday that she did, in fact, damage J. Mooney's car in the car park of Tullamore College.

Mary did say that she was aware that what she did was wrong.

Mr. O'Neill said that he could foresee difficulties if both members of staff continued working together in T.C.

Mary, in reply, said that she could go to another school.

Mr. McEvoy asked Mary if she was requesting a transfer. Mary's reply was, 'yes, I am, that would be wonderful'.

Mr. O'Neill requested Mary to write a letter of apology to County Offaly VEC for the incident and to include a guarantee that nothing like this would happen again.

Mary stated that it was her intention to pay for the costs of the repairs to J. Mooney's car.

I informed Mary that letter would remain on file and would not be available to any committee or group unless there was a repetition of the incident.

Mary referred to a series of incidents which she asserts provoked her to act in the way she (did). The CEO said that as these were outside the area of responsibility of the County Offaly VEC, that we are adamant that we confine our discussion to the incident of criminal damage.

Mary was assured that she would have access to her file at all times. . ."

36. The plaintiff, in her evidence, said that she attempted to raise Mr. Mooney's behaviour towards her at this meeting. This was dismissed by Mr. O'Neill, saying:

"Look, it's of no consequence, it's outside the area of responsibility of County Offaly VEC. It doesn't matter what he did to you. We are here to discuss the car damage."

The plaintiff denied ever saying that a transfer would be wonderful, but said that at that time, she would not have minded a transfer to get away from Mr. Mooney and out of the school. The plaintiff said she was told she had to do three things; to write a letter of apology to the VEC; to write a letter of apology to Mr. Mooney, and to write a letter of apology requesting a transfer out of the school. She said she agreed to write a letter of apology to the VEC, but point blank refused to write a letter of apology to Mr. Mooney. She said at that stage, she was sent outside the door. When she returned, she says the demand for the apology to Mr. Mooney was dropped. She says that at the start of the meeting, she attempted to explain why she had damaged Mr. Mooney's car, but her attempts to outline her grievances with regard to Mr. Mooney were dismissed, that there was no willingness to investigate her complaints, and she had the impression of hostility towards her, that the attitude of Mr. McEvoy and Mr. O'Neill was, *"we are going to get rid of you. We are going to side with Jim Mooney and you are of no importance and no consequence."*

37. The plaintiff said she was frightened, that she was told her job was on the line and that she could lose it, and she did not know at that stage that she could have had her husband or a union representative or anybody accompanying her at the meeting. She said she believed that Mr. McEvoy was the one who wrote the minutes of the meeting and subsequently erased the word "serious". She said that she had put in the word "did" as she noticed, being an English teacher, that it had been left out. She said that they made it obvious that they had no interest in her complaint. She said she had never been informed that the meeting was of a disciplinary nature. She said she was very upset during the meeting and she said that there was no fair procedures used at all.

38. Subsequent to this meeting, the plaintiff wrote two letters, both dated 17th November, 1998, and addressed to Mr. D' O'Neill. The first of these letters was in the following terms:

"Dear Mr. O'Neill,

Further to our meeting of Monday 9th November, 1998, I wish to apply for a transfer from Tullamore College.

Thank you for your attention in this matter.

Yours sincerely,

Mary O'Toole (Mrs.)"

39. The second letter was as follows:

"Dear Mr. O'Neill,

I am writing as requested regarding the matter we discussed on Monday 9th November, 1998. I regret this incident occurring and it won't occur again. In my view, a person hasn't got anything if they haven't their dignity. I felt mine had been trampled all over and I couldn't take it any more. I lashed out in the wrong way. I have the height of respect for the VEC and I'm sorry that I caused you any trouble. I'm looking forward to the transfer.

Thank you for your attention.

Yours sincerely,

Mary O'Toole (Mrs.)"

40. The plaintiff explained the reference in the above letter as being to the effect that Jim Mooney had taken every bit of her dignity from her, and further, that she had been trampled on by Edward McEvoy and Diarmuid O'Neill who did nothing to investigate her complaints.

41. In the month following these letters, the plaintiff consulted with her union representative, a Mr. Brian Hyland, and as a result of advice given to her by Mr. Hyland, she wrote a further letter dated 20th December, 1998, to Mr. O'Neill in the following terms:

"Dear Mr. O'Neill,

I am writing further to my recent request for a transfer. I have given the matter much thought and I wish to withdraw my request; I would very much prefer to remain teaching in Tullamore College.

Thank you for your attention in this matter.

Yours sincerely,

Mary O'Toole (Mrs.)"

42. The plaintiff explained her change of mind as being based on two factors. The first of these was that if she was transferred to another school, it could involve having to travel a distance of twenty miles or so, with the consequence of getting home much later, and as a result of this, she would be much later picking up her six-year old son from the crèche. The second factor was that she felt because the matter was now, as she put it, *"out in the open"*, that Jim Mooney would have to behave himself and therefore she felt a sense of relief, and that she would be safe in the school.

43. On 13th January, 1999, the plaintiff signed a document which was in the following terms:

"13th January, 1999

I retract statement made in Mr. McEvoy's office on 5th November, 1998, in Mr. T. Bracken's presence. I won't repeat it. I regard the unpleasant matter closed.

Mary O'Toole

Witness: T. Bracken"

44. The plaintiff explained the genesis of this document as arising from the continuing threat of a prosecution in respect of the damage done to Mr. Mooney's car and also the continuing threat of a transfer from Tullamore College. She explained that to avoid these threats, and under duress, she agreed to sign this statement retracting the allegations she made concerning Mr. Mooney on 5th November, 1998.

45. Thereafter, the plaintiff said that she felt that Mr. McEvoy's attitude to her was absolutely dreadful, appalling. As an example of this, she instanced that on Tuesday mornings, he used to make announcements in the staffroom and he would frequently praise Mr. Mooney. The plaintiff found this really hurtful and would stay in the bathroom until the break was over. The plaintiff said that as the year 1999 went by, every time she had a free class, she went home and lay down and she left the staffroom every day at lunchtime. She said her health totally deteriorated, that she was on a lot of medication for depression and on anti-anxiety tablets and on different stomach medications.

46. During this year, the plaintiff said she stayed out of Mr. Mooney's way and had absolutely nothing to do with him whatsoever, and that she kept out of the school, out of everything. Her husband, Eamonn, used to ring her every day at lunchtime to see if she was okay.

47. The plaintiff, in her evidence, said that in September 1999, she was approached by Helen Wilson, who asked her to do the newsletter again, as she had done it in the past. The plaintiff said she would not, that she felt very aggrieved at how she had been treated, and that Mr. McEvoy had completely sided with Mr. Mooney. The plaintiff's evidence was that Ms. Wilson said she would arrange a meeting with Mr. McEvoy so that the plaintiff could sort it out with him. The plaintiff said she had this meeting with Mr. McEvoy in October 1999.

48. The plaintiff's evidence was that at the meeting, Mr. McEvoy said to her, *"Mary, I know you are a ten out of ten and I know that this other person isn't a ten out of ten, but you've got to laugh at this situation because you've got your husband to go home to and he has nobody to go home to"*. The plaintiff replied to this, saying, *"Edward, will you just tell me one thing: did you put him up to sending me the solicitor's letter that I received on 10th December, 1998?"* In response, to this, the plaintiff says that Mr. McEvoy stumbled and muttered and replied, *"Well, well, well, I knew he was going to send it"*. To this, the plaintiff responded, *"Edward, if that is the case, this meeting is over"*. The plaintiff then left the office. The letter referred to was the letter of 10th December, 1998, sent by solicitors, Messrs. Larkin Tynan & Company, acting for Mr. Mooney, in which it was stated that over a considerable period of time since May 1997, the plaintiff had pursued and harassed Mr. Mooney and made sexual advances to him, despite his making it clear at all times that he had no interest in any relationship with her. The letter went on to say that in May 1997, Mr. Mooney had to report the plaintiff's behaviour to the gardai when she had called to his house in the early hours of the morning, and the letter goes on to mention the criminal damage to Mr. Mooney's car.

49. The plaintiff said that after this meeting, there was no relationship between herself and Mr. McEvoy. It was her evidence that Mr. McEvoy continued to bully her in subtle ways. In this respect, she cited two incidents, the first being on the day the school broke up for the Easter holidays of 2000, when, she said, Mr. McEvoy came to her class. Because it was the day of the break up for the Easter holidays, she was allowing the children a treat. There were only ten of the class of thirty present. Mr. McEvoy directed her to resume the normal Geography class. On another occasion, a pupil sent out by the plaintiff to get pencils was ordered by Mr. McEvoy to return to the class, notwithstanding that he had explained to Mr. McEvoy that he had been sent out by the plaintiff. On another occasion, the plaintiff said that she herself was in the corridor on her way to get a revision book, when she encountered Mr. McEvoy and was ordered back to the classroom.

50. Another incident that caused the plaintiff great upset was the fact that she was not invited to the wedding of a fellow teacher, Ms. Michelle Brooks, with whom she had been friendly. The plaintiff's evidence was that she had been informed earlier by Ms. Brooks that she would be coming to the wedding, but closer to the event, Ms. Brooks informed her that she could not invite her to the wedding because of her fear or apprehension that if she did, she might not be made permanent in the school because of Mr. McEvoy's dislike of or disapproval of the plaintiff.

51. Later in the year 2000, the plaintiff had been greatly upset by the death of a pupil in the school in respect of whom she had been a class tutor. The plaintiff had had a close relationship with this pupil and had assisted her and counselled her in any difficulty she was having in the school. This child was subsequently killed in a road traffic accident. The plaintiff experienced considerable grief following her death, and it was whilst having a discussion with the school Chaplain, Father Gerry Boyle, in the staffroom concerning this, that the final incident in the history between the plaintiff and Mr. Mooney occurred.

52. Whilst the plaintiff was talking to Father Boyle, Mr. Mooney walked into the staffroom. This caused the plaintiff, as she put it, *"I just saw red"*. She said to Mr. Mooney, *"You are a bully, you bullied me once before and you will never do it again"*. She went on to say, *"You molested me and you can't molest people and get away with it"*. Her evidence was she went on to say to Mr. Mooney, *"Now you can run off to Edward and tell him what I've said to you"*. She went on to say to him, *"You are drunkard, that is all you are. Several people have seen you falling out of pubs in the town"*. The plaintiff's evidence was that Mr. Mooney responded by saying, *"What are you on about, psycho?"*

53. After this, there was a heated and loud discussion which lasted about four or five minutes. The plaintiff's evidence was that at the conclusion of the discussion, she walked out of the room and as she did, Mr. Mooney was standing in front of her and she brushed against him. She said she did not push him or assault him. He had been standing facing her, and as she went out, she says her elbow probably brushed off his elbow. She denied shoving Mr. Mooney in the back.

54. Following this incident, Mr. Mooney wrote a letter of complaint dated 11th December, 2000, to Mr. McEvoy in the following terms:

"Dear Mr. McEvoy,

I wish to make an official complaint regarding harassment and physical abuse which I received from a member of staff, Ms. M. O'Toole. This incident occurred at 3.30pm on Tuesday 5th December, 2000, in the staffroom of Tullamore College, and was witnessed by Father Gerry Boyle.

The incident occurred as follows . . .

I walked into the staffroom at 3.30pm, the only people in the room at this time were Father J. Boyle and Ms. O'Toole.

I said, 'hello' to Father G. and was just walking past him when I was accosted verbally by Ms. O'Toole in an extremely aggressive and high-pitched tone.

From notes taken contemporaneously, I include some of her comments to me.

- 'you think you're very smart'
- 'you won't get away with it'
- 'you can't molest people and get away with it'

At this point, I asked what she was talking about, saying, 'what are you on about, psycho?'

She continued:

- 'you know what I'm talking about'
- 'I know all about you falling down drunk outside pubs'
- 'I've heard all about you'
- 'you're a drunkard'
- 'I suppose you'll run to Edward and tell him'
- 'Oh yes, you think you're great big Jim'

At this point, I had my back to her, and as she was walking past, she pushed me in the back with both hands and then walked out of the staffroom.

As she was leaving, I said to her, 'you need help'.

The entire incident lasted roughly forty seconds and left me in an upset state. Father G. Boyle was there all through this incident . . ."

55. By a letter dated 12th December, 2000, addressed to Mr. McEvoy, Father Gerry Boyle said the following:

"Dear Mr. McEvoy,

On Tuesday last, 5th December, at 3.30pm, I witnessed Ms. Mary O'Toole shout at Mr. Jim Mooney and call him names in the staffroom of Tullamore College.

Yours sincerely,

Gerry Boyle"

56. Following this incident, when the plaintiff went home, she reflected on matters and concluded that she could not stay in the school, that it would not be good for her health. A meeting took place on 13th December, 2000, with the CEO, Mr. O'Neill, at which a transfer to another school was discussed. Four schools were mentioned as suitable for the plaintiff, namely, Banagher, Clara, Ferbane and Kilcormac. The plaintiff did not wish to go to Edenderry, as she had started off teaching there, and did not wish to return, and in addition, it was a considerable distance from her home. Following this meeting, the plaintiff, by letter of 18th December, 2000, addressed to Mr. O'Neill, formally requested a transfer from Tullamore College, preferably to Clara Vocational School, but if a transfer there was not possible for the coming school year, she requested a transfer to either Kilcormack, Ferbane or Banagher.

57. A further meeting took place between the plaintiff and Mr. O'Neill on 8th January, 2001. On the same day, a letter was written by Mr. McEvoy to Mr. O'Neill, in the following terms:

"Dear Mr. O'Neill,

I wish to draw your attention to a recent incident involving Ms. Mary O'Toole. Please find enclosed copies of the account of the incident.

Given the other incidents which have already taken place, this is a matter of serious concern to me.

Yours sincerely,

Edward McEvoy

Principal

p.s. I also include copies of the legal correspondence and of Mrs. O'Toole's retraction pertaining to the previous incidents. These were provided along with the copies of the account of this most recent incident."

58. In the meeting of 8th January, 2001, the plaintiff's evidence was that Mr. O'Neill suggested mediation, to which the plaintiff agreed. The plaintiff's evidence was that her husband made a similar request to Mr. O'Neill.

59. The plaintiff became ill in January with Gastritis which was exacerbated by the stress she was experiencing. The plaintiff had recovered and was back at work by 22nd January, 2001.

60. Because she was still feeling bad over everything that had happened, she, at that stage, consulted a solicitor. She had a further meeting with Mr. O'Neill in his office on 22nd January, 2001. The plaintiff's evidence was that she tried to tell Mr. O'Neill about everything that had occurred but he declined to listen, indicating his only interest was in effecting the transfer request. In the meantime, the plaintiff had received a second solicitor's letter from Mr. Mooney dated 16th January, 2001, which was in the following terms:

"Dear Madam,

We act for James Mooney of Springlawn, Daingean Road, Tullamore, County Offaly. You will recall that we had occasion to write to you in December 1998 in relation to various matters which had arisen in 1997 and 1998, and in particular, your conduct involving our client during that period. These particular incidences were concluded by you making a retraction of a statement which you had made to the school Principal, Mr. McEvoy, and paying compensation to our client in respect of damage which you caused to our client's vehicle in December 1998.

