

REPORT of the
COMMITTEE on PROCEDURE and PRIVILEGES
on
Utterances made by Deputy Mary Lou McDonald in Dáil
Éireann on 3rd December 2014

Adopted by the Committee on 1st April 2015

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**Report of the Committee on Procedure and Privileges on utterances made by
Deputy Mary Lou McDonald on 3rd December 2014**

1. On 3rd December 2014, Deputy Mary Lou McDonald named certain persons under privilege in the House, on foot of allegations made by a whistleblower in relation to tax evasion and investigations relating thereto.
2. Deputy McDonald's utterances were referred to CPP by the Ceann Comhairle under paragraph (10)(b) of Standing Order 59 for consideration under that Standing Order.
3. On 19th December 2014, CPP requested Deputy McDonald to either make a written submission to the Committee, or appear before it, in relation to the matter.
4. Deputy McDonald made a written submission to the Committee dated 4th February 2015, which was considered by CPP on 4th March 2015.
5. Deputy McDonald submitted that her exercise of privilege was in the public interest, and met the requirements of Standing Order 59 in relation to reasonable excuse, responsible exercise, good faith and sound basis.
6. At its meeting on 4th March, CPP considered Deputy McDonald's remarks and her submission. The following is an extract from the minutes of that meeting, containing the Committee's determination on the matter:

“Following consideration of all relevant matters in the context of Standing Order 59, the Committee decided in relation to Deputy McDonald's utterances that they were in the nature of being defamatory under the definition in paragraph (11) of Standing Order 59. The Committee further decided by unanimous decision that the utterances were *prima facie* an abuse of privilege.”
7. CPP requested Deputy McDonald to make a personal explanation to the House, in effect to withdraw the utterances without qualification, and to indicate by 12th March 2015 when she intended to do so.
8. Deputy McDonald wrote back to CPP on 11th March 2015, questioning and disputing CPP's consideration process.
9. On 1st April 2015, CPP considered the contents of Deputy McDonald's letter of 11th March, and strongly rejected the Deputy's assertions.

10. CPP is of the view that the right to one's good name is a fundamental right, and persons outside of the House should not be referred to in a manner which would adversely affect their good names or reputations.
11. The Constitution confers absolute privilege on members of Dáil Éireann in respect of their utterances in the House, and CPP is of the view that under no circumstances should this be abused.
12. Deputy McDonald by failing to indicate her intention to withdraw the utterances by the date specified has in effect failed to withdraw them. In light of this CPP is now reporting to Dáil Éireann its findings that Deputy McDonald's utterances were in the nature of being defamatory, and were prima facie an abuse of privilege, having regard to the provisions of Standing Order 59.
13. Finally, it is also noted that in submissions made following the utterances, Mary Harney, Máire Geoghegan-Quinn, Ray MacSharry and Desmond O'Malley strenuously denied the allegations. These submissions were laid before the Dáil on 11th March 2015, in accordance with a decision of CPP.



SEÁN BARRETT TD
CEANN COMHAIRLE

Tithe an Oireachtais

HOUSES OF THE OIREACHTAS



PARLIAMENT OF IRELAND

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Ms Mary Lou McDonald TD
Leinster House

19th December 2014

Dear Deputy McDonald

I have to inform you that the Ceann Comhairle has received three submissions in relation to your remarks in the Dáil on 3rd December 2014. (I enclose an extract from the Official Report of the Debates in this regard.) In those remarks, you made reference to certain allegations against named individuals in relation to tax evasion and investigations relating thereto, as outlined in a dossier prepared by a whistleblower.

The submissions were received from certain of the named individuals, each of whom submitted that your remarks impugned their good name. On receipt of the submissions, the Ceann Comhairle examined them and decided to refer them to the Committee on Procedure and Privileges ('CPP') under Standing Order 59(10)(b). (A copy of this Standing Order is also enclosed for your information.)

At its most recent meeting, CPP gave initial consideration to the submissions under Standing Order 59, and decided to request you to put your case by way of a submission to the Committee in relation to your remarks. (Please note in this regard that when considering a matter under Standing Order 59, CPP is required to take account of certain matters contained in paragraph (9) of that Standing Order.) I would request that by Friday 9th January 2015, you would either make a written submission to the Committee by sending it to me, or indicate your willingness to appear before the Committee.

