

24 May 2022

Mr. Stephen Donnelly, TD,  
Minister for Health,  
Department of Health,  
Block 1, Miesian Plaza,  
50 – 58 Lower Baggot Street,  
Dublin.  
[stephen.donnelly@oireachtas.ie](mailto:stephen.donnelly@oireachtas.ie)

**By Email only**

Cc: [ministerbutler\\_office@health.gov.ie](mailto:ministerbutler_office@health.gov.ie)  
[kpower@MHC.ie](mailto:kpower@MHC.ie)

Our Ref: CAM002/0001/KR

**Re: South Kerry CAMHS Compensation Scheme**

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Dear Minister,

We act on behalf of more than 150 families whose children attended South Kerry Child and Adolescent Mental Health Services (CAMHS) and who have now been invited by CAMHS to apply for inclusion in the Compensation Scheme (“the Scheme”).

Whilst in general terms we welcome the Scheme, there are a number of shortcomings which we have identified with the Scheme. It is not surprising that such shortcomings have arisen given that the Scheme was drafted without any input from consultation with the patients, their families, or their legal representatives. We have discussed these shortcomings with representatives of the State Claims Agency and their Solicitors who, as you know, do not have the gift of modifying the Scheme. Accordingly, the purpose of this correspondence is to draw your attention to the shortcomings we have identified so as to afford your Department an opportunity to modify the Scheme and thereby ensure that the Scheme is robust and will achieve its purpose of compensating persons who have suffered injury or harm without the necessity of litigation.

For ease, we include herewith a copy of the Scheme upon which we have tracked changes and have set out the reasoning for those changes in the footnotes. A number of the suggested changes are not,

in our opinion, controversial and their inclusion would simply ensure that our clients would have a level of trust in the Scheme which in turn will be conducive to the success of the Scheme. In the absence of such changes, the uptake level in respect of the Scheme will likely be significantly affected.

The most significant shortcomings of the Scheme relate to its scope and in particular the exclusion of first degree family members such as parents and siblings, from the Scheme. The impact of the deficits in the care afforded to children who attended CAMHS extend beyond the children. From the instructions we have taken it is apparent that many parents have suffered family life altering circumstances including inter alia physical assaults, owing to the aggression of their children consequent to the levels of medication they were prescribed, as well as emotional and psychological distress. This is particularly true as parents were instructed, often under duress and threat of discharge, to administer the medication to their children.

In addition to the exclusion of first degree family members, we have concerns that the Scheme excludes children who fall outside the geographic confines of the Scheme; by way of example, we have received instructions from in excess of 30 families from North Kerry as well as several families from Donegal to Wexford regarding deficits in the care administered by CAMHS services. This may be remedied as further look-back reviews are undertaken around the country but in our view, there is an opportunity at this stage to consider further defining the qualifying criteria so as to avoid a situation whereby only one cohort, confined to children, is admitted to the scheme while all other claimants are left to litigate separately. Such a division is clearly to be avoided on the interests of the families and children.

We respectfully encourage you to consider a holistic approach to the scope of the Scheme and, in this regard, our Office is willing to meet with representatives from your Department to further discuss the matter.

We look forward to hearing from you in early course.

Yours faithfully,

*Coleman Legal*

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**Coleman Legal**

FAO Keith Rolls  
Coleman Legal Partners  
Solicitors  
84 Talbot Street  
Dublin 1  
DX 112002

**By email only**

23 June 2022

**Your Ref:**

**Our Ref:** STAT07/0001/KP/MMC/AD  
MHC-28591782-1

**Matter: South Kerry CAMHS Compensation Scheme**

Dear Keith

I refer to the recent meeting between ourselves, counsel and the State Claims Agency. You raised a number of issues at that meeting on behalf of your clients and we are in a position to address many of these points now. As we explained, a number of the points raised at that meeting (and in your letter to the Minister) relate to the structure of the Scheme and are accordingly matters for Government. My client is not in a position to address those matters.

