



THE SUPREME COURT

Record No: 2017/71

**Clarke C.J.
O'Donnell J.
McKechnie J.
MacMenamin J.
Dunne J.
O'Malley J.
Finlay Geoghegan J.**

Between/

Angela Kerins

Applicant/Appellant

And

Deputy John McGuinness, Deputy Mary Lou McDonald, Deputy Shane Ross, Deputy Áine Collins, Deputy Paul J. Connaughton, Deputy John Deasy, Deputy Robert Dowds, Deputy Seán Fleming, Deputy Simon Harris, Deputy Eoghan Murphy, Deputy Gerald Nash, Deputy Derek Nolan, Deputy Kieran O'Donnell, The Clerk of Dáil Éireann, The Clerk of the Public Accounts Committee, Ireland and the Attorney General

Respondents

Judgment of the Court delivered the 29th May 2019 by Mr. Justice Clarke,

Chief Justice

Introduction

1.1 The Court has already given a substantive judgment in this case (see *Kerins v. McGuinness* [2019] IESC 11) (“the principal judgment”). As noted in the principal judgment, two matters were left over for further consideration, the first being the question of whether it would be appropriate to join the institution of the Dáil as a defendant in these proceedings. The reason why that issue emerged stemmed from the finding of the Court, as set out in the principal judgment, to the effect that the Dáil (or, in an appropriate case, the Houses of the Oireachtas or the Seanad) is the appropriate defendant in proceedings such as these, rather than the individual members of a committee whose actions are challenged.

1.2 The second issue left over for further consideration was the question of whether it can be said that the actions of the Dáil Public Accounts Committee (“the PAC”), looked at as a whole, can be said to have been in significant breach of the terms of the invitation issued by the PAC to Ms. Kerins to attend before it. Again, the reasons why that question was considered of relevance are fully set out in the principal judgment and it is unnecessary to repeat them here. Suffice it to say that the Court indicated that, in the event that it was satisfied on the facts that the actions of the PAC could be so characterised, it was the intention of the Court to make an appropriate declaration.

1.3 Further written submissions were directed and an oral hearing held. This judgment is directed solely to those two questions and should be read in conjunction with the principal judgment. The issue of the position of the Dáil can, however, be very simply dealt with and it is proposed to turn first to that question.

2. The Dáil as Defendant

2.1 Counsel who represented the PAC indicated in written submissions and confirmed at the oral hearing that there was no objection to the Dáil as an institution being joined as a defendant in these proceedings, in substitution for the individual members of the PAC and for

the Clerk of the Dáil. It is obviously unusual for a new party to be joined to proceedings after a substantive judgment has been given and, in particular, where that occurs before the court of final appeal. However, it is clear that the relevant interests of the Dáil were fully represented at all stages of this process so that, in the circumstances of this case, it is simply a technical question of specifying the precise identity of the correct defendant rather than seeking to join a new party which might have a different interest that was not fully protected in the process up to that point in time.

2.2 On that basis, the Court will make an order substituting the Dáil for the relevant defendants, being all of the defendants with the exception of Ireland and the Attorney General (“The State”). Because the issue was briefly raised at the oral hearing, it is appropriate to make one further observation before moving on to the second issue. The Court would wish to make clear that the fact that a House or the Houses of the Oireachtas can and should be joined as the defendant in proceedings such as this (and that the individual members of a relevant committee should not be joined) does not alter the justiciability of any particular claim. Just because, for example, the Dáil is joined in proceedings arising out of the actions of a committee of the Dáil does not in any way expand the jurisdiction of the Court to make orders in favour of a plaintiff. The limitations on the jurisdiction of the Court which are imposed by the Constitution, and which are analysed both in the principal judgment and also in the judgment of this Court in *O’Brien v. Clerk of Dáil Éireann* [2019] IESC 12, represent the boundaries of justiciability in this area. Those boundaries are not altered by the joinder of a House or the Houses of the Oireachtas.

2.3 It is next appropriate to go on to consider the question of fact concerning the issue of whether it can be concluded on the evidence that the PAC acted unfairly in the sense identified in the principal judgment, being that its actions, taken as a whole, can be said to

have involved inviting a citizen to attend before it on one basis, but also involved acting significantly outside the terms of the invitation once the citizen attended.