Our client instructs us that you have complied with the request made on his behalf in our letter of 10th December, 1998 (a copy of which is enclosed herewith) to desist from any contact with our client in the interim period until an unfortunate incident which occurred on 5th December, 2000. On that occasion, our client instructs us that an incident occurred in the staffroom at the school whereby, without any provocation or contact whatsoever from our client, you verbally and physically abused our client. Our client is concerned, firstly, at the nature of the incident, which occurred on 5th December, and, secondly, that this incident may be a precursor to other incidents similar to those which occurred in 1997 and 1998, and which were the subject matter of our earlier correspondence.

We are writing, firstly, to request a full apology from you in respect of the incident which occurred on 5th December, and, secondly, a firm undertaking that there will be no repetition of such incidents, and, furthermore, that any contact which you have with our client in the future will be purely that necessitated in the course of both your and his employment as teachers in Tullamore College.

Our client has already brought this matter to the attention of the school and educational authorities, and should there be any repetition of this behaviour, then we are putting you on notice that our client will immediately bring the matter to the garda authorities for investigation, as had to do in relation to your conduct on the previous occasion.

We await hearing from you or your legal representative with a full apology in respect of the incident which occurred on 5th December, and also your undertaking that there will be no repetition of such events in the future . . ."

61. After receiving this letter, the plaintiff consulted a solicitor, and with the aid and advice of a solicitor, the plaintiff composed a letter of 25th January, 2001, addressed to Mr. Edward McEvoy, which became the plaintiff's formal letter of complaint, and reads as follows:

"Dear Mr. McEvoy,

I feel that at this time, I must make an official complaint in respect of my position in Tullamore College.

Since January 1997, I feel I have been the victim of continual and persistent bullying in the workplace. Jim Mooney has been the perpetrator of this bullying and I am not at a point where my health is suffering because of this behaviour.

Over a period of time, he continued to touch me in an inappropriate way which made me feel uncomfortable, in spite of my requests that he stop doing so.

He insulted and belittled me in the presence of teaching colleagues.

Since I was a teacher of Transition year students and he was the Transition Year Coordinator, I was made to feel extremely uncomfortable in my efforts to liaise with him; due to his assuming sexually suggestive facial expressions on numerous occasions when I tried to speak him on curricular matters.

On one occasion, just prior to the Easter holidays 1997, he took my paycheck. I went to his room at 3.30pm to get it. He returned my opened paycheck, made no effort to apologise for taking it, and when I suggested that we needed to speak for moment to clarify matters, he insisted we meet elsewhere outside the school. I stressed I was not interested in such a meeting and that I would appreciate it if he would discontinue making unnecessary physical contact with me.

I later made attempts to speak to him to resolve whatever issues he had with me, but these efforts were rejected in a most disrespectful manner and he later represented these efforts on my part as evidence of sexual harassment when, in truth, he had requested sexual favours from me.

I later made complaints to school management concerning his behaviour, but I feel these complaints were not taken seriously and this has contributed to the deterioration in my health.

I now call on you to deal with my complaints and take whatever action is necessary to make my working environment the safe place it should be.

Yours sincerely,

Mary O'Toole"

62. This letter was handed by the plaintiff to Mr. McEvoy on the morning of Friday 26th January, 2001.

63. The plaintiff's evidence was that she gave this letter to Mr. McEvoy at about 10.00am, and about half an hour later, she said Mr. McEvoy called her into his office and in an aggressive way said to her, "*Leave the door open*", and he then handed her a booklet on sexual harassment, or how to deal with complaints of sexual harassment in the school, and he informed her that two people had been designated to deal with her complaint, namely, Ms. Colette Lee and Mr. Tom Donoghue.

64. The plaintiff contacted Colette Lee at lunchtime and made an arrangement to meet on the Monday. The plaintiff made no arrangement with Mr. Donoghue as she failed to see him that afternoon.

65. That afternoon, at approximately 3.30pm, as the plaintiff was leaving the staffroom, the plaintiff's evidence was that Mr. McEvoy informed her that Mr. O'Neill wished to see her in his office at 4.00pm. The plaintiff met Mr. O'Neill at 4.15pm, accompanied by her husband.

66. At the meeting, the plaintiff's evidence was that she was informed by Mr. O'Neill that he had arranged a transfer of the plaintiff to Edenderry with effect from the following Monday morning. The plaintiff felt the choice of Edenderry was a vindictive one, as it was the only school that she had indicated to which she did not wish to be transferred. The plaintiff accepted the transfer. The minute of this meeting of 26th January, 2001, is in the following terms:

"Meeting with Mary O'Toole, Friday 26th January, 2001

Present: Edward McEvoy, Diarmuid O'Neill and Mary O'Toole

Agenda

To find a resolution to the difficulties which have come to light in Tullamore College between Mary O'Toole and Jim Mooney

Diarmuid O'Neill outlined:

- *The possibility of a transfer from Tullamore College to Oaklands Community College, Edenderry.*
- *Also outlined the need to end all aspects of the dispute between the two parties.*
- *Sought and received a guarantee from Mary O'Toole that the accusations and written allegations would stop immediately.*
- *Informed Mary O'Toole of the arrangement made earlier with Tony Banbrick, Principal at Oaklands Community College and requested her to report to Oaklands Community College on Monday morning 29th January, 2001, at 9.00am.*
- *Informed Ms. O'Toole that all of the above would continue only if she honoured her promises.*
- *Informed Ms. O'Toole that similar guarantees to be given by Jim Mooney."*

67. The plaintiff reported for duty to Oaklands Community College, Edenderry, on the following Monday morning, 29th January, 2001, but was very distressed by the arrangements put in place for her there, in particular, that she was not given a proper timetable; she was put in front of a class to teach Irish, but she was not an Irish teacher. After the plaintiff arrived in Edenderry, she received a formal letter of transfer dated 26th January, 2001, from Mr. O'Neill, which was in the following terms:

"A Chara,

Further to your written request for a transfer from Tullamore College, I am pleased to inform you that I am now in a position to offer you a voluntary transfer to Oaklands Community College with a starting date of Monday 29th January, 2001.

Please let me know as soon as possible that you will/will not accept this offer . . ."

68. By a letter of 5th February, 2001, addressed to Mr. O'Neill, the plaintiff formally replied in the following terms:

"Dear Mr. O'Neill,

Further to your letter of 26th January, last, I wish to inform you that I am refusing your offer of a voluntary transfer to Oaklands Community College, Edenderry.

In December 2000, I requested a transfer to Clara, Kilcormac, Ferbane or Banagher. I now wish to withdraw this request entirely.

Thank you for your attention.

Yours sincerely,

Mary O'Toole"

69. The plaintiff's evidence was that her mental and physical health had deteriorated badly and she had to go out on stress leave at that stage. The plaintiff was out on medical certificates up until May 2001. By letter of 23rd February, 2001, from Brian P. Adams & Company, solicitors, on behalf of the plaintiff, addressed to Mr. O'Neill, the following was said:

"Dear Sir,

I confirm that I act for the above-mentioned Mary O'Toole and refer to your letter to her of 26th January, last, and her reply on 5th February.

In view of the clearly expressed intention of my client that she wishes to refuse the transfer offered to Edenderry Vocational School, please confirm to me that my client's post in Tullamore Vocational School is open to her when she is medically certified to be fit to return to work."

70. By a letter of 29th March, 2001, Mr. Mooney replied to the plaintiff's letter of formal complaints dated 25th January, 2001, in the following terms:

"With regard to this letter, I wish to state for the record in the strongest possible terms, that I vehemently deny the accusations made by Ms. O'Toole. The single exception to this is the incident relating to her payslip, the details of which she also lied about. The remainder of the allegations are completely fictitious without any grounding in truth whatsoever.

In relation to the payslip, this incident occurred around March 1997. The teachers' payslips are normally left in the individual teacher's pigeonhole at 10.20am on payday. I mistakenly took Ms. O'Toole's payslip from her pigeonhole, which was beside mine, when I was going to class after the 10.20am break. I opened it in class without looking at the name on the envelope, looking at the net amount, returned it to my pocket, still thinking it was mine. Roughly thirty minutes later, Ms. O'Toole called to my class and asked me if I had taken her payslip. I looked at the name on the envelope, saw my mistake, immediately apologised for taking and opening it, then returned it. My apology for this genuine mistake was made clear at the time.

Ms. O'Toole has made a previous complaint regarding me to Mr. McEvoy, made on 5th November, 1998, which she has retracted in writing. This false accusation I have also categorically denied.

Also, I wish to state for the record, that the reverse of these allegations is, in fact, the case, in that Ms. O'Toole has consistently harassed and pursued me, both inside and outside of school. All of her advances have been rebuffed unequivocally.

Any and all dealings which I have had with Ms. O'Toole in the school have been carried out in a professional manner.

With regard to the outrageous allegation made by Ms. O'Toole in her letter dated 25th January, 2001, I would like an opportunity to discuss this matter with a view to exploring options available to me in order to set the record straight through the offices of the VEC . . ."

71. By letter dated 2nd May, 2001, the plaintiff's solicitors, wrote to solicitors for the defendants, as follows:

"Re. Mary O'Toole v. County of Offaly Vocational Educational Committee

Dear Sir,

I refer to the above-mentioned matter and confirm the advice of counsel, my client has now decided to institute proceedings against your above mentioned client.

Kindly confirm you have authority to accept service."

72. Following on this letter, proceedings were commenced in this case by the issuance of a Civil Bill on 14th May, 2001.

73. In May, when the plaintiff was fit to return to work, the plaintiff wrote to Mr. O'Neill by letter of 22nd May, 2001, as follows:

"Dear Mr. O'Neill,

I wish to inform you that my doctor has certified that I may return to work on 28th May.

Further to previous correspondence, I will attend at Edenderry under protest, as I do not accept the transfer as previously stated.

I expected the VEC to resolve my position before term commences in September.

Thank you for your attention in this matter.

Sincerely yours,

Mary O'Toole (Mrs.)"

74. Towards the end of May 2001, the plaintiff was offered a transfer to Ferbane Community College, which she accepted. The plaintiff commenced teaching in Ferbane in September and has been there since.

75. On 6th June, 2001, a fire occurred in Tullamore College. A garda investigation ensued into the circumstances of this fire. During the summer months, a search of the plaintiff's house was conducted on foot of a Search Warrant issued in connection with this investigation, and the plaintiff was arrested and detained under s. 4 of the Criminal Justice Act 1984, in connection with this investigation. No charges were ever brought against the plaintiff who was greatly upset and aggrieved by these events and believed that her arrest was actuated by information furnished to the gardaí by the school authorities. The plaintiff has initiated other proceedings concerning these matters.

76. In his evidence, Mr. Mooney told a story which, not only diametrically contradicted every aspect of the plaintiff's evidence, but was to the effect that far from him sexually harassing the plaintiff, it was the other way about, that he was subjected to repeated, unwanted sexual advances by the plaintiff, which he repeatedly and unequivocally rebuffed. Mr. Mooney told the court that he commenced his career as a teacher in 1990 and started in Tullamore College in 1993. Following the commencement of his teaching

course, he did a Master's course and finished off this after starting in Tullamore in 1993. In his Master's Degree, he achieved Honours with a 1.1 grade. Later, he did a Higher Diploma in Education Management, whilst teaching fulltime in Tullamore College.

77. Between 1993 and 1996, his evidence was that there were no issues arising between the plaintiff and him in regard to their professional relationship in the school. Early in 1997, he noticed an unusual number of interruptions by the plaintiff into his class for frivolous reasons. He felt that these were happening too often.

78. He described the incident which occurred towards the end of March 1997 over the paycheck. He said that he had mistakenly taken the plaintiff's paycheck and had opened it, but had only seen the net amount and not the name, and had folded it and put it in his pocket, and when the plaintiff came to his class and broached the matter, he took it out of his pocket and saw that it was her paycheck, and his evidence was that he apologised to her for his mistake. He said that before she left, the plaintiff handed him his paycheck. He said he apologised to her three times. His evidence was that their pigeonholes were side by side.

79. He said the first time that the plaintiff was in his house was in late April 1997, that at that time, he had been out sick for a couple of days, having had treatment for his back. He said she came around at lunchtime, uninvited. Mr. Mooney was just out of bed and was not very well able to move because of his back injury. She came around to see how he was and he invited her in for a cup of tea and the visit lasted approximately ten minutes.

80. Mr. Mooney next described a major incident occurring on 25th May, 1997, the occasion when the plaintiff came to Mr. Mooney's house, having had a few drinks with a friend of hers. Mr. Mooney said he had been out for a drink with the two men with whom he shared the house, namely, Christy Doherty and Louis O'Keeffe, both of whom gave evidence. He said they went out at about 9.00pm and he, Mr. Mooney, came home about 11.00pm and the other two arrived back within an hour and they watched TV for about an hour, after which the plaintiff and Mr. Doherty went out to the garage to play a game of pool. At about 1.30am, Louis O'Keeffe came out to him and said, *"There's a woman inside to see you"*. Mr. Mooney went into the dining room where the plaintiff was. He described her as close to drunk and slurring her words. He remembers her saying, *inter alia*, *"don't be afraid, I only want to be with you"* and *"I just want to talk to you"*. Mr. Mooney said he kept repeating to her that she would have to go home and that she could not stay and would have to leave, but that he did not seem to be getting through to her. Eventually, he did persuade her to leave. As she was leaving, she said she could not find her keys. Mr. Mooney said he realised then that she had driven down. This led to a search for the keys, for which the porch light was put on. Mr. Mooney asked Christy Doherty to put on the headlights of the car to shine on the driveway. They searched everywhere for the keys, including the door handle of the car, and even shone a torch into the plaintiff's purse. Mr. Mooney said to his companions that he would have to leave her home and he went down and got his keys and drove the plaintiff home. Mr. Mooney was very annoyed at this stage, and said nothing to the plaintiff as he drove her home. He returned to his house and he and his two housemates were in the kitchen when, after about fifteen minutes, the doorbell started ringing persistently. Realising who it probably was, Mr. Mooney said to Louis O'Keeffe, *"I'm not answering that. If that is Mrs. O'Toole, I said, if she doesn't go away, tell her to go away, and tell her if she doesn't go away, I said to him to ring the guards"*. Louis O'Keeffe answered the door and Mr. Mooney could hear the front door opening and closing a number of times. He heard Louis O'Keeffe relay to the plaintiff what Mr. Mooney had said, but she kept ringing the doorbell, and his evidence was that she then started shouting in the letterbox. At that stage, Louis O'Keeffe picked up the phone and rang the guards. The plaintiff then disappeared and her car was left parked out in front. The gardaí arrived down within about fifteen minutes. Mr. Mooney went out in front with Louis O'Keeffe and explained to the guards what the situation was, that there was a woman making a nuisance of herself. Mr. Mooney did not give the plaintiff's name to the gardaí.

