Independent Assessor

Mr Justice Iarfhlaith O'Neill

C/o The Independent Administrator, Department of Education & Skills,
Cornamaddy, Athlone Co Westmeath N37 X659

5/07/19

Mr Joe McHugh TD,

Minister for Education and Skills,

Office of the Minister for Education and Skills,

Marlborough Street ,

Dublin 1

Re: Independent Assessment of claims for ex gratia payment arising from the judgement of the ECtHR in the Louise O Keeffe v Ireland case.

Dear Minister

As you are aware, nineteen applications were received by me for reviews of the decisions of the State Claims Agency to decline a payment from the ex-gratia scheme. Early in the process it became apparent that the major issue for almost all of the applicants was the "Prior Complaint" condition for eligibility for a payment from the scheme. Since April 2018 I have been receiving submissions on that issue from the interested parties and also from the Irish Human Rights and Equality Commission and the Child Law Clinic of the Faculty of Law of University College Cork. I have now concluded that process and have made a decision on the matter, which I enclose herewith.

As you can see from the same I have concluded that the "prior complaint " condition was not compatible with a correct implementation of the Judgement of the ECtHR in the Louise O Keeffe case.

I have now determined all of the applications that I have received.

Of the 19 applications, I have determined that in 13 of these , the applicants were entitled to a payment from the scheme, as the only ground on which a payment to these applicants, was declined was the failure to furnish evidence of a prior complaint.

In the remaining 6 applications, I determined that in all 6 cases there was a failure to fulfil the first condition for eligibility for a payment from the scheme, namely that there had been proceedings against the State which had not been discontinued. In one case there was an additional ground for

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exclusion from the scheme, namely that the complaint was in respect of physical abuse and not sexual abuse. Five of these applicants would also have been affected by the "prior complaint" condition.

As this probably concludes my involvement in this matter, I would like to express my appreciation to you and you officials in particular Catherine Hynes for the unstinting co-operation and unfailing courtesy, I have received, throughout this process which I know, has been a difficult one for all.

Yours Sincerely

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Decision of the Independent Assessor

1. In July 2015 the Minister for Education and Skills introduced an Ex-Gratia scheme to compensate those persons who had discontinued litigation against the State, akin to the case taken by Louise O Keeffe, whose case had been dismissed by the Supreme Court in 2011. The terms of eligibility to receive compensation from this scheme were:

"To be eligible for an ex-gratia payment survivors will have to establish that:

They had instituted legal proceedings against the Minister for Education. in respect of school child sexual abuse and that these proceedings were not statute barred under the Statute of Limitations prior to being discontinued; and
They were sexually abused while at school by a primary or post primary school employee in respect of whom there was a prior complaint of sexual abuse to the school authority [or a school authority in which the employee had previously worked] prior to the issue of the Department of Education child protection guidelines to primary and post -primary schools in 1991/1992."

2. The inclusion of the necessity, for eligibility, to establish that there was a prior complaint of sexual abuse on the part of the abuser in question has given rise to objection and complaint on the part of applicants to the scheme. The latest information establishes that 50 persons have applied to the State Claims Agency [SCA] for compensation from the scheme. 44 have been refused compensation. 6 cases are pending. Of the 44 refused all cases were declined on the ground of a lack of evidence of "prior complaint". Thirty two of these 44 cases were also declined on the additional ground that they did not have proceedings against the state which were discontinued.

3. In November 2017 I was appointed by the Minister for Education and Skills as Independent Assessor in relation to applications by persons whose claims for compensation under the ex-gratia scheme were refused by the SCA. The relevant terms and conditions of my appointment are as follows:

"Role and Function
The role of the Assessor in each of the cases assigned, is to review the decision made by the State Claims Agency declining an ex-gratia payment where a person has taken a case of school child sexual abuse against the State and where their cases come within the terms of the ECtHR judgement in the Louise O Keeffe case and are not statute barred"

4. By February 2018 I had received 19 applications for a review of the refusals of the SCA in each case. In 13 of these cases the only ground of refusal was the lack of evidence of a prior complaint of sexual abuse on the part of the same abuser. In each of these cases the applicants challenged the correctness of the introduction of the "prior complaint" condition on the grounds that this condition was inconsistent with the judgement of the ECTHR in the Louise. O Keeffe case and hence that there was a failure on the part of the Minister to properly or correctly implement the terms of that judgement.

5. In light of the terms of my appointment as set out above, and having regard to the complaints of these applications concerning the imposition of this condition I felt obliged to consider whether this condition was consistent with a correct implementation of the judgement of the ECtHR in the Louise O Keeffe case. I was also mindful of my obligations under Section 3 of the European Convention on Human Rights Act 2003 [the Act of 2003], which provides as follows:

"3[1] Subject to any statutory provision ....every organ of the State shall perform its functions in a manner compatible with the State's obligations under the Convention provisions"

6. My function in relation to this ex-gratia scheme can be properly characterized as part of the executive function of the state and hence as Independent Assessor I am to be considered an"organ of the State" in this regard. More precisely the functions carried out by me are essentially those of a tribunal and section 1 of the Act of 2003 provided that "organ of the State" includes " a tribunal or any other body [other than ...a. Court] which is established by

law or through which any of the legislative, executive or judicial powers of the state are exercised"

7. In order to comply with Section 3 of the Act of 2003, it was necessary for me to consider whether the "prior complaint" condition was compatible with the judgement of the ECtHR in the Louise O Keeffe case, as to disregard this issue would have risked carrying out my function in a manner which was not compatible with the State's obligations under the Convention.

8. In March 2018 I posed the following question initially to the Minister and thereafter to the Applicants.

"Whether the imposition of the condition which required that there had to be evidence of a prior complaint of sexual abuse on the part of the employee in question to the school authority [or a school authority in which the employee had previously worked], to establish eligibility for a payment under the ex-gratis scheme, is consistent with and a correct implementation of the judgement of the European Court of Rights in the case of Louise. O Keeffe. V Ireland."