2.4 However, before dealing with the facts in that regard, it is appropriate to make a number of observations.

3. Some Observations

3.1 It should be recalled that the central factors which the Court identified in the principal judgment as potentially giving rise to a situation where it would be appropriate to grant a declaration were:-

1. The fact that the PAC had acted significantly outside its terms of reference;
2. The possibility that it might be appropriate to find as a fact that the PAC had acted unfairly by departing significantly from the terms of the invitation by virtue of which Ms. Kerins was asked to attend before it;
3. The possibility that, having regard to the way in which the hearing was conducted and, in particular, the way in which it was sought to order the hearing, not least by the Chair, it might be appropriate to characterise what occurred as representing the actions of the committee as a whole rather than actions of an individual member; and
4. The fact that there did not appear to be any appropriate remedy available to a person in the position such as Ms. Kerins.

3.2 It should, however, be emphasised that each of the four matters identified are capable of being remedied by the Houses of the Oireachtas themselves. If there are issues with the terms of reference of any committee, then the Oireachtas can adjust those terms of reference in whatever way it considers appropriate, subject only to the limitation that the business which the Houses can assign to a committee must form part of the constitutional remit of the Houses themselves. While not without limit, that remit is very wide. If, therefore, there are

genuine grounds for enquiring, in the public interest, into a particular matter which comes to the attention of a committee but which seems to be outside of its terms of reference, there is no reason why that committee cannot seek to have its terms of reference adjusted in some appropriate way to allow it to conduct the enquiry in question. Likewise, there is no reason in principle why a House or the Houses might not establish a mechanism to allow for such adjustment to be made in a quick and efficient way. It might, of course, be the case that the Oireachtas as a whole might take the view that another committee (or perhaps even a special committee set up for that purpose alone) might be more appropriate. All of those issues are a matter for the Oireachtas itself. It is, however, important to emphasise that the Oireachtas has within its own hands the solution to any issues concerning the boundaries of the terms of reference of committees. But it is equally important to emphasise that those boundaries need definition and a proper process needs to be followed to ensure that there is clarity about where they lie.

3.3 The next issue concerns the terms of any invitation issued to a citizen to attend before a committee. But, of course, the terms of an invitation are formulated by the committee itself. If there are problems with the breadth of the invitation, then such difficulties stem from the way in which the invitation itself was formulated. The terms of an invitation can, potentially, be altered provided that the alteration does not take place at such a late stage such that the alteration would in itself be unfair. In addition, it is worth noting that it may well suit persons who are invited to appear before a Dáil committee to deal with issues outside the scope of an invitation issued. There is no legal barrier to a citizen answering questions which go beyond the scope of an invitation.

3.4 The conduct of the business of a committee of the Oireachtas is, of course, again a matter for the Oireachtas itself. It is for the Oireachtas to specify, in its rules and orders, the way in which business is to be conducted and, in particular, the role and powers of the Chair

of any committee to ensure that the committee concerned operates properly within the scope both of its remit and of any invitation issued to an attending citizen. These are, again, matters which are wholly in the control of the Oireachtas, both as to the rules and ensuring their observance.

3.5 Finally, the issue of the availability of an appropriate mechanism to provide a remedy in the event of a committee acting inappropriately is a matter which the Oireachtas itself can put in place.

3.6 All of these matters were addressed, in one form or another, in the principal judgment. The Court also notes, as was mentioned by counsel at the hearing, that it is proposed to put in place a series of measures designed to deal with at least some of the issues which the Court has identified. It is not, of course, a function of the Court to consider in advance those measures. It is, however, appropriate to comment that much of the solution to all of these issues lies in the hands of the Oireachtas itself. It is also easy to envisage that, provided appropriate solutions are put in place within the Oireachtas, the risk of any further proceedings meeting the restrictive criteria for justiciability identified in the principal judgment would be all the more remote.

3.7 Before going on to deal with the proper characterisation of the relevant hearing in the context of the invitation issued to Ms. Kerins, it is appropriate to reiterate one further point made in the principal judgment. The Court made clear that when it spoke of an unfair hearing, it was doing so in the context of a committee acting as a whole, in a way which demonstrated that a citizen had been invited to attend on one basis but where it was appropriate to characterise the hearing as a whole as having been conducted on a significantly different basis. The Court also made clear that there might well be questioning which might be considered unfair in a colloquial sense because questions might be deemed loaded or unduly aggressive or inappropriate on a whole range of other bases. However, unfairness of

that type does not, as is clear from the principal judgment, potentially give rise to issues concerning the actions of the committee becoming justiciable. It is not the tone of the questioning which needs to be reviewed, for to do so would be to make deputies amenable for their utterances in circumstances which the Constitution does not permit. Rather, it is the substance of the actions of the committee as a whole which requires to be analysed.

