



RE: PAC Follow up  
president@ul.ie  
to:  
PAC@oireachtas.ie  
18/04/2017 11:29  
Cc:  
Aelish.Nagle  
Hide Details  
From: "president@ul.ie" <president@ul.ie>  
To: "PAC@oireachtas.ie" <PAC@oireachtas.ie>,

Cc: Aelish.Nagle <Aelish.Nagle@ul.ie>

1 Attachment



Pres Letter of reply to PAC - 180417.pdf

Dear Ms Falsey,

The attached letter was sent in the post today. I will need a few more days to finalise a response to your letter dated April 12.

Regards,

Don Barry

Professor Don Barry  
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**From:** Margaret Falsey [<mailto:Margaret.Falsey@Oireachtas.ie>] **On Behalf Of** PAC@oireachtas.ie  
**Sent:** 04 April 2017 15:59  
**To:** president@ul.ie  
**Cc:** Callista.Bennis <Callista.Bennis@ul.ie>  
**Subject:** PAC Follow up

Good Afternoon,

I attach a letter outlining the follow up required following President Barry's appearance before the Committee

on Thursday 30th March 2017. I also attach the transcript for reference.

If you have any questions please feel free to contact me.

Regards  
Margaret Falsey  
PAC Secretariat  
016183074

*(See attached file: [PAC32-I-286] UL- follow up meetig 30.03.2017.pdf)*

*(See attached file: Transcript 30.03.2017.pdf)*

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Professor Don Barry BSc, PhD (Yale)  
*Uachtarán*  
*President*

18 April 2017

Ms Margaret Falsey  
Committee Secretariat  
Public Accounts Committee  
Leinster House  
Dublin 2

Dear Ms Falsey

I refer to your letter of 4 April 2017 outlining four queries arising from the University's attendance at the Public Accounts Committee meeting on Tuesday 30 March 2017. The response to these queries follows.

**Query 1 - An explanatory note on the €186,000 paid to Revenue in respect of sabbatical policy to include figures incurred by the University and how much was received by individuals**

The University operates a Sabbatical Programme for academic staff. The sabbatical involves the academic attending a university or a number of universities outside of Ireland. The length of sabbatical varies but is generally awarded for either six or twelve months. An academic applying to the Sabbatical Programme must indicate how the sabbatical will advance the strategic priorities of the University and the application requires the approval of both the relevant Faculty Dean and the Research Office.

While on sabbatical, the member of academic staff continues to be paid by the University of Limerick, but at a reduced rate, and these earnings continue to be subject to PAYE/PRSI/USC. It is University policy to reimburse staff for travel and subsistence expenses incurred in the performance of their University duties while away from their normal place of work. This includes the cost of airfares, as well as accommodation and subsistence.

**Sabbatical – treatment pre 2013**

The Sabbatical Policy of the University pre 2013 maintained the pre sabbatical net pay of the staff member availing of the sabbatical. As the staff member was away from their normal place of work a portion of their pay during the period of sabbatical was deemed to be expenses and a portion continued to be treated as pay. The reduced salary and round sum expense amounts were paid monthly while the individual was outside Ireland on sabbatical. The policy did not require a review of the expenses paid or a review of the evidence backing up the amounts paid.

For the individual staff member, the net effect was that the individual had the same net income from the University and out of these funds they had to pay the expenses of being abroad on work.

A saving resulted to the University since the University did not have to pay PAYE/PRSI/USC on the portion of gross pay that was deemed to be expenses. Generally this saving was used to pay a temporary replacement for the staff member on sabbatical.

The individual had similar net income and the gross cost to the University in terms of round sum expenses plus net pay plus PAYE/PRSI/USC plus any replacement cost was the same (there was no additional cost to the university). However, the round sum expense amount was potentially overstated and could be deemed to have been pay rather than expenses. This is the issue (round sum expense amount) that the C&AG suggested that the University explore with Revenue.

### **Sabbatical treatment – 2013 onwards**

In late 2012 the C&AG audit team pointed out that the basis of payment of sabbatical expenses as round sums may not be in compliance with Revenue rules. The university undertook a full review which resulted in a revised Sabbatical Policy and a voluntary disclosure to Revenue.