9. The Minister responded by way of a written submission dated the 26th April 2018. This written submission was circulated to the Applicants and written submissions were received by me from McGuill & Co Solicitors acting for 9 applicants dated the 8th June 2018. Written submissions dated the 6th June 2018 were received from Anne Hickey Solicitor acting on behalf of 5 applicants. In addition written submissions dated the 13th of June were received by me from the Irish Human Rights and Equality Commission [IHREC]. Also a written submission dated the 31st of May 2018 was received from the Child Law Clinic, School of Law, University College Cork. [CLC]

10. These responding submissions were sent by me on the 3rd of July 2018 to the Minister with an invitation to the Minister to respond and in particular to address the the following question:

" I would be very grateful, if you would in particular address the legal status and/or legal effect in domestic law, of decisions/determinations of the

Committee of Ministers in relation to the implementation/enforcement of judgements of the ECtHR."

11. The Minister responded by way of his second written submission on the September 2018. The Minister's submission was circulated by me to the Applicants and the IHREC and CLC. I received a written submission dated the 22nd of November 2018 from Hickey Coghill on behalf of their 5 applicants, a written submission dated the 23rd November 2018 from CLC. McGuill & Co adopted this submission on behalf of their applicants. I received a submission dated the 7th of December 2018 from the IHREC.

12. These submissions were sent by me to the Minister who responded by way of a third written submission dated the 21st of January 2019. This submission of the Minister was in turn circulated to the Applicants and the IHREC and CLC. In addition a letter from me to the Minister dated the 30th of January 2019 in which I sought factual information from the Minister with regard to the performance of the ex-gratia scheme and the Minister's reply to my letter dated the 22nd of February 2019 were circulated to the Applicants and the IHREC and the CLC.

13. I received a third submission from the CLC dated the 5th of March 2019, a third submission from the IHREC dated then 14th March 2019 and a further submission from McGuill & Co on behalf of their applicants dated the 15th of March 2019.

14. Before going on to deal with the issues discussed in all of these submissions I would like to express my deepest gratitude to all the legal teams for the erudition and industry given in the preparation of these excellent submissions, which have been indispensable to me in carrying out my function. As these submissions are necessarily very lengthy a short summary of them is appropriate at this point.

Submissions

15. For the State it was contended that central to the judgement in the Louise O Keeffe case was the fact that there had been a prior

complaint of sexual abuse on the part of LH her abuser. This complaint was made to the School manager but not revealed or acted on, with the consequence that LH continued to abuse many children in the school in question including Louise O Keeffe. The State contends that it was "in these circumstances" that the ECtHR made a finding that Ireland breached Louise's O Keeffe's right to be protected by the State from inhuman and degrading treatment, particularly in the context of being a pupil in a national school. The State accepts the finding by the ECtHR that the the State breached Art 3 of the convention in failing at a minimum to have in place mechanisms for the detection and reporting of incidents of child sex abuse in the national school system. The State contends however, that had there been such a system in place, it could only have been triggered or activated by a complaint made by or on behalf of an abused child. Hence it argues, the existence of a complaint was an indispensable pre-requisite to satisfying the test set out by the ECtHR in it's judgement to establish a liability on the party of the State, namely that the complainant had to show that the rectification of the deficiency which was a breach of Art 3 , in her case the absence of a mechanism for detecting or reporting child sex abuse, would have a real prospect of altering the outcome. For this to happen, the State contended that, the first necessary step was a complaint in relation to the child sex abuse and until that happened nothing would be achieved to alter the outcome. Hence the prior complaint condition for the ex-gratia scheme has to be seen in that light. In Louise O Keeffe's case had there been a State controlled complaint's procedure, the likelihood of the complaint which was made being effectively acted on would obviously, have been high.

16. The State places considerable reliance on the outcome of meetings of the Committee of Minister's of the Council of Europe as supportive of the view that the "prior complaint" condition was compatible with the judgement of the ECtHR in Louise O Keeffe's case. Those meetings considered the terms of the ex-gratia scheme in the context of the general measures the State was obliged to introduce to implement that judgement. In approaching the problem of assessing evidence of prior complaint, the State emphasized that a holistic and flexible approach would be taken by the SCA. This approach, the State contends appears to have found

favour with the Committee of Ministers and along with an apparent acknowledgement by the Committee of Ministers to the effect that the State was entitled to impose some limitations in the ex-gratia scheme, was considered to be consistent with the judgement. The State contends that the 'prior complaint" condition was viewed favourably in that context.

17. The State further submitted in this regard, that although the views of the Committee were not binding, they were persuasive, being of the highest authority and given that the committee was the body charged under the Statutes of the Council with the responsibility of supervising the implementation of judgements of the ECtHR, organs of the State in this jurisdiction and the Independent Assessor in particular should be very slow to depart from or disagree with the conclusions of the Committee of Ministers. In this regard the State contends that the Independent Assessor in order to comply with section 3 of the Act of 2003, must in carrying out his functions have regard to the role assigned to the Committee of Ministers under the Convention and take due account of the Committees decisions in this regard.

18. The State further stresses the fact that the the Committee has not sought to avail of the procedure under Article 46[4] of the Convention to refer the matter back to the Court for a ruling on a question of interpretation of the judgement, even though both the IHREC and CLC, in their interventions under Rule 9 of the Rules of the Committee, have urged the Committee to so do.

19. Finally the State points out that the supervision by the Committee of Minister's of the State's implementation of the general measures required, has been moved from the "enhanced procedure" to the "standard procedure" indicating that the Committee of Minister's does not perceive any obstacles to the full implementation of the judgement, in the Action Plans put forward twice annually setting out the states actions and proposals in that regard.

20. The submission made on behalf of the applicants and by the IHREC and CLC pursued common themes and may be set out together. All disputed the the manner in which the State has interpreted the

judgement of the ECtHR in the Louise O Keeffe case, so as to link inextricably the liability of the State for breaches of Art 3 and 13 of the Convention to the fact that in Louise O Keeffe's case there was a prior complaint of sexual abuse on the part of the person who abused Louise O Keeffe. This approach on the part of the State was criticized as a misinterpretation of that judgement.

21. It was submitted that the primary finding by the ECtHR was that the State breached Art 3 of the Convention by failing to have in place state controlled measures to protect children in national schools, including Louise O Keeffe from child sexual abuse, and at a minimum failing to have reporting and detection mechanisms which could have uncovered in time the abuse that occurred. The failure which attracted liability under Art 3 was the failure to have these mechanisms in place and not a failure to have responded to the prior complaint which was made in Louise O Keeffe's case. The ECtHR, they submitted, actually exonerated the State from any procedural failure, in failing to respond to that complaint, finding that the State did not have knowledge of that complaint until 1995 and once apprised of the complaint the State acted appropriately and in a timely manner with regard to the investigation of the complaint and the prosecution of LH.