81. The following day, Mr. Mooney said he received a phone call from the plaintiff which he described as *"extremely weird"*, asking Mr. Mooney *"what about us?"*

82. The next day, which was Monday, his evidence was that the plaintiff interrupted his class and came in, that Mr. Mooney was abrupt with her and she gave him a letter and asked him to read it. He said he did not, and folded it and put it in his pocket. Later, as he was leaving school, at about 3.30pm, as he was close to the Exit door, he said the plaintiff interrupted him and asked him for a lift home, saying she wanted to speak to him. Mr. Mooney said that he absolutely refused and left. He said he read the letter a day or two later. This was the letter written by the plaintiff which the plaintiff said she wrote while supervising an examination on that day. Mr. Mooney said that after he read the letter, he put in a drawer in his house and left it there. He said he had received notes from the plaintiff before that, which he had ripped up, but he decided to keep this letter because he thought some of the content of it was *"scary"*. The letter remained in the drawer until the plaintiff made accusations against Mr. Mooney in November 1998. He said he woke up in a cold sweat, one night, and wondered whether he still had the letter.

83. After the incident on 25th May, and the receipt by Mr. Mooney of the letter, he said he noticed nothing untoward with regard to the plaintiff for the rest of the year, until a staff social event in Kinnitty Castle at Christmas 1997. A bus had been organised to take people there. His evidence was that nothing unusual happened during the social event, and on the way home on the bus, the plaintiff invited a few people in for a drink afterwards. Mr. Mooney was on the bus at the time, and when she invited him, he said, *"no thanks, I'm going to head home"*. He said she persistently invited him a number of times, to which he replied, *"Okay, sure, I will go in for one"*. His evidence was that he stayed for about an hour or an hour and a half, and it was uneventful and there were no arguments or no shouting of abuse at the plaintiff concerning her or her mother and no arguments with male teachers, nothing of that kind happened. Mr. Mooney denied insulting the plaintiff or using strong language and said he had never met the plaintiff's mother and knew nothing about her. He said there were a number of people still there after he left, and at no stage during the night was he alone with the plaintiff. The reason he had gone to the plaintiff's house was because he felt that calling the guards in May had been a bit heavy handed and going to the plaintiff's house would neutralise or normalise things.

84. Mr. Mooney said the next event of relevance occurred in March 1998, when the staff of the school attended a performance of *'D'Unbelievables'* in the Tullamore Court Hotel. Mr. Mooney was there and so was the plaintiff. At the interval, Mr. Mooney noticed the plaintiff at the far side of the foyer, where she was crying and being consoled by Tom Bracken. Mr. Mooney had no idea what was amiss. After the show was over, they stayed on for a drink. Mr. Mooney was with a different group to the teachers, he having attended with friends of his. They were joined by Tom Bracken, a teacher, who asked Mr. Mooney if he could stay in his house that night, to which Mr. Mooney agreed. The plaintiff then joined Mr. Mooney's company, uninvited. Mr. Mooney says he did not speak to her at all. Mr. Mooney went home after about half an hour with Christy Doherty who was driving. About half an hour later, there was a knock at the door. Tom Bracken was there and there was another car in the driveway with the plaintiff and another teacher, P.J. Hanlon. Mr. Mooney informed Mr. Bracken that he was welcome to stay the night, but that the plaintiff was not coming in.

85. On 29th May, which was a Friday, the school was breaking up for summer holidays. Mr. Mooney said that staff were meeting in the Brewery Tap public house. He went there around 5.00pm. The plaintiff was there, as was Tom Bracken. Mr. Mooney said that he was speaking with Mr. Bracken for most of the time, and Mr. Bracken asked if he could stay over in Mr. Mooney's house, which he did. The plaintiff also came back to Mr. Mooney's house. She arrived with Mr. Bracken at around 8.00pm, apparently having shared a taxi

with Mr. Bracken. Mr. Mooney invited them in, and when they went to the front room, Mr. Mooney brought in drinks for both of them. He said they chatted for about an hour, when Mr. Mooney took a personal phone call from his girlfriend which lasted for about half an hour. Another teacher, P. J. O'Hanlon, had been there for about fifteen minutes or so. At about 11.30pm, Mr. Bracken made a phone call to New Zealand. At about that time, Mr. Mooney went upstairs and made a bed for Mr. Bracken which took about twenty minutes. When he came back down, the TV was on and Mr. Bracken was in the front room and had nodded off. He said the plaintiff was in the kitchen cum dining room. She was sitting on the floor reading a magazine. Mr. Mooney said he went in and he sat on the couch opposite her and there was some chitchat. He said he rested on the couch and put his head back and closed his eyes for a minute and the next thing he knew was that the plaintiff had gotten from where she had been, over to between his legs. He said she was resting her arms on his knees and letting her hands kind of rest down. She was in that position for a minute or so, and then started telling Mr. Mooney how much she liked him. He said he had a good bit of drink on board at that stage. He said that she started moving her hands up his inner thighs and started fumbling with the buttons of his fly. At that point, he said he put his hands on her shoulder and moved her back and made light of it, that he laughed at it. He says she took that as an offence rather than the way it was intended, and that she was simpering rather than crying, and he said to her, *"listen, you're going to have to leave, I'm going to bed"*. After that, Mr. Mooney roused Mr. Bracken and showed him where he was sleeping upstairs, and when he came back down, Mr. Mooney says the plaintiff was still there. At this stage, Mr. Mooney started turning off the lights and locking up. His evidence was that he said to her; she had her coat on at this point, in the hall, *"look, you can do what you like, I am going to bed"*. He then turned around and started going upstairs. When he was a third of the way up the stairs, she started following him up the stairs. He said he turned around and had to usher her out of the house.

86. Mr. Mooney denied, on this occasion, exposing his penis to the plaintiff, or that she ran from the house. His evidence was that the plaintiff rang the following day or the day after. He did not know where she had got his number as he had never given it to her, and the only thing that stuck in his memory from that phone call was that she said, *"did last night mean nothing to you?"* She also mentioned that she had left her purse in the house and asked to go up and collect it, to which Mr. Mooney replied, *"No way. I will give it to Mr. Bracken and he can return it to you"*. Mr. Mooney's evidence was that he heard nothing during the summer holidays of that year.

87. Mr. Mooney described an incident in Spallins public house where a number of teachers had gathered informally after the summer holidays of 1998. He said he had been talking to Michelle Brooks and complimented her on her hair, and as he was speaking to her, the plaintiff interrupted, to which Mr. Mooney responded by saying, *"I wasn't speaking to you, you're rude"*. He explained this in his evidence as having been a little bit out of place, but because of the history at that stage, he wanted as much distance as possible. In his evidence, he said that he described as *"rubbish"* suggestions by the plaintiff that the tannoy system could be used by the Principal to eavesdrop on what was said in class. He said these remarks were made in a group and not one-to-one with the plaintiff, and she seemed to be very put out by his comments.

88. His evidence was that when he left this gathering to go home, he went to his car which was parked in the parkway and he said that the plaintiff followed him over to his car, that he did not realise this until he got into his car and she held the door and prevented him from closing it. He said she kept asking him to stay and not to go home, and then she wanted to get into the car and go home with him and would not let him close the door. Mr. Mooney said that he used very strong language to tell her where to go, as nothing else seemed to be getting through.

89. Mr. Mooney described the next incident as occurring on 12th October, 1998, when he was in the gymnasium beside the school and the caretaker informed him that somebody had damaged his car. He went out and saw the tyre was flat. As he was changing the tyre, he noticed a slash mark, about an inch or an inch and a half, and then he noticed that his aerial was completely broken off. The matter was reported to the gardaí. Mr. Mooney said that when he brought his car to the garage, it was drawn to his attention that the front right tyre was slashed as well, but not punctured.

90. On 23rd October, 1998, there was another social gathering of teachers in the school, in Hugh Lynch's pub in Tullamore. Mr. Mooney said he was there, as also was the plaintiff. At the end of the evening, Mr. Mooney invited a few people back to his house, but pointedly did not invite the plaintiff. The small number he invited back got taxis to his house. The plaintiff, however, arrived in with some other people and Mr. Mooney did not make an issue of it. While she was in the house, Mr. Mooney said he did not speak to her, that he pointedly kept his distance. Mr. Mooney said that event did not go on very long. He then arranged for taxis to take people home. He said his housemate, Christy Doherty, who had been in bed, got up and joined them. He said that a really weird thing happened, that as he was going out from the kitchen, going up to the bathroom, the plaintiff popped out from the front living room, the door was ajar and the room was in darkness. He said she appeared to have been hiding there for about a half an hour since she seemed to have left and gave him a fright. Mr. Mooney said that he unceremoniously put her out of the house again. At that stage, he did not know who had slashed his tyres.

91. On 2nd November, 1998, Mr. Mooney said he was called to a meeting with the CEO, Mr. O'Neill, and Mr. McEvoy, and was asked did he know who had damaged his car, to which he replied that he had no idea who had done it. Mr. Mooney said he was asked that if a member of staff had done it, who did he think it might be, to which he replied, there was only one member of staff he was having trouble with, and that was the plaintiff.

92. Mr. Mooney said that three days later, on 5th November, 1998, Mr. McEvoy called him into his office in relation to the damage to his car and said to him, *"Mrs. O'Toole is after making very serious allegations about you in your house on 29th May of '98"*. He went on to say that the tenor of the allegation was that he, Mr. Mooney, had looked for sexual favours from the plaintiff and that he had exposed himself. Mr. Mooney described himself as gobsmacked when he heard this, and completely refuted and denied utterly what was put to him. He decided at that stage that he had better go and see a solicitor and he went to Mr. Eddie Tynan of Tynan Larkin in Mullingar and instructed that solicitor to write a letter to the plaintiff. At this stage, a letter dated 10th December, 1998, was sent to the plaintiff. That letter stated the following:

"Dear Madam,

We act for Mr. James Mooney of Springlawn, Daingean Road, Tullamore, County Offaly. Our client instructs us that over a considerable period since May 1997, you have pursued and harassed our client and have made sexual advances to him, despite our client making it clear to you at all times that he had no interest in any relationship with you other than the normal necessary working relationship, as required, due to the fact that you are both teaching in the same school.

Our client instructs us that in May 1997, he had to report your behaviour to the gardaí when you called to his house in the early hours of the morning and he also handed us a letter which you wrote in or about the month of May 1997, to him, following that incident.

In the intervening period, you have persisted in this type of behaviour, despite our client's constant efforts to discourage you from so doing.

We are further instructed that on the 5th ult. his car was damaged while parked outside the Tullamore College gym and we were instructed that you have admitted causing criminal damage to our client's vehicle on that date in question. It would appear that such an admission has been made to the garda authorities and the school authority.

We are writing to put you on notice that unless we receive from you an undertaking that you will have no further contact with our client, except for normal professional contact in the course of your employment in Tullamore College, that we are under strict instructions to issue proceedings against you arising out of the above matters. We also require your proposals to fully compensate our client for the damage to his motor vehicle.

We await hearing from you.

Yours faithfully."

93. This letter was responded to by a letter written by Ms. Carmel Kinsella, Leahy & Company, Solicitors, instructed by the plaintiff dated 15th December, 1998, which says the following:

"Our client: Mrs. Mary O'Toole

Your client: Mr. James Mooney

Dear Sirs,

Your letter of 10th December last, addressed to our client has been passed to us.

Our client categorically denies that she pursued, harassed or made sexual advances to your client. She is equally adamant that she does not wish any further contact with your client except as set out in your letter for normal professional contact in the course of their employment. With reference to your client's request for compensation for damages to his car, we should point out that Ms. O'Toole consulted with Mr. D. O'Neill, CEO for County Offaly and Mr. E. McEvoy, and agreed to compensate Mr. Mooney for the damage to his car. It was understood that Mr. McEvoy was to obtain an invoice from your client.

Please note that our client is still awaiting receipt of the invoice for damage done to your client's car, and has in the past couple of weeks again requested the invoice from Mr. McEvoy. Perhaps you would forward your client's invoice for damages to ourselves and we shall pass it on to Mrs. O'Toole.

Yours faithfully.

94. A further letter of 22nd January, 1999, was sent by Mr. Mooney's solicitors to the plaintiff. Mr. Mooney said he told Mr. McEvoy that he was going down the legal route and he said Mr. McEvoy suggested that Tom Bracken might try to mediate, he being friendly with both the plaintiff and Mr. Mooney, and he was also the TUI rep in the school. Mr. Mooney said he agreed to that, and as a result, a kind of shuttle diplomacy between him and the plaintiff developed over the Christmas period. Mr. Mooney said that he wanted was a retraction of the allegation made by the plaintiff. Mr. Mooney said he received "a kind of mini-mouse" retraction in writing on 13th January, 1999. Mr. Mooney said he was content with the retraction, having checked with the Deputy Principal and the Principal and the CEO to make sure that there were no other allegations or mistruths and no other issues outstanding at that time.

95. Mr. Mooney vehemently denied the evidence of the plaintiff concerning him slithering down the wall of a large assembly room, making a pouting or salacious gesture as she was handing the register to him. He also denied the plaintiff's evidence with regard to him lowering the window of his car, offering her a ride home in a salacious manner. He said this never happened. He also denied leering at the plaintiff and said he avoided eye contact with her and never leered at her. He denied rubbing the strap of her bra outsider of her clothes on a number of occasions in the staffroom. He did say that, on one occasion, he touched her by leaning over to get a mug and he rested a couple of fingers on the corner of her shoulder to keep balance. He said he remembered this because at the time, he had formed the impression that she had a crush on him. He said this happened in early 1997. Mr. Mooney denied belittling the plaintiff's ideas in discussion with other teachers, or using foul language in that context.

96. Mr. Mooney said that all through 1999 there were no problems or issues arising between himself and the plaintiff. In the year 2000, he gave evidence of what he described as a number of minor incidents. The first was when he, Mr. Mooney, was speaking to a teacher in the staffroom and the plaintiff interrupted. She had two copies from students who were copying homework for Mr. Mooney's subject in her class. His evidence was she threw them at him and was extremely rude, but he ignored her. Another incident occurred at the end of a parent teacher meeting when he was in the room on his own. The plaintiff came in and wanted to know why Mr. Mooney had got solicitors involved. He said his response to this was to put up his hand to her and say, "I'm not speaking to you". He said that in November 2000, when he thought he was in the staffroom alone, the plaintiff came in and hit him "a couple of digs in the ribs". He says he did not make anything of that. Later, he realised it had been witnessed.

97. His evidence in relation to the incident on 5th December, 2000, was that he came in about 3.25pm to the staffroom, when the plaintiff and Father Gerry Boyle were there and he walked by and said hello to Father Gerry. He said the plaintiff launched into a tirade of abuse, saying, "You're drunk", "you're a drunkard, I know all about you falling down around the town. You won't get away with abusing people." He replied, saying, "I don't know what you are on about, psycho", "what are you on about, psycho?" Mr. Mooney said he turned his back on her, and then as she was walking past him, with her two hands she pushed him quite forcefully in the back. As she was leaving, Mr. Mooney said to her, "you need help".

98. Following this, Mr. Mooney made a complaint because he thought, "enough is enough" and because of the previous assault in the staffroom. He made a complaint to the VEC and to the union. He gave the letter to Mr. McEvoy and asked him to forward it to the VEC and met the union rep, Tom Bracken, and gave both of them a copy of the letter. This was on 11th or 16th December, 2000. He also instructed his solicitor to write a letter to the plaintiff dated 16th January, 2001. The text of this letter is quoted above.