The Sabbatical policy was revised to cover all sabbatical from 2013 onwards. The policy now sets a subsistence allowance for travel, based on the Department of Finance approved foreign subsistence allowances, which is paid to the staff member while on sabbatical. In addition the vouched cost of travel for the staff member can be claimed. Pay while on sabbatical is reduced to one third of current pay and the cost to the University continues to be less than the gross pay cost of the staff member pre sabbatical. This saving continues to be used to pay a temporary replacement for the staff member on sabbatical.

Subsistence and expenses allowances paid during the sabbatical are subject to final calculation and audit by UL finance staff. For this post sabbatical review evidence of travel and duration of stay are required and in the event that any over payment of expenses is identified this is returned to the University. The primary difference between the previous and revised policy is that the expense amounts paid to individuals are fully backed up by evidence of travel and calculated in accordance with approved guidelines.

### **Voluntary disclosure**

The University undertook a detailed review for all staff on sabbatical between 2009 and 2012 inclusive. Calculations were undertaken for each individual sabbatical to quantify the extent to which the expenses paid may have been non-compliant with Revenue rules. The university made a voluntary disclosure in relation to expense payments where these exceeded the expenses based on Civil service rates and revenue overseas subsistence rates for long and short periods overseas.

The relevant tax and interest, up to 3 January 2013 (date of voluntary disclosure) is summarised as follows: -

Tax Year	2009	2010	2011	2012	Total
	#	#	#	#	#
Number of Sabbaticals	11	11	19	6	47
Sabbaticals no additional tax liabilities	4	8	8	3	23
Sabbaticals additional tax liabilities	7	3	11	3	24
	€	€	€	€	€
PAYE	36,707	5,831	59,448	18,133	120,119
PRSI EE & ER (& health levy)	8,877	1,962	11,721	2,825	25,385
Income Levy	2,888	408	0		3,296
USC	0	0	10,211	3,096	13,307
<b>Total</b>	<b>48,472</b>	<b>8,200</b>	<b>81,381</b>	<b>24,054</b>	<b>162,107</b>
Interest	13,985	1,546	7,202	86	22,819
<b>Total settlement</b>	<b>62,457</b>	<b>9,746</b>	<b>88,583</b>	<b>24,140</b>	<b>184,926</b>

In quantifying the relevant expenses, the Civil Service overseas subsistence rates were used, as appropriate for each of the relevant locations, distinguishing between long and short term sabbaticals, based on the rules set out in Revenue Leaflet IT54.

In a number of cases, the sabbatical was spent at more than one location and this impacts the calculation of the relevant percentage of the subsistence rate for the relevant location. The University was not retrospectively able to fully vouch travel costs and it was therefore considered prudent to make no allowance for flights in determining the liability for the voluntary disclosure. If flights had been included the liability could have been reduced.

In arriving at the liability, the expenses over the revised allowable amount have been taxed at each individual's marginal rate of PAYE, PRSI, income levy and USC for the tax years concerned. The PRSI includes both employee's and employer's PRSI, and the health contribution.

The following table sets out the amounts received by staff on sabbatical between 2009 and 2012. The table also sets out the amount of expenses paid to individuals that was deemed as overpaid following the detailed review of each individual sabbatical.

<b>Amounts Paid to Individuals*</b>				
	<b>Gross Pay Pre</b>	<b>Gross Pay</b>	<b>Expenses paid</b>	<b>Amount of</b>
<b>Year</b>	<b>Sabbatical</b>	<b>during</b>	<b>to staff member</b>	<b>expenses paid to</b>
		<b>Sabbatical</b>	<b>during</b>	<b>individuals deemed</b>
		<b>period</b>	<b>sabbatical</b>	<b>as overpaid</b>
2009	848,140	259,961	351,255	90,385
2010	730,160	225,270	235,997	14,221
2011	1,679,665	537,019	568,028	145,877
2012	526,050	167,658	192,852	44,367
<b>Grand Total</b>	<b>3,784,015</b>	<b>1,189,907</b>	<b>1,348,132</b>	<b>294,851</b>

\*The gross pay amount is subject to tax so the individual would have received a net payment

In relation to the amounts incurred by the University the following table summarises the costs to the University.