22. It was submitted that the true significance of the prior complaint in the Louise O Keeffe case, was as an illustration of the consequences of the failure to have an adequate state controlled reporting procedure, namely, the complaint went unheeded and the abuse continued for a further 22 years. There was not any integral connection between that complaint and the liability found by the ECtHR. There could have been a variety of consequences of the failure which breached Art 3, all with the common result of there being no complaint effectively transmitted to the State and acted on appropriately, with the further consequence of abuse continuing with impunity.

23. All stressed the difficulties victims of child sex abuse encountered in making complaints of child sex abuse. They point to the problems associated with the availability of evidence of prior complaints in so far as the organizations who might have received such complaints and recorded them have demonstrated an unwillingness to reveal these

records and the State in setting up the ex-gratia scheme has not empowered either the SCA or the Independent Assessor to compel production of such records.

24. In these circumstances, they submit that compliance with the "prior complaint" condition for eligibility for a payment from the scheme is virtually impossible and in this respect they point to the information revealed by the Minister in his letter to me of the 22nd of February 2019, as indicating that no applicant to the scheme has succeeded in obtaining a payment, as all applicants have failed to satisfy the "prior complaint" condition.

25. With regard to the measures required of the State to remedy the breach of Art 13, in failing to have adequate domestic remedies for victims of child sexual abuse in National Schools, they submit that the "prior complaint" condition blocks these victims from obtaining such a remedy from the the ex-gratia scheme. Access to the Courts to pursue a remedy, they say is also blocked by the judgment of the High Court [not appealed] in the cases of Wallace v. Creevey & Ors [2016] IHEC 294, Naughton v Drummond & Ors [2016] IHEC] 290 and Kennedy v Murray [2016] IHEC 291, in which the High Court held inter alia, that claims for breaches of Convention rights, including Arts 3 and 13, where it was alleged that the violation of the Convention right occurred before the coming into force and effect of the Act of 2003 could not be litigated in domestic law because the Act of 2003 did not have retrospective effect. The Act of 2003 came into effect on the 1st of January 2004.

26. The result, it was submitted, was that victims of school child sexual abuse who were in the cohort of persons for whom the ex-gratia scheme was designed, were now entirely bereft of a domestic remedy. The 'prior complaint' condition effectively excluded them from a payment from the ex-gratia scheme. Their original litigation was discontinued and could not be revived following judgements of the High Court and Court of Appeal in a number of school child sexual abuse cases in which it was sought to set aside Notices of Discontinuance. Even if it was possible to revive the original litigation, it would probably be necessary to amend the proceedings to include claims for breaches of Arts 3 and 13 of the Convention, and as these claims related to breaches of

the Convention which occurred before the coming into effect of the Act of 2003, they submitted they were "bound to fail".

27. In short, it was submitted, these victims of school child sexual abuse were left entirely without a remedy in domestic law, and their only recourse was to take a further case to the ECtHR, an outcome that the State was specially required to avoid in the general measures required to implement the judgement of the ECtHR in the Louise O Keeffe case.

28. With regard to the role of the Committee of Ministers, they submit that the Committee of Ministers is precluded by its governing statutes from interpreting the Convention and by necessary extension, judgments of the ECtHR which interpret the Convention. The role of the Committee is to supervise the implementation of the measures proposed by the High Contracting parties to implement the terms of a judgement of the Court. The interpretive role is reserved exclusively to the Court. Should interpretive difficulties arise in the supervision of implementation measures, Art 46 provides a procedure for the Committee to seek from the Court a ruling on the interpretive difficulty encountered.

29. They submit that the expressions of approval of the "prior complaint" condition are to be found in "notes" of the meetings of the Committee of Ministers and are merely notes of these meetings and cannot be elevated to the status of a decision by the Committee of Ministers approving the "prior complaint" condition as compatible with the judgement. In any event, they submit, the had such a decision been made by the Committee of Minister's it would have amounted to an interpretation of the Judgement of the ECtHR, which in effect added something to the judgement that was not in the expressed terms of the judgement and as such would have amounted to an interpretation of the judgement which was clearly outside the competence of the Committee of Ministers.

30. In fact, it was submitted, the Committee made no such decision. It's recorded "Decision" following the 1259th meeting on the 7th and 8th of June 2016 does not included any reference at all to the "prior complaint" condition. That Decision at paragraph 4, it was submitted did encourage the holistic and flexible approach which

the State had advanced, but this decision urged that approach to all claims that came within the terms of the judgement and not to the assessment of the evidence of "prior complaint" as contended for by the State.

31. The Applicants and the IHREC and CLC criticized the State for the content of it's several Action Plans and specifically the suggestion that the holistic and flexible approach aided the provision of a remedy in domestic law for victims of school child sexual abuse, when in fact, it did the reverse, namely it effectively blocked access to a remedy as evidence by the fact that not a single applicant had succeeded in getting a payment from the scheme in the 4 years since it's inception. The State was further criticized for failing to make clear in these Action Plans that the judgment of the High Court in the case referred to above barred any recourse to the domestic courts to obtain redress for breaches of Convention rights where the violation occurred before the 1st of January 2004, thereby excluding all victims of historical school child sexual abuse from access to the domestic courts to litigate claims in respect of breaches of Arts 3 and 13 of the Convention.

Judgement of the ECtHR in Louise O Keeffe v Ireland

32. A correct understanding of the true meaning of this judgement is essential to resolve the issues raised in these submissions relating to the inclusion of the "prior complaint" condition. The Court's Assessment or core reasoning section of this judgement is set out in paragraphs 143 to 169. The salient features of this part of the judgement are as follows:

"143. The relevant facts of the present case took place in 1973. The Court must, as the Government underlined, assess any related State responsibility from the point of view of the facts and standards of 1973 and , notably, disregarding the awareness in society today of the risk of sexual abuse of minors in an educational context, which knowledge is the result of recent public controversies on the subject, including in Ireland.....
144. The Court reiterates that Article 3 enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman

or degrading treatment or punishment. The obligations on High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken in conjunction with Article 3, requires State to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment, including such ill-treatment administered by private individuals. This positive obligation to protect is to be interpreted in such a way as not to impose an excessive burden on the authorities, bearing in mind, in particular, the unpredictability of human conduct and operational choices which must be made in terms or priorities and resources. Accordingly not every risk of ill-treatment could entail for the authorities a Convention requirement to take measures to prevent the risk from materializing. However, the required measures should at least, provide effective protection in particular of children and other vulnerable persons and should include reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge.....
145. Moreover the primary education context of the present case defines to a large extent the nature and importance of this obligation. The Court's case law makes it clear that t he positive obligation of protection assumes particular importance in the context of the provision of an important public service such as primary education, school authorities being obliged to protect the health and well-being pf pupils and, in particular of young children who are especially vulnerable and are under the exclusive control of those authorities.....
146. In sum, having regard to the fundamental nature of the rights guaranteed by Article 3 and the particularly vulnerable nature of children, it is an inherent obligation of government to ensure their protection from ill treatment, especially in a primary education context, through the adoption as necessary, of special measures and safeguards.....

