



Our Ref: P/GC

20 December 2019

Éilis Fallon  
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Committee of Public Accounts  
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Ref: PAC32-I-1671

Dear Ms. Fallon:

I refer to your correspondence of 15 November 2019, containing a set of questions for Maynooth University, on foot of anonymous correspondence received by the Committee of Public Accounts. Our responses to the specific questions raised are set out below.

**1. Does Maynooth pay all hourly paid staff for public holidays in line with legal requirements?**

The University pays hourly paid staff for public holidays on receipt of a valid claim for such payment. The University policy in relation to pay for public holidays, which is compliant with the relative legislative provisions, is as follows:

- Where an occasional member of staff has worked at least 40 hours in total over the five weeks before a public holiday, and where they would normally be rostered to work on the day on which the public holiday falls, the employee should claim payment for their normal rostered hours for the public holiday.
- Where an occasional member of staff has worked at least 40 hours in total over the five weeks before a public holiday, and would *not* normally be rostered to work on the day on which the public holiday falls, the employee should claim payment to the value of one-fifth of their normal working week.

The University payroll system does not currently provide for automatic payment of public holiday pay, so that the employee must claim for the public holiday. The University accepts that as a result there may have been instances where occasional employees have not claimed their full entitlement. Nonetheless, the University processes and issues payments to all hourly paid staff when such claims are made. The University is examining awareness-raising and systems solutions to give greater assurance that public holiday pay entitlements are claimed in full. A record of the total payments made to staff in relation to public holidays from 2015 to date is given below:

*Table 1: Total payments in respect of public holidays to occasional staff, 2015 to date.*

Year	Number of Payments	Value of Payments
2015	159	€22,799.59
2016	136	€18,810.63
2017	114	€17,077.85
2018	122	€19,801.42
2019	119	€18,040.45

2. Does Maynooth pay all hourly paid staff service increments (point on scale) in line with legal requirements?

The hourly rates of pay, for a given type of work, are single pay points, and service increments do not apply. National or special pay awards are normally applied to the rates of pay on the 1<sup>st</sup> October annually.

3. How many hourly paid staff are entitled to pensions? Are pension provision arrangements in place for all of these?

Hourly paid staff are not appointed to pensionable posts in MU and therefore there is no requirement for pension arrangements to be in place for them. Hourly paid staff do not normally exceed the threshold of 20% of a full-time equivalent required under the Protection of Employees (Part-Time Work) Act 2001 to be entitled to be enrolled in the pension scheme. Furthermore, the MU pension schemes are all integrated with the State Pension Scheme, which means that employees would need to earn greater than c. €25,000 to qualify for a pension, and therefore derive benefit from enrolment in an MU pension scheme.

The analysis of the nature of engagement and amounts paid to 1,394 staff, as part of the review and regularisation of occasional staff engagement described in previous correspondence, indicates that a small number of staff may have an entitlement to appointment to a part-time pensionable post. The University is working to resolve these matters.

4. Is Maynooth University in breach of the Employee Control Framework or has it been in breach of the framework in the last two years?

Maynooth University is in full compliance with the provisions of the Employment Control Framework. This is stringently tested by the annual audit undertaken by the Office of the Comptroller and Auditor General; as part of this audit process, quarterly staff returns issued by the University to the HEA for the year in question are tested and reconciled against the sanctioned staff establishment numbers as per the Employment Control Framework.

5. Does Maynooth University meet legal requirements to record hours worked and annual leave of employees and academic staff?

The University is satisfied that it has appropriate policies and controls in place to ensure compliance with the provisions of the Organisation of Working Time Act, 1997. The provisions of the Act are reflected in all contracts of employment. It should be noted that academic staff and researchers are skilled professionals who exercise a very high degree of autonomy and are afforded great flexibility in determining the pattern and location of their work. This is effective and appropriate to the conduct of world-class research and scholarship in line with national strategies and policies such as *Innovation 2020*.