I will set out the issues (and my client's responses insofar as they are able to respond) in the order they were raised per the footnotes in your drafted Amended Scheme (attached to your letter to the Minister):

1. **Expansion of the scope of the scheme to include family members, other Kerry CAHMS patients not identified in the Maskey Report and CAHMS patients from other areas.** This relates to the structure of the Scheme and my client is not in a position to address this; it is a matter for the Minister and Government.
2. **An increase in the payment on account of €5,000.** Our client has addressed this internally and hope to be able to make a proposal on this point soon.
3. **Mediation in person.** We can agree to this.

Dublin

London

New York

San Francisco

MHC.ie

Partners - Declan Black (Managing) | Christine O'Donovan (Chair) | Mark Adair | Jenny Ahern | Catherine Allen | Liam Brazil | Sonya Bruen | Susan Bryson | Nicola Byrne | Vanessa Byrne  
Niamh Caffrey | Niamh Callaghan | Neil Campbell | William Connolly | Rachel Carney | Eoin Cassidy | Gemma Coady | Tonya Colbert | Niall Collins | Ger Connolly | Keelin Cowhey | Melanie Crowley  
Tom Davy | Muireann Derrahy | Robert Dickson | William Dillon-Leetch | Shane Dolan | Michael Doran | Conor Durkin | John Farrell | Helen Ferguson | Oliver Fitzgerald | Rowena Fitzgerald  
Jamie Fitzmaurice | Frank Flanagan | Conor Fottrell | Karol Fox | Conall Geraghty | Stephen Gillick | Aibhe Givarry | Edward Gleeson | Micheál Grace | Liam Guidera | David Gurn | Jason Harte  
Edel Hartog | Wendy Hederman | Michaela Herron | Adam Hogg | Brian Horlan | Margaret Hughes | Brian Johnston | Peter Johnston | Lisa Joyce | Rachel Kavanagh | Martin Kelleher | Gerard Kelly  
Tara Kelly | Marcus Kennedy | Niamh Keogh | Rory Kinsane | Claire Laird | Michael Madden | David Mangan | Robert McDonagh | Brian McEligott | Justin McKenna | Peter McLay | Nicholas Metcalfe  
Niall Michel | Colin Monaghan | Deirdre Munnely | Alice Murphy | Deirdre Nagle | Jjevan Neelan | Philip Nolan | Ronald Neville | David Ormsby | David O'Donnell | Frank O'Flynn | Ian O'Herlihy  
Daragh O'Shea | Maurice Phelan | Kevin Power | Sínead Power | Elizabeth Quinn | Shane Reynolds | Judith Riordan | Liam Riordan | Paul Rochford | Elizabeth Ryan | Cúisín Tobin | Barry Walsh  
Of Counsel - Una Burke | Paul Egan

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4. **Apology in person from HSE representative (at no.16) at conclusion of mediation:** The SCA has discussed this with the HSE Kerry and they have agreed to this, where requested by any individual plaintiff.
5. **Lodgement & cost ramifications of an Appeal to the Judge:** This relates to the structure of the Scheme and my client is not in a position to address this; it is a matter for the Minister and Government.
6. **Waiving of Statute of Limitations:** The SCA obtained legal advice on this issue in respect of a previous Scheme and were advised that the SCA have no *vires* to waive the Statute of Limitations (even on an informal basis) for one cohort of plaintiffs as all plaintiffs must be treated equally. However, our client has indicated that should plaintiffs issue protective Personal Injuries Summonses and also enter the Scheme:
  - a. They will agree to “freeze” the proceedings at that stage until either (1) the mediation process is completed or (2) the plaintiff has decided to withdraw from the Scheme.
  - b. The costs of drafting and issuing the summons will be recoverable in the usual way
7. **Payment of damages on a phased basis to vulnerable but not incapacitated persons so that funds are not squandered.** We understand and empathise with the rationale underlying this point. However, a defendant/respondent, including the SCA, has no legal power or right to withhold the payment of damages to an adult plaintiff with capacity.
8. **Medical card & or ex gratia clinical supports not taken into account in terms of awards under Scheme.** Our client has confirmed that the medical card and ex gratia clinical supports will not be affected by any award. However, the existence of these benefits will of course be taken into account in the calculation and negotiation of Special Damages awards under the Scheme in order to avoid double compensation, and as per the practice and principles in all personal injury cases. Further, we attach the following new Regulations which hold that certain Social Welfare payments will not be affected by any payments made to applicants under the Scheme.