148. As to the content of the positive obligation to protect, the Court recalls that effective measures of deterrence against grave acts such as at issue in the present case, can only be achieved by the existence of effective criminal law provisions backed up by law enforcement machinery.....Importantly, the nature of child sexual abuse is such, particularly when the abuser is in a position of authority over the child, that the existence of useful detection and reporting mechanisms are fundamental to the effective implementation of the relevant criminal laws.....The Court would clarify that it considers, as did the Government, that there was no evidence before the Court of an operational failure to protect the applicant.....Until complaints about LH were brought to the attention of the State authorities in 1995, the State neither knew nor ought

to have that this particular teacher,LH, posed a risk to this particular pupil, the applicant.

149. It is also recalled that it is not necessary to show that "but for" the State omission the ill-treatment would not have happened. A failure to take reasonably available measures which could have had a real prospect of altering the outcome or mitigating the harm is sufficient to engage the responsibility of the State.....

150. It is indeed the case, as emphasized by the applicant, that a State cannot absolve itself from it's obligation to minors in primary schools by delegating those duties to private bodies or individuals.....However, that does not mean that the present case challenges, as the Government suggested, the maintenance of the non-State management model of primary education and the ideological choices underlying it. Rather, the question raised by the present case is whether the system so preserved contained sufficient mechanisms of child protection.....

152. In sum, the question for current purposes is whether the State's framework of laws, and notably it's mechanisms of detection and reporting, provided effective protection for children attending a National School against the risk of sexual abuse, of which risk it could be said that the authorities had , or ought to have had, knowledge in 1973.....

159. Parallel to the maintenance by the State of this unique model education, the State was also aware of the level of sexual crime against minors through the enforcement of it's criminal laws on the subject.....

161. Moreover, the evidence before the Court indicated a steady level of prosecutions of sexual offenses against children prior to the 1970s.....

162. The State was therefore aware of the level of sexual crime by adults against minors. Accordingly when relinquishing control of the education of the vast majority of young children to non-state actors, the State should also have been aware, given it's inherent obligation to protect children in this context, of the potential risks to their safety if there was no appropriate framework of protection. This risk should have been addressed through the adoption of commensurate measures and safeguards. Those should, at a minimum, have included effective mechanisms for the detection and reporting of any ill-treatment by and to a a State-controlled body, such procedures being

fundamental to the enforcement of the criminal laws, to the prevention of such ill-treatment and, more generally therefore, to the fulfillment of the positive protective obligation of the State.....

165. The Court is therefore of the view that the mechanisms on which the Government relied did not provide any effective protective connection between the State authorities and primary school children and/or their parents and, indeed this was consistent with the particular allocation of responsibilities in the National School model.....

166. The facts of the present case illustrate, in the Court's opinion, the consequences of this lack of protection and demonstrate that an effective regulatory framework of protection in place before 1973 might "judged reasonably, have been expected to avoid, or at least, minimize the the risk or the damage suffered" by the applicant..... There were over 400 incidents of abuse concerning LH since the mid-1960s in Dunderrow National School. Complaints were made in 1971 and 1973 about LH to the denominational Manager but, as the the Supreme Court accepted, the Manager did not bring those complaints to the notice of of any State authority. The Inspector assigned to that school made 6 visits from 1969 to 1973 and no complaint was ever made to him about LH. Indeed, no complaint about LH's activities was made to a State authority until 1995 after LH had retired. Any system of detection and reporting which allowed such extensive and serious ill-conduct to continue for so long must be considered to be ineffective..... Adequate action taken on the 1971 complaint cold reasonably have been expected to avoid the present applicant being abused two years later by the same teacher in the same school.....

168. To conclude, this is not a case which directly concerns the responsibility of LH, of the clerical Manager or Patron, or of a parent or indeed of any other individual for the sexual abuse of the applicant in 1973. Rather the application concerns the responsibility of a State. More precisely, it examines whether the respondent State ought to have been aware of the risk of sexual abuse of minors such as the applicant in National Schools at the relevant time and whether it adequately protected children, through it's legal system from such treatment.

The Court has found that it was an inherent obligation of government in the 1970s to protect children from ill-treatment. It was moreover, an obligation of acute importance in a primary education context. That obligation was not fulfilled when the Irish State, which must be considered to have been aware of

the sexual abuse of children by adults through, inter alia, its prosecution of of such crimes at a significant rate, nevertheless continued to entrust the management of the primary education of the vast majority of young Irish children to non-State actors [National Schools], without putting in place any mechanism of effective State control against the risk of such abuse occurring. On the contrary, potential complaints were directed away from State authorities and towards the non-State denominational Managers [paragraph 163 above]. The consequences in the present case were the failure by the non-State Manager to act on prior complaints of sexual abuse by LH, the applicant's later abuse by LH and, more broadly, the prolonged and serious sexual misconduct by LH against numerous other students in the same National School.

169. In such circumstances, the State must be considered to have failed to fulfill it's positive obligation to protect the present applicant from sexual abuse to which she was subjected in 1973 whilst a pupil in Dunderrow National School. There has been a violation of her rights under Article 3 of the Convention. Consequently the Court dismisses the Government's preliminary objection to the effect that this complaint was manifestly unfounded"

Decision

33. In searching for the true meaning of this judgement, it is helpful to begin by discerning what the judgement is not about. In this respect par 168 gives ample guidance. It is not about the responsibilities or failures of the individual actors in the situation, i.e. LH, the school Manager or parents. Also it is not about the operational failure of the State to have appropriately dealt with LH when his abusing was finally uncovered in 1995 or to have dealt with him before 1995 as the Court found that the State did not have knowledge of his abusing until 1995. Par 148 makes this clear.