99. The letter of 16th January, 2001, was replied to by a letter from Brian P. Adams & Company for the plaintiff, which Mr. Mooney received on 5th March, 2001.

100. Mr. Mooney said he met with the CEO and the Principal on 26th January, 2001, arising out of a complaint he had made. The plaintiff's formal letter of complaint dated 25th January, 2001, was discussed at this meeting and the letter was given to Mr. Mooney. He read the letter and categorically denied everything that was in it. Mr. Mooney said that Mr. O'Neill suggested a face-to-face meeting between the plaintiff and Mr. Mooney, but Mr. Mooney ruled that out. Mr. O'Neill then suggested mediation which Mr. Mooney agreed to consider. Before agreeing to this, he wanted to consult his solicitor in connection with the plaintiff's letter of complaint of 25th January, 2001. Mr. O'Neill then suggested the IVA TUI Code of Conduct, Code of Procedure, and Mr. Mooney said he would agree to that. The application by the plaintiff for a transfer from Tullamore College was also discussed at this meeting.

101. Subsequently, Mr. Mooney commenced a case for defamation against the plaintiff in these proceedings, which is still pending.

102. A number of witnesses have given evidence which sheds some light on the relationship between the plaintiff and Mr. Mooney and are of considerable assistance to me in resolving the conflict of evidence between them.

103. Mr. Louis O'Keeffe and Mr. Christy Doherty were housemates of Mr. Mooney at the end of May 1997, and were present in the house that night when the plaintiff called. Mr. O'Keeffe denied that the plaintiff called to the house at around 6.00pm. His evidence was that when she came, it was well after midnight, possibly 1.30am or 2.00am. Mr. O'Keeffe was watching TV in the room nearest the front door. He said Mr. Mooney and Mr. Doherty were in the garage in a separate building at the back, playing pool. The doorbell rang and Mr. O'Keeffe answered and it was a woman who wished to speak to Mr. Mooney. Mr. O'Keeffe had never seen her before, but now knows her to be the plaintiff. Mr. O'Keeffe went out and spoke to Mr. Mooney and told him there was a woman to see him. He asked who it was, but Mr. O'Keeffe did not know, and then Mr. O'Keeffe returned to the TV. The plaintiff, in the meantime, had stepped inside, into the front hall. The door between the TV room and the hall was closed, but Mr. O'Keeffe could hear a muffled conversation between the plaintiff and Mr. Mooney, and although he could not hear any details, he had the impression that whatever the plaintiff wanted, Mr. Mooney was not prepared to give. Mr. O'Keeffe then turned up the TV so that he could not hear. He said he could hear the plaintiff saying, *"I just want to be with you"* before he turned up the TV. He said that after a period, he did not know how long, they had left the front hall and he thought they had gone outside. At that stage, Mr. O'Keeffe went upstairs to bed. He said a good while later, possibly an hour, there was a persistent ringing of the doorbell. By persistent he said he meant that it rang once, and nobody answered, and whoever it was, rang it again and again and continued to ring it. Mr. O'Keeffe said he eventually got sick of this and got up, put on some clothes, and went downstairs. The light was on in the kitchen and Mr. Mooney was there and beckoned him into the kitchen. Mr. Mooney said to Mr. O'Keeffe, *"I don't want to talk to her"*. Mr. O'Keeffe opened the door and the plaintiff was there. She said, *"Can I speak to Jim, I just want to talk to Jim"*. Mr. O'Keeffe described her as unsteady on her feet, slurring her words, and that she was quite persistent and wanted to speak to Mr. Mooney. He said he made it clear to her that Mr. Mooney did not want to speak to her and that she should go home. This went on for some time and, eventually, Mr. O'Keeffe closed the door. Mr. O'Keeffe's evidence was that as soon as he did this, the plaintiff proceeded to ring the doorbell again. He opened the door and he said, the plaintiff said, *"I want to speak to Jim. I really need to speak to Jim; I just want to be with him"*. He said the phrase *"I just want to be with him"* kept reoccurring. Mr. O'Keeffe said that he told the plaintiff that Mr. Mooney did not want to speak to her and that she should go home, and that he would have no option but to call the guards because she was making a nuisance of herself and he was tired and wanted to go to bed. He closed the door again, and the plaintiff started ringing the bell again, and this time started shouting in the letterbox that she wanted to speak to Jim, that she just wanted to be with Jim and could he please come to the door. Mr. O'Keeffe said he made it clear that if she persisted, he would call the guards. She did persist and he did call the guards. He said, she listened to his conversation on the telephone and in response to Mr. O'Keeffe's complaint to the gardai that there was a woman at the door making a nuisance of herself, she shouted in the letterbox, *"I am not making a nuisance of myself"*. He said that the plaintiff left at that point. Mr. O'Keeffe denied taking any part in the search for the plaintiff's keys and was adamant that when the plaintiff returned, she never asked him for keys.

104. Evidence was also given by Mr. Christy Doherty who, in 1997/1998, was the third co-tenant of this house on the Daingean Road in Tullamore with Mr. Mooney and Mr. O'Keeffe. His first recollection of the plaintiff, whom he recognised in court, was the evening in question in May 1997. His evidence was that the plaintiff came to the house on two occasions. He agreed with Mr. O'Keeffe's evidence concerning the events which occurred on the visits which he witnessed. Mr. Doherty was present in the hall when the plaintiff came back to the house and was shouting through the letterbox. He said there were a number of things shouted, but she shouted, *"I just want to be with you, I just want to be with you, Jim"*. Mr. Doherty said that on the initial visit, he was in the garage playing pool with Mr. Mooney, and remained in the garage for five to ten minutes after Mr. Mooney went to the front door, at which stage he decided to go back into the house. At that stage, he found Mr. Mooney looking for keys, with the lights on in the front hall and the front porch. He said Mr. Mooney explained to him that they were looking for the plaintiff's keys. Mr. Doherty asked if he could help and was asked to go out the back to see if he could find anything. Mr. Doherty went out and turned on the lights of his car, which was parked in front of the garage. He said because they could not find the keys, Mr. Mooney decided to drive the plaintiff home.

105. Mr. Doherty was adamant that when he went out through the back of the house, it was solely for the purpose of getting to his car to turn on the lights and not to search for the keys in the house. Mr. Doherty denied that he had spoken to the plaintiff at 6.00pm when she said she came to the house. He said at that stage, when he left the poolroom, the search for the keys was just beginning and Mr. Mooney was turning on lights. He said the search went on for ten or fifteen minutes at most. His evidence was that this search for the keys took place on the plaintiff's first visit. He said that he was still up when the plaintiff returned the second time. He and Mr. Mooney were chatting over events and it was approximately 2.30am or 3.00am.

106. Mr. Doherty recalled a second incident, approximately a year later, after attending the performance of *'D'Unbelievables'* in the Tullamore Court Hotel, when Mr. Mooney refused to allow the plaintiff to come into the house after that event.

107. Mr. Doherty recalled a third incident occurring after Mr. Mooney and a number of teachers came back to the house after a night out in October 1998, when, after Mr. Mooney had organised taxis for the people to leave, Mr. Mooney informed him that the plaintiff had been hiding in the front room and he had to get her out

108. I am quite satisfied that the evidence of both Mr. O'Keeffe and Mr. Doherty was truthful and accurate. I accept their evidence as to what was said by the plaintiff when she came to their house, twice, on the evening in question in May 1997. What they heard her say on both these occasions is wholly inconsistent with the plaintiff's evidence that the purpose of her visit was to discuss Mr. Mooney's misbehaviour towards her. I am quite satisfied that the purpose of her ill-advised, if not intemperate visit, was simply to express her own interest in Mr. Mooney.

109. It would have been quite extraordinary, indeed, and highly improbable, that anyone, including the plaintiff, who wished to discuss with Mr. Mooney misconduct of the kind alleged by the plaintiff, would take the extraordinary step of going to his house so late at night, and after a celebratory occasion, when she would have known well that, apart from herself, it was quite likely that Mr. Mooney might have consumed some alcohol during the course of the evening. This was most unlikely to be the strategy of someone wishing to

discuss a grievance concerning the behaviour of another and to rectify and/or normalise a professional relationship. The far more probable explanation is that the plaintiff, having cast caution to the wind, undertook this escapade as a desperate attempt to advance or develop a romantic relationship with Mr. Mooney. I find it impossible to reconcile her shouting through the letterbox the things which I accept she said, with any intent on her part to have a discussion with Mr. Mooney concerning his alleged misbehaviour or concerning normalising the professional relationship between them.

110. It is interesting to contrast the plaintiff's evidence to the effect that, at the end of her discussion with Mr. Mooney in the paycheck incident just before the Easter break in 1997, she said she would not meet Mr. Mooney anywhere to discuss matters. Yet, less than three months later, and notwithstanding that nothing occurred between them, apart from her claim to have been moved out of the way by Mr. Mooney in a corridor, she not only meets him elsewhere, but goes to his house late at night to have her discussion. I find her evidence in all of this wholly incredible.

111. This brings me to the letter written by the plaintiff on the Monday after the incident at Mr. Mooney's house. On the face of it, this is a letter which is redolent of romantic interest by the plaintiff in Mr. Mooney and of a very urgent desire on her part to discuss this with him. The plaintiff, however, vehemently denies that this was the meaning or intent of the letter. Her explanation of it was that in order to get through to Mr. Mooney to discuss his sexual harassment of her, and having failed hitherto to have achieved that, she adopted a conciliatory, if not ingratiating, approach in order to, as it were, disarm him, or not to cause him to become defensive, and thereby resist or repel what she had to say to him. In this regard, she was supported by the expert evidence of Dr. Anne Leader, to the effect that victims of harassment and bullying often adopt such a posture when attempting to achieve a resolution of the conduct objected to.

112. I am wholly unconvinced by this explanation and do not accept it for the simple reason that it is wholly at variance with the true facts which would, of course, have been unknown to Dr. Leader who was dependent upon the plaintiff's reporting of events. What was said and done by the plaintiff at Mr. Mooney's house on the night in May 1997, just before this letter was written, provides an illuminating insight into the plaintiff's state of mind, so far as Mr. Mooney was concerned, which was one of romantic interest in him, and the letter, in my opinion, is wholly consistent with that. It might very well be observed that the letter evinces a serious lack of insight on the part of the plaintiff into how bizarre, and indeed outrageous, her behaviour had become, and indeed, the tragedy of this situation is that far from gaining such insight with the benefit of time, for whatever reason, she has swung, after October 1998, from romantic interest to a distorted, hostile view of Mr. Mooney and the events involving him.

113. As of May 1997, the plaintiff's later portrayal of Mr. Mooney, was of a man bent on treating her as a sexual object and, apparently, interested in, if not anxious for, a sexual relationship with her. Her evidence concerning her discussion with Mr. Mooney on the night when she came to the house was that he attempted physical contact with her. It is interesting to note how Mr. Mooney, on the uncontested evidence, reacted to the delivery to him of this letter. He did not make any response whatsoever and there was no contact whatsoever between the plaintiff and Mr. Mooney until September 1997. If, as the plaintiff alleges, Mr. Mooney wanted a sexual relationship with her, then one would have thought he would have undoubtedly have interpreted the letter as meaning that the plaintiff was available to him and would have taken advantage of that. In my view, the fact that Mr. Mooney did not respond in any way whatsoever to this letter belies the plaintiff's evidence that Mr. Mooney was attempting to promote a sexual relationship with her, which she did not want, *i.e.* sexually harassing her.

114. The evidence of Ms. Michelle Brooks was also very helpful. She started as a temporary teacher in Tullamore College in September 1997. She became very friendly with the plaintiff and went to lunch almost every day with the plaintiff. Ms. Brooks said the plaintiff spoke about Jim Mooney quite often, and in a very positive way. She said the plaintiff was very interested in Mr. Mooney, *"interested in what he was doing, where he was going, who he was socialising with, who his friends were, who his girlfriend was, all of that kind of thing"*. She recalled an incident on 28th February, 1998, when she, Ms. Brooks, was attending an in-service course on inclusive education in UCD, and the plaintiff accompanied her to Dublin and went shopping while Ms. Brooks attended the course. When they met up afterwards, she said the plaintiff produced a shopping bag, and out of it took a tie and said, *"I'm going to send this to Jim Mooney, I'm going to send it to him anonymously"*. Asked why, by Ms. Brooks, she replied, *"Because I just want to cheer him up, to make him smile"*. Ms. Brooks suggested it might be better if she gave the tie to her husband and she agreed to do that.

115. Ms. Brooks said she felt that the plaintiff was very interested in Mr. Mooney and every aspect of his being and was physically attracted to him and spoke about him at length on numerous occasions. On one occasion, at lunch, Ms. Brooks said the plaintiff said to her, *"I suppose I'd consider riding off into the sunset with Jim Mooney, but I couldn't hurt Darragh"*.

116. Ms. Brooks said it was absolutely untrue that she had not invited the plaintiff to her wedding because she was afraid to upset Mr. McEvoy because of her temporary position in the school. She said this was never discussed with the plaintiff, and at the time, there was no issue over her permanency because she had completed two years, and she had an expectation of being made permanent. She said she had not invited the plaintiff, as, having discussed matters with two other teachers who were getting married, she decided only to invite the Vice Principal, the Principal and the Chaplain, and she said that towards the end of 1998, the plaintiff's behaviour changed and she did wish to cool the friendship a bit and put *"a little bit of daylight between us"*. She said that the plaintiff had never mentioned the words 'harassed' or 'sexually harassed'. She said that the plaintiff had cut a photograph of Mr. Mooney from the newspaper. Mr. Mooney was dressed up as a nun for some kind of an event, and she said the plaintiff had this in her purse and showed it to her on one occasion.

117. Ms. Brooks said that the plaintiff's very positive attitude to Jim Mooney changed around about September/October 1998, when she became quite negative about him and made negative, derogatory comments about him. Ms. Brooks recalled the social event in Spallins pub. She did not recall any discussion of popular psychology, but she did recall Mr. Mooney complimenting her upon her new hairstyle and recalled the plaintiff interrupting and Mr. Mooney responding sharply to the effect, *"I wasn't speaking to you"*. Ms. Brooks recalled the plaintiff being very upset and consoling her in the Ladies toilet and that her upset was because of what Mr. Mooney had said or done. Ms. Brooks said it was around this time that the plaintiff began to become negative concerning Mr. Mooney. Ms. Brooks recalled the plaintiff being very upset because a post in the school, which she had hoped to get at this time, went to Mr. Mooney, and this really annoyed her. She said the plaintiff became scathing about Mr. Mooney and recalled her referring to him as a *"rake"*. She was also scathing about the school management at that time, as well. She said, however, that there was no suggestion or complaint from the plaintiff about sexual harassment; she never complained to Ms. Brooks at any time that she had been sexually harassed.