As we indicated at our meeting and in discussions since, my client and indeed my firm feel the Scheme (together with the clarifications provided above) represent a real and genuine opportunity to ensure that those affected are appropriately compensated in a non-adversarial, collaborative and cooperative process. We genuinely hope that your clients will participate in the Scheme and if I can provide any further clarifications (that are within my gift to so do), I would be more than happy to so do.

Yours sincerely,

Sent by email, no signature

Kevin Power  
Partner

**MASON HAYES & CURRAN**

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27 June 2022

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[kpower@MHC.ie](mailto:kpower@MHC.ie)

Our Ref: CAM002/0001 /KR

**Re: South Kerry CAMHS Compensation Scheme**

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Dear Minister,

We refer to the above and to our correspondence on 24<sup>th</sup> May.

We note we have not heard from you in relation to same.

As we are sure you are aware, the shortcomings in the Compensation Scheme have caused considerable concerns throughout the affected families in both South & North Kerry. Whilst the families welcome non adversarial Mediation, they will be not be partaking in the Compensation Scheme unless their concerns are acknowledged in the revised scheme. Please note that as of the 27 May, our offices are receiving application forms daily, that need to be completed by our clients, to partake in the Scheme. However, at this stage, we can confirm that we will not be advising any clients to complete the application, until such time as the Terms of Reference have been agreed.

We have provided a draft Scheme that encapsulates the concerns of over 150 families that have instructed our office, regarding the care their loved ones received while attending Kerry CAMHS. We have witnessed the devastating impact the acknowledged 'deficits in care' have caused throughout the County and we have relayed same to the State Claims Agency, and their instructed Solicitors.

We trust the matter is being addressed as a priority within your office and we are at a loss to understand how we have not received any correspondence in relation to our proposals, on behalf of our clients, whilst the aforementioned applications are being received daily. This is both surprising and unhelpful.

We respectfully request that you address our proposals as a matter of urgency to ensure that no further unnecessary uncertainty & distress is experienced by the affected families.

We look forward to hearing from you in early course.

Yours faithfully,

*Coleman Legal*

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**COLEMAN LEGAL**

**From:** [Minister of State Butler](#)  
**To:** [Keith Rolls at Coleman Legal](#)  
**Subject:** HEA-MoSB-00590-2022  
**Date:** Monday 27 June 2022 15:37:46

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**Rep. HEA-MoSB-00590-2022 (Coleman Legal)**

27th June 2022

Dear Coleman legal

I refer to your recent correspondence concerning proposed changes to the South Kerry CAMHS Compensation Scheme.

**Expansion of the scope of the scheme to include family members, other Kerry CAHMS patients not identified in the Maskey Report and CAHMS patients from other areas.**

The Minister is not proposing any extension of the scheme. Any extension of the scheme would be a matter for Government to consider.

**An increase in the payment on account of €5,000**

The Minister understands that the SCA is agreeable to pay €10,000 in General Damages in addition to the €5,000 payable under the Scheme. This would be on account through the applicants' solicitors and subject to verification of application. It would be deductible from any final assessment of damages. The Minister is supportive of this proposed increased forward payment on account.

**Mediation in person**

The Minister understands that it is agreed in principle by the SCA to offer mediation in person or remote mediation as per the consent of the applicant.

**Apology in person from HSE representative at conclusion of mediation:**

The Minister understands that the HSE has agreed to make an apology in person on conclusion of mediation, where sought, in addition to previous in person and written apologies already conveyed.

**Lodgement and cost ramifications of an Appeal to the Judge:**

The Minister understands from the SCA that the position as set out in the scheme is in line with court processes and is not unreasonable. It is not so much a case of the SCA seeking to recoup costs as it is not making an allowance for the (relatively minor) costs of the

appeal. All of the applicant's other costs will be allowable. On this basis, it is not intended to amend the scheme in this respect.

**Waiving of Statute of Limitations**

The Minister understands that the SCA sought and received legal advice on this issue. The advice is that SCA has no *vires* to waive the Statute of Limitations in respect of one cohort of plaintiffs only (even on an informal basis). All plaintiffs must be treated equally. Therefore, it is not possible to waive the Statute.