34. What then does this judgment do in so far as the liability of the State is concerned.?

35. Firstly, the Court found that regardless of the unique system of management of National Schools whereby the State ceded the management role to denominational entities, the State could not and did not absolve itself of it's inherent obligation of government to take reasonably available measures to protect children in National Schools from the risk of child sexual abuse. At a minimum this obligation required the State to have in place effective mechanisms of detecting and reporting incidents of child sexual abuse in National Schools by and to a State controlled body. The basis on which this conclusion of the Court rests, is it's finding that the State was aware of the risk to children of sexual crimes committed by adults from it's prosecution of these crimes at a significant level over many years prior to 1973, and from reports into these matters received by the State over many years.

36. The failure on the part of the State, which was unequivocally identified by the Court as constituting a breach of Article 3 of the Convention was the systems failure in not having in place before 1973, at a minimum, effective mechanisms for the detection and reporting of child sexual abuse in National Schools by and to a State controlled body.

37. As to the consequences of this failure and it is here that the State and the Applicants diverge in their views of what the judgement entails., does it mean as the State contends, that the existence of the prior complaints against LH was an essential ingredient in establishing the liability of the State. This could arise in one or other of two ways. Firstly, if the liability of the State hinged on the existence of these complaints which were not acted on and secondly, if these complaints could be seen as necessary to satisfy the test of a "real prospect of altering the outcome or mitigating the harm" as envisaged in Par 149 of the judgement.

38. The Applicants and the IHREC and CLC, on the other hand see the liability of the State as encompassing all of the consequences that flow from the systems failure which was the basis of the finding of a breach of Art 3 of the Convention. These consequences would include, as in Louise O Keeffe's case the fact that prior complaints against LH went unheeded for 24 years, but also the probability that the absence of effective mechanisms for detecting and

reporting child sexual abuse incidents in National Schools, meant that complaints were not made because there was no system there to receive such complaints, or these complaints may have been made and simply ignored, lost, and never recorded because of the absence of any system for receiving and recording them. In short they see what happened in relation to the prior complaints against LH, as but one example of what can go wrong, when there was no effective State controlled system in place for detecting and reporting incidents of child sexual abuse in National Schools.

39. It is crystal clear, that the ECtHR did not make any finding of a breach of Art 3 based on the fact that here was a failure to have responded to the prior complaints against LH. In fact the Court specifically exonerated the State from any liability in this regard, holding that the State neither knew or ought to have known of these complaints until 1995 and there was no operational failure with regard to the manner the State dealt with the complaints thereafter.

40. I am quite satisfied that the judgement of the ECtHR establishes a liability on the part of the State for a breach of Art 3 based solely on the failure to have in place, at a minimum effective mechanisms for the detection and reporting by and to a State controlled body, of child sexual abuse in National Schools. In Par 149 of the judgement, the ECtHR set out it's test or standard for establishing loss and damage resulting from the State's breach of Art 3, namely, that a claimant must demonstrate that had the appropriate measures been in place there was a "real prospect" of avoiding or mitigating the harm. In this respect the ECtHR expressly rejected a "but for" test in order to establish harm or damage consequent on the breach of Art 3.

41. In this context, it is the State's contention that proof of a prior complaint is essential to establish liability or to prove loss consistent with the findings of the ECtHR. The distinction between establishing liability and proving loss as a result of the harm or damage is important. The breach of Art 3 as found by the ECtHR of itself establishes the liability of the State potentially. That potential becomes a reality when a claimant can show a 'real prospect" that

the harm or damage would have been avoided or mitigated if the State had in place the requisite measures.

42. In my view a pre-condition for entry into this process, namely, that a claimant cannot begin to prove loss unless they can point to a prior complaint against the same abuser, essentially subverts the normal process of proving loss in civil proceedings, as it would seem, was envisaged by the ECtHR when they adopted the "real prospect" test in this regard.

43. In this regard, one must bear in mind that the core finding of the ECtHR was that there was no mechanism for the reporting of child sexual abuse in National Schools. Consequently there was no systematic recording of such complaints by the State. Thus the State does not have records of complaints which may have been made to the denominational authorities in the schools. Complaints made to Managers or Patrons or others in positions of responsibility in the National Schools are very unlikely to have been properly recorded and with the passage of time have been lost in the fog of receding history and are now not recoverable and available to the applicants. In so far as records of these complaints still exist, they are in the possession of the denominational institutions who managed the Schools and are not available to the State. Neither the SCA nor the Independent Assessor has the legal power in the context of the ex-gratia scheme to compel production of such records.

44. In addition, the absence of a State controlled mechanism for the reporting of child sexual abuse complaints, of itself, must, as a matter of probability, have deterred such complaints and reduced aggrieved parents to impotent silence.

45. Can the State now insist that applicants to the ex-gratia scheme prove a prior complaint to be eligible for a payment.? The State contends that even if there had been an effective reporting mechanism in place, the starting point or necessary trigger to activate such a reporting mechanism would have been a complaint, by or on behalf of an abused child.

46. For the State to insist on such a pre-condition to eligibility involves an inherent inversion of logic and a fundamental unfairness to applicants. The failure which constituted the breach of Art 3, was not having a state controlled mechanism for detecting and reporting incidents of child sexual abuse in National Schools. An unavoidable consequence of that failure is that no records now exists or are available, of complaints which may have been made, and many complaints in all probability were not made, because they there was no state controlled complaints procedure in place to receive such complaints.

47. Thus it is inherently illogical for the State to demand the very evidence, which is not there, or cannot be recovered, because of the very failure of the State which constitutes the actual breach of Art 3 of the Convention as so found by the ECtHR.

48. In these circumstances, this insistence by the State on proof of a prior complaint against the same abuser, because of the virtual impossibility for applicants to meet this demand, is fundamentally unfair and ignores the fact that the State created, in breach of Art 3 of the Convention the very circumstances which now inhibit applicants from being in possession of knowledge or prior complaints. To justify it's position in this regard, the State is now driven to contending that the true meaning and effect of the judgement of the ECtHR is that the Court found a breach of Art 3 because of the failure of the State to have mechanisms for state controlled detecting and reporting of child sexual abuse in National Schools, but that this finding encompassed, a finding that a remedy in respect of that breach was conditional on a victim of that child sexual abuse being obliged to prove facts which the breach itself rendered a virtual impossibility.

