



## Ceann Comhairle

**Mr. Gerry Donnelly,  
Secretary,  
Senior Civil Service Association,  
Fleming's Hall,  
Fleming's Place,  
Dublin 4.**

18 May 2020

Dear Mr. Donnelly,

I refer to your letter dated 15 May 2020 on behalf of the Senior Civil Service Association in relation to the arrangements governing the attendance of the Association's members at Oireachtas Committee meetings in the context of the establishment of Committees by the Thirty-Third Dáil and in light of the decision of the Supreme Court in *Kerins v McGuinness and Ors* [2019 IESC 11, IESC 41].

In its decisions, the Supreme Court expressly recognised that Committees form an essential part of the workings of parliament and acknowledged the ability of the Houses of the Oireachtas to conduct their legitimate constitutional business through the work of their Committees. As Ceann Comhairle, I acknowledge that the important work of Oireachtas Committees in the public interest must be conducted in a manner which respects and appropriately protects the rights of witnesses as set out in the decision of the Supreme Court. To this end, in June 2019 the Dáil Committee on Procedure, which I chair, and the Seanad Committee on Procedure and Privileges jointly tasked a working group of officials with considering the parliamentary response to the judgments and reporting back to the Committees.

The Working Group, at my specific request, sought submissions from relevant stakeholders including the Secretaries General of all Government Departments who were written to on an individual basis on 25 June 2019. Regrettably no Secretary General or Government Department made a submission as part of this process; nor was a collective one made on their behalf by the Civil Service Management Board.



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That having been said, the issues raised in your letter form the core part of the work of the Group, which is nearing completion of its report, which will be brought to the Dáil Committee on Procedure for consideration at an early date. The report will make recommendations on the key issues raised by the Supreme Court, namely,

1. **Remit:** the need for Oireachtas Committees to have clear terms of reference and to remain within them;
2. **Invitations:** the need for clarity of invitations issued from a Committee to witnesses, and for the Committee to adhere to the terms of such invitations;
3. **Conduct of meetings:** the conduct of meetings by the Committee as a whole, and the supervision of such meetings by the Chair; and
4. **Remedies:** the need for remedies to be available to persons who may be affected by a breach of their rights by a Committee.

Amendments to the Standing Orders of both Houses will be required as a result of the report and, once the Dáil Committee on Procedure has completed its consideration of the recommendations, these amendments will be submitted to the Dáil Committee on Standing Orders and Dáil Reform and to the Seanad Committee on Procedure and Privileges. Thereafter, they will be tabled as motions in both Dáil and Seanad Éireann.

Pending the completion of this work which is being progressed as a priority, it is important to note that procedural changes were put in place in 2014 following the Committee meetings earlier that year which gave rise to the *Kerins* litigation. I draw your attention to the *Protocol for persons giving evidence to Committees of the Houses of the Oireachtas* which was adopted by the Dáil and Seanad CPPs in mid-2014 and is provided to all witnesses who appear before Oireachtas Committees. The protocol which is available on [oireachtas.ie](http://oireachtas.ie)<sup>1</sup> sets out detailed guidelines in relation to the purpose of meetings, the role of the Chair, treatment of witnesses and other matters relating to the conduct of Committee meetings, including notice periods, meeting breaks, and the accompaniment of witnesses. The protocol (at page 3) sets out some key principles governing the conduct of Committee meetings and in particular provides that the Chairman of the Committee will “endeavour to ensure that meetings are conducted in a manner consistent with the protocol, that each witness is given a fair hearing at the meeting and that any request made by a witness is given due consideration and not unreasonably refused”.

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<sup>1</sup> [https://data.oireachtas.ie/ie/oireachtas/parliamentaryBusiness/other/2017-05-24\\_protocol-for-persons-giving-evidence-to-committees-of-the-houses-of-the-oireachtas\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/parliamentaryBusiness/other/2017-05-24_protocol-for-persons-giving-evidence-to-committees-of-the-houses-of-the-oireachtas_en.pdf)



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I note the request in your letter for assurance that witnesses are “*not subjected to aggressive or bullying behaviour, contrary to fair procedure and natural justice*”. The inference of this request is most unfortunate. In a strict legal sense, the Supreme Court made a distinction between policing the tone of individual members’ statements, which are not justiciable, and reviewing the conduct and actions of the Committee as a whole. As the protocol makes clear, witnesses are encouraged to raise any concerns in relation to fair procedures and natural justice with the Chairman of the Committee, whose role is to ensure that the Committee meeting is orderly, relevant and fair.

As the Special Committee on COVID-19 Response is the first Committee to engage with witnesses in the new Dáil, I will bring this correspondence to the attention of the Chairman of the Committee. All Oireachtas Committees are briefed as a matter of course on the legal framework for their work, including the principles set out in the *Kerins* case, and further briefing will be provided on the new rules and Standing Orders once these are adopted by the Houses.

Yours sincerely,

Seán Ó Feargháil, T.D.

Ceann Comhairle.