**Payment of damages on a phased basis to vulnerable but not incapacitated persons so that funds are not squandered.**

The Minister understands that the HSE, as defendant, has no legal power or right to withhold the payment of damages to an adult with capacity. Therefore, this is a matter for the plaintiff to arrange with their own representatives.

**Medical card and/or ex gratia clinical supports not taken into account in terms of awards under Scheme.**

Taking medical card and ex gratia clinical supports into account in terms of calculating Special Damages awards is undertaken to avoid "double compensation" and is, the Minister understands, in accordance with the practice and principles in personal injuries actions. As set out in the Scheme, these supports will not be affected by any award. Therefore, it is not proposed to amend the scheme in this respect.

I hope this clarifies the position on the various matters raised.

Yours sincerely



Pádraig Kelly

private Secretary to Minister Butler



30 June 2022

Mr. Stephen Donnelly, TD,  
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Our Ref: CAM002/0001 /KR

**Re: South Kerry CAMHS Compensation Scheme**

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Dear Minister,

We refer to previous correspondence regarding the above matter resting with e-mail correspondence received on the 23rd inst., from Mason Hayes & Curran, and the 27th inst., from Minister Mary Butler's Private Secretary, Pádraig Kelly. There is no indication in the correspondence from Mr Kelly that it was sent on behalf of the Minister for Health. Clarification on this point is required given the absence of any apparent response from the Minister for Health to our letters of 24<sup>th</sup> May & 27<sup>th</sup> June, 2022.

As you are no doubt aware, we had identified certain shortcomings with the proposed CAMHS Compensation Scheme ("the Scheme") and we had asked that certain modifications be considered. From correspondence referenced above, we note that a number of our proposed changes have been accepted. We welcome this development and look forward to receipt of the revised Scheme in due course, once the remaining issues have been resolved.

With regard to the remaining issues, we are at a loss to understand the *vires* point regarding waiving of the Statute of Limitations but will, as suggested, issue protective proceedings as necessary. In this regard, we note the SCA's agreement to discharge the costs of drafting and issuing those protective Personal Injuries Summonses.

In effect therefore, two significant issues remain:

1. The Scope of the Scheme;
2. The extent of the payment on account.

### **1. The Scope of the Scheme:**

As previously advised, our biggest criticism of the Scheme remains its scope and, in particular, the exclusion of first-degree family members such as parents and siblings. Many of these have suffered physical assaults owing to the aggression of their children (consequent to the levels of medication they were prescribed) as well as emotional and psychological distress particularly as they administered the medication to their children.

We note from recent correspondence that the issue of the enlargement of the Scheme is regarded as a matter for Government to consider; please confirm that you intend to bring this issue to Government for consideration. Whilst we appreciate the desire to avoid a “floodgates” scenario, respectfully we would submit that there are adequate safeguards in law to ensure that such a situation could not arise; those safeguards will limit claims to instances where family members have suffered a physical injury and/or a recognisable psychiatric injury.

Were the Scheme to remain confined to its current scope, this will inevitably lead to a two-tiered system whereby invited applicants will avail of the Scheme but their family members will be forced to litigate the matter before the Courts. Undoubtedly such an approach will have adverse temporal and financial implications; implications which no doubt the Government was anxious to avoid by establishing the Scheme.

Accordingly, we would urge you on behalf of the families affected to reconsider the expansion of the Scheme and bring the issue to Government.

### **2. The Payment on Account:**

Whilst in general terms we welcome the agreement to increase the initial payment made on account to €15,000 (€10,000 for general damages and €5,000 payable under the Scheme per Minister Butler’s e-mail), what was initially proposed by the Scheme was that the monies paid would be paid “to assist in discharging any initial expense that may have been or will be incurred”.

Given the nature of these cases and the plethora of reports that will be required to address the issues of causation as well as the various quantum reports that will be required, the sum of €5,000 will simply not discharge the cost of those reports. The reports will more likely cost in the region of €15,000.