3.8 However, the overall question is whether those actions can be considered to have been unfair, by reference to the invitation which Ms. Kerins received. As there was some debate between the parties as to how it was appropriate to construe that invitation, it is necessary to turn first to the terms of the invitation.

4. Terms of the Invitation

4.1 By letter dated 22 January 2014, the Clerk to the PAC, Mr. Ted McEnery, first wrote to Ms. Kerins, stating:-

“I write to advise you that the Committee is currently examining the issue of State funding to the Rehab Group and, in that regard, I have written today to the Accounting Officers of both the HSE and the Department of Justice and Equality.

The request to both funding bodies relates, in the main, to oversight and conditions of funding and the Committee has also sought access to any evaluations undertaken of the funding provided by the State to the Rehab Group. The Committee also directed me to make contact with you in relation to these matters so as to afford the Rehab Group the opportunity to outline to the Committee the outturn and outcome achieved by Rehab of the funding received from the State.

As I outlined above, there is no requirement at this stage to provide information to the Committee... The Committee will, following receipt of information from the Department and the HSE, consider whether to hold an oral hearing on the States funding of the Rehab Group and should that be the case, I will contact you so as to make the necessary arrangements for you to appear and give evidence to the Committee.”

4.2 By letter dated 18 February 2014, Mr. McEnery wrote to Ms. Kerins inviting her to appear before the PAC. She was advised that the Committee had scheduled a meeting on 27 February 2014, for “examination” of the following matters:-

- “- Payments made by the HSE to Rehab under Section 29 of the Health Act, 2004
- The operation of the Charitable Lotteries Scheme and payments made to Rehab from the Vote of the Department of Justice and Equality
- Payments made by SOLAS to Rehab for the provision of Specialist Vocational Training.”

4.3 The letter continued:-

“The Committee has directed me to invite you to (*sic*) as Group Chief Executive of Rehab Group to attend this meeting to assist the Committee in its examination of these specific matters. In addition to yourself, you may have supporting officials attend with you... A short opening statement to the Committee may be made on these specific matters.”

4.4 It is also potentially of some relevance to note that there were certain discussions which took place during and after that correspondence. From the evidence set out in the affidavits of Ms. Kerins and of the Chair of the PAC, Deputy McGuinness, it is apparent that on 24 January 2014, Ms. Kerins met privately with Mr. McGuinness to discuss her attendance before the PAC. In her affidavit sworn on 21 July 2014, Ms. Kerins states that she was advised by Mr. McGuinness that all that would be required of her before the PAC was to address the payments to Rehab from the HSE, SOLAS and the Department of Justice and Equality, to explain the structure of the Rehab Group and its operations and to declare her salary. In his affidavit sworn on 24 October 2014, Deputy McGuinness deposed that, at that meeting, Ms. Kerins had stated that she would be in a position to disclose her salary to the PAC and that the Board was considering the disclosure of other salaries. He further stated that he had made clear to Ms. Kerins that the concern of the PAC primarily lay with the expenditure of taxpayers’ money and the way in which this funded salaries. For obvious

reasons, given the absence of cross examination, any differences in the accounts given in those affidavits have not been resolved by judicial decision.

4.4 In her affidavit of 21 July 2014, Ms. Kerins stated that, on 21 February 2014, she had a conversation with Mr. McEnery in relation to the order of business of the proposed PAC meeting and what might be expected of the representatives of the Rehab Group. She stated that Mr. McEnery had explained that there was “agitation” about her salary. In his affidavit sworn on 29 October 2014, Mr. McEnery stated that he had expressly informed Ms. Kerins that the PAC had requested to deal with the issue of remuneration and that he had put her on notice that the issue was likely to arise as part of the Committee’s examination of the expenditure of public funds. Further, he indicated that he had stated that there was agitation about salaries in publicly funded health sector bodies in general, rather than specifically in relation to the salary of Ms. Kerins.

