

*(Second Supplementary Order Paper)*

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**DÁIL ÉIREANN**

*Dé Máirt, 12 Samhain, 2019*  
*Tuesday, 12th November, 2019*

2 p.m.

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**GNÓ COMHALTAÍ PRÍOBHÁIDEACHA**  
**PRIVATE MEMBERS' BUSINESS**

*Fógra i dtaobh Leasú ar Thairiscint: Notice of Amendment to Motion*

**245.** “That Dáil Éireann:

notes that:

- on 5th February, 2019, the Minister for Justice and Equality announced the appointment of District Court Judge, Gerard Haughton, to conduct a scoping exercise into certain matters surrounding the circumstances leading to the death of Shane O’Farrell;
- the purpose of the initial scoping exercise was to determine what further steps could be taken, and the Minister for Justice and Equality stated that Judge Gerard Haughton was ‘free to recommend any course of action’ which he considered appropriate;
- Judge Gerard Haughton was provided with terms of reference but the Minister for Justice and Equality stated in the Dáil and in correspondence to the O’Farrell family that they would have an opportunity to consult with the Judge on those terms;
- on 24th April, 2019, Judge Gerard Haughton submitted final terms of reference to the Minister for Justice and Equality; and
- on 29th July, 2019, the Department of Justice and Equality rejected the terms of reference submitted by Judge Gerard Haughton and provided terms of reference significantly narrower than both the Judge’s terms of reference and those provided by the Minister for Justice and Equality on 5th February, 2019;

recognises that:

- on 14th June, 2018, a majority of Dáil Éireann members voted in favour of a motion calling on the Government to immediately establish a public inquiry into the death of Shane O’Farrell; and
- on 13th February, 2019, a motion was passed by the members of Seanad Éireann calling for the immediate establishment of a public inquiry into the death of Shane O’Farrell; and

calls on the Government to:

- acknowledge that the Department of Justice and Equality’s terms of reference do not address the needs of either the O’Farrell family or the Resolution of the Dáil of 14th

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June, 2018; and

- adopt the following terms of reference immediately for the scoping exercise as drafted by Judge Gerard Haughton who consulted with the O’Farrell family, and which terms reflect the spirit of the Resolution of the House:

‘In light of the public controversy surrounding the circumstances of the death of Mr. Shane O’Farrell on 2 August 2011, and having regard to the motion passed by Dáil Éireann on 14 June 2018 and Seanad Éireann on 13 February 2019, calling for the establishment of a public inquiry in the matter and having regard to the State’s obligations pursuant to Article 40.3 of the Constitution and the European Convention of Human Rights and in particular Articles 1, 2, 5, 6, 8 and 13 thereof as set out in the schedule below:

1. To review the investigations that have already taken place into the circumstances of the death of Mr. O’Farrell, namely:
  - (a) The criminal prosecution of Mr. Zigimantas Gridziuska in respect of the fatality on the 2 August 2011 and the subsequent trial in the Circuit Criminal Court in February 2013;
  - (b) The previous prosecutions of Mr. Zigimantas Gridziuska and the interactions of members of An Garda Síochána with Mr. Zigimantas Gridziuska in so far as same are relevant to the fact that the said Mr. Gridziuska was on bail at the time of the death of Mr. Shane O’Farrell on 2 August 2011;
  - (c) The review by the Independent Review Mechanism (IRM);
  - (d) The criminal investigation by the Garda Síochána Ombudsman Commission (GSOC);
  - (e) The subsequent disciplinary investigation by GSOC; and
  - (f) To have regard to the documentation gathered for the Statutory Inquest into the death of Mr. Shane O’Farrell.
2. To review changes that have been made to the law and practice in relation to the administration of bail and bench warrants and the extent to which they have or have not addressed gaps in those systems since the death of Mr. O’Farrell;
3. Based on the reviews at 1. and 2. above to advise the Minister for Justice and Equality:
  - (a) If there are any remaining unanswered questions in relation to the circumstances of Mr. O’Farrell’s death that should be the subject of further inquiry or investigation; and
  - (b) If there are, the most appropriate manner in which they should be investigated, having regard to the statutory independence of bodies such as the courts, the Director of Public Prosecutions and the Garda Síochána Ombudsman Commission.
4. If an investigation or inquiry is recommended to draft terms of reference for said investigation/inquiry, and the suggested composition of the said investigation/inquiry;
5. To make enquiries with persons or bodies that he/she considers appropriate in relation to the review; and
6. To report to the Minister for Justice and Equality within 8 weeks of commencement with an interim report indicating, *inter alia*, the

expected timeframe for completion of the scoping exercise.’” — *Jim O’Callaghan, Bobby Aylward, John Brassil, Declan Breathnach, James Browne, Mary Butler, Thomas Byrne, Jackie Cahill, Dara Calleary, Pat Casey, Shane Cassells, Jack Chambers, Lisa Chambers, Niall Collins, Barry Cowen, John Curran, Stephen Donnelly, Timmy Dooley, Sean Fleming, Pat the Cope Gallagher, Seán Haughey, John Lahart, James Lawless, Marc MacSharry, Micheál Martin, Charlie McConalogue, Michael McGrath, John McGuinness, Aindrias Moynihan, Michael Moynihan, Eugene Murphy, Margaret Murphy O’Mahony, Darragh O’Brien, Éamon Ó Cuív, Willie O’Dea, Kevin O’Keeffe, Fiona O’Loughlin, Frank O’Rourke, Anne Rabbitte, Eamon Scanlon, Brendan Smith, Niamh Smyth, Robert Troy.*

