

**Seán Ó Fearghaíl, TD**  
**Ceann Comhairle**  
**Dáil Eireann**  
**Leinster House**  
**Kildare Street**  
**Dublin 2**

**15 May 2020**

**Dear Ceann Comhairle,**

The Board of the Senior Civil Service Association has directed me to write to you regarding the arrangements governing the attendance of the Association's members at Oireachtas committee meetings. The Senior Civil Service Association is the representative body for civil servants at Assistant Secretary and higher grade equivalents, the majority of whom work for the executive branch of government. Our objective in writing to you is to ensure that when our members are called as witnesses before Oireachtas committees they can contribute fully to the important work of committees while having their rights to constitutional and natural justice fully respected.

At the outset, it must be emphasised that the Association accepts and recognises the fundamental importance and value of the responsibility of the Government to Dáil Éireann as part of the State's constitutional democratic balancing framework. Providing for that accountability represents a very significant proportion of our members' work. The Association recognises that this constitutional framework ensures that the obligations and duties of the three branches of Government work to serve the interests of the people while respecting the prerogatives of the other branches, and the obligation on all three branches of government to operate with procedures that are fair and that respect the rights to constitutional and natural justice which all citizens enjoy.

As Ceann Comhairle, we recognise that you are committed to ensuring that the Dáil does its work in holding the Government responsible to it in a manner that is fair, impartial, and has full regard to the rights of all citizens. As the 33rd Dáil has embarked on the establishment of committees which will now look to invite witnesses to attend before them, senior civil servants which the Association represents are committed to assisting such committees in their

work. However, both our members and the general public are aware that the Supreme Court found in a recent seminal case that a committee of the Dáil had acted unlawfully in its treatment of a witness. That case raised questions concerning serious harm to the health, wellbeing and reputation of a witness.

This decision by the Supreme Court is unprecedented. It is an indicator of their concerns in respect of the treatment of witnesses appearing before Oireachtas committees and of the need for appropriate mechanisms within the Oireachtas to protect the rights of witnesses. A lack of fair procedures would be severely damaging, not only to the reputation and wellbeing of witnesses, but also to the reputation of committees of the Oireachtas and their capacity to properly scrutinise the actions of Government in a manner which meets constitutional norms and the perception of fairness. The Houses have been conferred by the Constitution with strong privileges for good reason, but there is a corollary obligation on the Houses to vindicate the rights of individuals where the role of the Courts is constrained. As the Supreme Court noted in the Judgment of the Court delivered on the 27th February, 2019 by the Chief Justice, Mr. Justice Clarke:

*"9.27 It is important to start with a re-statement of the purpose of the privileges and immunities conferred on the Houses and their committees by the relevant provisions of Article 15. Those provisions are designed to permit free speech within the Houses so as to permit the constitutional functions of the Oireachtas to be carried out in a manner which is not unduly restrained by the risk of outside interference from the courts. The provisions concerned are also designed to ensure public knowledge of how those constitutional functions are being performed in a manner that is not constrained inappropriately by the risk of legal action. That the constitutional rights of citizens do not disappear at the gates of Leinster House but rather are primarily to be protected within the bounds of the Houses of the Oireachtas by the Houses themselves is supported by the constitutional entitlement of those Houses to enforce rules and standing orders without outside interference."*

Given this context, it may be timely to revisit the conduct of hearings by Oireachtas committees established following this year's General Election. Senior civil servants are now, by virtue of the jobs they hold, being asked to attend at Oireachtas committees in a situation where there is need to ensure fair procedure and appropriate redress mechanisms. No matter what redress might be offered after appearing before a committee, damage that may be done to a person's reputation and health cannot be undone. It is important therefore, in light of the matters which have been before the courts, that the Oireachtas has in place appropriate rules and procedures to protect and vindicate the rights of witnesses.

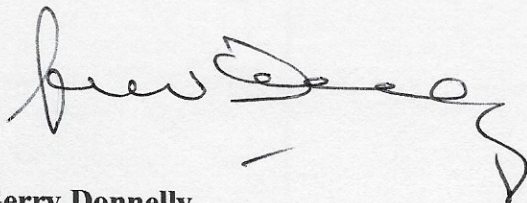
We would be grateful, therefore, if you could advise us as to what improved rules and arrangements in respect of fair procedure the Dáil has put in place, or is in the process of putting in place, to ensure that witnesses are:

- Given sufficient notice of an invitation to attend a committee in order to prepare properly and having proper regard to the very demanding and extended work pressures they may be facing;
- given sufficiently specific notice of the issues to be raised by a committee;
- not asked questions beyond the scope of a committee's remit;
- not subjected to aggressive or bullying behaviour, contrary to fair procedure and natural justice;
- not asked to disagree or imply disagreement with Government policy, if civil servants, as this is contrary to the law;
- given an adequate opportunity to answer questions put to them;
- advised of their right to be accompanied by an adviser;
- given adequate breaks and not asked to attend for unreasonably prolonged periods, particularly given current public health restrictions around length of meetings;
- made aware of the duty of the Chair of an Oireachtas committee to ensure fair procedures are applied to witnesses.

The Association recognises that its members, like all civil servants, are subject to Public Service legislation, and rules and obligations set out by the Minister for Public Expenditure and Reform. Developing the structures and arrangements for effective and fair procedures may raise issues in relation to the framework under which civil servants work and the Association also intends to raise these issues with the relevant Departments.

The Association also wishes to acknowledge the pressures on you and other members of the new Dáil, especially at the current time, and the associated workload. We look forward to hearing from you, and to the ongoing engagement of our members with Oireachtas committees in a fruitful, productive and mutually respectful manner.

**Yours sincerely,**

A handwritten signature in black ink, appearing to read 'Gerry Donnelly', written in a cursive style.

**Gerry Donnelly,  
Secretary,  
Senior Civil Service Association**