118. I am quite satisfied that Ms. Brooks was a truthful, reliable and independent witness, and I have no hesitation in relying upon her evidence. It is plainly obvious that her evidence is wholly inconsistent with the evidence of the plaintiff. It is important in that Ms. Brooks started in the school in September 1997. At that stage, according to the plaintiff, the process of sexual harassment had been underway since either late December 1996 or early 1997, and the incident at the end of May 1997 had already occurred, together with the letter written the following day. Ms. Brooks' evidence fully supports Mr. Mooney's account of events, insofar as the contacts

between the plaintiff and Mr. Mooney were driven by an attraction on the part of the plaintiff for Mr. Mooney, rather than the other way around. Ms. Brooks' evidence is also entirely consistent with the known events, namely, that in or about October 1998, the plaintiff thereafter evinced a hostile attitude to Mr. Mooney, commencing with the criminal damage to his car, and the allegations against Mr. Mooney uttered to Mr. McEvoy and Mr. O'Neill, when the plaintiff was confronted with the car damage incident.

119. All of this suggests to me that after the night in Spallins pub, when Mr. Mooney was, at the very least, sharp, if not rude, with the plaintiff in public, and subsequently, after the next social outing, privately rejected her, using very strong language for that purpose, it is probable that the plaintiff could not but realise and accept the reality of that rejection. Her reaction thereafter to Mr. Mooney was hostile and destructive.

120. In my view, the letters exchanged between Mr. Mooney's solicitor and the plaintiff's solicitor dated 10th December, 1998, and 15th December, 1998, are of considerable significance. As is obvious, Mr. Mooney alleges sexual harassment on the part of the plaintiff. The plaintiff's reply, while denying that she sexually harassed Mr. Mooney, makes no allegation whatsoever of any sexual harassment or impropriety of any kind against Mr. Mooney. It would seem to me quite extraordinary if the plaintiff was of the view that she had been sexually harassed by Mr. Mooney that she would not have instructed her solicitor to make the complaints that she subsequently made in her formal letter of complaint of 25th January, 2001, and it is beyond doubt that if she had so instructed her solicitor, that her solicitor would have reflected those instructions in the response to the letter of 10th December, 1998. This omission inexorably indicates that as of that time, the plaintiff did not, in truth, consider that Mr. Mooney had sexually transgressed against her in any way.

121. In light of all of the foregoing, I do not accept the plaintiff's evidence that there was any sexual harassment on Mr. Mooney's part directed against the plaintiff. I am quite satisfied that the plaintiff's evidence in this regard is not credible and I accept Mr. Mooney's evidence that he did not, at any time, engage in any behaviours towards the plaintiff which had any kind of a sexual connotation or suggestion.

122. Although the plaintiff's allegations against Mr. Mooney have been expressed, not just sexual harassment, but also bullying, it seems to me that her complaints are essentially of sexual harassment. She does complain of having her contributions at staff meetings in relation to the Transition Year belittled by Mr. Mooney, and also complains of rudeness on his part at a social event with other teachers. Even if I were to accept the plaintiff's evidence in relation to these complaints, which I am unable to do, they would not, in my opinion, constitute an actionable wrong in respect of which she was entitled to recover damages from the defendants on the basis that they were vicariously liable.

123. The plaintiff also complains of bullying and harassment on the part of the school management, namely, Mr. McEvoy and Mr. O'Neill, and to a lesser extent, the Vice Principal, Mrs. Wilson. The plaintiff's allegations in this respect appear to be to the effect that her complaints against Mr. Mooney of sexual harassment and bullying were not heeded and investigated by the school authorities under the available complaints or grievance procedures. The plaintiff also complained that after October 1999, she had a very poor relationship with Mr. McEvoy and that he treated her very badly or harassed her thereafter.

124. Mr. McEvoy, in his evidence, recalled an incident in December 1997. As he was patrolling the corridors, he noticed the plaintiff to be upset. He knocked on the door of her classroom and went in, called her to the back of the classroom and asked her was she okay, to which she replied that she was upset. He asked her was she okay to continue; then he asked her to come and see him when the class was finished, which she did. His evidence was that when she came to see him, she said she was upset because a member of staff was ignoring her and she wanted to be their friend. He said she repeatedly refused to name the person and indicated that if she wanted him to intervene, he would need to know who was involved, but she never named the individual. Mr. McEvoy said that the plaintiff never said anything about being bullied or sexually harassed or anything of that nature at this meeting; her only complaint was that she was being ignored. Mr. McEvoy said he named a particular teacher, but the plaintiff said it was not that person. Mr. McEvoy said that to console the plaintiff, he said to her that if somebody did not want to be friendly with her, it was their loss and he did not know why she would be concerned because she had a good husband and a young son to go home to. He said she was in quite good form when she left.

125. Mr. McEvoy, dealing in his evidence with the plaintiff's complaint about not getting the Year Head role, having been acting in that capacity, said that two people, both the plaintiff and another teacher, had volunteered to take up the role with no guarantee of succeeding to the post. In the event, after interviews, neither of them succeeded to the post, which went to another teacher who was the holder of a B post, and when asked for an explanation by the plaintiff why she did not get the position, Mr. McEvoy denied, replying, simply, that he, Mr. McEvoy, was the Principal and he reassured her that other opportunities would arise and her chance would come. Mr. McEvoy said that he had no input, hand, act or part in these appointments.

126. Mr. McEvoy recalled the meeting on 2nd November, 1998, with the plaintiff, to deal with the damage to Mr. Mooney's car. Also present was Mr. O'Neill, the CEO. He said Mr. O'Neill had come down to the school and informed him what had happened and asked Mr. McEvoy to get the plaintiff to come to the office, which Mr. McEvoy did. Mr. McEvoy was not present for the first few minutes of the meeting. When he got there, he said Mr. O'Neill outlined to the plaintiff the damage that had been done to the car, that the person who had done this had been seen, that the Registration Number of the car had been taken and as a result of garda enquiries, that the gardaí were in a position to identify the perpetrator. He said Mr. O'Neill asked the plaintiff did she know anything about it, and her reply was that she did not, but that she thought it was outrageous. Mr. McEvoy said that the plaintiff then said she had serious issues with Jim Mooney and she said she wanted to tell about an incident that had happened in Mr. Mooney's house the previous summer. Mr. McEvoy said that Mr. O'Neill said that he would have to stop her there as he was happy to discuss anything that was within the remit of County Offaly VEC or that happened in the workplace, but he was not happy to discuss something that happened outside the workplace and was outside our area of responsibility, and he went on say he was happy to discuss any issues that she had in relation to the workplace. Mr. McEvoy said that the plaintiff then began to tell about the paycheck incident. Mr. McEvoy said that when she had finished telling him about this, he, Mr. McEvoy, pointed out to her that a similar incident happened the previous year when two other members of staff had inadvertently mixed up their paychecks to the extent that one of them actually had successfully lodged his colleague's paycheck to his account. Mr. McEvoy said that he would put the incident to Mr. Mooney. Then Mr. O'Neill said he would like to see the plaintiff at 4.00pm if she had any other issues she would like to raise. Mr. McEvoy said that there were no other allegations made by the plaintiff at this meeting on 2nd November.

127. Mr. McEvoy said that on 5th November, as he was at his desk going through his post, the plaintiff came into his office with Tom Bracken. He said she wanted to report to him that Mr. Mooney had sought oral sex with her. Mr. McEvoy said he asked her where and when had this happened, and she replied, last summer, at his house on the Daingean Road. He said that the plaintiff left and Mr. Bracken remained behind and Mr. McEvoy asked Mr. Bracken he been present on the occasion in question because he knew Mr. Bracken would sometimes go for a drink after work with Mr. Mooney and other members of staff. Mr. Bracken confirmed that he had been, but was asleep in the next room and had seen nothing. Mr. McEvoy said to Mr. Bracken that he thought that because it was

outside the workplace that he, Mr. McEvoy, would not have a role to play, but that he would ring Mr. O'Neill and talk to him about it. He rang Mr. O'Neill and discussed it with him, straight away, that day.

128. It is commonplace that a further meeting took place on 9th November involving the plaintiff, Mr. O'Neill and Mr. McEvoy. At that meeting, Mr. McEvoy said the plaintiff admitted that she had damaged the car, and early in the meeting, she had said she had issues with Mr. Mooney. Mr. McEvoy said that Mr. O'Neill said he was happy to discuss anything that happened within the remit of responsibility of County Offaly VEC or in the workplace, but that he was not going to discuss matters which happened outside the workplace or which had nothing to do with County Offaly VEC. Mr. McEvoy's evidence was that after this, the plaintiff said nothing. Mr. McEvoy then said that Mr. O'Neill indicated that he foresaw a situation where there would be tension between the plaintiff and Mr. Mooney if they were working together. He said that the plaintiff then said she could move school and he asked her was she suggesting a transfer, to which she replied, yes, that that would be wonderful. Mr. McEvoy said he handwrote the memo of the meeting. He then went through the memo and said it was the agreed memo of the meeting and that he read it back to the plaintiff and Mr. O'Neill. He said that the crossing out of the word 'serious' was agreed. He said he then handed the memo to the plaintiff to read, which she did, and when she read it, she spotted a grammatical mistake. He said the plaintiff read the two sheets which comprised the memo. Mr. McEvoy would not accept that the plaintiff was in a distraught or very disturbed state, and he said it was an amicable meeting and he was of the view that the plaintiff was quite relieved as nothing was going to happen in relation to the incident of criminal damage, it being a dismissible offence. He said that Mr. O'Neill, in an effort to ensure that the incident would not do long-term damage to the plaintiff's career, because she was a good teacher, said that the letter would remain on file but would not be available to any committee or any group unless there was a repetition. He said that all signed the document as an agreed memo of the meeting when the plaintiff had read it. Mr. McEvoy denied that the plaintiff was tearful during the meeting. Mr. McEvoy denied that the plaintiff was asked to write a letter of apology to Mr. Mooney. He said that never happened. Mr. McEvoy's evidence was that any question of the termination of the plaintiff's contract of employment would have been a matter for the Department of Education and that that simply did not arise, that on the contrary, the incident was not to be made public and would not be made known to other bodies or other people. His evidence was that had it been disclosed further, it would have had serious consequences, if this incident had been made known to the committee and it would be very unlikely that the plaintiff would ever get promoted. His evidence was that although it remained on her personnel file, nobody would have access this. Mr. McEvoy denied any attitude or disposition on his part of siding with Mr. Mooney and of regarding the plaintiff as of no importance and no consequence. He said that the memo indicates that every effort was being made to draw a line under the incident and to move on without long-term repercussions for the plaintiff.

129. Mr. McEvoy said that after the meeting of 2nd November, he had spoken to Mr. Mooney about the plaintiff's complaint about the paycheck incident in March 1997, and Mr. Mooney told him that the incident had happened, that the plaintiff had come to his classroom and looked for her paycheck, he had apologised and gave her her paycheck and then she handed him his paycheck.

130. Mr. McEvoy said that after the disclosure to him by the plaintiff on 5th November of her complaint concerning Mr. Mooney, he talked to Mr. Mooney about this and put the plaintiff's allegation to him, which he denied. Later that day, he came back in the afternoon and he showed Mr. McEvoy a copy of the letter written by the plaintiff after the incident in Mr. Mooney's house at the end of May 1997. Mr. McEvoy read that letter. Mr. McEvoy said that after the allegation made by the plaintiff on 5th November, Mr. Mooney told him he was going to go down the legal route to seek a retraction of the allegation.

131. Mr. McEvoy said that following this, he talked to Mr. Tom Bracken because he knew he was great conciliator on the staff and he knew he was friendly with both the plaintiff and Mr. Mooney. He said he was very conscious of the fact that the allegation that the plaintiff had made pertained to an incident which had happened outside the school. Mr. McEvoy said that he thought Mr. Bracken had spoken to the two parties but he did not report back to Mr. McEvoy. Mr. McEvoy emphatically denied any contact concerning this matter with Mr. Brian Hyland, a TUI representative. He said he never heard anything about it and he had no contact with Mr. Hyland and Mr. Hyland never contacted him.

132. Mr. McEvoy said that the meeting of 9th November and the handwritten memo was the end of the matter so far as the car damage was concerned, as far as both he himself was concerned and as far as the CEO was concerned. He said that the memo of that meeting and the plaintiff's written apology were put in a sealed envelope and he said even the people in the HR Department in the VEC would not have been aware of it. He emphatically denied that there was any question of a threat of prosecution being made against the plaintiff. He said everything was done to keep the matter as quiet as possible for the plaintiff's sake, and no member of staff would have known about it, apart from the plaintiff and Mr. Mooney, the Vice Principal, Mrs. Wilson, and Mr. Bracken and Mr. McEvoy. He said he was not aware whether the plaintiff had told her friend, Michelle Brooks, about it or not. Mr. McEvoy also emphatically denied that there was any threat of a transfer of the plaintiff. He said it came up in discussions on 9th November concerning the possibility of a transfer and the plaintiff subsequently wrote requesting a transfer, and then subsequently wrote withdrawing the request and nothing happened.

133. Mr. McEvoy denied that in November 1998, he was aware that there was a significant bullying and harassment situation between the plaintiff and Mr. Mooney and he denied that he was told of this by the plaintiff. He said an incident that happens in a private house at night, outside of working hours, is not within the remit of the responsibility of he, as a Principal, nor the CEO. He said he was not aware that there was a problem. Mr. McEvoy said that it was his view that the plaintiff's allegation concerning the incident at the end of May 1998 had nothing to do with the school. He said he was not made aware of anything other than the incident on the Daingean Road. He said that notwithstanding being given the opportunity to raise other matters related to the workplace or within the remit of County Offaly VEC, the only other allegation made by the plaintiff concerned the paycheck in March 1997. Mr. McEvoy's evidence was that the plaintiff did not say that, in her view, the taking of the paycheck was a form of sexual harassment or bullying directed by Mr. Mooney against her.

134. Apropos the meeting on 2nd November, 1998, and the reference in the memo of that meeting to "*cheques and other issues*", Mr. McEvoy said Mr. O'Neill asked her what were the other issues and the plaintiff proceeded to say she wanted talk about an incident that happened in Jim Mooney's house the previous summer, to which Mr. O'Neill said, "*I'll have to stop you there*". Mr. McEvoy said that this happened also at the meeting on 9th November. Mr. McEvoy said that the first he ever heard of the other allegations of sexual impropriety alleged by the plaintiff against Mr. Mooney was in her letter of complaint of 25th January, 2001.

135. Mr. McEvoy said that in the meeting between himself, Mr. Mooney and Mr. O'Neill on 2nd November, 1998, he says that Mr. Mooney had no idea who had done the damage to his car and presumed it might have been teenagers. He said when it was suggested to him that it might have been a member of staff and when he was invited to guess who it might have been, Mr. Mooney said the only person he could think of was the plaintiff because she had been harassing him at his house.