The arrangements as regards hours of work and annual leave are set out in contracts of employment and relevant University policies. Specifically, Maynooth University is in compliance with the provisions of the DES Circular on Revised Annual Leave Arrangements for Staff Employed by Universities and Colleges (Other Than Lecturing Staff) (2014) and the relevant provisions of the Public Sector Stability Agreement.

Responsibility for the oversight and administration of annual leave, and attendance and hours worked, sits with local management, with the Human Resources Office providing advice and support as necessary.

#### Annual Leave

The annual leave entitlements for employees, including academic staff, are as outlined in their terms and conditions, in line with the terms of the Croke Park Agreement, Public Service Stability Agreements and relevant circulars, and as further specified by University policy.

The University's policy on annual leave for academic staff is formally stated in the Annual Leave clause of its Academic Terms & Conditions as follows:

- *The University's holiday year currently runs from 1<sup>st</sup> January to 31<sup>st</sup> December. Leave entitlement shall be such leave as is reasonably determined from time to time by the University, and shall not be less than the statutory entitlement under the Organisation of Working Time Act, 1997.*
- *Within your annual leave provision, the University reserves the right to allocate and schedule annual leave, this to include a period of summer leave, in accordance with the needs of the University. All annual leave arrangements must be agreed in advance with the Head of Department. Adequate prior notice must be given to the University of your intention to take annual leave.*

Annual Leave entitlements for Administrative, Professional & Technical Staff are explicitly stated in contracts of employment, and are in line with the DES Circular on Revised Annual Leave Arrangements for Staff Employed by Universities and Colleges (Other Than Lecturing Staff) (2014).

#### **Attendance/Hours of Work**

Provisions concerning Attendance and Hours of Work for academic staff are formally set out in Academic Terms & Conditions as follows:

- *The normal place of work will be the campus of National University of Ireland Maynooth, Maynooth, Co. Kildare. However, the University may from time to time require you to work at other locations in Ireland or internationally where it provides services. Where the University requires you to work at locations other than the campus of the University, it will consult with you in relation to such a requirement and will take your views into account in reaching a final decision on the matter;*
- *Save as necessitated by the efficient exercise of your duties or approved absence, you will attend at your place of work during the working week and for the duration of this contract;*
- *Taking account of the provisions of the Organisation of Working Time Act 1997, you will work such hours as are reasonably necessary for the proper performance of your duties and responsibilities of the post which may include evening and/or weekend work;*
- *You are required to be generally available in the department and to observe such norms and policies in relation to attendance as may apply within the University.*

Attendance and Hours of Work for Administrative, Professional & Technical Staff are explicitly stated in terms and conditions and are in line with the provisions of the Public Service Stability Agreement.

6. Did Maynooth University undertake an administrative recent review process which included regrading of jobs and an appeals process equivalent to job evaluation? Did Maynooth University meet requirement to notify Department of process? If not, explain.

Maynooth University undertook an Administrative Review Process to support ongoing organisational design and development, enhance effectiveness and efficiency, and ensure existing roles from Executive Assistant to Senior Administrative Officer Grade II inclusive were graded appropriately. The outputs of this process also provide a rational and auditable basis for the grading of new roles. This process was launched and under way before the University was notified of any requirement to inform the Department of Education and Skills of such processes.

7. Have all consultant contracts awarded to Capella Consulting in the HR area in the last five years been awarded in accordance with procurement rules?

Yes. All contracts issued to the consulting company referenced above satisfy the legislative requirements and guidelines as set down in the University's Procurement Policy (2017). In addition, it

should be noted that the monetary value of the engagements referenced, are under the threshold for a national tender process in line with the University's Procurement Policy and Office of Government Procurement Guidelines. Accordingly, a quotation process was applied in each case.

8. How many protected disclosures have been made in the university since the introduction of the relevant act? Provide numbers by year, a general description and the stage or outcome of any relevant investigations.

One disclosure has been received as follows:

Year	Disclosures
2014	0
2015	0
2016	0
2017	0
2018	1
2019	0 (to date).

The disclosure received in 2018 related to alleged wrongdoing in relation to procurement, and is the final stages of investigation.

9. Provide a breakdown, number and description of legal cases ongoing or resolved, taken by current or former employees in the last five years.