Year	Gross Pay Pre Sabbatical	Amounts Paid to staff members during sabbatical	Additional tax paid as part of revenue settlement	Interrest Paid as part of Revenue settlement	Total Cost to UL of staff members during sabbatical	Costs as % of pre-sabbatical pay
2009	848,140	611,216	48,472	14,078	764,151	90%
2010	730,160	461,267	8,200	1,562	485,250	66%
2011	1,679,665	1,105,047	81,381	7,358	1,339,663	80%
2012	526,050	360,510	24,054	132	429,063	82%
<b>Grand Total</b>	<b>3,784,015</b>	<b>2,538,039</b>	<b>162,107</b>	<b>23,130</b>	<b>3,018,127</b>	<b>80%</b>

There was a lengthy and thorough detailed exercise undertaken by the University to arrive at the liability. The calculations were checked and reviewed by PWC. The University updated its sabbatical policy and put in place steps to ensure no recurrence.

In 2015 the University had a Revenue PAYE/PRSI Revenue Audit of tax year 2013, as part of the audit Revenue reviewed all sabbaticals in that year and there were no issues noted.

**Query 2 – A note of the 20% non-Irish students with a breakdown by EU and Non-EU and how much is paid by international students.**

The total student fee income from Non EU students for 2014/15 amounted to €14.3m. The breakdown of student numbers is set out in the following table.

	2014/15 EU	2014/15 Non EU	2014/15 Total
<b>Degree Seeking Students</b>			
Undergraduate	384	354	738
Postgraduate Taught	115	226	341
Postgraduate Research	96	149	245
<b>Total Degree Seeking</b>	<b>595</b>	<b>729</b>	<b>1,324</b>
<b>Visiting Students</b>			
Study Abroad		553	553
Summer School		62	62
Erasmus Incoming	473		473
Non-EU exchange incoming and Erasmus Mundus		136	136
<b>Total visiting students</b>	<b>473</b>	<b>751</b>	<b>1,224</b>
<b>Total Non Irish</b>	<b>1,068</b>	<b>1,480</b>	<b>2,548</b>
Total Students at UL	14,303	14,303	14,303
<b>% of Total</b>	<b>7.5%</b>	<b>10.3%</b>	<b>17.8%</b>

**Query 3 - As regards the Mazars review, a note on the number of facilitators employed and the costs associated with this.**

This section deals with cases raised in the context of the Mazars review. In October 2015 Mazars was appointed by the HEA to conduct a review of the following matters:

- The process employed by the University of Limerick to inquire into allegations made by Person A of irregular practices both in the making of payments and in their authorisation by the Finance Department which were the subject of a report to the Comptroller and Auditor General from the University on 27 April 2012;
- The process employed by the University to inquire into: (a) the allegations of Person A and (b) the allegations made by Person B and Person C.

In addition to the above matters, two other parties that had been subject to disciplinary proceedings following external investigations into dignity and respect complaints were also included within the Mazars report. One of the individuals was a service provider whose contract was terminated and who was mentioned at the PAC meeting on March 30 and is referred to below as Person Y. The second is a former member of staff who left the University as part of a disciplinary process and is referred to below as Person Z.

**Person A**

In July 2010, Person A went on sick leave and has not worked in the University since then. In March 2012, Person A's solicitors approached the University's solicitors stating the following "*we are taking the unusual step of requesting on humanitarian grounds that your client [the University] permit our client [Person A] to bring closure to this matter by allowing her to avail of a redundancy or retirement package.*". On the recommendation of the University's Occupational Health Physician, the University facilitated Person A's request resulting in Person A retiring on grounds of ill health in June 2012 pursuant to the rules and regulations of the pension scheme. Person A entered this agreement voluntarily in full and final settlement of all matters relating to her former employment with the University upon the advice of her solicitors. As per the rules of the pension scheme, Person A received a short service gratuity of €16,236 on retiring on health grounds. There were no facilitation or investigating costs associated with Person A.

**Persons B and C**

Since November 2013, three sets of formal complaints have been made to the University by or against Person B and Person C and involving eight other individuals in the Finance Department.