136. In the meeting of 9th November, 1998, when the plaintiff had admitted the damage to Mr. Mooney's car, Mr. McEvoy said that it was presumed that her reason for doing this was related to something that had happened in the house on the Daingean Road because

they had no evidence or information from the plaintiff otherwise. He said the only thing that she could come up with, when asked, was the paycheck incident which had happened eighteen months earlier. Mr. McEvoy said he was sure that the plaintiff was not asked to write a letter requesting a transfer from Tullamore College. He said that did not happen and she volunteered her request for a transfer. Mr. McEvoy said that he thought there was a personal problem of some nature between the plaintiff and Mr. Mooney which did not pertain to the workplace. He said the plaintiff never made any allegations whatsoever in relation to the three items later complained of by the plaintiff until her letter of 26th January, 2001, and he said that if she had made these complaints earlier, they would have been dealt with.

137. Mr. McEvoy said he had no involvement whatsoever, nor did the CEO, in the retraction note signed by the plaintiff on 13th January, 1999, of the allegation made on 5th November, 1998. He said he presumed Mr. Mooney wanted that retraction. He said it was utterly untrue that the reason the plaintiff was required to sign that retraction was that if she did not, she was going to be prosecuted by Mr. Mooney and she was going to be transferred. Mr. McEvoy said that the written retraction was on the VEC file because the plaintiff had arrived in to him on 13th January, and handed in the retraction note. He said he gave a copy of the retraction note to Mr. Mooney and sent a copy to the VEC. He said the plaintiff had not been required by him or by Mr. O'Neill at any stage to write a letter of retraction. Mr. McEvoy said he was surprised when the plaintiff came in on 13th January, out of the blue, to give him the retraction note.

138. Mr. McEvoy denied that when the plaintiff reported the Daingean Road incident to him on 5th November, 1998, that she made any wider report of sexual harassment and bullying. He also denied saying that he could not deal with the matter in the absence of Mr. Mooney.

139. Mr. McEvoy described the plaintiff as a very good teacher whose attendance was very good, was always punctual to class, well prepared and her students liked her; who kept very good discipline, was very fair and that he was stunned when he learned of the incident of the car damage, and hoped that with the efforts made at the time, a line would be drawn under it and everybody would move on.

140. Mr. McEvoy said that the meeting which the plaintiff said took place in October 1999, arranged by Mrs. Wilson, never took place. He said there was never any need for anyone to arrange a meeting with him because his door was open at all time to people and nobody ever had to arrange an appointment with him through anybody else. He said that Mrs. Wilson never had to organise a meeting for a member of staff with him. Mr. McEvoy denied emphatically ever saying that anyone was a ten-out-ten. He said Mr. Mooney was an excellent teacher and nobody has ever matched him for results in school from the point of view of achieving A1's. He agreed that the school was blessed to have two such good teachers. He said the conversation concerning ten-out-of-ten never happened. Mr. McEvoy said that he could not recall the plaintiff putting to him that he put Mr. Mooney up to writing the solicitor's letter of 10th December, 1998, and he said he would not have done that. He said he would not have encouraged any member of staff to engage in legal proceedings against a colleague. He said that conversation never took place at the meeting alleged by the plaintiff or at any time. However, Mr. McEvoy said that he did not accept that the relationship between himself and the plaintiff was very poor after October 1999. Mr. McEvoy accepted that he did come into the plaintiff's class, as he did to other teachers as well, generally at the end of term, to encourage the pursuit of educational activities rather than frivolous games which he regarded as a waste of time. He said that even though attendance on these days would be small, generally, those who were there, were highly motivated and likely to achieve good results and it was his policy to encourage educational activity which might enhance results, rather than activities which were frivolous and a waste of time. He said that the plaintiff was in no way singled out in this respect.

141. He said he did not notice any change in his relationship with the plaintiff during the year 2000, and he said he regularly, when he encountered students in the corridor, he would send them back to their class, that he had told staff not to send students on errands from class. He said at the start of the school year, he reminded staff to prepare for class and make sure they had all the resources necessary and not to have downtime in class where they would have to send students for resources or be tempted themselves to leave the class.

142. Mr. McEvoy, *apropos* the plaintiff's evidence concerning not being invited to Michelle Brooks' wedding, said he had no hand, act or part in trying to influence anybody's wedding arrangements and he rejected the idea that Michelle Brooks' job was under threat in the school. He said that was not true. He said that where a teacher was on a temporary whole time contract, if there was any difficulty, the contract would not be renewed after the first year. However, he said Michelle Brooks' contract was renewed twice, and the only thing that held up her being made permanent was awaiting sanction from the Department of Education and as soon as that sanction was received, she was made permanent.

143. Mr. McEvoy learnt of the incident that occurred on 5th December, 2000, a week following that incident, that is, on 12th December. He said that on 6th December, the plaintiff came in to him and said she was thinking of looking for a transfer but made no mention of the incident. He learnt of the incident when he received a formal complaint from Mr. Mooney concerning the incident. He spoke to Father Gerry because he had been present. Father Gerry told him that he had witnessed an incident of verbal abuse in the staffroom and wrote a short letter concerning it. He said the following day, Mr. Mooney came back to him and asked him to hold off sending his complaint to the VEC until he sought legal advice. Mr. McEvoy said he held off on it then, but he did inform the CEO by telephone. He said, having been asked to hold off on it by Mr. Mooney, he did not, as he intended to do, put the matter to the plaintiff. He said Mr. Mooney came back to him and on 8th January and he sent the complaint to the CEO. Mr. McEvoy said that the plaintiff went sick from 8th January, which was the first day back at school, until 22nd January, 2001.

144. In relation to the plaintiff's complaint of Mr. McEvoy favouring Mr. Mooney, as instanced by praising him at staff meetings, Mr. McEvoy said that after Assistant Principal meetings on Monday at which relevant matters were discussed, always on Tuesday morning at break time, he would go into the staffroom and he would read out what became known as '*The Tuesday Memo*' which would deal with relevant school matters. After this, the memo would be put into each teacher's pigeonhole. He said, always, at the end of the memo, he would praise a member of staff for an achievement, for example, training a successful football team or debating team. He emphatically denied that Mr. Mooney was singled out for praise.

145. Mr. McEvoy said that the plaintiff's formal written complaint of 25th January, 2001, was handed to him by the plaintiff. He said he went into his office and read it, and in view of what it contained, he looked for his copy of the Code of Practice for dealing with issues of sexual harassment in the workplace which had been adopted the previous November, but he could not find his copy which he had left at home, so he went into the staffroom and took the copy off the notice board. He said he called the plaintiff back into his office at the break of class and handed her the copy of the Code of Practice and reminded her of the two people who had been designated, because staff had been made aware prior to Christmas of who the two people were, namely, Tom O'Donoghue and Colette Lee. He said that the plaintiff indicated that she had made contact with Colette Lee.

146. Mr. McEvoy said he was present at two meetings on 26th January, 2001. At the second one, at which the plaintiff and her

husband were present, her transfer request, which had been made in writing, was dealt with. Mr. McEvoy said that the memo of the meeting prepared by Mr. O'Neill was an accurate account of what had transpired at the meeting. He said that Mr. O'Neill indicated that the only place that he could find a suitable vacancy was Edenderry because they had been unable to recruit a suitable Irish teacher in the school. He said the intention was that Mr. Doolan, a teacher in Edenderry, who was a History teacher and also an Irish teacher, would have his History classes taken off him and given to the plaintiff. He said the same would happen with another teacher, who was a teacher of English. He said when all this was put to the plaintiff and her husband, they agreed to it, even though the plaintiff made it clear that it was not her first choice. Mr. McEvoy said that Mr. O'Neill then sought and received a guarantee from the plaintiff that the accusations and written allegations would stop immediately. He said that what was wanted there was a ceasefire so that the legal correspondence and allegations would halt to enable a proper resolution to be reached to the satisfaction of all. In response to the plaintiff's query, he said Mr. O'Neill said he would seek the same guarantees and promises from Mr. Mooney as he was seeking from her.

147. Mr. McEvoy said that after the plaintiff went to Edenderry, on the Tuesday of that week, she came, by arrangement, to Tullamore College to collect notes connected with her teaching schemes. Mr. McEvoy said he met her in the school in the parents' room and he gave her the notes. He noticed that still had her master key to Tullamore College and he asked her for this as she was no longer a teacher in the school. Mr. McEvoy said that the plaintiff told him she was very happy in Edenderry.

148. Mr. McEvoy vehemently denied that he was in any way behind the plaintiff's arrest in connection with the fire in Tullamore College. Mr. McEvoy accepted that in the investigation into the fire by the gardaí, he had told the gardaí that he suspected that the plaintiff might have been involved and that she may have made anonymous phone calls to him, and that when he said down the phone to the anonymous caller, "*Mary, is that you?*", the phone calls stopped. These calls had been made between January and May 2001 onto his direct line into his office, which was an ex-directory number which very few people would have had. He said there were maybe five calls. On the sixth call, he said, "*Mary, is that you?*", after which he said he heard a sharp intake of breath, the phone hung up and he never got another call.

149. Mr. McEvoy denied that the plaintiff's formal complaint was being swept under the carpet by the device of transferring the plaintiff to Edenderry. He said, firstly, Mr. Mooney would not have tolerated the allegations being left hanging over him and, secondly, he, Mr. McEvoy, as Principal, would not have liked the implication that he had not listened to the plaintiff's complaints, as he took pride in his work, so he would not have let the thing rest.

150. Mrs. Helen Wilson, who was the Deputy Principal in Tullamore College from 1996 to 2005, said in her evidence that she first heard about sexual harassment allegations in 2001, after the plaintiff had sent a letter to the VEC, that is, the letter of complaint of 26th January, 2001. She said that she had no meetings with the plaintiff on any occasion in connection with a sexual harassment allegation and she said the plaintiff never came to her on any occasion in relation to these allegations. She recalled an incident which she thought was towards the end of September 1998, when a student came to her and told her that the plaintiff was upset in the classroom at lunchtime. She went to the classroom and spoke to the plaintiff and asked her what was wrong and her evidence was that the plaintiff told her she was upset because she had not got a post of responsibility. Mrs. Wilson said she was surprised at this, as there had been a reasonable length of time since the results of the competition were announced. Her evidence was that the plaintiff said to her that she had nothing against any of the people who got posts and she named them, including Mr. Mooney, that she had nothing against him, that they were friends, but that it was very hard to get him to talk. Mrs. Wilson said she encouraged the plaintiff to get involved in extracurricular activity and suggested coaching for debating and public speaking. She said that some time later, the plaintiff came back to her and indicated that she was not interested in this because her husband was doing it in Kilcormack. She felt there would be a conflict of interest. At that stage, Mrs. Wilson said she suggested to her editing a newsletter for the school. She said this discussion happened in 1998, soon after her previous discussion, where she had found her upset. Mrs. Wilson said that the plaintiff did say she would be interested in that, but Mrs. Wilson felt she was not really interested and she said the plaintiff reminded her that she was interested, particularly in being a Year Head. Mrs. Wilson said that at that point, she and the plaintiff had a good relationship and she regarded the plaintiff as a good teacher and she believes she would have been a good Year Head.

151. Mrs. Wilson said she saw absolutely nothing, concerning the allegations made by the plaintiff, of Mr. Mooney touching or rubbing the plaintiff in the staffroom, nor of Mr. Mooney offering the plaintiff a lift with a salacious suggestion. She recalled a discussion in the staffroom one day when the plaintiff was telling the people there about her purchase of a car, saying she had been shopping on a Saturday afternoon and had bought a car and that her husband had not known about it, and when she went home and told him, his reaction was "I admire your choice".

152. Mrs. Wilson denied having any involvement in arranging a meeting between the plaintiff and Mr. McEvoy. She said that during her entire career in the school with Mr. McEvoy, she had never arranged a meeting with him for anybody. She said that Mr. McEvoy's door was always open, as was her own, and teachers could come at any time to talk to them or make arrangements to see either one or other of them.

153. Mrs. Wilson denied the plaintiff's evidence that she visited her in her office on 6th November, 1998. She said the meeting never took place. She said the first she had heard of the car damage incident and the plaintiff's involvement with it was after the garda investigation and she did not believe that the plaintiff would have been involved in doing that.

154. Mrs. Wilson said that in September 1999, she asked the plaintiff if she would be interested in continuing to do the newsletter. She said she had done it in 1998. She said she presumed that she was going to do it because she said people tended to continue doing work that they enjoyed doing. Her memory was that the plaintiff did the newsletter at the end of term, which would have been Christmas 1998, and again for the Easter term of 1999 and summertime. Her evidence was that the plaintiff continued doing it until the time that she said she would no longer do it, which was in 1999. Mrs. Wilson said that what the plaintiff said in evidence concerning this meeting in September 1999, to the effect that she was very aggrieved with the way she was being treated by the CEO, Mr. O'Neill and Mr. McEvoy over the car incident, and that it was general knowledge that she had been threatened with a transfer was all incorrect. Mrs. Wilson said she asked her was she going to do the newsletter again, and she said the plaintiff replied that she was not. Mrs. Wilson said she did not pursue it because it was voluntary work and that, in the first instance, she felt she was not particularly interested in it.

155. Mrs. Wilson said that at no time did the plaintiff ever come to her to complain about Mr. Mooney. She said she was absolutely sure of that and she said if she had, she would have taken up her problem and would have dealt with it in an appropriate manner, that she had a good relationship with the plaintiff and there was no reason ever for her not to handle any difficulty that she had.

156. Mr. Diarmuid O'Neill, in his evidence, said that he had started teaching in 1969, was the Principal in Tullamore College for thirteen years and became the CEO of Offaly Vocational Educational Committee in 1995.

157. He said he first became aware of difficulty between the plaintiff and Mr. Mooney when the gardaí in Tullamore approached him regarding damage to a car in the car park in Tullamore College. They informed him they had a suspect in that case, told him the name of the suspect and that they had evidence that the person suspected was seen in the car park doing the damage and seen leaving the car park by two independent witnesses. Mr. O'Neill said he had been playing football in the gymnasium on the night in question, as he had done for the previous three years every Monday night during wintertime from 7.00pm to 8.00pm. As he left after the game, the caretaker drew to his attention the damage to Mr. Mooney's car. He said, having consulted with the gardaí, he sought a meeting with the plaintiff, as the suspected person, which was to take place in the office of Mr. McEvoy in the school. He said at that meeting, he spoke to the plaintiff in Mr. McEvoy's presence. He went down through the facts that the incident had been witnessed but did not inform her that she was suspected as the culprit. He then asked her did she know anything about the incident, and his evidence was that she replied that she knew nothing about the incident and she condemned the incident as outrageous. Mr. O'Neill said at that stage, the plaintiff said she had problems with Mr. Mooney. He asked her what those problems were, to which she replied that they related to an event on the Daingean Road in Tullamore. She commenced to tell him about this event, but as soon as he gathered that it was in the early hours of the morning in a private house and between adults, he got a very quick sense that he should not be hearing about it and that it was inappropriate to listen any further and that it was outside his area of responsibility, so he asked her to stop. Mr. O'Neill said he told her that he would listen to and act on any concerns she had that were related to her workplace, and following on that, he said the plaintiff told him about the paycheck incident. He said that the "other issues" referred to in the memo of the meeting which he prepared, referred to the event on the Daingean Road and the plaintiff's annoyance about what happened there. Mr. O'Neill said that he again stated that he would deal with any work related concerns that the plaintiff had, and he gave her an opportunity to tell him if she had any other matter that she wanted to discuss. He said there was nothing else said, and then he said to her that if she wanted to come back to him regarding the damage to the car, he would like her to come back at 4.00pm that day.