Please see **Appendix 1**

10. Provide a note on the numbers and reasons for contracting of academic staff who invoice Maynooth University directly.

MU receives invoices for services from a small number of academics and teaching staff. These fall into three categories.

1. The University currently engages four international experts in specific research areas who provide research consultancy services for which they invoice directly. The total value invoiced was €99,000 in 2018/19. This is normal practice nationally and internationally, where an individual with specific expertise may be engaged by different universities and organisations for research and/or educational services. We would expect the number of such engagements at Maynooth University to grow as its involvement in Executive Education and enterprise-facing research increases further.
2. The University engaged two staff invoicing €137,100 in total during 2018/19 to deliver Teastas Eorpach na Gaeilge (TEG). TEG is funded by the Department of Culture Heritage and the Gaeltacht to provide a series of general Irish language proficiency examinations and qualifications for adult learners of Irish. The decision to treat these staff as self-employed was not a University decision, but a determination by the Scope Section of the Department of Social Protection that an individual engaged to deliver TEG should be treated as self-employed, and should therefore invoice for their services. The University, for consistency, engages all staff involved in TEG on the same basis, in accordance with the Scope Section ruling.
3. The University engaged seven practitioners in the area of Mediation, with a total of €12,965 being paid in 2018/19, to teach on the Mediation programmes offered by the university. This again is normal practice; these individuals are usually self-employed practitioners, and it is appropriate that they invoice the University for services, as they would other clients.
4. The Committee should also note that, separate from the contracting of academic staff, the University contracts with a media production company to provide teaching and access to production facilities for students on our Media Studies degrees. This supplier invoiced €287,178 during 2018/19.

#### 11. Please provide a copy of staff grievance policy.

The University has one formal statutory mechanism for the resolution of grievances and disputes.

The Universities Act, 1997, provides in Section 26, that

*"(1) A governing authority shall establish procedures for the resolution of disputes which arise in the university, other than disputes to be dealt with through normal industrial relations structures operating in the university or appeals conducted in accordance with section 27 (2)(e).*

*(2) Procedures established under subsection (1) shall—*

*(a) be specified in a statute,*

*(b) be established following consultation with trade unions and staff associations representing employees of the university and with the students union or other student representative body, and*

*(c) provide for consideration of issues in dispute by an independent person or persons, as appropriate, one of whom, in the case of a constituent university, shall be a nominee of the Chancellor of the National University of Ireland"*

The University has, in accordance with the provisions of the Act, specified in a statute (Maynooth University Statutes, Chapter IV, Statute K, attached) the procedures for the resolution of grievances and disputes. The Statute is compliant with the provisions of *S.I. No. 146/2000 - Industrial Relations Act, 1990 - Code of Practice on Grievance and Disciplinary Procedures*. The University, through its Human Resources Office, supports attempts to resolve disputes and grievances at local level, including mediation where appropriate. The sole formal mechanism for the resolution of disputes and grievances is that specified in the Statute.

The University is aware of the existence of a draft document titled "Grievance Procedure" which was under development to codify the role of the Human Resources Office in the informal resolution of disputes, and which was retrievable from the University website document archive. This draft was not progressed, or approved at management or governance level, and is not the grievance policy of the University.

#### 12. Can you confirm that grievance policy applies to occasional staff?

The mechanisms for dealing with grievances and disputes are available to all members of the University, and as such, all employees, including occasional staff, may raise grievances or disputes. In accordance with the provisions of the Universities Act, 1997, industrial relations grievances or disputes are dealt with through normal industrial relations structures, and other grievances or disputes are first addressed informally, with the support of the Human Resources Office as necessary, and if not resolved, through the procedures specified in Statute K.

#### 13. Conclusion

I trust the above provides a full and informative response to the questions raised in your letter of 15 November 2019. I should be happy to provide any further information you may require.