*Leasuithe:*

*Amendments:*

\*1. To insert the following words after “scoping exercise.’ ”:

“and calls on the Government to add the following to the terms of reference after the words ‘documentation gathered for the Statutory Inquest into the death of Mr. Shane O’Farrell’:

‘(g) The relationship, official and unofficial, of Mr. Gridziuska with An Garda Síochána handlers of informers.’” — *Martin Kenny, Gerry Adams, John Brady, Pat Buckley, Seán Crowe, David Cullinane, Pearse Doherty, Dessie Ellis, Martin Ferris, Kathleen Funchion, Mary Lou McDonald, Denise Mitchell, Imelda Munster, Jonathan O’Brien, Eoin Ó Broin, Caoimhghín Ó Caoláin, Donnchadh Ó Laoghaire, Louise O’Reilly, Aengus Ó Snodaigh, Maurice Quinlivan, Brian Stanley.*

**\*please note: This amendment is in substitution for amendment 1 on the Supplementary Order Paper sent out earlier today**

2. To delete all words after “Dáil Éireann:” and substitute the following:

“affirms that:

- the death of the late Shane O’Farrell was a dreadful tragedy for his family and loved ones, and the circumstances surrounding his death raise a number of questions; and
- the State has endeavoured to answer these questions through an extensive investigation by the Garda Síochána Ombudsman Commission (GSOC) and a review by the Independent Review Mechanism;

notes that:

- following the completion of both criminal and disciplinary investigations by GSOC, and in an effort to progress motions passed by both Houses of the Oireachtas calling for a public inquiry into the circumstances of the death of the late Shane O’Farrell, the Minister for Justice and Equality, in February 2019, appointed a retired District Court Judge, Gerard Haughton, to conduct a scoping exercise with a view to advising the Minister if there were matters concerning the death of Shane O’Farrell that required further inquiry/investigation and, if there were, to provide draft terms of reference for said inquiry/investigation;
- the Minister for Justice and Equality invited the O’Farrell family to engage with Judge Haughton;

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- throughout the process, the Department of Justice and Equality consulted with the Office of the Attorney General;
- the terms of reference of the scoping exercise must be compliant with the line of jurisprudence established by the Supreme Court in the case of *Shatter v. Guerin*;
- the case of *Shatter v. Guerin* addressed *inter alia* the scope of preliminary inquiries established by Government, the precision required of terms of reference and the constitutional procedures that must be observed in such exercises;
- the *Shatter v. Guerin* judgment was delivered subsequent to the transmission of the draft terms of reference to Judge Haughton;
- the Minister for Justice and Equality's only concern in relation to the scoping exercise is that it be conducted in accordance with the law and that any recommendations made by Judge Haughton at the conclusion of the exercise are legally robust;
- the terms of reference of the scoping exercise were finalised, in consultation with the Office of the Attorney General, on 23rd September, 2019, and, in accordance with those terms of reference, Judge Haughton is required to provide an interim report within eight weeks of commencement;
- Judge Haughton has advised the Department of Justice and Equality that he expects to be in a position to provide the Minister for Justice and Equality with his interim report by Friday, 15th November, 2019, though he is willing to delay this to accommodate further engagement with the O'Farrell family; and
- Judge Haughton's interim report will set out, *inter alia*, the timeframe for the completion of the scoping exercise; and

acknowledges that:

- while the terms of reference of the scoping exercise are focused, as required by the law, they allow for review of all of the issues intended;
- Judge Haughton is free, in his final report, to make any recommendation he sees fit, including the establishment of any form of statutory or non-statutory inquiry;
- the O'Farrell family are free to make any representations to Judge Haughton in relation to any matter that they would wish to see inquired into in any future inquiry; and
- the terms of reference of the scoping exercise being conducted by Judge Haughton should remain as follows in order to ensure compliance with the law as set down by the Supreme Court in *Shatter v. Guerin*:

‘In light of the public controversy surrounding the circumstances of the death of Mr. Shane O'Farrell on the 2nd August 2011 and having regard to the motion passed by Dáil Éireann on 14th June 2018 and Seanad Éireann on 13th February 2019, calling for the establishment of a public inquiry into the matter;

Taking into account:

- The outcome or reports of investigations or inquiries that have already taken place related to the death of Mr. O'Farrell, including the reports of the investigations carried out by the Garda Síochána Ombudsman Commission and the outcome of the Independent Review mechanism; and
- Any changes that have been made to the information sharing systems or procedures operating between An Garda Síochána, the Courts Service and other relevant State bodies, in so far as they are relevant to dealing with persons subject to bench warrants or conditions attaching to the granting of bail and suspended sentences, since the death of Mr. O'Farrell.

To advise the Minister for Justice and Equality:

- Whether there are any circumstances surrounding the death of Mr. O’Farrell which warrant further investigation or inquiry beyond those already carried out;
- Whether any inquiry is necessary into the systems and procedures for the sharing of information between An Garda Síochána, the Courts Service and other relevant State bodies operating at the time of Shane O’Farrell’s death;
- The form of any such investigation or inquiry;
- Its terms of reference; and
- The suggested composition of the investigation or inquiry.

To report to the Minister for Justice and Equality by mid-November 2019 with an interim report indicating, *inter alia*, the expected timeframe for completion of the scoping exercise.’” — *An tAire Dlí agus Cirt agus Comhionannais*.