

**Strictly Private & Confidential Addressee only**  
Ms. Nessa Childers MEP

**By Email only**  
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22 September 2014    **Your Ref:**

**Our Ref:** PFC/KC/41020.3  
MHC-10231345-1

**Matter:**    **Our client: Mr Phil Hogan**

Dear Madam,

We refer to your letter date 12 September.

We note your reference to Article 8 of the Protocol on the Privileges and Immunities of the European Communities.

The Article, as partially referenced by you, reads;

*“Members of the European Parliament shall not be subject to any form of inquiry, detention or legal proceedings in respect of opinions expressed or votes cast by them in the performance of their duties.”*

As you may be aware, following a reference for a preliminary ruling in Judgment of the Court (Grand Chamber) of 6 September 2011 (reference for a preliminary ruling from the Tribunale di Isernia — Italy) — Criminal proceedings against Aldo Patriciello, that Article was interpreted by the ECJ as follows;

*Article 8 of the Protocol on the Privileges and Immunities of the European Union, annexed to the EU, FEU and EAEC Treaties, must be interpreted to the effect that a statement made by a Member of the European Parliament beyond the precincts of that institution and giving rise to prosecution in his Member State of origin for the offence of making false accusations does not constitute an opinion expressed in the performance of his parliamentary duties covered by the immunity afforded by that provision unless that statement amounts to a subjective appraisal having a direct, obvious connection with the performance of those duties. It is for the court making the reference to determine whether those conditions have been satisfied in the case in the main proceedings.*

Your misleading statements were expressed as statements of facts, not opinions. Your letter states as facts that our client;

*"...submitted a request to Kilkenny County Council to prevent a traveller family from being provided with social housing accommodation in Bonnettstown, on behalf of local constituents".*

Our client did not submit any request to "prevent a traveller family from being provided with social housing" nor did he submit any such request "on behalf of local constituents". The issues are subject to legal proceedings and we do not intend to reiterate the actual facts, which are publicly available, in detail. Briefly, our client's constituency office communicated to Kilkenny County Council a constituent's concerns, as expressed to our client, in respect of a family being provided housing in a specific house near the constituent. Further, the relevant family about which the constituent had expressed concerns was never referenced as a "traveller" family by our client's constituency office or our client.

You also stated that you were bringing;

*"...to your attention facts which were confirmed and defended by Mr. Hogan himself".*

Our client did not confirm and/or defend the acts you have alleged he was responsible for, being specifically preventing a traveller family from being provided with social housing. Your letter also implies that in some manner our client has actually confirmed and/or defended racism, which is clearly an extremely serious allegation and ignores our client's clearly expressed views on the issue.

As noted above, your letter states the above as facts. At no place in the letter where you state these specific apparent facts do you clarify that you are expressing an opinion. If you were not expressing an opinion, and you made false accusations, parliamentary privilege potentially does not apply.

Further, even in circumstances where you believed you were expressing an opinion, clearly you may not have carried out any subjective appraisal as, as supported by any rudimentary research on the issue, your accusations were based on false information which you then chose to circulate. In addition, even in circumstances where you believed you were expressing an opinion following a subjective appraisal, our client is at a loss to understand how the dissemination of false, defamatory information could be argued to have a direct, obvious connection with the performance of your duties as an MEP, as is required in circumstances where you could legitimately show that parliamentary privilege applies.

For the avoidance of doubt, our client's only concern is in respect of your dissemination of false, defamatory information.

As previously noted, our client reserves his position in this respect but we would repeat the previous request that you confirm that any other copies and/or prior drafts and/or actual documentation showing research carried out prior to circulating the letters and before making any associated comments on any media format will be retained. Whilst we have again marked this letter private and confidential, it is a matter for yourself as to whether or not you chose to circulate its contents to various media outlets. However, we would request that you also retain any such subsequent communications relevant to that circulation.

Yours faithfully,

*Mason Hayes & Curran*  
MASON HAYES & CURRAN