Yours sincerely,



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Professor Philip Nolan  
President



**Appendix 1**

**External Claims taken by current and former employees of Maynooth University  
(September 2014 to September 2019)**

	<b>Year Claim lodged</b>	<b>Claim</b>	<b>Status/Outcome</b>
1.	2019	Claim under Section 8 of the Unfair Dismissals Act 1977	<b>WRC Referral date pending</b>
2.	2019	Claim under section 7 of the Terms of Employment (Information) Act, 1994 and Section 13 of the Industrial Relations Act, 1969	<b>Ongoing engagement locally to resolve</b>
3.	2018	Claim under Section 13 of the Industrial Relations Act, 1969 and Claim under Section 14 of the Fixed-Term Work Act, 2003	Claim withdrawn
4.	2018	Claim under Section 6 of the Payment of Wages Act 1991 and Claim under Section 13 of the Industrial Relations Act, 1969	Claim withdrawn
5.	2018	Claim under Section 13 of the Industrial Relations Act, 1969 and Regulation 10 of Protection of Employees on Transfer of Undertakings regulations 2003	Ongoing engagement locally to resolve
6.	2018	Claim under Section 14 of the Fixed-Term Work Act, 2003	Claim withdrawn
7.	2018	Claim under Section 13 of the Industrial Relations Act, 1969	Decision in favour of MU
8.	2018	Complaint under Section 13 of the Industrial Relations Act, 1969.	Claim withdrawn
9.	2017 / 2018	Complaint under Schedule 2 of the Protected Disclosure Act 2014	Awaiting further hearing Date
10.	2017 / 2018	Complaint under the Industrial Relations Acts 1969	Labour Court claim withdrawn Ongoing Mediation
11.	2017 / 2018	Complaint under Section 13 of the Industrial Relations Act, 1969 and Section 8 of the Unfair Dismissals Act 1977	Claim withdrawn following internal resolution
12.	2017	Complaint under Section 8 of the Unfair Dismissals Act 1977.	Claim withdrawn following internal resolution
13.	2017	Complaint under Section 13 of the Industrial Relations Act 1969	Claim withdrawn following internal resolution
14.	2017	Complaint under Terms of Employment (Information) Act 1994 and Payment of Wages Act 1991	Resolved internally
15.	2016	Claim under Section 77 of the Employment Equality Act	WRC found in favour of Claimant

16.	2016	Complaint under the Protection of Employees (Fixed Term Work) Act 2003	Labour Court decision against MU
17.	2016	Complaint under the Protection of Employees (Fixed Term Work) Act 2003	Resolved internally
18.	2016	Complaint under the Industrial Relations Acts	Resolved internally
19.	2016	Complaint under the Payment of Wages Act 1991 and Terms of Employment (Information) Act 1994	Resolved internally
20.	2015	Complaint under Employment Equality Acts 1998-2011	Non-attendance of Claimant at hearing
21.	2015	Complaint under the Industrial Relations Acts	Resolved internally
22.	2015	Complaint under the Industrial Relations Acts	Resolved internally
23.	2015	Complaint under the Industrial Relations Acts	Resolved internally
24.	2015	Complaint under the Industrial Relations Acts	Claim withdrawn
25.	2015	Labour Court Appeal  Complaint under the Employment Equality Acts 1998-2011	Labour Court decision in favour of MU
26.	2015	Complaint under the Protection of Employee (Fixed Term Work) Act 2003	Resolved internally
27.	2015	Labour Court Appeal  Complaint under the Protection of Employees (Fixed Term Work) Act 2003	Labour Court decision in favour of MU
28.	2014 / 2015	Complaint under the Protection of Employees (Fixed Term Work) Act 2003	Labour Court decision in favour of Claimant
29.	2014	Complaint under the Industrial Relations Acts	Resolved through 3 <sup>rd</sup> party mediation
30.	2014	Complaint under the Industrial Relations Acts	Labour Court decision in favour of MU
31.	2014	Complaint under the Protection of Employees (Fixed Term Work) Act 2003	Labour Court decision in favour of Claimant
32.	2014	Complaint under the Protection of Employees (Fixed Term Work) Act 2003	Labour Court decision in favour of MU

