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Mr Ted McEnery,
Clerk to the Committee,
Committee of Public Accounts,
Leinster House,
Dublin 2.

My Ref: RD/CC
Your Ref:
Date: 30th April 2014

Re: My Client: Mr Frank Flannery

Dear Sir

I refer to your letters of the 14th April 2014 and 17th April 2014.

Your letter of the 14th April 2014, which included a transcript of evidence before the Committee, on Thursday, the 10th April 2014, which was alleged to be examining "*state funded expenditure of the Rehab Group*" offered my client a "*right of reply*".

My client has carefully reviewed the transcript of evidence and he is satisfied from perusing same that he does not need to exercise a right of reply as it is clear there were no matters properly before the Committee on which he would be able to assist them having regard to his tenure as Chief Executive Officer of that organisation which terminated in November of 2006. However, if there are particular matters which the Committee wish to direct my client's attention to and which he may have overlooked, he will be happy to review same, if they identify such specific issues which may be of concern to them and upon which they believe he may be able to respond.

Arising from your letter of the 17th April 2014, which arrived before giving me an opportunity to respond to your letter of the 14th April 2014, rather than advance matters it appears merely to confuse matters.

The substance of the letter under reply seems to indicate that the Committee were unhappy with some of the responses given by the persons appearing before them in respect of a range of issues which may or may not have been linked to expenditure of state funds and requiring my client's attendance to deal with the "*aforementioned public monies that in 2013 amounted to €95.5m.*"

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Robert Dore BCL
Commissioner for Oaths
Parliamentary Agent

Carol Coleman DLS
Legal Executive

It seems unnecessary, but important, to point out once again that my client ceased as Chief Executive Officer of the Rehab Group in November of 2006 and from that date would have had no executive responsibilities in relation to the working of the Rehab Group.

It is equally clear that if public monies were expended in the amount of €95.5m, in 2013, by the State towards Rehab, the persons or institutions responsible would be in the main:

1. Payments made by the HSE to Rehab under Section 39 of the Health Act 2004;
2. Payments made to Rehab from the Department of Justice and Equality under the Charitable Lotteries Scheme;
3. Payments for the provision of specialist vocational training made by SOLAS, and
4. Payments made by other government departments to companies of the Rehab Group.

If that is an accurate description of the source of the €95.5m then it is clear that the Committee should be directing their enquiries to those bodies to enquire as to whether they were responsible for the €95.5m and how they came to pay it.

It is clear that the Committee does not have the power and/or jurisdiction to review the “*spend of public monies by Rehab*” as referred to in its letter of the 17th April 2014. Standing Order 163, which governs the Committee, states:

“(1) There shall stand established, following the reassembly of the Dáil subsequent to a General Election, a Standing Committee, to be known as the Committee of Public Accounts, to examine and report to the Dáil upon—

- (a) the accounts showing the appropriation of the sums granted by the Dáil to meet the public expenditure and such other accounts as they see fit (not being accounts of persons included in the Second Schedule of the Comptroller and Auditor General (Amendment) Act, 1993) which are audited by the Comptroller and Auditor General and presented to the Dáil, together with any reports by the Comptroller and Auditor General thereon:*

Provided that in relation to accounts other than Appropriation Accounts, only accounts for a financial year beginning not earlier than 1 January, 1994, shall be examined by the Committee;

- (b) the Comptroller and Auditor General's reports on his or her examinations of economy, efficiency, effectiveness evaluation systems, procedures and practices; and*
- (c) other reports carried out by the Comptroller and Auditor General under the Act.”*

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It is clear and well known to the Committee that the Rehab Accounts have not been audited by the Comptroller and Auditor General since the 1st January 1994.

It seems clear therefore that the Committee may not launch an examination and enquiry into the accounts, reports or executive remuneration of the Rehab Group pursuant to Standing Order 163(1).

It is difficult to believe that the Committee are unaware of the lack of jurisdiction and have not received advice to that effect.

In an article, which appeared in the Irish Times on the 24th January 2014 under the headline "PAC given legal warning about its remit" the following is stated:

"The Public Accounts Committee has been given a legal warning that it is in danger of straying outside of its remit in the way it is carrying out its hearings and investigations.

Melissa English, the parliamentary legal adviser in Leinster House, was responding to concerns from a number of PAC members about how the committee was conducting itself in recent weeks.

Ms English was said to have been "extremely blunt" in her warning, and told TDs they had "crossed the line" so much it was now a "dot in the distance".

The issue was raised at a private meeting on Wednesday night by Fine Gael Waterford TD John Deasy, who was supported by party colleague Eoghan Murphy and Labour deputies Derek Nolan and Gerald Nash.

A number of PAC members have privately raised concerns about the workload the committee is taking on, and if it is entitled to look into as many areas as it is now.

Its legal remit is to examine public spending by any bodies which come under the remit of the Comptroller and Auditor General.

'Ambulance chasers'

In recent weeks it has investigated the Central Remedial Clinic as well as calling in Irish Water, which led to some TDs calling the PAC "ambulance chasers". It has called numerous people before it who had no obligation to accede to the committee's request, and Ms English said it was only a matter of time before people refused to appear.

Additional powers

She also suggested the committee seek additional powers to give it more responsibility.

Committee chairman John McGuinness last night said it could seek to extend its responsibility to all organisations in receipt of taxpayer's money.

It is understood a row was also sparked when Independent TD Shane Ross and Sinn Féin's Mary-Lou McDonald requested that Rehab be asked to appear before the committee as soon as possible.