49. I have no hesitation in concluding that judgement of the ECtHR does not expressly or by any permissible or possible implication contain such reasoning.

50. In so far as proof of loss and damage is concerned it all comes back to Par 149 and the "real prospect" test, which means that any tribunal charged with the duty of assessing compensation for a breach of Art 3 as so found by the ECtHR, must consider the effect

or impact of the absence of effective mechanisms for the detection and report of complaints of child sexual abuse in National Schools, on the likelihood of the harm or damage being avoided or mitigated. In other words, if there had been in place proper systems, in this regard, is it likely that sexual abuse of children in National schools in the years before 1992, would have been avoided or mitigated. It must not be forgotten, that absence of detection mechanisms was also part of the finding of a breach of Art 3. Detection necessarily involves pro-active measures to detect child sexual abuse. Whilst the existence of a prior complaint against the same abuser will be a relevant and indeed very important factor in any consideration of whether the existence of these mechanisms would have had a "real prospect" of avoiding or mitigating the harm, the absence of a prior complaint cannot terminate any further consideration of whether effective mechanisms for the detection and reporting of child sexual abuse in National Schools, had they been there before 1992, would probably have avoided or mitigated the occurrence of sexual crimes against children in National Schools.

51..It would seem to me, that had the envisaged detecting and reporting measures by and to a state controlled body been in place in the years before 1992 when all of the historic child sexual abuse occurred in National Schools, as a matter of probability, the prevailing culture of impunity which permitted these crimes to occur, could not have existed or survived and inevitably, except in rare cases, the harm, namely the sexual abuse of children would have been avoided.

52. Thus in my opinion, the inclusion of the "prior complaint" condition for eligibility for a payment from the ex-gratia scheme, is inconsistent with the core reasoning of the judgement of the ECtHR in the Louise O Keeffe case and in effect, impedes the operation of the test set out in Par 149 of that judgement, to be satisfied by claimants in order to be compensated by the State for breaches of their right under Art 3 of the Convention to be protected by the State from ill-treatment in National Schools, in this instance child sexual abuse.

The Judgement in Three High Court Cases

53. In the State's Action Plan submitted to the Committee of Ministers in July 2016 there was included the following;

"The High Court recently gave judgement in three related historic day school abuse claims [Wallace v Creevey and Others [2016] IHEC 294, Naughton v Drummond and Others [2016] IHEC 290 and Kennedy v Murray and Others [2016] IHEC 291 on inter alia, whether the claims disclosed a cause of action against the State Defendants. The Judge [Mr Justice Seamus Noonan] found that on the facts of these cases there was no evidence of liability on the part of the State Defendants as there was, inter alia, no allegation or evidence of a prior complaint in respect of the abuse. Accordingly, the Judge held that the claims were distinguishable from the Louise O Keeffe case. The Judgements have not been appealed by the Plaintiffs and the State has agreed to no orders as to costs, i.e the State defendants will bear their own legal costs."

This statement is repeated in subsequent Action Plans and is raised at paragraph 17 of the State's First Submission to me. There are some surprising features in this statement, in the manner in which it presents the Judgements in the three case. Apart from very minor differences, the three judgements are similar. All three cases related to historic child sexual abuse in schools. After the judgement of the ECtHR, the Plaintiffs in each case had applied to the Master of the High Court for the joinder of the State into their existing proceedings against other defendants. In each of the three case the Master had made the order sought by the Plaintiffs. Subsequently, the State applied to the High Court to set aside the orders of the Master, and it was these applications that were determined by Noonan J in the three judgements.

The State, as revealed in the judgements, advanced two grounds, identical in each case, in support of it's applications, namely, that the claims against the State were statute barred and secondly, that the claims were bound to fail as they related to allegations of breaches of Convention rights, where the violations occurred before the coming into effect of the Act of 2003. The Plaintiff's in each case, in resisting the State's case, inter alia, made the case

that apart from the their claims for breaches of their Convention rights, they also wished to make the case, as had been done in the Louise O Keeffe domestic litigation against the State, that there was a claim in negligence, that had not been judicially determined in the Louise O Keeffe case and also they wished to pursue a claim that the State was vicariously liable to them, as had been litigated and lost in the Supreme Court in the Louise O Keeffe case. In this regard, they sought to make the case that the Supreme Court would depart from it's judgement in the Louise O Keeffe case on vicarious liability, in light of the judgement of the ECtHR. In the event Noonan J. rejected the Plaintiff's contention in this regard In exactly similar terms in Par 48 in the judgements in the Naughton and Kennedy cases and at Par 47 in the Wallace case. Here is what he said.

"What remains therefore are the Plaintiff's claims in negligence and vicarious liability against the State Defendants. In so far as vicarious liability is concerned, the plaintiff accepts that under the law as enunciated by the Supreme Court in O Keeffe v Hickey, such a 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 it's 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 Ireland, 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"

Thus, it would appear that the context In which Noonan J mentioned distinguishing O Keeffe v Ireland on the ground of prior complaint, was the proposed claims by these plaintiffs in respect of negligence and vicarious liability.

The outcome of these applications was determined by Noonan J in favour of the State solely on the basis of accepting the two propositions advanced by the State, namely that the claims were statute barred and bound to fail as the claims were not justiciable in Irish domestic law as the alleged breaches of the Convention pre-dated the Act of 2003.

Noonan J. make this crystal clear in the final paragraphs in each judgement where he says;

"For the reasons explained therefore, I am satisfied that the plaintiff's claim against the State defendants is clearly and manifestly statute barred and separately, that it is in any event bound to fail....."

54. As it is clear that the ratio decidendi of his decision to grant the State the relief it sought, was his acceptance of the two parts of the State's case, what Noonan J said concerning distinguishing O Keeffe v Ireland, would be considered an obiter dictum.

55. What is certain, is that Noonan J's judgements in these cases is not authority for the proposition that the "prior complaint" condition was an integral part of the liability created by the judgement of the ECtHR as this issue was not raised, argued or considered by him in his judgement.

