



SUPREME COURT

**Respondent's Notice of the Sixteenth and
Seventeenth Named Respondents (the "State Respondents")**

Supreme Court record number	2017 / 000071
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[Title and record number as per the High Court proceedings]

Angela Kerins	V	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 [2014 431 JR]
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Date of filing	19 May 2017
Name of State Respondents	Ireland and The Attorney General
State Respondents' solicitors	The Chief State Solicitor
Name of appellant	Angela Kerins
Appellant's solicitors	Eames Solicitors

1. Respondent Details

Where there are two or more respondents by or on whose behalf this notice is being filed please also provide relevant details for those respondent(s)

State Respondents' full names	Ireland and The Attorney General
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The State Respondents were served with the application for leave to appeal and notice of appeal on:	5 May 2017
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The State Respondents intend:

<input type="checkbox"/>	to oppose the application for an extension of time to apply for leave to appeal
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<input type="checkbox"/>	not to oppose the application for an extension of time to apply for leave to appeal
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<input type="checkbox"/>	to oppose the application for leave to appeal
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<input checked="" type="checkbox"/>	not to oppose the application for leave to appeal
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☒ to ask the Supreme Court to dismiss the appeal

☐ to ask the Supreme Court to affirm the decision of the Court of Appeal or the High Court on grounds other than those set out in the decision of the Court of Appeal or the High Court

☒ Other (please specify)

The State Respondents ask the Supreme Court to hear its appeal against the decision of the Divisional Court of 5 April 2017 on the issue of costs on the same date as the present appeal

If the details of the respondent's representation are correct and complete on the notice of appeal, tick the following box and leave the remainder of this section blank; otherwise complete the remainder of this section if the details are not included in, or are different from those included in, the notice of appeal.

Details of respondent's representation are correct and complete on notice of appeal: ☐

State Respondent's Representation

Solicitor			
Name of firm	The Chief State Solicitor's Office		
Email	Caitriona_Keane@csso.gov.ie		
Address	Osmond House Little Ship St Dublin 8	Telephone no.	
		Document Exchange no.	
Postcode		Ref.	
How would you prefer us to communicate with you?			
<input type="checkbox"/>	Document Exchange	<input checked="" type="checkbox"/>	E-mail
<input checked="" type="checkbox"/>	Post	<input type="checkbox"/>	Other (please specify)

Counsel			
Name	Maurice Collins SC		
Email	maurice@mauricecollins.ie		
Address	2 Arran Square Dublin 7	Telephone no.	8729533
		Document Exchange no.	812015
Postcode			

Counsel			
Name	Conor Power SC		
Email	conor@conorpower.net		
Address	Law Library Distillery Building 145-151 Church St Dublin 7	Telephone no.	4449896
		Document Exchange no.	816564
Postcode			

Counsel	
Name	John Fitzgerald BL
Email	johnfitzgerald@lawlibrary.ie

Address	Law Library	Telephone no.	8175624
	Distillery Building 145-151 Church St Dublin 7	Document Exchange no.	816619
Postcode			

If the Respondent is not legally represented please complete the following

Current postal address
Telephone no.
e-mail address

How would you prefer us to communicate with you?			
<input type="checkbox"/>	Document Exchange	<input type="checkbox"/>	E-mail
<input type="checkbox"/>	Post	<input type="checkbox"/>	Other (please specify)

2. Respondent's reasons for opposing extension of time

If applicable, set out concisely here the respondent's reasons why an extension of time to the applicant/appellant to apply for leave to appeal to the Supreme Court should be refused

n/a

3. Information about the decision that it is sought to appeal

Set out concisely whether the respondent disputes anything set out in the information provided by the applicant/appellant about the decision that it is sought to appeal (Section 4 of the notice of appeal) and specify the matters in dispute:

- (i) While the State Respondents do not take issue with the information furnished in Section 4 of the Notice of Appeal insofar as same accurately records findings made by the Divisional Court in its judgment delivered on 31 January 2017 (*"the Judgment"*) they take issue with the criticisms made of the Judgment included in Section 4 and in particular at paragraphs 8, 10, 11 and 17.
- (ii) The State Respondents take issue with paragraphs 4, 10 and 16 insofar as they suggest that the Divisional Court made findings that the PAC had acted *ultra vires*. No such findings were made by the Divisional Court.

4. Respondent's reasons for opposing leave to appeal

If leave to appeal is being contested, set out concisely here the respondent's reasons why:

The State Respondents are not contesting the application for leave to appeal to the Supreme Court. They also submit that the Court should allow their intended appeal against the related decision of the Divisional Court, given on 5 April 2017, whereby the Court declined to award the State Respondents their costs against the Applicant and made no order in relation to those costs.

For the avoidance of doubt, the State Respondents take issue with the repeated assertions in this section of the Applicant's Notice that the Divisional Court departed from, reversed and/or effectively reversed the decisions of this Court in *In Re Haughey* or *Maguire v Ardagh*.