**Complaint 1** consists of a combination of complaints relating to interpersonal difficulties originating in December 2013 made both by and against Person B and Person C and six of their colleagues in the Finance Department. The University engaged an independent facilitator who commenced the facilitation process in February 2014. In April 2014, the facilitator informed the University that facilitation between the parties had gone as far as it could go and accordingly the facilitation process would be concluding. The facilitation process cost €5,751. The University then appointed another independent external consultant to conduct a formal investigation. Person B and Person C have not engaged with this process. The cost of the external investigation to date is €2,795.

**Complaint 2** was made by Person B and Person C against a single colleague in the Finance Department alleging physical endangerment in respect of an incident which occurred in December 2014. The University appointed an independent external HR consultant to investigate the complaint in accordance with the University's Dignity and Respect Policy. The external investigation cost €4,261. Person B and Person C appealed the findings of the investigation. The University appointed a barrister to independently conduct the appeal. The external appeal cost €4,305. In June, 2015 the University referred the findings of the investigation and the appeal for further investigation pursuant to section III of the University's Disciplinary Procedure.

Following a request from the HEA the University agreed to postpone the disciplinary process pending completion of the Mazars report. The process remains on hold pending the hearing by the WRC of a claim of penalisation made by Person B and Person C pursuant to the Protected Disclosure Act, 2014. Person's B & C have sought and been granted a deferral on four separate occasions.

**Complaint 3** was made in February 2015 by Person B and Person C against three members of management in the Finance Department. The University appointed an independent investigator to investigate the complaint. To date Person B and Person C have not engaged with this investigation process. The cost of the external investigation to date is €500.

#### **Person Y**

By way of background, Person Y was engaged by the University of Limerick as a service provider from September 2000. In October 2013, a person engaged by the University, submitted a formal written complaint against Person Y. The University appointed an independent external investigator to investigate the complaint. The external investigation cost €7,438. Person Y appealed the findings of the investigation and the University appointed an external barrister to consider the appeal. The appeal was unsuccessful. The external appeal cost €2,000.

Additionally, in December 2013, Person Y made a formal complaint against a senior manager, who had line management responsibility for the functional area Person Y was engaged in. The University appointed an external investigator to investigate the complaint which cost €4,261.

In October 2014, the University commenced a disciplinary process based on the findings of the initial investigation and of the subsequent appeal. As mentioned at the PAC meeting on March 30, in August 2015 a compromise agreement for €209,600 (inclusive of VAT) was entered into terminating the University's relationship with Person Y.

#### **Person Z**

In December 2013, three students lodged formal complaints against Person Z. The complaints referred to inappropriate sexual references in class and inappropriate touching of students causing them to feel uncomfortable. In February 2014, the University appointed an external independent investigator to investigate the complaints which cost €6,973. A compromise agreement for €150,000 was entered into terminating the University's relationship with Person Z.

#### **Query 4 - A note on the number of complaints which have given rise to internal or external reports or settlements and the figures associated with this.**

Details of complaints which have given rise to internal or external reports or settlements and the figures associated is presented in two parts; (a) complaints related to the University's Dignity and Respect Policies; and (b) complaints made to external organisations related to employee's terms and conditions of employment.

#### **Part A**

From 2007 to 2017, the University dealt with a total of 24 formal complaints pursuant to the University's Dignity and Respect Policies. We have dealt with six of these in answer to query 3, that is: Persons B and C (3 complaints), Person Y (2 complaints) and Person Z (1 complaint involving 3 students). In this section, details of the other 18 complaints over the ten year period are outlined in Table 1. The 18 Dignity and Respect cases detailed in Table 1 cost the University a total of €221,364, made up of €135,128 for facilitation processes and €86,236 for external investigations and external appeals.