56. It is surprising that the State in it's Action Plans does seem to suggest, that the basis of Noonan J's judgements was a determination that, as a matter of fact, the State had no liability because there was no allegation or evidence of a prior complaint and were distinguishable from the O Keeffe case. This is an inadequate presentation of these judgements, particularly as it fails to make clear the actual reasons which underpinned the judgements and in particular, the second one, namely that these claims were bound to fail because the claims for pre 2004 breaches of Convention rights were not justiciable in Irish domestic law.

Strict Liability

57. The State apprehends that without the "prior complaint" condition for eligibility for a payment from the ex-gratia scheme, the State would be taking on an absolute or strict liability, obliging it to compensate every victim of historic child sexual abuse in a National School. In my view, the necessity for claimants to satisfy the "real prospect" test as set out in Par 149 of the judgement of the ECtHR, excludes strict liability, although, it must be observed that as mentioned at par 52 above, it would only be in rare cases,

that circumstances would exist which would displace the probability or "real prospect ", that the requisite measures would have avoided or mitigated the harm. In addition a claimant must in the first place establish that he or she was sexually abused by an employee in a National School. All of this displaces the legal concept of strict liability.

Article 13 Remedies

58. In addition to finding that the State breached Louise O Keeffe's rights under Art 3 of the Convention, the ECtHR also found the State in breach of Art 13 in failing to have provided an effective remedy in domestic law for the breach of her Art 3 rights. Since the delivery of the judgement in January 2014, the State has been endeavoring to comply with the terms of the judgement. In the first instance the specific measures required to satisfy the judgement for Louise O Keeffe, namely the payment of the award to her and the cost and expenses awarded was done very promptly.

59. Putting in place the general measures required to achieve compliance with the terms of the judgement to ensure that child sexual abuse in schools is effectively prevented and detected by appropriate measures, and further claims for breaches of Art 3 in circumstances similar to those dealt with in the judgement, do not have to be litigated in the European Court of Human Rights, but can be dealt with under domestic law in the Courts in Ireland or other lawfully empowered tribunals, has proved challenging. This process has come under the supervision of the Committee of Ministers, initially under the enhanced procedure and latterly under the standard procedure. The State has so far submitted 10 Action Plans setting out the actions taken and proposed measures. In so far as dealing with the effective prevention and detection of child sexual abuse in schools is concerned, the measures taken have radically changed the manner in which child sexual abuse is dealt with and have addressed the deficiencies that were there in the past and were considered by the ECtHR in the Louise O Keeffe case.

60. Providing redress or remedies for victims of historic child sexual abuse in National Schools has been problematic. In it's Action Plans the State has divided the litigation of these victims into four groups, namely, Litigation at the time of the Judgement; New Litigation in relation to Historic Abuse Claims; Discontinued Litigation in relation to Historic Abuse Claims; and Litigation in respect of Current Abuse Claims.

61. The cases of the 19 applicants who have applied to me for a review would fall into two of these catagories, namely those who had litigation in being, but discontinued it after the judgement of the Supreme Court rejecting Louise O Keeffe's case against the State, who number 14 of these applicants and those who have not so far sued the State and presumably would potentially fall into the "New Litigation in relation to Historic Abuse Claims" category.

62. Those who discontinued their cases no longer have access to the Courts, a fact made certain by the judgement of the High Court in the case of A v the Minister for Education & Ors [2016 IHEC 268 , and upheld by the Court of Appeal, in which it was held that the Notice of Discontinuance served in one of these discontinued child sex abuse cases could not be set aside. To provide a remedy in domestic law for these victims the State introduced the ex-gratia scheme. Eligibility for a payment from the scheme depended on having discontinued litigation against the State, being able to furnish evidence of a "prior complaint" against the same abuser and that the claim was not statute barred when the claim was discontinued. Even if these victims could set aside the Notices of Discontinuance, they would then be faced with the judgement in the 3 cases referred to above, which would preclude them from litigating claims in respect of pre 2004 breaches of Convention rights. Thus the ex gratia scheme is the only remedy in domestic law against the State for the child sexual abuse they suffered in National Schools. The "Prior Complaint" condition makes it virtually impossible for these victims to gain a payment from this scheme, a fact clearly demonstrated by the experience to date, namely, not a single applicant has been awarded a payment from the scheme. Manifestly in these circumstances, it is difficult to avoid the conclusion that the Art 13 rights under the Convention of these victims, continue to be infringement.

63. The 6 applicants to me for a review of the refusal by the SCA of their applications on the additional ground of eligibility namely, not having discontinued existing litigation, if seeking redress in the Courts, will face the same obstacle as those who discontinued litigation, arising from the judgement of the High Court in the 3 child sex abuse cases mentioned above. They will not be able to pursue claims for breaches of their Art 3 Convention rights, as the violations in question occurred before the coming into effect of the Act of 2003. As they clearly are ineligible for a payment from the ex gratia scheme because they are not in the cohort of victims who discontinued litigation against the State, they would appear to be without a remedy in domestic law against the State in respect of the child sexual abuse they suffered in National Schools unless, as mentioned above, they can be considered as part of the cohort of claimants catagorised by the State in it's Action Plans as **"New Litigation in relation to Historic Abuse Claims"** , in which case, they could, as envisaged in the Action Plans, apply to the SCA for compensation. The State appears to have re-affirmed this approach when it set up the appeals process to the Independent Assessor. In the documentation supplied to applicants intending to appeal, there was a document headed:

"Implementation of ECtHR judgement in the Louise O Keeffe Case General information on appeals where an application for an ex-gratia payment is declined by the State Claims Agency"

Paragraph three of that document is as follows;

"New Litigation in relation to Historic Abuse Claims"
Where others institute claims against the State in relation to historical child sexual abuse which are not statute barred and their circumstances come within the terms of the ECtHR Judgement, the SCA is authorized to make settlement offers as in the existing cases. Where a litigant does not accept the settlement offer or where the SCA is no satisfied that the case comes within the terms of the Judgement, the case will proceed before the domestic Courts. To date, some 140 new claims have been notified to the SCA. The SCA will engage with litigants solicitors to clarify the circumstances of

the new litigant's cases and to make settlement offers where it is appropriate to do so."