Yours sincerely

Noreen Banim

Noreen Banim
Clerk to CPP



Mary Lou McDonald TD
Deputy Leader
Spokesperson
on Public Expenditure and Reform
Dáil Office
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APPENDIX B

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4th February 2015

Ms Noreen Banim
Committee on Privileges and Procedures (Dáil)
Leinster House
Dublin 2

Noreen, a chara,

I write in response to your letter of the 19th December last.

At the Dáil sitting of 3rd December last I stated that allegations of tax evasion and the political obstruction of investigations of same had been made by a serving senior civil servant (the Whistleblower). In the course of my remarks I identified a number of former politicians and former ministers against whom these allegations are made. In so doing I relied on the privilege afforded to me as a member of the Oireachtas.

The dossier setting out these allegations was circulated by the Whistleblower to me and to other members of the Public Accounts Committee as individual members of the Dáil. As such the dossier enjoys the status of personal papers and is not a document of any committee of the Oireachtas. Legal advice given to members of the Public Accounts Committee directed that no Oireachtas Committee would be permitted to investigate the allegations contained in the dossier.

Separate legal advice given to me by the Parliamentary Legal Advisor (PLA) directed that the only forum in which I could raise these allegations was the floor of the Dáil. I was made aware that in so doing I would be relying on my constitutionally protected parliamentary privilege.

Given the gravity of the allegations, the undisputed credibility of the Whistleblower and the absence of any other parliamentary channel, after careful consideration I chose that course of action. I did so in the public interest, on the basis of a genuine belief that this was well within my constitutional rights, and in order to uphold my duties and responsibilities as an elected representative. For the following reasons, I submit that my exercise of privilege in this case meets the threshold for reasonable excuse under Standing Order 59(9)(d)(ii) and also meets the complementary requirements of responsible exercise, good faith and sound basis under Standing Order 59(9)(a).

For the record I wish to draw your attention to a number of facts that I believe to be pertinent.

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The Whistleblower is a senior civil servant who had been appointed as the authorised investigating officer into allegations of tax evasion and Ansbacher accounts by a previous Government. His professional competence as a forensic accountant is not in question. He made his disclosure in accordance with the Protected Disclosures Act 2014. I believe that his disclosure is made in good faith and in the public interest. His allegations are documented and are backed up by two senior colleagues, both also forensic accountants.

Prior to the 3rd December last, the Whistleblower's allegations were already the subject of public comment and controversy, having been widely reported in the media. A number of media outlets named the Whistleblower and furthermore named a number of individuals – all deceased – alleged to have been holders of offshore accounts.

Prior to the 3rd December one element of the Whistleblower's allegations was corroborated – that current Minister Richard Bruton TD was in possession of a detailed witness statement for a period of two years and had failed to hand over that statement to the Garda Bureau of Fraud Investigation. Minister Richard Bruton TD released that witness statement to the Gardaí on 10th November last, only after this fact was made public.

The Dáil record of 3rd December last makes abundantly clear that I was setting out allegations made against the individuals named in the Whistleblower's dossier, by the Whistleblower. For my part I made no assertion of wrongdoing against any individual. I merely referred to those allegations made – and subsequently stood over – by the Whistleblower. In doing so, I very consciously and specifically refrained from offering an opinion on the veracity of these allegations, and moreover I did not assert that they were true.

It is in the public interest that these allegations of tax evasion and political obstruction be publicly stated and investigated. I have made that case to an Taoiseach as head of Government. I will continue to press that case.

Your letter of 19th December last refers to three submissions relating to my remarks at the 3rd December sitting, which were received, examined and referred to the Committee on Privileges and Procedures by the Ceann Comhairle. Your letter further states that these submissions are being considered in accordance with Standing Order 59, in particular 59(10)(b).

My reading of Standing Order 59(10)(b) is that, notwithstanding any other provision of Standing Order 59, the Ceann Comhairle may use his discretion to refer an utterance to the Committee on Procedures and Privileges. It does not state that he may use his discretion to refer a submission or submissions received regarding such utterances to the Committee, notwithstanding any other provision. I am therefore at a loss as to how either the Ceann Comhairle or the Committee is able to consider these three submissions, which were not referred under Standing Order 59(3)(b), applicable when 'the defamatory nature of the utterance is not apparent at the time during the course of the proceedings', as stated at 59(3).

