

An Roinn Sláinte
Department of Health
Secretary General



Ms Éills Fallon
Committee of Public Accounts

By email: PAC@oireachtas.ie

29 April 2021

Our Ref: HEA-SG-00285-2021

Dear Ms. Fallon,

Thank you for your letter of 16 April following the meeting of the Committee on 31 March which considered correspondence from Deputy Matt McCarthy on 26 March.

I appreciate the concern of the Public Accounts Committee in addressing the allegations made in the RTE Investigates broadcast of 26 March. I have taken these allegations extremely seriously.

Allegations had previously been brought to the Department of Health's attention in February 2020, through a protected disclosure. An independent review completed by Senior Counsel in November 2020 was published on 21st April.

The Report of the Department of Health team set up to establish the facts in respect of specific allegations by RTÉ Primetime Investigates Programme was published on 21st April. This report deals with each of the allegations made in the programme and related articles on the website.

I want to assure the Committee as representatives of parents, families and other stakeholders that the Department of Health has never gathered sensitive medical and educational information on children involved in court cases in the manner portrayed in the recent media reports. There is no evidence that the Department of Health was secretly compiling dossiers on children with autism involved in Special Educational Needs "SENS" litigation as alleged. Therefore, the matter of costs in the creation and maintenance of such dossiers does not arise.

The approach of both the Department of Education and the Department of Health to students with special educational and health needs is to seek to ensure the provision, along with other relevant public bodies, of the appropriate services for those students as best it can. It is only where the suitability of such services is contested that litigation ensues.

The Minister for Health is named from time to time as a defendant in cases taken against the State. These cases include those related to Special Educational Needs ("SEN"), many of which date back to the early 1990s and tend to have been taken against the Minister for Education, the Minister for Health, the Health Service Executive (HSE), 'Ireland' and the Attorney General (AG). The Minister for Education and the Minister for Health are generally named as co-defendants in these cases and both Departments are jointly represented by the Chief State Solicitor's Office (CSSO).

It is in the public interest that State parties to litigation manage those proceedings as efficiently as possible. In pursuing a well-managed approach to litigation in the public interest, Government Departments regularly adopt a joint strategy in defending litigation.

Given the complexities of "SENS" litigation, the time necessary to either settle or defend these cases, and in recognition that the plaintiffs require coordinated responses in education and health, it was agreed a number of years ago between senior management in the Department of Education, the Department of Health, and the HSE, that valuable and limited State resources should be concentrated on resolving the cases, where it is possible to do so. This is not always possible, due to the demands made.

Should the State parties not act in coordination, it would not be possible to either provide a resolution to the plaintiff that is appropriate and complete, or otherwise, where necessary, to defend proceedings in a proper fashion. This also ensures a consistent approach and that applicants in similar positions are treated in similar fashion and limits the possibility of some plaintiffs being treated more favourably than others, due to lack of knowledge as to how other plaintiffs in similar circumstances have had their cases dealt with.

I hope that the above is helpful and I am happy to provide any other clarifications should they be required.

Yours sincerely,



Robert Watt
Secretary General