158. Mr. O'Neill said he also had a meeting on the same day, 2nd November, 1998, with Mr. Mooney at 10.30am, shortly after the meeting with the plaintiff. At that meeting, he said he discussed with Mr. Mooney the information given to him by the gardaí. He said Mr. Mooney did guess the name of the teacher alleged to have done the damage to his car. He said that Mr. Mooney informed him that the plaintiff had been annoying him over a period of time and he said that he had reported the matter to the gardaí. He also said that Mr. Mooney told him about a letter that had been sent to him by the plaintiff. He did not furnish a copy of the letter to him, but Mr. O'Neill got the clear impression that the letter expressed matters of an intimate nature and he did not pursue that. Because the allegation that the plaintiff had damaged Mr. Mooney's car had not been established or proven, he requested Mr. Mooney not to discuss the matter outside of his interview with him. Mr. O'Neill said he came to no conclusion at that stage; that he felt he was merely going through a process.

159. Mr. O'Neill gave evidence next of his involvement in the meeting on 9th November, 1998. He said the purpose of the meeting was to speak again to the plaintiff regarding the criminal damage to Mr. Mooney's car. He said early in the meeting, the plaintiff informed him that she had carried out the damage to Mr. Mooney's car in the car park in Tullamore. He said that she acknowledged that what she had done was wrong. He said he felt that this was a very serious matter for two reasons. First, its criminal nature, which, in the educational sector, for somebody in the plaintiff's position, could lead to dismissal from her post, and, secondly, because she had lied to him in regard to this incident in the meeting on 2nd November, 1998. Mr. O'Neill said that the prospect of dismissal under the relevant statutory procedure was very much uppermost in his mind at the time. Mr. O'Neill said that before and during this meeting, he was considering his own options because his concern was that he had a teacher in front of him, and if he proceeded down the possible dismissal route, it was inevitable that her job would be at stake, her future career would be at stake and as she was a young, married teacher and a good teacher who had a family, it weighed very heavily on him what he should do and he had given some thought to it prior to the particular meeting, if, in fact, it turned out she was the person.

160. He went on at the meeting to say to the plaintiff that he foresaw difficulties for both members of the staff continuing to work together in Tullamore College, to which she replied that she could go to another school. He said that when asked for clarification, the plaintiff confirmed that she was seeking to go to another school, that that would be wonderful. Mr. O'Neill said that if she wanted a transfer that she must write a letter to the County Offaly VEC seeking a transfer. Mr. O'Neill said he was very anxious to get the plaintiff to write a letter of apology to County Offaly VEC for the incident and to include a guarantee that it would not happen again, because he felt that if the plaintiff was not willing to do this, he would have a bigger difficulty, but he said the plaintiff readily agreed to do this. Mr. O'Neill said that as he had his mind made up not to proceed down the discipline route and the dismissal route as he wanted as few people as possible to know what he was doing about the incident, to protect the plaintiff and her reputation in the school and he told her that her file would not be made available to anybody else and the information concerning the incident would be put into an envelope and kept in her personal file, but in his office where it was not available to anybody in the HR Department or anybody else. He said he kept it in a locked file in his office and that was not the first time that that had happened. Mr. O'Neill added that in deciding not to go down the route of dismissal and keep the file in the privacy of his own office, he was making a judgment call which left him at some risk if there was a repetition of an incident of that seriousness. He said he could be vulnerable if it became known that he had already handled it in the way he did. He said he was anxious to ensure, on the one hand, that the plaintiff's reputation and career was safeguarded, but he was also concerned about his own position and his own career, but in doing what he did, he said he left himself somewhat vulnerable.

161. In reference to the phrase "series of" in paragraph 7 of the memo of that meeting and the pencilling out of the word 'serious', Mr. O'Neill said that the plaintiff referred again to the events on the Daingean Road and to the issues that she had around that event and that she said that it was this event and what happened there that provoked to act in the way she did, which prompted Mr. O'Neill to remind the plaintiff, as he had done before, that these matters were outside the responsibility of County Offaly VEC. He said that he made it clear that any issues of concern that she had that were work related, he was happy to deal with and follow through on. Mr. O'Neill was adamant that the plaintiff only mentioned the Daingean Road incident and no other incidents of alleged sexual harassment. Mr. O'Neill said that he listened intently to every single thing that the plaintiff said to him that day because he said a lot depended on what the plaintiff's said that day. Mr. O'Toole emphatically denied wanting to get rid of the plaintiff and said that if he had been so disposed, he had the ammunition to do so in the committing of criminal damage by her and the fact that she lied about it to him initially. He said that on the contrary, he wanted to protect her position. He said he had experience of the plaintiff when he was Principal in Tullamore College from 1993 to 1995, and he regarded her as a very good teacher who did her job well and he had every reason to look after her and her career and he had no intention of doing anything that would damage that.

162. Mr. O'Neill said that no member of the Teachers Union of Ireland and, in particular, Mr. Hyland, ever spoke to him about the plaintiff in the period from 1998 onwards about any matter. He also said that Mr. Bracken never spoke to him about the plaintiff, this incident or any other matter. Mr. O'Neill said that the inclusion of the line in the memo concerning the plaintiff's access to her file at all times was put in by him to reassure the plaintiff that she would know exactly what was going to be on her file regarding this incident. He said the plaintiff was given the memo, which she read over and corrected, adding in the word 'did' on the third line of the second page before she signed it.

163. Mr. O'Neill said that the meeting was a difficult one for the plaintiff, that he did not remember any emotion at the meeting, but that he would have given the plaintiff, like anybody who came to his office for something as difficult as this, time to compose themselves before they left the office. He said he did not remember the plaintiff crying at the meeting.

164. Mr. O'Neill said that when he received the plaintiff's letter dated 20th December, 1998, in which she withdrew her request for a transfer, he was surprised and somewhat disappointed because he said that work had been done in trying to arrange a transfer. He said he also found it difficult to understand her withdrawal of her request.

165. Mr. O'Neill said he had no part to play in the retraction by the plaintiff of the allegation she made on 5th November, 1998, and was not aware of it at the time.

166. Mr. O'Neill next encountered the plaintiff on 13th December, 2000, she having verbally requested a transfer from Mr. McEvoy on 6th December, 2000, the day after the incident in the staffroom, and Mr. McEvoy had recommended to the plaintiff that she approach Mr. O'Neill's office about that request. That led to the plaintiff meeting with Mr. O'Neill on 13th December, 2000. Present at that meeting were the plaintiff, Mr. O'Neill and Marie Bracken, the Assistant Principal Officer in County Offaly VEC, who was Head of Administration in the County.

167. Mr. O'Neill said that the plaintiff requested a transfer to another school. Mr. O'Neill said four schools were mentioned, namely, Banagher, Clara, Ferbane and Kilcormack. Mr. O'Neill asked her why did she want to leave the school, and she replied that she felt she had much more to offer in another school and she said she was not happy in the school she was in. Mr. O'Neill said he asked her was there anything he could help with regarding her work in Tullamore College or was there any complaint of anything wrong. He said she made no comment on this, just that she wanted to change to another school. Mr. O'Neill said that the plaintiff stated clearly her preference to go to either Banagher, Clara, Ferbane or Kilcormack. She did not mention Edenderry and he said that it was obviously not one of her preferred choices. He acknowledged that if it was possible to accommodate her in one of her preferred schools that would be done. Mr. O'Neill denied that the transfer to Edenderry was vindictive. He said that after the meeting, he asked the HR Department to seek a place for the plaintiff in one of the schools preferred by her. He said, as it turned out, there was only one school in the county that had a vacancy; all other schools had their full quota of teachers. The only school with a vacancy was Edenderry. He said a vacancy had arisen in Edenderry because early in the first term, the period of September to December, a teacher had left the school, namely, an Irish teacher. He said two sets of interviews took place to fill the vacancy, but no suitable candidate was found, therefore, the Principal was anxious to get somebody on a temporary basis to fill the vacancy until such time as the timetable could be readjusted.

168. At a meeting with the plaintiff on the morning of 26th January, 2001, Mr. O'Neill put the proposal to transfer her to Edenderry to her, knowing that it was not her preferred choice. That meeting took place in Mr. O'Neill's office. Mr. McEvoy was also present.

169. At the start of this meeting, the plaintiff's letter of complaint dated 25th January, 2001, mentioning bullying and harassment was discussed. It was the first item on the agenda and referred to in the memo where there is a reference to "*to find a resolution to the difficulties*". Mr. O'Neill said that the difficulties there mentioned were the accusations of bullying and harassment. Mr. O'Neill said he told the plaintiff that he hoped to continue on a process following what Mr. McEvoy had done that morning, having given her a copy of the Code of Practice for dealing with bullying and harassment in the workplace. Mr. O'Neill said he reminded the plaintiff that she had requested a transfer from Tullamore College to any one of four schools, and that in the light of her difficulty, he had a proposal she could avail of if she wished. He then told her of the vacancy that occurred in Edenderry, that he was acutely aware that this was not one of her choices, but that it was the only school where there was a vacancy. Mr. O'Neill said that he told her that if she went there it would only be until summer, until such time as an opportunity would arise to change her to one of the schools of her choice, as subsequently happened.

170. Mr. O'Neill said he was anxious at that stage to deal with the allegations before him in terms of the plaintiff's letter and he wanted to ring fence those allegations and deal with them. In this respect, he requested that all aspects of the dispute between the two parties would need to end, and that he said that he intended to play a key role in coming to a satisfactory conclusion in all of that. He said he sought and received guarantees from the plaintiff that written allegations and accusations would stop to enable them to deal with the accusations that they had in front of them in a calm atmosphere. He said that the plaintiff agreed with his request and understood what he meant.

171. Mr. O'Neill said that as of 30th November, 2000, he knew a grievance procedure was in force and that replaced one which had been operated under the auspices of the Teachers Union of Ireland, nationally before that.

172. Mr. O'Neill said that on 26th January, 2001, the plaintiff, for the first time, indicated to him that there was a difficulty regarding bullying and sexual harassment in the workplace. He said, having read her letter and having spoken to Mr. McEvoy in the morning, felt that the appropriate way to deal with it was to follow the Code of Practice but he did not rule out the possibility that meetings would take place with the plaintiff and others in the days or weeks to come. Mr. O'Neill said that his position was that the plaintiff had been given a copy of the Code and it was a matter for the plaintiff whether or not to implement stage one or to start at stage two of the procedure. He said the ball was in her court. He said that the plaintiff apparently decided to start at stage one and had made contact with one of the two designated people, namely, Colette Lee. He said at that stage he was of the view that the Code had been embarked upon and that it was going to take its course.

173. Mr. O'Neill said that the plaintiff was out on a sick certificate from 8th January until 22nd January.

174. Mr. O'Neill said that he hoped that the transfer would contribute to calm by eliminating any opportunity for further controversy, the parties being separated by approximately twenty miles. He said that in that respect, the transfer was successful. There were no other allegations of any kind from that point on. He said that his intention was that this would allow the process to continue unimpeded or uninterrupted. He said he had a concern that as this was a new process and might not be enough to lead to a resolution, he felt he would need to meet the plaintiff to see that she was happy with the progress with the Code and he told her on 26th January that he would be writing to her to meet her to discuss how the Code was being worked, if it was being worked successfully, or if there was anything he could do to help that. He also wanted to meet her with regard to the change of schools to monitor how that was going.

175. Mr. O'Neill said that through the Principal of the college in Edenderry, he arranged to meet the plaintiff on the Friday, a week after the meeting on 26th January, 2001. Mr. O'Neill received a letter dated 2nd February, 2001, from the plaintiff, saying:

"Dear Mr. O'Neill,

I refer to your request for a meeting today at 4.00pm. I enclose herewith a Doctor's Certificate and, as you can see, I am unwell and unable to attend today. I must return to my GP on Monday for a further check-up. After this, I can make myself and my solicitor available for a meeting at a mutually acceptable time.

Yours sincerely,

Mary O'Toole"

176. A Medical Certificate dated 1st February, 2001, was presented, saying that the plaintiff was suffering from Gastritis and unable to attend school/work.

177. The plaintiff was out of work until the following May, and Mr. O'Neill did not have any further meeting with her.

178. Mr. O'Neill said he had a meeting with Mr. Mooney to discuss the plaintiff's letter of complaint of 25th January, 2001, and at that meeting, he went through the letter with Mr. Mooney and asked him for his response. This meeting took place on 26th January, 2001, just prior to the meeting Mr. O'Neill had with the plaintiff on that date. Mr. O'Neill said he had explained to Mr. Mooney the seriousness of the allegations and the implications of the allegations made and he discussed how these would have to be dealt with. He said Mr. Mooney was cooperative with the process. He said Mr. Mooney did not want any face-to-face meetings with the plaintiff while the accusations were being dealt with. Mr. O'Neill said that Mr. Mooney wrote to him by way of a letter of 29th March, 2001, which was Mr. Mooney's formal response to the allegations which were contained in the complaint of 26th January. Mr. O'Neill said he had no further contact with Mr. Mooney thereafter concerning the plaintiff's complaints, and became aware that Mr. Mooney had issued legal proceedings against the plaintiff.

179. Mr. O'Neill said that after the plaintiff agreed to the transfer to Edenderry, County Offaly VEC set about seeking a transfer to a school of the plaintiff's choice. He said that as a result of discussions he had with the Principals of the schools in the County Offaly VEC, he succeeded in finding an appropriate placement for the plaintiff in Ferbane Vocational School, and the plaintiff was informed of this in May 2001, and she took up duty there on 1st September, 2001.

180. Mr. O'Neill accepted that he did not tell the plaintiff that she could or should have a representative with her at the meetings of 2nd or 9th November, 1998. He said these meetings were not accusatory meetings and said if the plaintiff had requested the presence of either a union representative or friend, he would certainly have agreed to same. He agreed that he did not bring the relevant Code of Practice of 1994 to the attention of the plaintiff then, because he did not think it was appropriate.

181. Mr. O'Neill said that in his meeting with Mr. Mooney on the morning of 2nd November, 1998, he did not raise with Mr. Mooney the matter which had been alluded to by the plaintiff in his earlier meeting with her, as he would have regarded anything that happened in a private house in the early hours of the morning as not his concern and would not have gone down the route of discussing it with Mr. Mooney. He said just as the plaintiff had volunteered certain information to him and he stopped her doing that, Mr. Mooney also volunteered some information as well. He said that when Mr. Mooney mentioned the letter written by the plaintiff, Mr. O'Neill did not enquire as to the contents and Mr. Mooney did not tell him the contents of that letter, and he felt that it was outside his area of responsibility.

182. Mr. O'Neill said that the conversation on the telephone that the plaintiff, in her evidence, said happened when she went to work in Edenderry, and in which conversation she said that Mr. O'Neill had ordered her to go back to work and told her he would not discuss anything with her unless she returned to Edenderry immediately, did not happen. Mr. O'Neill also denied ringing the plaintiff's husband in Kilcormack School to arrange a meeting at 4.00pm on Friday 2nd February.