Standing Order 59(2)(a) makes clear that the Ceann Comhairle shall act immediately at the time of utterance, where an utterance is in his or her view defamatory. The record of

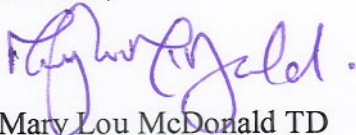
the Dáil sitting of 3rd December last makes clear that while the Ceann Comhairle did explicitly caution me regarding the utterances at issue, he did not ask for an unqualified withdrawal of the utterances as he was obliged to do under Standing Order 59(2)(a), if in his view the utterances were defamatory *and not otherwise permitted by virtue of Standing Order 59(9)(a) and/or 59(9)(d)(ii)*.

Furthermore, as outlined above, an examination of the totality of the record of the debate, as required under Standing Order 59(9)(e), will show that: 1) I clearly insisted that the allegations were not yet proven; 2) I did not go into the detail of the allegations, or otherwise attribute specific allegations to those named; and 3) I clearly indicated that my intention was to emphasise to an Taoiseach the serious implications of his Government failing to ensure thorough investigation of the available evidence through whatever mechanism is available to him in his public capacity, in light of the long delay in referring this evidence to the authorities, and in view of advice received that no Oireachtas Committee would be able to pursue the facts.

For these reasons, I believe that my exercise of privilege is covered under Standing Order 59(9)(a) and 59(9)(d)(ii), especially taking into account the totality of the record of proceedings as provided for at Standing Order 59(9)(b). As such, this permits the Ceann Comhairle to decide pursuant to Standing Order 59(9)(e) that, having taken into account the totality of the record, no further action shall be taken.

Thank you for your consideration of this submission.

Le meas,



Mary Lou McDonald TD

Tithe an Oireachtais

HOUSES OF THE OIREACHTAS



PARLIAMENT OF IRELAND

An Coiste um Nós Imeachta agus Pribhléidí (Dáil Éireann)

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Ms Mary Lou McDonald TD
Leinster House

5th March 2015

Dear Deputy McDonald

At its meeting yesterday evening, the Committee on Procedure and Privileges (CPP) considered your correspondence of 4th February in relation to your utterances in the Dáil on 3rd December.

Having regard to the provisions of Standing Order 59, I have to inform you that CPP decided that your utterances were in the nature of being defamatory, as defined in paragraph (11), and were prima facie an abuse of privilege. CPP further decided that you should make a personal explanation to the House in effect to withdraw the utterances without qualification. Accordingly, I would request that you inform the Ceann Comhairle by Thursday 12th March when you intend to make your explanation. I must inform you that if you do not make a personal explanation, in accordance with the terms of Standing Order 59(5)(b)(ii), CPP will make a report to the Dáil with a recommendation that you be reprimanded in your place.

CPP also decided that the correspondence received from persons named in your utterances should be laid before the Dáil.

Yours sincerely

Noreen Banim
Clerk to Dáil CPP



Ms Noreen Banim
Clerk to Dáil CPP
Leinster House
Dublin 2.
11th March 2015

Noreen, a Chara,

I am writing to request that the Committee on Procedures and Privileges (CPP) provide me with the reasoning behind its decision to define my exercise of Dáil privilege on 3rd December last as an abuse.

I strongly believe that my use of privilege on that day was fully consistent with the provisions of standing order 59.

Having provided the CPP with a detailed response (4th February) to the allegation of abuse of Dáil privilege, I find it astonishing that the CPP would respond without any reference to, much less answers to, the detailed explanation and defence of my use of privilege.

I would remind you that I have not seen the letters of complaint submitted to the CPP regarding my exercise of privilege.

The procedure adopted by the CPP for deciding on this matter is deeply flawed; affording me neither access to the letters and therefore the basis of the complaint, nor an explanation for the CPP decision.

I look forward to your response

Is Mise

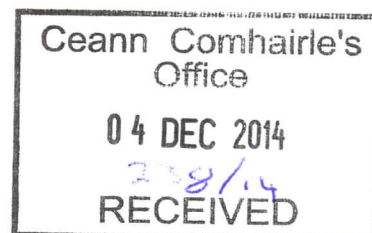

Mary Lou McDonald TD

*Received Journal Office
Friday 13th March 2015*

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An Ceann Comhairle
Seán Barrett TD,
Leinster House
Dublin 2



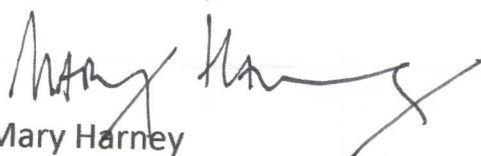
Dear Ceann Comhairle,

A very serious and totally unfounded allegation was made against me by Deputy McDonald in the Dail on Wednesday 3rd December.