4.5 Two questions arise from that sequence of events. The first is the issue as to the proper characterisation of the invitation itself. The second concerns the consequences of the subsequent discussion between the parties.

4.6 On the first question, the Court is satisfied that the initial letter can properly be described as being one of a very general nature which was issued before the Committee sought to bring any precision to an invitation to attend. That initial letter does provide context, both to the subsequent more detailed letter of invitation and also to the discussions to which reference has been made. It must be recalled that the Court is not here looking at a formal legal document which can be parsed and analysed and construed in the manner in which a court might interpret legislation. Rather, it is a letter of invitation which should be interpreted as a reasonable recipient of the letter concerned might be expected to read it. As has been pointed out on many occasions, the proper approach to the interpretation of any documentation which might influence legal rights and obligations is that the text should be

read in context. Part of the context of the invitation letter is, undoubtedly, the earlier letter. However, the later letter does purport to set out the boundaries of the areas likely to be the subject of interview with some level of precision. In the Court's view, a reasonable reader would understand that the hearing was to be confined to the matters specified in the later letter but that the scope of the enquiry under those headings might be informed by the content of the earlier letter.

4.7 Therefore, the general description contained in the earlier letter, which suggested that the PAC might wish the Rehab Group to outline "the outturn and outcome achieved" as a result of State funding, can be taken to have given an indication of the parameters of the matters which might be examined in respect of the three specific funding provisions which were referred to in the invitation letter itself. It would, in the Court's view, be clear to a recipient of such correspondence that the purpose of the invitation was to ask the relevant officers of the Rehab Group (including Ms. Kerins) to deal with questions about what benefit the State was obtaining by way of positive outcomes from the expenditure specifically referred to in the invitation letter. It does not appear to the Court that a recipient of such correspondence could reasonably have expected that there would have been questions about specific governance matters or the way in which the Rehab Group allocated its funds, save only to the limited extent that such matters at a very general level might be considered to potentially impact on the overall outturn and outcome of the specific State expenditure mentioned.

4.8 However, it is also necessary to consider the content of the discussions to which reference has already been made and the question of whether those discussions can properly be said to have extended the scope of the matters to which the invitation can properly be said to have related.

4.9 It does seem that it was made clear that the PAC would enquire into Ms. Kerins' salary. It is important, in that context, to emphasise that the Court is not here concerned with whether the PAC was acting within its remit under its terms of reference, but rather whether the Committee went significantly outside the terms of its invitation to Ms. Kerins. Clearly, any discussions which take place between an invitee and a committee or its representatives, in advance of the attendance by a person before the committee, can legitimately be taken into account in assessing the overall scope of the invitation. If a person agrees that a committee may raise questions on a topic which might not, strictly speaking, come within the written terms of an invitation, then it could hardly be said to be "unfair", in the sense in which that term is being used in the course of this judgment, for the committee to operate within the scope of any extension thus agreed.

4.10 It should be recalled that counsel for Ms. Kerins quite properly accepted at the oral hearing that he could not make any complaint about questions being raised as to Ms. Kerins' salary. As he put it, if that were the only subject of questioning "we would not be here".

4.11 However, with that addition, it seems to the Court that the terms of the invitation to Ms. Kerins were as set out in the detailed letter of invitation and were confined, therefore, to the outturn and outcome of the payments made to Rehab under the three schemes identified in the correspondence. Against that backdrop, it is necessary to turn to what actually transpired at the PAC hearing.

5. The Actions of the Committee

5.1 As was pointed out in the principal judgment and reiterated earlier in this judgment, the assessment with which the Court is engaged involves the proper characterisation of the actions of the committee as a whole, by reference to the invitation issued to Ms. Kerins and the subsequent conduct of the hearing. In one sense, that broad assessment involves two separate, although connected, matters. The first requires an assessment of the extent to which

any particular aspect of the actions of the PAC can be taken to represent the actions of the committee as a whole. The second involves an overall assessment of what actions were actually taken.

5.2 On the first question, it can be said that there are a number of materials in the evidence which was before the High Court from which it is reasonable to infer that, at least generally speaking, the PAC was acting in unison.

5.3 First it is appropriate to note that, in the third affidavit sworn by him in these proceedings, the Chair of the PAC, Deputy McGuinness, at paras. 67 to 75, gave an explanation as to why he did not consider it necessary for each member of the committee to swear a separate affidavit. Deputy McGuinness noted that the PAC acts by a majority but that, in fact, no member of the committee had called for a vote at any stage in the course of the process with which the Court is concerned in these proceedings.