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Mr Ross and Ms McDonald argued this was justified since Minister for Justice Alan Shatter told the Dáil this week that Rehab lottery sales of €7.2 million only saw a profit of €558,000 in 2010.

However, Mr Deasy objected to this and said the committee should wait until it had more information before calling them in.

"There is doing something right and there is doing something for PR," Mr Deasy is understood to have said.

Mr Deasy said the committee needs to allow due diligence and process be carried out before rashly calling organisations before the committee."

It seems clear from the above that the Committee had legal advice:

1. That they did not have the jurisdiction or authority to call Rehab or my client before the Committee.
2. That in doing so they were acting without authority and in breach of their own rules.
3. That they were advised that they needed to seek additional powers if they wished to proceed as they were intending.
4. That they did not seek those additional powers before calling my client to the Committee.
5. That at each time they requested my client to appear they knew they had no authority to do so.
6. That they were acting, not in the public interest, but solely for their own PR motives.
7. That in doing so they have abused their powers as members of the Dail Committee and have acted unconstitutionally.

All of the above is confirmed by the article written by a member of the Committee Mr Shane Ross which appeared in the Sunday Independent on the 27th April 2014 under the heading *"Public favours giving PAC more teeth"*.

Interalia, this included the following:

"A court challenge may soon be launched. Opponents of the PAC will inevitably argue that we have exceeded our remit. Yet even an adverse verdict would provide an opportunity. PAC members would welcome the all-clear to define our remit more widely, allowing us – without ambiguity – to summon reluctant witnesses who can provide us with information about the source and destination of all public money. If the courts found that we had strayed too far, legislation could be introduced in line with today's opinion poll: technical, legalistic arguments that we should not enquire into the antics of any State-funded body unless it had been audited by the Comptroller and Auditor General could be discarded. We could amend the law, removing current wriggle room which allows the PAC's activities to be deliberately delayed in the byzantine bureaucracy of Dail procedure".

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This could scarcely be more serious. It makes it abundantly clear that the Committee has been advised and is acutely conscious of the limitations on its jurisdiction, and of the fact that it is most doubtful that its jurisdiction does not extend to the enquiry that it has purported to carry out into Rehab. Indeed the purpose of the article is manifestly to pre-empt what Mr Ross calls "an adverse verdict". This is truly shocking and is unacceptable in the context of a Dail Committee whose Chairman has made it plain at every turn the intention of the Committee to seek to compel the attendance of my client, knowing that it was not legally entitled to bring him before the committee under its current powers.

If it transpires, as now seems overwhelmingly probable, that the Committee has embarked on and persisted in an examination of Rehab knowing that this was outside its remit or culpably indifferent as to whether this may be the case, there shall be grave consequences for the Committee and others who were aware of this. My client has been publicly excoriated both by direct actions of the Committee or its members and as the natural and intended consequence of the course on which the Committee embarked. This is a gross abuse of public office, both legally and constitutionally unacceptable, and the most serious conceivable infringement of my client's personal rights under the Constitution.

Reviewing your letter of the 17th April 2014 therefore, which specifically asks my client to confirm whether he is prepared to accept the invitation of the Committee and give evidence, he will neither accept nor decline an invitation of the Committee until a formal legal invitation is issued requiring him to attend and which clearly identifies the issues the Committee wish to enquire into.

In my client's letter of the 2nd April 2014 which was in reply to your letter to him of the 30th March 2014 he indicated that he had:

"a concern at the agenda as outlined as being a bit of a smokescreen to hide the true purpose of some members of the Public Accounts Committee as it does not accurately reflect the many comments of some members of the PAC and the media since my last letter to you. The comments are mainly focused on my personal financial affairs including my pension which I believe are not within the remit of PAC".

He further went on to identify in that letter a particular instance where the Chairman of the Committee, John McGuinness, made a highly prejudicial statement relating to a letter received by the Committee from a Mr. John Kelly which the Committee then furnished to the Gardaí. He suggested that that item alone created the impression of a *"witch-hunt being carried out by some members of the Committee against individuals in Rehab (including myself)".*

From information received by my client in and around the 14th April 2014, it further appears that the Committee and/or its Chairman John McGuinness either verbally or in writing requested the Revenue Commissioners to review all of my client's financial dealings of whatsoever kind that he may have had with the Rehab Group

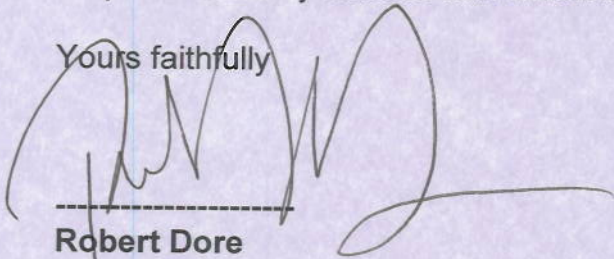
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It is clear that this confirms that some members of the Committee, including its Chairman John McGuinness, are carrying out a witch-hunt and personal vendetta against my client with a view to discrediting him in the eyes of the public and with the intention of damaging him in his business relationship with other parties.

My client believes some members of the Committee and/or its Chairman John McGuinness in taking the stance as set out in this letter, have deliberately and consciously acted without lawful jurisdiction and have abused their powers as members of a Dail Committee in their dealings with the Rehab group, its board, operational management team and my client.

These members are no longer fit and proper persons to conduct any further enquiries into any matters with which my client may be legally concerned.

Yours faithfully



Robert Dore
Dore & Co.