64. As my function as an "organ" of the state in this matter is governed by section 3 of the Act of 2003, in dealing with these 6 case, I am obliged to consider whether the State in fashioning forms of redress for these claimants, has done so in a manner which is compatible with the State's obligations under the Convention provisions, and specifically in this instance as determined by the ECtHR in the Louise O Keeffe judgement. The inclusion of the claims these claimants in the cohort catagorised as New Litigation in relation to Historic Abuse Claims, would provide an avenue of redress for them, thereby avoiding leaving them without a, remedy, potentially in breach of Art 13 of the Convention

65. It is interesting to note that in respect of the two groups apart from the "Discontinued Litigation" group, relating to historic sexual abuse claims, namely those with Litigation extant at the time of the Judgement and those presenting New Litigation in respect of Historic Abuse Claims, the State Action Plans do not expressly include the "prior complaint" condition in the authorization to the SCA to make settlement offers in these cases.

The Role of the Committee of Ministers

66. As mentioned above, the supervision of the State's measures to implement the judgement of the ECtHR in the Louise O Keeffe case has rested with the Committee of Ministers of the Council of Europe, the body charged with this function under the governing statutes of the Council of Europe and as provided for in Article 46 of the Convention. It is to this body that the State has submitted all of its Action Plans aimed at implementing the judgement . Following its 1259th meeting in June 2016, the Notes of this meeting appear to express the approval of the Committee of the inclusion of the prior complaint condition in the ex gratia scheme and the State relies heavily on this document to urge me not to

depart from, what they say, is the view of the expert body uniquely experienced in the implementation of judgements of the ECtHR.

The relevant paragraph of the "Decisions" of this meeting reads as follows;

"The Deputies.....

4. noted with satisfaction that the State Claims Agency is making settlement offers to those whose claims fall within the terms of the judgement; urged the authorities to ensure that it continues take a holistic and flexible approach to all such claims and concludes its work without delay....."

67. It is to be noted here, that the *"holistic and flexible approach"* urged by the Committee of Ministers, related to all claims coming within the terms of the judgement and is not confined to the assessment of whether evidence of a prior complaint was sufficient to establish the existence of a prior complaint.

68. There has been reference to the obligation under Section 4 of the Act of 2003 to take judicial notice of the decisions of the inter alia the Committee of Ministers. Alternatively, it is said, that the obligation in Section 3 of the Act of 2003 on organs of the State to carry out their functions in a manner which is compliant the Convention, requires organs of the State to have regard to decisions of the Committee of Ministers where relevant.

69. Section 4 applies to Courts and requires that Courts take judicial notice of decisions of the Committee of Ministers. The Independent Assessor is not a Court, and the process of taking judicial notice, as that term is legally understood, does not arise in the function that I am engaged to perform.

70. As an organ of the State, I have no hesitation in having regard respectfully, to relevant decisions of the Committee of Ministers. However, the only decision that I have been furnished with, arising out of meetings of the Committee of Ministers dealing with the State's Action Plans, does not make any mention of the "Prior Complaint" condition at all, far less express approval of it. In this regard I am quite satisfied that there is no decision of the Committee of Ministers which approves the "Prior Complaint" condition as part of the ex gratia scheme.

71. This is hardly surprising. The role of the Committee of Ministers is to supervise the implementation of judgements of the ECtHR. It does not interpret judgements. If Interpretive difficulties arise there is a procedure under Art 46 [3] or perhaps under Art 47 of the Convention to seek a ruling or an advisory opinion from the Court. This procedure has not been availed of by the Committee in this case even though the IHREC and the CLC sought such a referral.

72. As the judgement does not expressly accommodate the States position on the issue of prior complaint , it would seem to me to be necessary, to adapt the standard or test for assessing loss and damage for a breach of Art 3, as set out in Par 149 of the judgement, to read into that paragraph an addition, to the effect that in the assessment of whether the measures which the State had failed to put in place, would have had a "real prospect" of altering the outcome or mitigating the harm and damage, there had to be evidence of a prior complaint against the same abuser. Such an exercise could not be achieved by an interpretation of Par 149, but would in fact require a substantial addition to this paragraph. It need hardly be said that the Committee of Ministers does not have the power to add to or alter the terms of a judgement, nor does it have the power to interpret judgements.

73. Thus even if the Committee of Ministers did, as the State contends, indorse or approve the inclusion the "prior complaint" condition of eligibility in the ex-gratia scheme, this would have been manifestly outside their legal power, and I would be obliged by Section 3 of the Act of 2003 to ignore it. However, as said above, there is no evidence in the documents submitted to me that the Committee of Ministers did this. On the contrary, their "Decision" in this regard skillfully avoids any such decision or expression of opinion.

Conclusions

74. The "Prior Complaint" condition for eligibility for a payment for the Ex-gratia scheme is incompatible with the judgement of the ECtHR in the Louise O Keeffe case. [See pars 33 to 57 above.]

75. The insistence by the State on the inclusion of the "Prior Complaint" condition for eligibility for a payment from the Ex-gratia scheme, risks a continuing breach of the rights, under Article 13 of the Convention, of those victims of child sexual abuse in National Schools, who discontinued litigation against the State, to an adequate remedy in domestic law. [See pars 55 to 59 above]

76. The "Prior Complaint" condition was not, and could not lawfully, have been approved or indorsed by the Committee of Ministers of the Council of Europe as compatible with the judgement of the ECtHR in the Louise O Keeffe case. [See pars 66 to 73 above]

77. The inclusion of the "Prior Complaint" condition, effectively excludes any possibility, of a *"holistic and flexible approach"* to the settlement of historic child sexual abuse claims.

78. The 13 applicants to the Independent Assessor whose applications for a payment from the Ex-Gratia scheme were refused by the SCA on the sole ground that that they failed to furnish evidence of a "Prior Complaint" are each entitled to a payment from the scheme. [See pars 50 to 52 above].

79. The 6 applicants to the Independent Assessor for a payment from the Ex-Gratia scheme, whose applications were refused by the SCA on the ground that they failed to furnish evidence of a "Prior Complaint" and also on the additional ground that they did not have litigation against the State which they had discontinued, are not entitled to a payment from the scheme, because they do not fulfill the eligibility condition in the Ex-Gratia scheme in relation to discontinued litigation. Their claims for compensation for historic child sexual abuse may, more appropriately be dealt with by the SCA under the heading **"New Litigation in relation to Historic Abuse Claims"**, as set out in the States Action Plans and more particularly in the **"General Information on Appeals where an**

application for an ex-gratia payment is declined by the State Claims Agency". [See pars 63-64 above]

Signed:

Dated: 5/07/19