5.4 Likewise, it is clear from a reading of all of the papers that no member of the PAC objected to any particular line of questioning or course of action being adopted by any other member. The Court is mindful, of course, that there may be political considerations which would tend to lean deputies (or indeed, the Chair) away from being seen to interfere with questioning being conducted by other deputies. However, the fact remains that there is no evidence of any resistance of any sort, whether formal or informal, on the part of members of the PAC with the course of action being adopted.

5.5 It also seems to the Court to be relevant to note certain comments made by the Chair in the course of the PAC proceedings. While some of those comments post-date the hearing at which Ms. Kerins attended, they nonetheless purport to reflect the overall approach of the committee generally and are therefore, in the Court's view, relevant in the assessment with which the Court is engaged.

5.6 At a meeting of the PAC on 13 March 2014, the Chair said the following:-

“If we are to complete our analysis of this we need to send a clear message to Rehab and others who come before us that it is far better to co-operate with the committee, deal with the issues which are raised and allow us continue our work. The decisions made this morning in private session, and dealt with again in public session, are decisions made with the agreement of all members of the committee. There was no dissenting voice to the invitations to be issued or to how this was to be approached. It is with the full support of the Committee of Public Accounts we undertake this work. Ministers and Members of both Houses should take note of this before making public comments.” (p. 6 of transcript of the PAC of 13 March 2014).

5.7 In a similar vein, towards the end of the hearing at which Ms. Kerins attended, the Chair said the following:-

“What has not helped us has been the lead-up to this and having to drag that information into the public domain. As Mr O’Toole and Mr. O’Brien have the information, it would be important for Ms Kerins that this information would be put into the public domain ...

The point I am going to make about Mr. Flannery and the remuneration committee relates to the wishes of the Committee of Public Accounts. It was clearly expressed by the members of this committee at our last meeting that Mr Flannery and the remuneration committee be asked to attend and the report on the benchmarking of the salaries be made available as well.” (p. 95 of transcript of the PAC of 27 February 2014)

5.8 The information referred to is information in relation to salaries. It should also, in that context, be recalled that, while Ms. Kerins had agreed to certain disclosures concerning

her own salary, she, and others, were pressed about the salaries of Rehab personnel who had not given such waiver.

5.9 From the above materials, it seems to the Court to be appropriate to conclude that the PAC acted broadly in unison on the relevant occasions. The Chair did not seek to prevent any line of questioning and no other member raised any issues of that type. There were a number of statements to the effect that the committee was acting on an agreed course of action. There is no evidence to suggest that there was any significant view on the committee to the effect that the actions of any member were considered by the committee as a whole to be inappropriate.

5.10 That being said, it does not seem to the Court that it could simply be inferred that the PAC adopted each and every action of each and every member. It might not be reasonable to expect that objection be taken or action invoked in the event that an individual deputy, by means of a throwaway remark or one or a small number of questions, could be said to have acted in a way which the committee might have considered inappropriate. An air of reality has to be brought to any assessment of this type.

5.11 On the other hand, the absence of any intervention or objection and the statements concerning unanimity can properly give rise to an inference that the PAC, as a whole, did not object to persistent and significant actions on the part of a number of deputies which went unopposed.

5.12 In that context, it does have to be said that quite a number of the members of the PAC on the occasion in question did seem to concentrate their questioning on issues which were, at least in general terms, within the scope of the invitation issued to Ms. Kerins. However, it does seem clear to the Court that at least three members of the PAC, including, significantly, its Chair, engaged in questioning which went significantly outside the scope of that

invitation. The questioning concerned was also prolonged. It follows that a significant part of the conduct of the business of the PAC on the occasion in question was directed towards questions which were well outside the scope of the invitation, even if that invitation is to be taken as including Ms. Kerins' salary, for the reasons addressed earlier.

5.13 In coming to that view, the Court has considered in detail the transcript of the meeting of the PAC of 27 February 2014. First, it can be said that significant questioning was directed to Ms. Kerins concerning her predecessor, Mr. Flannery, and any commercial relationships which he had with Rehab or whether he had undertaken consultancy work with Rehab (see pp. 18 and 19 of transcript of 27 February 2014). Furthermore, there was a lengthy exchange concerning earlier correspondence which had taken place between legal representatives of Ms. Kerins and the PAC, which, it would appear, had irritated some deputies. In the light of the fact that the PAC significantly exceeded its remit at the hearing, that correspondence would appear to have been more than justified.