5. Respondent's reasons for opposing appeal if leave to appeal is granted

Please list (as 1, 2, 3 etc in sequence) concisely the Respondent's grounds of opposition to the ground(s) of appeal set out in the Appellant's notice of appeal (Section 6 of the notice of appeal):

- (i) Given the repetitive and overlapping nature of the Grounds of Appeal, the State Respondents do not propose to address each such Ground seriatim, but take issue with all such Grounds as if set out herein and traversed individually. Rather, it is proposed to seek to identify and address the central issues raised in the Notice of Appeal and the Judgment.
- (ii) The Grounds of Appeal include arguments which were not in fact advanced to the Divisional Court and the State Respondents will submit that such arguments cannot properly be advanced in this Court. In particular, the arguments advanced at Grounds 6.3(iv), 6.3(v) and 6.4(iii) are new arguments which were not made to the Divisional Court.
- (iii) The Divisional Court correctly found that the Applicant's attendance before the PAC was voluntary. On the evidence, no other finding was open having regard to the fact that PAC did not have, and not purport to exercise, any powers to compel the attendance of the Applicant before it. The Houses of the Oireachtas (Inquiries,

Privileges and Procedures) Act 2013 (*“the 2013 Act”*) provides a clear statutory framework in which Oireachtas committees may be granted powers of compellability. Such powers were never granted to the PAC in relation to its examination of Rehab and it never had power to compel the attendance of the Applicant before it or the provision of information by her or in relation to her.

- (iv) Apart from the objection that this ground was not advanced before the Divisional Court, and the further objection that there was no evidence whatever before the Court to that effect in any event, the argument at Ground 6.4iii to the effect that the Applicant was not a volunteer before the PAC in circumstances where she had been directed to attend by her employer is wrong in law. The relevant issue was whether the Applicant had been compelled to attend by the PAC in the exercise of a power to compel such attendance, which clearly she was not as the Divisional Court corrected held.
- (v) The Divisional Court further correctly found that the PAC was not exercising adjudicative functions. Insofar as the Applicant seeks to contend that the members of the PAC made *“findings”* in relation to her, the State Respondents say that the utterances of which the Applicant complained were, as lawfully found by the Divisional Court, *“expressions of opinion by the relevant members devoid of any legal force”* and cannot properly be characterised as *“findings”* such as were at issue in *In Re Haughey* or *Maguire v Ardagh*.
- (vi) Having regard to these findings (voluntary attendance; no exercise of adjudicative functions) the Divisional Court correctly distinguished the decisions of this Court in *In re Haughey* and *Maguire v Ardagh*. Far from purporting to reverse or depart from those decisions, it is evident from the Judgement that the Divisional Court was scrupulous in its analysis and application of them.
- (vii) The Divisional Court was correct in its finding that Article 15.13 applies to proceedings of Committees of the House of the Oireachtas as it applies to the Houses of the Oireachtas and was therefore correct in finding that section 92 of the 2013 Act is merely declaratory of the position under Article 15.13.
- (viii) The State Respondents take issue with the Applicant’s contention that *In Re Haughey* and *Maguire v Ardagh* are authority for the proposition that Article 15.13 is not applicable to the proceedings of Oireachtas Committees. There is

nothing in those cases to support such an interpretation and existing authority supports the approach taken by the Divisional Court.

- (ix) The Applicant's action was premised on asking the Court to engage in an examination of utterances of members of Dáil Éireann in the course of their proceedings before the Public Accounts Committee in February and April 2014, for the purpose of directly impugning the tone and tenor of those utterances with the object of advancing her claim for damages (which the Divisional Court was correct to characterise as "*the essence of the applicant's case*"). Such an exercise is expressly excluded under Articles 15.12 and 15.13 of the Constitution and it is pleaded that the Divisional Court was clearly correct in holding that the Appellant's claim was non-justiciable in the light of Article 15.13.
- (x) The Divisional Court correctly concluded that the Applicant was seeking to make the Oireachtas amenable to the jurisdiction of the Court in respect of utterances within the scope of Article 15.13 and that, in light of the express and imperative terms of that provision, that cannot be done. Before the Divisional Court, the Applicant failed to identify any basis on which her action could properly be entertained by the Court having regard to Article 15.13 and her Grounds of Appeal equally fail to do so.
- (xi) Rather than providing any basis on which the Courts might review the exercise of the powers of the Public Accounts Committee as pleaded at Ground 3(i) of the Notice of Appeal, the 2013 Act (which the Applicant does not challenge in these proceedings) confers absolute immunity on members of the Oireachtas in respect of "*any utterance in or before a committee*" (section 92).
- (xii) The State Respondents take issue with the Applicant's contentions to the effect that the Divisional Court misunderstood the decision of this Court in *Callely v Moylan* or misunderstood the status of, and/or misapplied, the joint judgment of O'Donnell and Clarke J.
- (xiii) In conclusion, the State Respondents plead that the Applicant's Grounds of Appeal do not disclose any error on the part of the Divisional Court or any basis for reversing the Judgement.

Name of counsel or solicitor who settled the grounds of opposition (if the Respondent is legally represented), or name of respondent in person:

JOHN FITZGERALD BL

CONOR POWER SC

MAURICE G COLLINS SC

6. Additional grounds on which decision should be affirmed

Set out here any grounds other than those set out in the decision of the Court of Appeal or the High Court on which the Respondent claims the Supreme Court should affirm the decision of the Court of Appeal or the High Court:

Are you asking the Supreme Court to:

depart from (or distinguish) one of its own decisions?

☐

Yes

☒

No

If Yes, please give details below:

make a reference to the Court of Justice of the European Union?

☐

Yes

☒

No

If Yes, please give details below:

Will you request a priority hearing?

Yes

x

No

If Yes, please give reasons below:

Signed: Eileen Creedon
(Solicitor for) the respondent

Please submit your completed form to:

**The Office of the Registrar to the Supreme Court
The Four Courts
Inns Quay
Dublin**

This notice is to be lodged and served on the appellant and each other respondent within 14 days after service of the notice of appeal.