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By Post and Email: <redacted>

Our Ref: redacted **Your Ref**: redacted **Date**: 20 July 2016

Re: **Redacted v Kevin John Mullan, Minister for Education and Skills, the Attorney General and Ireland - High Court Record Number 2011/5625P**

Dear Sirs,

We refer to the above matter in which. as you are aware, we act on behalf of the Minister for Education and Skills, the Attorney General and Ireland ("the State Parties").

Judgment has now been delivered by the High Court (Noonan J.) in three related cases, Wallace v. Creevey and Others [2016] IEHC 294[1], Naughton v. Drummond and Others [2016] IEHC 290[2] and Kennedy v. Murray and Others [2016] IEHC 291[3]. Copies of those judgments are available at the webpages identified in the hyperlinks set out below, or at the judgments sections of the Courts Service website at http://courts.ie/Judgments.nsf/Webpages/HomePage?OpenDocument&l=en&p=055.

In those judgments, the High Court has confirmed, in the context of claims of historic sexual abuse alleged to have occurred in schools, that there is no cause of action against the State Parties, and such claims will be struck out on that basis. That is so whether such claim is based on the European Convention on Human Rights ("or other international conventions"), negligence or vicarious liability. We highlight the following portions of the judgment in Wallace, from para. 46- 50, for ease of reference: -

> *"46. It is thus clear that a breach by the State at international level of any provision of the Convention, such as found by the ECtHR in O'Keeffe, cannot give rise to justiciable rights under domestic law at the suit of the plaintiff. Insofar therefore as the plaintiff's personal injuries summons purports to rely directly on articles of the Convention or other international conventions, such claim is bound to fail. Although no claim under the 2003 Act is expressly pleaded, even if it were such claim would also be bound to fail as the matters complained of long predate the coming into effect of that statute.*
>
> *47. What remains therefore are the plaintiff's claims in negligence and vicarious liability against the State defendants. Insofar as vicarious liability is concerned, the plaintiff accepts that under the law as*

[1] https://www.courts.ie/viewer/pdf/5c267cc1-4388-4ff7-be60-2d0cf1a909ba/2016_IEHC_294_1.pdf/pdf#view=fitH
[2] https://www.courts.ie/viewer/pdf/b7444c74-3720-4b8f-b94f-0cb1502b639e/2016_IEHC_290_1.pdf/pdf#view=fitH
[3] https://www.courts.ie/viewer/pdf/2424e608-4a2b-478c-a372-c73efd017727/2016_IEHC_291_1.pdf/pdf#view=fitH

enunciated by the Supreme Court in O'Keeffe v. Hickey*, such claim cannot succeed. The plaintiff however, seeks to argue that having regard to the ECtHR decision in* O'Keeffe v. Ireland*, the Supreme Court may be prepared to revisit its earlier decision. That may or may not be so but I am bound to apply the law as it stands and even if this case were on all fours with* O'Keeffe v. Hickey*, it would clearly have to fail on the issue of vicarious liability. It is of course in any event separately distinguishable by virtue of the fact that in the present case, there was no prior complaint of abuse by the second defendant.*

48. Finally on the issue of what might be termed primary negligence, the plaintiff has sought to argue that the Supreme Court did not expressly rule on this issue and it is therefore still open. That however appears to be incorrect. The plaintiff in O'Keeffe v. Hickey *did in fact rely on primary negligence as well as vicarious liability, was unsuccessful on both fronts in the High Court but only pursued her appeal before the Supreme Court on the issue of vicarious liability. Even had this ground been pursued, it is evident from the judgment of Hardiman J. that it would have failed...*

49. In the light of the foregoing, I am of the opinion that quite apart from any limitation issue, the plaintiff's claim herein against the State defendants is bound to fail.

50. For the reasons explained therefore, I am satisfied that the plaintiffs claim against the State defendants is clearly and manifestly statute barred and separately, that it is in any event bound to fail. I will accordingly...strike out the plaintiffs claim as against those defendants.

In light of the passages set out above, the Plaintiffs claims in these proceedings as against the State Parties cannot succeed and are bound to fail.

Further, in this case, prior to the institution of proceedings against the State Parties, the Plaintiff issued proceedings as against Kevin John Mullan in respect of the same subject matter on 22 June 2011. That situation also arose in the judgments referred to. Those Plaintiffs argued that by virtue of s.48A of the Statute of Limitations (as inserted by the Statute of Limitations (Amendment) Act 2000) their actions were not statute barred or, alternatively, that the delivery of the decision of the ECtHR in *O'Keeffe v. Ireland* constituted their "*date of knowledge*" within the meaning of the Statute of Limitations (Amendment) Act 1991. Both propositions were rejected. We highlight the following passage which appears in the case of Kennedy at para. 25 - 26: -

" ... the plaintiff did in fact make a reasoned decision to being an action arising out of the sexual abuse committed against him. That decision, clearly made on legal advice, was to sue the Christian Brothers and not the State ... Plainly therefore, the plaintiff's decision not to sue the State was entirely unrelated to any question of disability, of which there is in any event no evidence ... There is no suggestion, nor could there be on the evidence, that the plaintiff ceased to be under a disability insofar as suing the Christian Brothers was concerned but such disability somehow continued in relation to the State defendants".

Further, at para. 40 - 41: -

"It seems to me that as a matter of principle, the proposition that a cause of action, apparently long since statute barred, can be somehow revived or indeed conferred ab initio as a result of an expansive development of the law by judicial decision, cannot be well founded. As the English Court of Appeal points out, the potential for the bringing of stale claims would be virtually limitless. It would militate

> *against the very purpose for which statutes of limitation exist, namely to protect parties being unfairly pursued by claimants who fail to act in a timely manner and to bring certainty and finality to the pursuit of litigation. In my view therefore, the effect of the clear concluding words of s. 2 (1) of the 1991 Act is that a party's date of knowledge for the purposes of that Act cannot be reckoned by reference to subsequent judge made law. It accordingly follows that the plaintiff's claim against the State defendants is manifestly and clearly stature barred".*

In this case, the Plaintiff also sued the <redacted order> in respect of the same alleged factual matrix, more than 2 years prior to purporting to join the State Parties to those proceedings. Order 15 rule 13 of the Rules of the Superior Courts provides that where a Defendant is joined to proceedings the proceedings are, in respect of that person, "*deemed to have begun only on the making of the Order adding such a party*". Accordingly, the Plaintiffs claim as against the State Parties is also manifestly and clearly stature barred.

On the basis of the circumstances of your client's claim, as set out in the pleadings and other documents and information in our possession and correspondence to date, we believe that this is not a case which comes within the *ratio* of the judgment of the European Court of Human Rights in *O'Keeffe v Ireland*.

The State Parties are prepared to bear their own costs in these proceedings to date, on the strict condition that, in consideration of that forbearance, within 21 days of the date of this letter you file in the Central Office and serve on us Notice of Discontinuance of this action on behalf of the Plaintiff as against the State Parties.

Further, should we fail to hear from you with confirmation that the Plaintiff accepts that offer, the State Parties reserve their rights in full in terms of seeking to bring finality to this matter.

We look forward to hearing from you.

Yours faithfully



Hayes solicitors