

# Atheist Ireland



To: Sarah Cremin  
Committee Secretariat  
Public Accounts Committee

cc Comptroller and Auditor General

18 October 2022

Dear Ms Cremin,

Thank you for your letter dated 10 October, which begins:

“I refer to the meeting of the Committee of Public Accounts on 15 September 2022. The Committee considered your correspondence dated 27 July 2022 regarding Atheist Ireland’s ongoing engagement with the Department of Education.”

Can we first clarify that our letter of 27 July was not primarily about our ongoing engagement with the Department of Education. It was about our complaint to the Committee on Public Accounts about the misuse of public funds by the Department of Education. We were, and still are, asking your committee to examine this complaint, and to take action to end this misuse of public funds.

Like any issue, this issue has aspects which other bodies can also examine. However, it is your Committee’s remit and responsibility to examine those elements of this issue that involve the misuse of public funds. We would like a response from your committee to the substance of our complaint. We are happy to meet with your committee to clarify these issues further.

Our letter of 27 July was in response to your letter of 4 July, in which you noted that:

- (a) There is ongoing engagement between the Department and Atheist Ireland.
- (b) The matters raised in our correspondence relate to an interpretation of the Irish Constitution, and it is not the role of your Committee to adjudicate on such interpretations.
- (c) It is not within your Committee’s remit to examine the merits of Government policy that might flow from such interpretations.
- (d) We might make our enquiry to the Oireachtas Education Committee.

In our letter of 27 July, we addressed these four issues as follows:

- (a) We were then still waiting for the Department of Education to get back to us with a response. However, we said that the Department of Education should not be left to examine itself regarding its misuse of public funds.
- (b) We were not asking you to adjudicate on any interpretations of the Constitution because the Oireachtas already funds and upholds the determinations of the Constitution made by the Supreme Court, whose role it is to make such determinations.
- (c) We were not asking you to examine the merits of any government policy or indeed of any legislation. We were asking you to examine the failure of the Department of Education to administer Constitutional rights and legislation, with regard to state funding of schools, in accordance with the distinction made between policy and administration by the Supreme Court in the Burke case.
- (d) We had been also, as you suggested, raising aspects of the issue with the Oireachtas Education Committee. However, we said it is your Committee’s remit to examine those elements of the issue that involve the misuse of public funds.

You have asked for our consent to forward our correspondence dated 27 July 2022 to the Joint Committee on Education for any action it might deem appropriate. You say that matters regarding the implementation of legislation are within the remit of that Committee. As we have said, we are also raising aspects of the issue with the Oireachtas Education Committee.

However, it is not within the remit of the Oireachtas Education Committee to examine the misuse of funds by the Department of Education. This is the reason why we sent our complaint regarding the misuse of public funds to the Committee on Public Accounts and to the Comptroller and Auditor General. On that basis:

- We consent to you forwarding our correspondence to that committee in order that they might respond to you, and thereby assist your consideration of our complaint about the misuse of public funds.
- We do not consent to you transferring responsibility to that committee for addressing our complaint to your committee about the misuse of public funds. It is your committee's remit and responsibility to examine the misuse of public funds.

In our earlier correspondence, we both addressed the fact that Atheist Ireland is also engaging with the Department of Education on this issue. We would like to update you on this.

- On 6 May, we met with the Department and the NCCA, and we agreed to have a follow-up meeting once they had considered further the points we made.
- On 24 May, in our letter to you, we said we believed the Department was acting in good faith, and that the Public Accounts Committee also has an oversight duty to ensure that constitutional conditions on state funding are met.
- On 28 June, we wrote to the Department and NCCA, saying it was seven weeks since our meeting, and asking when would be suitable for them to have the follow-up meeting.
- Today, more than five months since our meeting, we have not heard back from the Department of Education or the NCCA about the follow-up meeting.

During that time, we have been in correspondence with your committee, clarifying several misunderstandings that you had about what we were asking you to do, and why the complaint about the misuse of public funds comes under the remit of your committee.

At this stage, it seems to us that nobody is addressing the substance of our complaint. We do not understand why this is the case, as it is a fundamental issue regarding the misuse of public funds contrary to legislation and the Supreme Court's determinations on the Constitution.

We would like a response from your committee to the substance of our complaint. We are happy to meet with your committee to clarify these issues further. We attach, for your ease of reference, a copy of our letter to you of 27 July. We may contact you again with any updates that might assist your consideration of our complaint.

Yours sincerely,

Jane Donnelly  
Human Rights Officer

Michael Nugent  
Chairperson

Chris Hind  
Teachers Officer

Appendix: Note on misuse of public funds

## **Appendix: Note on misuse of public funds**

We want to elaborate briefly on why this issue involves a direct misuse of public funds, and not merely a failure to implement legislation.

The Department of Education is obliged, when funding schools, to adhere to the requirements of Article 42.4 and Article 44.2.4 of the Constitution (consistently with Supreme Court rulings), and to the requirements of the Education Act 1998, with regard to the right of children to attend any school in receipt of state funding without attending religious instruction at the school and the obligation of the State to have due regard for the rights of parents regarding the religious and moral formation of their children.

This means that the Department, when funding schools, is obliged to ensure that some of that funding is allocated to adhering to these constitutional and legislative obligations. Consistently with the Burke judgment, the Department must do this as part of its administrative scheme when translating legislation into administration.

However, the Department has no Guidelines or any rules around the administration of these constitutional conditions for the funding of schools. In practice, the Department allocates funding to schools without ensuring that these constitutional and legislative obligations are met. The schools then allocate to other things the money that they are constitutionally obliged to allocate to vindicating the constitutional rights of children and parents.

The Department is aware that this is happening, and is not doing anything to change the situation, despite the facts that the Education Act 1998 obliges every person concerned in the implementation of the Act to give practical effect to the constitutional rights of children, and that the Supreme Court has said that parental rights are a foundational pillar of the Constitution.

The Department is therefore knowingly facilitating the misallocation of public funds, to other areas of spending, which the Department has a duty to ensure is allocated to vindicating the constitutional and legislative rights of children to attend any school in receipt of state funding without attending religious instruction at the school and to the obligation of the State to have due regard for the rights of parents regarding the religious and moral formation of their children.