In view of our clients' limited means it will not be feasible to (nor would we) ask our clients to discharge the shortfall in the cost of the reports. Nor could we ask them to expend monies paid to them on account for damages, on reports. In circumstances where a sum of €15,000 was paid to the Solicitors for the applicants in the Pandemrix Scheme to enable the necessary reports to be procured, we fail to see how any lesser sum can be offered to our clients particularly in view of the comments made in correspondence sent on Minister Butler’s behalf and from Mason Hayes & Curran, that “all plaintiffs must be treated equally.” In the circumstances, we would ask you to revisit the amount of the monies payable under the Scheme.

In terms of the proposed payment to our clients, at this stage, our clients do not require an advance on their general damages. The damages our clients require now are effectively special damages; monies that can be applied to source further treatment and thereby mitigate their losses stemming from the failings of the treatment afforded to them by CAMHS. Assuming that the nature of this payment is

properly recognised as an “upfront” payment, a sum of €10,000 would be acceptable to our clients. However, for the reasons outlined above, they will require a separate payment of €15,000 in respect of the costs which they will incur in obtaining expert reports. Given that these payments will ultimately be deductible from the final amounts paid to our clients, we fail to see any legitimate basis for refusing this request.

Significant progress has been made to date and we are hopeful that with further consideration of the two discrete issues identified above, a robust Scheme can be finalised which will achieve its purpose of compensating persons who have suffered injury or harm without the necessity of litigation.

We look forward to hearing from you in early course.

Yours faithfully,

*Coleman Legal*

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**Coleman Legal**

**From:** [Minister of State Butler](#)  
**To:** [Keith Rolls at Coleman Legal](#)  
**Subject:** HEA-MoSB-00590-2022  
**Date:** Monday 25 July 2022 16:39:22

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**Rep. MoSB-00590-2022 (Coleman Legal)**

25th July 2022

Dear Coleman Legal

On behalf of Minister Butler I refer to your letter of 30 June last and previous correspondence concerning proposed changes to the South Kerry CAMHS Compensation Scheme.

Minister Butler wishes to reiterate that she does not propose any extension of the scheme and feels that the increased forward payment of €10,000 in general damages, in addition to the €5,000 payable on account, is reasonable. The Minister understands that the State Claims Agency will keep the issue of forward payments under review, in the context of its ongoing assessment of claims.

I also wish to clarify that, in line with normal practice as appropriate, any correspondence issued signed by a Minister's Private Secretary is undertaken on behalf of a Minister.

Yours sincerely



Pádraig Kelly  
Private Secretary to Minister Butler

28 July 2022

Mr. Stephen Donnelly, TD,  
Minister for Health,  
Department of Health,  
Block 1, Miesian Plaza,  
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[kpower@MHC.ie](mailto:kpower@MHC.ie)

Our Ref: CAM002/0001/KR/JN

**Re: South Kerry CAMHS Compensation Scheme**

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Dear Minister,

As you are aware, we act on behalf of a large number of families whose children attended South Kerry Child and Adult Mental Health Services (CAMHS) and who have now been invited by CAMHS to apply for inclusion to the Compensation Scheme (“the Scheme”). Over the last number of months we have engaged with the State regarding the Scheme and its operation, highlighting certain shortcomings. In this regard, we enclose herewith, at appendix 1, copies of correspondence that has passed between our office, your department and your Junior Minister, Minister Mary Butler. To date, we are disappointed that you have chosen not to involve yourself in this correspondence, which is not acceptable given your primary role in the matter.

Despite your non-involvement to date, through our mutual endeavours, a significant number of our concerns regarding the Scheme have been resolved but one key issue from our clients’ point of view remains in dispute and that is the extent of the payment on account. We trust, given your primary role, that this issue will, as it should, receive your personal attention and that you will bring it to the attention of Cabinet.

As you will be aware, under the Scheme there is provision for a sum of €5,000 to be paid on account to an applicant “to assist in discharging any initial expense that may have been or will be incurred”. By letter dated the 27th June 2022, Minister Butler agreed to increase the initial payment made on account to €15,000; in so doing, it was specified that €10,000 was for general damages and €5,000 was “to assist in discharging any initial expense that may have been or will be incurred”. In correspondence dated 30th June 2022, we pointed out that the sum of €5,000 will simply not discharge the costs of the plethora of reports which will be required to address the issues of causation as well as quantum in

these cases. We further pointed out that a sum of €15,000 was paid in respect of outlay to applicants to the Pandemrix scheme notwithstanding that the State's liability in those cases is capped at 50% whereas the State has accepted full responsibility in respect of applicants invited to submit applications under the CAMHS Scheme. For completeness, please see relevant paragraph of the Pandemrix Scheme below.