I did not, as alleged, terminate an investigation on the basis of any name that was put to me by the Authorised Officer.

I'm availing of Standing Order 59(3b) to have this untrue and defamatory allegation corrected and the record amended accordingly.

Yours sincerely,


Mary Harney

3rd December 2014

Mary Harney, Norwood, Wynnsward Park, Clonskeagh, Dublin 14.

APPENDIX E

From: Sean OFearghail/Members/Oireachtas
To: ceann.comhairle@oir.ie
Cc: Brendan Conroy/Staff/Oireachtas@HOUSES
Date: 09/12/2014 15:51
Subject: Correspondence
Sent by: Sean Kelly

A Ceann Comhairle,

I am writing to you regarding comments made by Deputy Mary Lou McDonald on December 3rd 2014 during Leader's questions about allegations made by a Whistle-blower to members of the PAC.

Deputy McDonald mentioned individuals' names when they had no opportunity whatsoever to defend themselves. She has not yet been asked to withdraw her remarks even though you did warn her on the day that she 'cannot make allegations of that nature in the Chamber'.

Deputy McDonald's comments were unprecedented and I believe a gross misuse of Dáil privilege. Under Standing Order 59 there is a facility for the individuals who were mentioned to write to you within two weeks so that the issue be examined.

However I believe this issue is so serious and unprecedented it should be examined by the Committee on Procedure and Privileges as soon as possible. If it is the case that this can only be done by way of motion (under Standing Order 59(3a)) please let me know, and I will bring forward a motion to the House.

I am available to discuss this further if you so wish.

Yours sincerely,

Seán



SEÁN Ó FEARGHAÍL TD
KILDARE

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**FIANNA Fáil WHIP & SPOKESPERSON ON DEFENCE;
ARTS & CULTURE; CONSTITUTIONAL REFORM;**

APPENDIX E

11 December 2014

Máire Geoghegan-Quinn
5, Woodfield
Cappagh Road
Bearna
Galway City

An Ceann Comhairle
Mr Sean Barrett, TD
Dáil Éireann
Leinster House
Dublin 2

A Cheann Comhairle, a chara,

In the Dáil chamber last week an elected Member of the House, under privilege, read certain allegations against me into the record of the House. These allegations were totally false. As a retired Member of the House I had no right of reply to protect my good name.

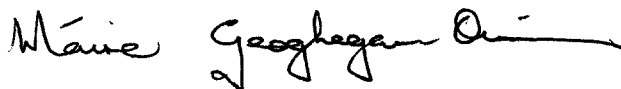
I now wish to lodge a formal complaint with you about this matter.

It should be noted that the following statement of fact was made by me in the aftermath of the allegations.

"I have never had an Ansbacher Account. Neither have I ever had an account with Guinness and Mahon Bank".

Le deá mhéin,

Is Mise le Meas,

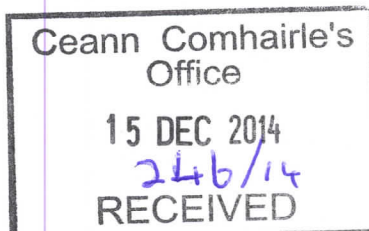
A handwritten signature in black ink, reading 'Máire Geoghegan-Quinn'. The signature is fluid and cursive, with a long horizontal stroke at the end.

Máire Geoghegan-Quinn

APPENDIX E

Ray MacSharry
Alcantara
Pearse Road
Sligo
12 December 2014

Mr Seán Barrett TD
Ceann Comhairle
Leinster House
Kildare Street
Dublin 2

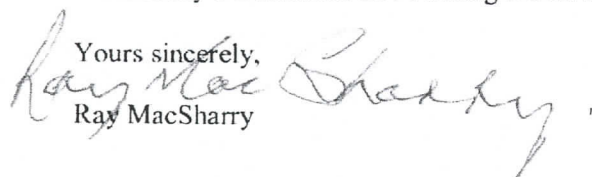


Re: Submission of Ray MacSharry Pursuant to Standing Order 59. (1)

An Ceann Comhairle

Please find enclosed my submission pursuant to Standing Order 59. (1) of the Dáil Éireann Standing Orders relative to Public Business together with Oireachtas Library Research Service Rules (the "**Standing Orders**"). This submission relates to comments made by Deputy Mary Lou McDonald on Wednesday 3 December 2014 during a Dáil Éireann Parliamentary Debate.