5.14 Thereafter, there was lengthy questioning (at pp. 25 to 27 of the transcript of 27 February 2014) about a commercial relationship between Rehab and a company called Complete Eco Solutions Limited. A relative of Ms. Kerins and Mr. Flannery had an interest in that company. It is difficult to see how the commercial relationship between that company and Rehab came within even a generous interpretation of the terms of the invitation issued to Ms. Kerins.

5.15 While, for the reasons already addressed, the Court proposes to consider this issue on the basis that Ms. Kerins' salary was within the scope of the invitation issued to her, it is also clear that some of the matters pursued at the hearing, such as the age of her company car, could not reasonably be said to come within the terms of the invitation.

5.16 There was also a significant intervention in relation to an incident in which it was said that certain locks had been changed in the offices of the Rehab Group, which incident could have had no bearing on the issues identified in the invitation.

5.17 In addition, it is clear from pp. 95 to 96 of the transcript of 27 February 2014 that the Chair of the PAC, in his concluding remarks, returned to some of the issues raised earlier, such as the correspondence from Ms. Kerins' lawyers and issues concerning Complete Eco Solutions.

5.18 Importantly, it was also suggested to Ms. Kerins that the reason why Rehab had been invited to attend the PAC was because of what one deputy described as a "massive lack of transparency". If that was truly the reason why the invitation was issued, then that reason is wholly absent from the letter of invitation and that would, in itself, provide strong grounds for holding that a significant purpose of the committee hearing was to deal with issues which were not fairly raised in the invitation letter.

5.19 Indeed, it is illustrative to note one aspect of the proceedings which concerned the salaries of a whole range of senior officials of Rehab. The issue arose in the context of the fact that, while Ms. Kerins had agreed that her salary would be mentioned, there was no similar agreement reached in respect of any other members of the staff of Rehab. Nor were the salaries of other members of Rehab within the scope of the written invitation issued. It was clear, therefore, that seeking to explore the salaries of any persons other than Ms. Kerins was outside the scope of the invitation but yet it was vigorously pursued.

5.20 In that context, it should be noted that the then Chief Executive Officer of the HSE, who was also in attendance on the occasion in question, was of the mistaken view that a request from the PAC overrode any confidentiality rights which Rehab or its staff might enjoy. This was based on a view that the Houses of the Oireachtas (Enquires, Privileges and

Procedures) Act 2013 applied. Where compellability powers are conferred on a committee under that legislation, witnesses may well be obliged to answer questions which require them to provide information which might otherwise be subject to a duty of confidentiality (although not legal privilege) or be governed by data protection legislation. However, no compellability powers had been conferred on the PAC on the occasion in question (and, indeed, as noted in the principal judgment, when such powers were subsequently sought, they were refused) and so the CEO of the HSE was mistaken in his view that he was under a legal obligation to provide information which was covered by confidentiality and, arguably, by data protection legislation. Notwithstanding this, the question of providing that information that was pressed by the Committee and such an obligation to provide was erroneously confirmed by the Chair.

5.21 Indeed, it should be noted that one deputy described the questioning in relation to salary levels generally as being one “on which this whole meeting has concentrated more than any others”.

5.22 Throughout the transcript there are further references by some of the deputies concerning issues which are wholly outside the scope of the invitation. An issue was raised concerning a letter sent by lawyers of Ms. Kerins in relation to an article published on the website of IrishCentral.com and further questioning was pursued in relation to a defined benefit pension scheme.

5.23 Finally, there was significant questioning concerning governance issues within Rehab and its accounting practices. Again, these are matters which no fair reading of the invitation could suggest lay within the terms on which Ms. Kerins was requested to attend.

5.24 In fairness, and as already briefly noted, a number of deputies concentrated their questioning on the operation of the various schemes which were funded by the State under

the three schemes identified in the letter of invitation. But, in the Court's view, questioning on areas well outside the terms of that invitation did represent a significant part of the hearing.