183. Mr. O'Neill said that after the plaintiff went on sick leave, he wondered whether he could contact her while she was out on sick leave and he took legal advice on this and was advised not to make contact with her until she returned from her sick leave.

184. Before embarking upon a consideration of the evidence relating to the manner in which the defendants dealt with the plaintiff's complaints, I should first comment upon the defendants' submission to the effect that if the court finds that the plaintiff was not sexually harassed or bullied or otherwise ill-treated by Mr. Mooney, no case could arise against the defendants in respect of any alleged deficiencies in the investigative procedures pursued by the defendants in relation to the plaintiff's allegations.

185. Notwithstanding the fact that I have rejected the plaintiff's evidence in relation to her complaints and found that she was not sexually harassed or bullied by Mr. Mooney, she was, nonetheless, entitled, as indeed would any employee of the defendants, to make such complaints and to have them properly dealt with under the appropriate current procedures, by the defendants, as employers. If it could be said that the evidence identified damage or injury to the plaintiff caused by any actionable failure by the defendants in this respect, notwithstanding the lack of merit in the plaintiff's complaints, damages could arise. It is, of course, fair to say that there is a theoretical element to this conclusion, given that it would be highly unlikely and that a plaintiff could establish or that a court could identify separate injury or damage resulting from a procedural deficiency, in circumstances where the underlying complaint was without foundation.

186. Nevertheless, I must proceed to consider the plaintiff's complaints against the defendants in respect of their handling of her complaint.

187. Critical to the determination of this issue is the evidence of the plaintiff as to what she told the defendants at various times. In this respect, as in the earlier aspects of the case, I regret to have to say that I have little or no confidence in the veracity of the plaintiff's evidence, and up until 2nd November, 1998, I am quite satisfied that the plaintiff made absolutely no complaint of any kind whatsoever concerning Mr. Mooney to the defendants. I accept Mr. McEvoy's evidence as to the content of the conversation between himself and the plaintiff when he found her upset in her classroom and, indeed, what she had to say about being ignored is consistent with the fact of rejection by Mr. Mooney of her advances. When Mrs. Wilson spoke to her in or about September or October, 1998, after she was unsuccessful in her application for promotion, her only complaint, at that stage, about Mr. Mooney, who had been successful in the competition was that he was difficult to talk to. I accept Mrs. Wilson's evidence as to this conversation and there appears to me to be a consistent pattern emerging. As indicated earlier, the plaintiff's undoubted experience of blunt and unequivocal rejection by Mr. Mooney in October 1998, undoubtedly provoked very different feelings in the plaintiff towards Mr. Mooney thereafter.

188. I am satisfied that the memo of the meeting on 2nd November, 1998, put in evidence, is a fair and accurate account of the meeting. I also accept the evidence of Mr. McEvoy and Mr. O'Neill as to what transpired at the meeting. I am quite satisfied that the plaintiff did not, as she claims, complain at that meeting of the catalogue of sexual harassment and bullying that emerged much later.

At this meeting, the plaintiff found herself confronted with a very serious matter, the criminal damage to Mr. Mooney's car. The plaintiff's dealing with this matter is far from impressive. The carrying out of the criminal act, in the first place, was, for somebody in her position, reprehensible and irresponsible. The involvement of Ms. Rosario Mannion, whose evidence I fully accept, in the incident without her knowledge and the plaintiff's subsequent phone call to her to conceal evidence does even more discredit to the plaintiff. Ms. Rosario Mannion was a young woman who had just taken up employment in the town in a public sector job, and to have inveigled her, knowingly, into this criminal escapade, warrants particular censure.

189. The plaintiff knew she was in trouble at this meeting on 2nd November, 1998, and her reaction, initially, in denying any knowledge of the incident and condemning it, which I accept occurred, was discreditable. It is clear from the evidence of Mr. McEvoy and Mr. O'Neill, that to excuse or explain her situation, notwithstanding her denial of involvement in the criminal damage, she suggested that she had a grievance with Mr. Mooney. I am quite satisfied that the nature of the grievance outlined was confined to the incident in the Daingean Road house i.e. Mr. Mooney's house, in May 1998, concerning which she gave some outline detail, and the cheque incident.

190. When confronted with this information, in my opinion, Mr. O'Neill reacted entirely appropriately in declining, in the context of the information given, to entertain the matter any further because it was made apparent to him by the nature of the grievance outlined that it pertained purely to a very personal and intimate transaction which had occurred between two teachers in the context of their private lives, away from the school, and there was no connection to or involvement of the school in it. The cheque incident, as described in isolation, could only have been regarded as, at worst, a trivial incident, but in all probability, no more than an unfortunate mistake on the part of Mr. Mooney. In no sense, in the manner in which it was described at that meeting, could it have been regarded as an incident of or any part of a process of sexual harassment or bullying.

191. It is common case that on 5th November, 1998, the plaintiff and Mr. Bracken did go to Mr. McEvoy's office and there the plaintiff gave a fuller account of the Daingean Road incident. I am quite satisfied that was the extent of any grievance against Mr. Mooney disclosed at that meeting. Thereafter, or about that time, the plaintiff went to the gardai and admitted her culpability in respect of the damage to Mr. Mooney's car. No doubt, by then, and as a result of what had been intimated to her in the meeting on 2nd November, 1998, she must have realised that further denial of it would turn out to be futile.

192. In the meeting of 9th November, 1998, with Mr. O'Neill and Mr. McEvoy, a different context applied. At this stage, the plaintiff's involvement in the incident of criminal damage was admitted. There could be no doubt but that this created a very serious problem for both the plaintiff and, indeed, her employers. I accept Mr. O'Neill's evidence and also Mr. McEvoy's evidence that they regarded the plaintiff as a very good teacher who, until then, had a blemish-free record, and that they were anxious to protect her career from the glaringly obvious and very serious consequences for her. I am quite sure that the plaintiff also must have been aware of the peril of her position so far as her career was concerned. This meeting, far from being a meeting to accuse and possibly condemn the plaintiff for any breach of discipline, was quite the reverse. The whole tenor of the meeting was one in which the objective appears to have been to protect the plaintiff from the obvious detrimental consequences to her career resulting from her admitted actions. Towards the end of the meeting, as the memo of it indicates, the plaintiff again returned to her grievances with Mr. Mooney, no doubt as an attempt to explain or excuse her conduct. I am quite satisfied and have no hesitation in accepting the evidence of Mr. O'Neill and Mr. McEvoy that the matter raised by the plaintiff in this regard was again confined to the Daingean incident and there was not a setting out by the plaintiff of her series of complaints of sexual harassment against Mr. Mooney.

193. In the course of the plaintiff's letter dated 17th November, 1998, to Mr. O'Neill, as requested, the plaintiff, towards the end of her letter, says, "*I have the height of respect for the VEC and I am sorry that I caused you any trouble . . .*" This is a sentiment which was volunteered by the plaintiff and it would appear to me to be wholly inconsistent with the complaint that is now made in these proceedings to the effect that in both the meeting of 2nd November, 1998, and the meeting of 9th November, 1998, the plaintiff was ill-treated by the defendants by not having her complaints listened to and properly investigated and, indeed, of encountering a strong bias against her in favour of Mr. Mooney.

194. I am quite satisfied that in none of these meetings did the plaintiff outline her allegations of sexual harassment against Mr. Mooney. It is accepted she did allude to the incident in the Daingean Road, but nothing more. Having regard to the very personal context to that incident, as it was revealed by the plaintiff, in my view, there was no grievance disclosed by the plaintiff in these meetings which would have warranted the activation of the relevant grievance procedures available at the time. Accordingly, it cannot be said that the defendants were in any way at fault in failing to have initiated an investigation under these grievance procedures.

195. If the plaintiff had made the allegations of sexual harassment, which she did, subsequently, in January 2001, and in these proceedings, I have no doubt but that the defendants would have done as they did in January 2001, promptly initiated the appropriate procedure to deal with the plaintiff's grievance.

196. The plaintiff, in her evidence, said that she raised her sexual harassment complaints with Mrs. Wilson on 6th November, 1998. Mrs. Wilson denied any such discussion. I prefer the evidence of Mrs. Wilson on all aspects of her dealings with plaintiff and I am quite satisfied that if the plaintiff had raised these matters with Mrs. Wilson, that she would have assisted the plaintiff to have her grievance resolved. I am satisfied that Mrs. Wilson was not involved at all, at any stage, in dealing with the plaintiff's issues in the school, as disclosed in these proceedings.

197. The plaintiff, in her evidence, claimed that her written retraction dated 13th January, 1999, of the allegation she made against Mr. Mooney on 5th November, 1998, in Mr. McEvoy's office, was brought about by a threat of prosecution and by way of the threat of transfer. I accept the evidence of Mr. O'Neill and Mr. McEvoy that they had no involvement whatsoever in bringing about this retraction, and that Mr. O'Neill did not know about it at all at the time and only learned of it subsequently, and Mr. McEvoy's only knowledge of it was when the plaintiff handed him the retraction in his office. The plaintiff's evidence to the effect that the retraction was partly induced by a threat of her being transferred from Tullamore College is incomprehensible in the light of the undisputed evidence that, having initially made a written request for a transfer, later, by a letter of 20th December, 1998, she formally withdrew that request and nothing further happened in that regard. There is no doubt that Mr. Mooney was very anxious to obtain a retraction of that allegation and did pursue that matter, including initiating correspondence through his solicitor. I am quite satisfied it was entirely in response to Mr. Mooney's approaches and also knowing the untruth of the allegation, that the plaintiff agreed to make that retraction.

198. This brings me, finally, to the events which unfolded in December 2000 and January 2001. After the incident in the staffroom on 5th December, 2000, it is quite clear that the plaintiff decided, in conjunction with her husband, that she should seek a transfer from Tullamore College and had a meeting with the CEO, Mr. O'Neill, on 13th December, and duly applied for the transfer. Indeed, the plaintiff's husband also rang up requesting a transfer for the plaintiff. I am quite satisfied that the plaintiff, as an experienced teacher,

would have been well aware of the difficulties involved in effecting a transfer at that time of the year when all of the schools would have had their teaching staff arranged from the start of the academic year, including their timetables. To have characterised the selection of Edenderry as vindictive, in these circumstances, seems to me a warped conclusion, wholly unsupported by any evidence. On the contrary, I am quite satisfied that Mr. O'Neill made every effort to accommodate the plaintiff and achieve her minimum desired result, namely, a transfer from Tullamore College with immediate effect, but that could only be done by placing her in Edenderry until a more suitable placement could be found before the start of the next academic year, which, in fact, occurred, in that, a transfer of the plaintiff to Ferbane was arranged in late May 2001. The plaintiff's suggestion that the transfer on 26th January, 2001, was the defendants' response to her formal letter of complaint of 25th January, 2001, is plainly absurd. As said earlier, the plaintiff had requested this transfer herself, as had her husband, and this process was in being since mid-December. The plaintiff had been out of work from 8th January, 2001, until 22nd January, 2001, thereby inhibiting a completion of that process. I am quite satisfied that the fact that the transfer took place on 26th January, 2001, and the letter of complaint was dated 25th January, 2001, and delivered on the morning of 26th January, 2001, is a mere coincidence over which the defendants had no control. Insofar as anybody was in control of the timing of these events, it was the plaintiff.

199. I accept the evidence of Mr. McEvoy and Mr. O'Neill that the first time that the plaintiff made the allegations of sexual harassment, apart from the Daingean Road incident in May 1998, was in her letter of complaint dated 25th January, 2001. It is quite clear from the evidence that the defendants *i.e.* Mr. McEvoy and Mr. O'Neill, reacted immediately to this letter of complaint and treated it with appropriate seriousness and immediately informed the plaintiff of the appropriate grievance procedure to be followed. The plaintiff took the initial step to follow the procedure by contacting Ms. Colette Lee, but shortly thereafter, the plaintiff went out on sick leave and remained out until the end of May. As the plaintiff had chosen to initiate the procedure, as she did, I am satisfied that the initiative remained with her to either pursue and complete the first stage of the procedure or, alternatively, to inform Mr. O'Neill or Mr. McEvoy that she no longer wished to pursue that course and wished to move to stage two, namely, the formal investigation.

200. I accept Mr. O'Neill's evidence that he intended to closely monitor the carrying out of the procedure, and for that purpose, sought a meeting with the plaintiff one week after Friday 26th January, 2001, but the plaintiff had by then gone out on sick leave and said she was not available.

201. At no stage thereafter did the plaintiff revert to Mr. O'Neill with any indication as to how she wished to pursue the grievance procedure and Mr. O'Neill was inhibited from contacting the plaintiff, having received legal advice that he should not do so while the plaintiff was on sick leave. In my view, in this situation, the initiative rested with the plaintiff if she wished this matter to be dealt with while she was on sick leave and the onus was on her to have initiated contact with Mr. O'Neill. She did not do this.

202. In fact, early in May, the plaintiff, through her solicitor, intimated that she was pursuing her grievances by way of court proceedings, and, indeed, these proceedings were, in fact, issued on 14th May 2001. The necessary consequence of this was that the complaints and grievance procedure became defunct. I am quite satisfied that the defendants did everything they could to enable the plaintiff to avail of the complaints procedure in force since November 2000, and the fact that this was not pursued was entirely the result of the plaintiff's own actions and choices.

203. The plaintiff also made complaints specifically against Mr. McEvoy that during the year 2000, that Mr. McEvoy treated her unfairly and in a discriminatory way by directing her to resume normal academic teaching of a class just before the Easter break, by sending a pupil back to class who had been sent on an errand by the plaintiff, and by also directing the plaintiff to return to her class when she encountered Mr. McEvoy in the corridor on her way to get a revision book. Mr. McEvoy has not denied that any of these incidents occurred, but explained that these would have reflected the general and well known policy in the school applied by him to all teachers, and were in no way an unjust or discriminatory treatment of the plaintiff. In his evidence, he elaborated that at the beginning of each year, he instructed teachers to ensure that they had in class the necessary resources so that downtime was avoided due to having to send pupils out on errands or, worse, to have the teacher leave the class to retrieve whatever was wanted. He also said that, notwithstanding that it might be the last day of term and many pupils might be absent, he insisted on classes being devoted in the normal way to the academic subject being taught, rather than the playing of games.

204. I accept Mr. McEvoy's explanation in this regard and I am of the view that none of these incidents amount to bullying or harassment or any other form of ill-treatment of the plaintiff by Mr. McEvoy.

205. In the course of her evidence, the plaintiff complained that her arrest in respect of the fire at Tullamore College was actuated by the defendants. I have been told that the plaintiff has initiated separate proceedings against State respondents arising out of those events. Accordingly, I do not wish to say anything here which could be said to be a judgment on the issues arising in that case. I am, however, quite satisfied that the plaintiff's evidence given in this case concerning her belief as to the involvement of the defendants, its servants or agents in that other matter, does not entitle the plaintiff to any relief against the defendants in these proceedings.

206. For the reasons set out above, I have come to the conclusion that the defendants have no liability to the plaintiff in respect of her complaints made in these proceedings, and, accordingly, I must dismiss her action.