Yours sincerely,


Ray MacSharry

**SUBMISSION OF RAY MACSHARRY PURSUANT TO STANDING ORDER 59. (1) OF
DÁIL ÉIREANN STANDING ORDERS RELATIVE TO PUBLIC BUSINESS TOGETHER
WITH OIREACHTAS LIBRARY & RESEARCH SERVICE RULES**

1. **Objective**

I wish to invoke Standing Order 59. (1) of the Dáil Éireann Standing Orders relative to Public Business together with Oireachtas Library & Research Service Rules (the “**Standing Orders**”) arising from statements made on 3 December 2014 during a Dáil Éireann Parliamentary Debate.

2. **Background**

On Wednesday 3 December 2014 during a Dáil Éireann Parliamentary Debate, Deputy Mary Lou McDonald, (the “**Member**”), referred to allegations made by a whistleblower of tax evasion by senior political figures and of obstruction of the investigation and exposure of these wrongdoings. The Member then stated that according to the whistleblower, a number of former senior political figures held Ansbacher accounts in order to evade tax.

“The whistleblower further alleges that other senior figures from Fianna Fáil and Fine Gael also held these very secret Ansbacher accounts that were administered by the late Des Traynor and a Mr. Pádraig Colleary, formerly of Guinness & Mahon.”

Following this statement the Ceann Comhairle cautioned the Member and stated that:

“The Deputy cannot make allegations of that nature in the Chamber.”

Despite this caution, the Member continued to discuss the subject. During the course of her statements the Member identified me as allegedly holding such an account (an Ansbacher account) for the purpose of tax evasion.

“It is not a case of me making allegations against anyone. I emphasise that these are allegations, but they come from a credible source. The whistleblower alleges Des O’Malley, Ray McSharry, Gerard Collins, Máire Geoghegan-Quinn, an S.Barrett, Richie Ryan - a former Minister for Finance - and others ----”

Following this statement the Ceann Comhairle again cautioned the Member and stated:

“Sorry, is the Deputy making these allegations here in the Chamber?”

To which the Member replied:

“I am echoing the serious allegations that have been brought forward by the whistleblower. That is the allegation.”

3. **Invocation of Standing Order 59. (1)**

I am aware of the principle of parliamentary privilege as enshrined in Article 15.12 and 15.13 of the Constitution. I know that these articles ordinarily protect statements made during the course of Oireachtas proceedings by members of either House of the Oireachtas. Notwithstanding the existence of parliamentary privilege, Standing Order 59. (1) provides an exception where there is an abuse of the privilege.

I wish to invoke this Standing Order in relation to the above comments by the Member. I do not propose to recite the entire Standing Order with which you are of course familiar. Rather I have considered only those sections which are relevant for the purpose of this submission.

4. **Application of Procedure under Standing Order 59 to Present Facts**

Standing Order 59. 3 (b) provides that an individual who has been named or identified and believes that a member has made an utterance in the nature of being defamatory may make a submission to the Ceann Comhairle within two weeks of the utterance being made. Standing Order 59. 3 (b) prescribes that such a submission must satisfy a number of requirements which I have duly set out below.

4.1 **Standing Order 59. 3 (b) – Identification**

I was clearly identified in the Member's statements. The Member referred to me by name and also to my political background with Fianna Fáil such that there could be no doubt that she was referring to me.

4.2 **Standing Order 59. 3 (b) (i) – Adverse effect**

The statement made by the Member to the effect that I was involved in illegal tax evasion, and the connection made between me and other persons proven to have been involved in such activities adversely affected me. As a result of the statement and the widely publicised media reports I suffered damage to my good name and reputation as protected under Article of 40.3.2 of the Constitution and a violation of my right to privacy.

4.3 **Standing Order 59. 3 (b) (ii) – Utterance in the nature of being defamatory**

The statement made by the Member (that I held an Ansbacher account in order to facilitate illegal tax evasion) constitutes an utterance in the nature of being defamatory for the following reasons:

- (a) The statement is not true. I have not at any time held an Ansbacher account or a Guinness & Mahon account, nor have I at any time held any offshore account for the purpose of evading tax.
- (b) This statement which asserts that I was engaged in illegal tax evasion certainly adversely affects my reputation in that it infers that I broke the law.
- (c) From a constitutional law perspective, the statement violates my right to a good name as protected under Article 40.3.2 of the Constitution.
- (d) From a civil law perspective, the statement is defamatory under Section 6(2) of the Defamation Act 2009 as it has caused my reputation to be lowered in the eyes of reasonable members of society.