*'Each client including the plaintiff in his case who accepts the settlement offer within the said period of two months will receive an additional sum of €25,000 (payable within 14 days of communication of acceptance of the offer), which said sum will not be taken into account as part of the 50% of the full value (as agreed or determined) of each claim.'*

We were very disappointed to learn from an email dated the 25th July 2022 sent on Minister Butler's behalf, that she considers the sum of €5,000 payable on account to be reasonable. Furthermore, we are at a loss to understand what is meant by the comment that *"The Minister understands that the State Claims Agency will keep the issue of forward payments under review, in the context of its ongoing assessment of claims"*, in circumstances where the administrators of the Scheme, the State Claims Agency, have repeatedly advised that they have no discretion in respect of the Scheme.

The purpose of the payment on account is solely to discharge the outlay on a particular file. By way of illustration, we enclose herewith (appendix 2) the estimated outlay cost in respect of the costs of procuring the necessary reports for one of our clients were, she to apply for inclusion in the Scheme. These costs would be replicated in other cases. As appears therefrom, the estimated costs far exceed €5,000; owing, to our client's limited means, she would not be in a position to discharge the shortfall in the outlay costs.

Respectfully, we would invite you to discuss the likely outlay costs with your own legal advisers as we are confident that they will not disagree with the estimate we have provided to you.

By limiting the amount of the payment on account to €5,000, the State is in effect putting a significant obstacle in the way of our clients accessing a scheme which was introduced with such publicity and apology in recognition of the egregious wrongs committed against them by the State's servants and/or agents.

Furthermore, by limiting the payment on account to €5,000, the actions of the State are unjust in circumstances where a greater sum is being paid on account under a scheme on which the CAMHS Scheme is mirrored and is shortsighted in circumstances where these outlay costs will ultimately be recouped from the State at the conclusion of an application to the Scheme. As such, from a budgetary point of view, there is no loss accruing to the exchequer.

Despite publication of the Scheme in April 2022, our clients are yet to receive any financial support with the consequence that their children cannot avail of treatment to mitigate the effects of the significant harm they suffered whilst attending the CAMHS South Kerry service.

In the circumstances, we would invite you to reconsider your position as a matter of urgency and put further proposals to us regarding the resolution of this impasse within 14 days of today's date.



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We look forward to hearing from you in early course.

Yours faithfully,

*Coleman Legal*

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**Coleman Legal**

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**From:** Minister of State Butler  
**Sent:** 15 August 2022 16:47  
**To:** Keith Rolls at Coleman Legal  
**Subject:** HEA-MoSB-00590-2022

HEA-MoSB-00590-2022

15th August 2022

Dear Coleman Legal,

I refer to your letter of 28 July 2022 concerning the South Kerry CAMHS Compensation Scheme.

Firstly, under S.I. No. 394/2020 - Health (Delegation of Ministerial Functions) Order 2020, lead responsibility for mental health services, on an administrative basis, was delegated by Minister Donnelly to Minister Butler.

Secondly, please note that any correspondence issued and signed by a Minister's Private Secretary is undertaken on behalf of a Minister.

With regard to your correspondence of 28 July, notwithstanding your expressed views about shortcomings in the scheme, no further extension of the scheme is being considered nor is any increase to the €5,000 payable on account being considered.

As indicated previously, the SCA is agreeable to pay €10,000 in General Damages in addition to the €5,000 payable up-front for expenses under the Scheme. This would be on account through the applicants' solicitors and subject to verification of application. The €10,000 would be deductible from any final assessment of damages. The State Claims Agency (SCA) will keep the issue of forward payments under review, in the context of its ongoing assessment of claims.

Yours sincerely



Pádraig Kelly  
Private Secretary to Minister Butler