**Table 1**

Case No.	Year	Issue	Process	Settlement Cost	Investigator / Facilitator	Investigator / Facilitator Cost
1	2016	Staff Dignity & Respect (D&R) Complaint	Independent Investigation (In progress)	None	Rosemary Mallon	No cost to date
2	2016	Student D&R complaint against staff	Independent Investigation	None	G Mitchell	4,503
3	2015	Student D&R complaint against staff	Independent Facilitation	None	John O'Dowd	4,074
4	2015	Staff D&R Complaint	Independent Investigation	None	T Doyle	6,203
			Independent Appeal. Appeal - not concluded	None	J Curran	No Cost to Date
5	2015	Staff D&R Complaint	Independent Facilitation	None	R Mylotte	2,460
			Independent Investigation	None	G Mitchell	2,997
			Independent Appeal Investigation	None	J Curran	4,182
			Adjudication Officer Hearing	None		
6	2014	Staff Group D&R Complaint	Independent Facilitation	None	J Hughes	2,460
			Independent Investigation	None	C Browne	5,720
7	2014	Staff D&R Complaint	Independent Facilitation	None	John O'Dowd	6,138
8	2011	Staff D&R Complaint	Independent Facilitation	None	John O'Dowd	9,903
9	2011	Staff D&R Complaint	Independent Facilitation	None	John O'Dowd	15,962
10	2011	Staff D&R Complaint	Independent Facilitation	None	John O'Dowd	14,427
11	2011	Staff D&R Complaint	Independent Facilitation	None	John O'Dowd	22,970
12	2011	Staff D&R Complaint	Independent Facilitation	None	Finbarr Flood	5,445
			Independent Investigation	None	Caroline Browne	4,070
13	2011	D&R Complaint	Independent Facilitation	None	John O'Dowd	6,743
			Independent Investigation	None	Baker Tilley Ryan Glennon (Barton & Flaherty)	40,359
14	2011	D&R Complaint	Independent Investigation	None	Caroline Browne	1,137
15	2009	Staff D&R Complaint	Independent Investigation	None	Finbarr Flood	17,065
16		Staff D&R Complaint	Independent Facilitation	None	Dermot Killen	10,885

17	2007	Staff D&R Complaint	Independent Facilitation	None	Dermot Killen	16,668
18	2007	Staff D&R Complaint	Independent Facilitation	None	Dermot Killen	16,993

## Part B

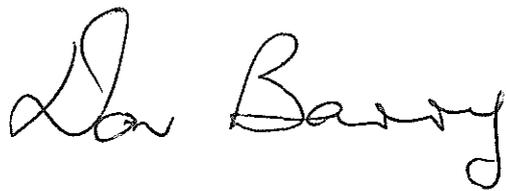
From 2007 to 2017, the University dealt with a total of 9 formal complaints pursuant to claims to 3<sup>rd</sup> Party organisations such as the Labour Relations Commission (LRC), Workplace Relations Commission (WRC), Labour Court (LC) and the Employment Appeals Tribunal (EAT). The majority of the 3<sup>rd</sup> Party referrals are pursuant to the Protection of Employees (Fixed-Term Work) Act, 2003 and the claimants are primarily researchers as permanent positions are not a feature of the employment landscape. The total cost amounted to €101,628 to the University for the ten year period.

Table 2

Case No.	Year	Issue	Process	Award / Redundancy	Investigator / Facilitator Cost
1	2015	3rd Party	Workplace Relations Commission (WRC) Claim for contract of indefinite duration (CID). WRC rejected claim - Claimant Appealed to the Labour Court (LC). Appeal outstanding.	None	None
2	2014	3rd Party	LRC Claim for a CID - LRC awarded the individual €4,000	4,000	None
3	2014	3rd Party	LRC Claim for CID - LRC awarded the individual €4,000	4,000	None
4	2013	3rd Party	Multiple WRC Claims - Rights Commissioner Claim for a CID (Failed), Appealed to Labour Court (Failed), EAT claim for unfair dismissal. EAT decision pending	None	None
5	2012	3rd Party	WRC Claim for a CID, WRC awarded €20,000 to the Claimant, but this was overturned by the Labour Court. Redundancy paid.	7,392	None
6	2011	3rd Party	LRC claim regarding Course Directorship.	None	None
7	2011	3rd Party	LRC Claim regarding a disputed Retirement Date.	15,000	None
8	2011	3rd Party	LRC Claim for CID. LRC decision appealed to the Labour Court. Settlement ensued.	35,000	None
9	2011	3rd Party	LRC Claim for a CID. Rights Commissioner awarded €6,000. Claimant appealed to Labour Court. Settlement prior to Labour Court Hearing.	20,000	None

I trust this deals with your queries satisfactorily but if you require further clarification please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink that reads "Don Barry". The signature is written in a cursive style with a large, looped initial "D" and a long, sweeping underline for the "y".

**Professor Don Barry**  
**President**