4.4 **Standing Order 59. 3 (b) (ii) – Prima Facie abuse of privilege**

The statements made by the Member constitute an abuse of privilege for the following reasons:

- (a) The Member gave no notice of her intention to discuss the issue of Ansbacher accounts (which did not feature in the order of business for the Parliamentary debate that day). Rather she began speaking on the topic in the middle of a discussion on Topical Issue Matters during Leaders Questions on the unrelated topic of housing and homelessness. Her statements made without

any warning, in the middle of an unrelated topic, constituted an abuse of privilege.

- (b) The Member made the allegation against me despite receiving a caution from the Ceann Comhairle that the Member was not permitted to make allegations.
- (c) The Member did not retract or qualify her statements following a second caution by the Ceann Comhairle but rather reaffirmed her statements.
- (d) In light of the damaging nature of the Member's statements, she should have availed of the procedure provided by Standing Order 59. (10) (a) which provides as follows:

"any member who considers that it is in the public interest for him or her to make an utterance which could be construed as being in the nature of defamatory, may give prior private notice to the Ceann Comhairle of his or her intention to make such an utterance and the reasons therefor; and such notice shall be taken into account in the consideration of the application of the provisions of this Standing Order,"

The Member's failure to avail of this procedure constitutes an abuse of privilege.

5. **Considerations of the Ceann Comhairle / Committee**

Standing Order 59. (9) outlines that the following matters should be considered by the Ceann Comhairle or the Committee when a submission is made under Standing Order 59.

5.1 Standing Order 59. (9) (a) – making the utterance in a responsible manner / acting in good faith

The Member did not make the utterance in a responsible manner and did not act in good faith. The Member gave no notice of her intention to discuss this subject, she made her statements in the middle of a discussion on an entirely unrelated topic, she did not heed cautions made by the Ceann Comhairle and she did not retract her statement once the cautions were made.

5.2 Standing Order 59. (9) (b) – the totality of the parliamentary record including rebuttal

Although the cautions by the Ceann Comhairle are recorded in the record, I was not present for the discussion and was not in a position to rebut the statements made. Therefore the Parliamentary record merely records the statement that I engaged in illegal tax evasion and there is no statement rebutting this false allegation.

5.3 Standing Order 59. (9) (c) – withdrawal of the utterance

The Member did not withdraw her statements but repeated them in the face of cautions by the Ceann Comhairle.

5.4 Standing Order 59. (9) (c) – utterance in the public domain / reasonable excuse for utterance

The information communicated in the utterance was not in the public domain prior to the Member's statements. The Member had no reasonable excuse for making the utterance.

6. **Relief Sought**

I request the following reliefs:

- 6.1 That I be able to incorporate an appropriate response in the Parliamentary record in the following terms:

“I have not, at any time, held an Ansbacher or any other offshore account for the purpose evading tax. The statement made by Deputy Mary Lou McDonald on Wednesday 3 December 2014 during a Dáil Éireann Parliamentary Debate is entirely false.”
- 6.2 That the Ceann Comhairle require the Member to withdraw without qualification the utterance made.
- 6.3 Such other relief as the Ceann Comhairle deems appropriate.

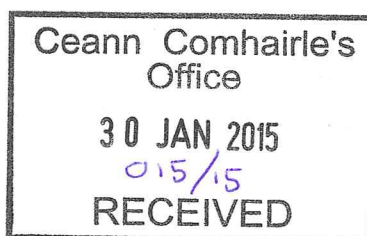
7 Lynton Court

Merrion Road

Dublin 4.

29 January, 2015.

Mr Sean Barrett TD
Ceann Comhairle
Dáil Eireann
Kildare Street
Dublin 2.



Dear Ceann Comhairle,

During November last, Deputy M McDonald made an allegation about me under privilege in Dáil Eireann to the effect that I held what was described as an Ansbacher account through Guinness and Mahon bank for the purpose of evading payment of income tax. This allegation is totally untrue and is very damaging. The Deputy concerned appears not to have withdrawn the allegation. I have been supplied with a list of Ansbacher account holders which I am informed is a complete list. My name does not appear on this list of 190 people.

It is possible that there were more than 190 such account holders. Even if this is so, my name could not be included because I never had such an account.

If this allegation were made outside the privilege of the House, I would sue the Deputy concerned. I would ask you, in view of your position, to seek the withdrawal of this allegation, and an apology for the fact that it was made, as it constitutes an accusation of a criminal offence.

Yours sincerely,

DESMOND O'MALLEY.