5.25 It is also appropriate to touch briefly on events subsequent to the hearing before the PAC on 27 February at which Ms. Kerins attended. This is so for a number of reasons. First, it is clear that the subsequent meeting of the PAC on 10 April 2014 was part of the same process. While it is the case that Ms. Kerins was not present, it is impossible to ignore the subsequent hearing, even for the narrow purpose of identifying whether it can be said that Ms. Kerins was invited to attend on one basis only to find the committee acting in a significantly different way to that envisaged in the invitation. Any problems with a committee so acting could not be solved by the simple expedient of separating its business into two separate meetings. Furthermore, it is possible to have regard to what transpired at the second meeting for the purposes of forming an overall assessment of the actions of the committee at both meetings.

5.26 It is a striking feature of the conduct of the second meeting that, apart from some ongoing questions about Ms. Kerins' salary, none of the issues raised by any of the members seemed to fall within the subject matter originally notified to Ms. Kerins and Rehab. Much of the business of the committee was concerned with what I think can only be characterised as strenuous efforts to seek to elicit from members of the Board of Rehab an acceptance that they had been dominated by Ms. Kerins and that she had damaged the reputation of the organisation, together with attempts to persuade the Chairman of Rehab to go into details of a staff complaint against Ms. Kerins.

5.27 Furthermore, there is no indication of any dissent to the general conduct of the meeting being raised by any member and nothing in the transcript to indicate that the PAC

was not acting collectively, at least so far as those members who were present on that occasion are concerned. That analysis of the second meeting only confirms the conclusion already reached to the effect that the PAC acted, at its hearings, in a manner which was significantly at variance with the invitation originally issued to Ms. Kerins.

5.28 For the reasons already analysed, it is also clear that those actions occurred without objection from any other members of the PAC and in circumstances where it can properly be concluded that the committee acted broadly on the basis of a consensus.

5.29 Against that backdrop, it seems to the Court to be appropriate to characterise the actions of the PAC as a whole as being such that they can be said to have condoned the significant departure by at least three deputies from the terms of the invitation issued to Ms. Kerins, extended to include reference to her salary. On that basis, the Court concludes that, on the evidence, it is appropriate to characterise the actions of the PAC as a whole as being ones where Ms. Kerins was invited to attend before it on one basis but where the committee acted on a significantly different basis once she attended.

5.30 For the reasons addressed in the principal judgment, the Court has already expressed the view that, in the event that such a conclusion could be reached on the evidence, it would be appropriate in all of the circumstances of this case to make a declaration that the committee acted unlawfully.

6. Conclusions

6.1 As already noted, this judgment is concerned only with the two specific questions which were left over for further consideration after the principal judgment of the Court was delivered. The first question concerned whether it would now be appropriate to join the Dáil as a respondent in these proceedings in substitution for the individual members of the PAC and the Clerk of the Dáil. Counsel for those parties, quite properly in the view of the Court,

made no objection to that course being adopted and the Court will, therefore, make an order substituting the Dáil as an institution for the respondents concerned.

6.2 The second issue was as to whether it could be appropriate, on the evidence, to characterise the actions of the PAC as a whole as being such that it could be said that Ms. Kerins was invited to attend before the committee on one basis but where the committee acted in a significantly different manner once she attended. For the reasons analysed in this judgment, the Court is of the view that it is appropriate to so characterise the actions of the PAC. The Court has already indicated in the principal judgment that, in the event that such a conclusion was reached on the evidence at the second hearing, the Court would grant Ms. Kerins an appropriate declaration.

6.3 In the circumstances, the Court will grant a declaration in the following terms:-

A declaration that, by conducting a public hearing in a manner which was significantly outside of its terms of reference and which also departed significantly from the terms of an invitation by virtue of which a citizen was requested to attend, the Public Accounts Committee of Dáil Éireann acted unlawfully.

6.4 As noted in the principal judgment, the appeal which was before this Court was concerned with the outcome of a first module of the trial before the Divisional High Court. It appears to this Court that the making of a declaration in those terms brings to an end that first module. It is a matter for the parties and their advisors to consider whether, and if so in what way, any issues which were not determined in the first module and which, therefore, potentially remain alive before the High Court, should be progressed, if such a course of action is considered desirable. In that context, the Court reiterates the comments made at paras. 12.4 to 12.8 of the principal judgment. Any dispute between the parties in relation to the further progress of these proceedings should be determined initially by the High Court.