## **CHAPTER IV**

### **DISPUTE RESOLUTION**

#### **K PROCEDURES FOR THE RESOLUTION OF DISPUTES WHICH ARISE IN THE UNIVERSITY OTHER THAN EXCLUDED DISPUTES.**

##### **1. Referral of Dispute**

Where a dispute arises in the University, other than an Excluded Dispute, which has not been resolved following reasonable efforts at resolution by one or more of the parties involved in the dispute, the issues in dispute may be referred in writing to the President by one or more of the parties to the dispute setting out clearly:

- (a) the nature of the issues in dispute;
- (b) the parties to the dispute;
- (c) the efforts made to resolve the dispute, including the utilisation of any internal University mechanism, whether formal or informal;
- (d) a request to the President for assistance in resolving the dispute.

##### **2. Decision of President**

The President shall consider any such request for assistance within a reasonable time and, if he or she considers it appropriate,

- (a) having met with the parties to the dispute;
- (b) having obtained from the parties any further information which he or she may require, and
- (c) having conducted such inquiries as he or she considers necessary,

may decide:

- (i) that the dispute is outside the scope of the procedures, or
- (ii) that the dispute is frivolous and/or vexatious, or
- (iii) that all reasonable efforts have not been made by one or more of the parties to resolve the dispute, or



- (iv) that resolution of the dispute would benefit from consideration by an independent person or persons, or
- (v) to take such other measures as he or she considers appropriate,

and upon any such decision being taken the supplementary provisions of Statute K.3 below shall apply.

### **3. Supplementary Provisions for Decision of President**

- (A) If the President decides that the dispute is outside the scope of the procedures the President will write to the party/parties who has/have referred the dispute advising the party/parties of his or her decision in this regard and the reasons for his or her decision.
- (B) If the President decides that the dispute is frivolous and/or vexatious the President will write to the party/parties who has/have referred the issues in dispute advising the party/parties of his or her decision in this regard.
- (C) If the President decides that all reasonable efforts have not been made by one or more of the parties to resolve the dispute the President will write to the parties to the dispute, advising them of his/her decision in this regard, and requesting that further efforts be made by them to resolve the dispute. The President may offer his or her opinion as to how the dispute should be resolved and/or offer advice to the parties with regard to resolution of the dispute. In addition, or as an alternative, the President may offer the parties the services of a facilitator, who may be an employee of the University, to help resolve the dispute.

Where, following the intervention of the President under this sub-clause, the dispute remains unresolved, it will be open to either one or more of the parties to the dispute to again refer any unresolved issues in dispute to the President as provided for in Statute K.1 above. In reaching a decision on the second referral, the President will have regard, *inter alia*, to the conduct of the parties in relation to the dispute subsequent to the first referral and, if a facilitator was appointed, to any report of such facilitator, which will be provided by the facilitator to the President.

- (D) If the President decides that resolution of the dispute would benefit from consideration by an independent person or persons he or she will nominate, for acceptance by the parties, an independent person or persons, one of whom shall be a nominee of the Chancellor of the National University of Ireland, to consider the issues in dispute and to recommend to the President as to how these issues should be

resolved. In seeking a nomination or nominations from the Chancellor, the President will request the Chancellor to have particular regard to the nature of the issues in dispute. The independent person or persons will not be an employee or a student or a member of the Governing Authority of the University.

Where all of the parties to the dispute agree to the appointment of the independent person or persons nominated by the President, the issues in dispute will be referred by the President to the independent person or persons.

Having been appointed, the independent person or persons will conduct such investigations and adopt such procedures as he or she or they considers/consider appropriate.

Having considered the issues in dispute, the independent person or persons will recommend in writing to the President as to how these issues should be resolved. It will be a matter for the President in the first instance, to decide whether or not to accept the recommendation(s) of the independent person or persons. Where the President accepts the recommendation(s), he or she will forward a copy of the recommendation(s) to each of the parties, advise the parties of his or her acceptance, and invite each of the parties to indicate to him or her in writing whether or not they accept the recommendation(s). Where the President does not accept the recommendation(s), he or she will so advise the parties and may take such action in relation to the issues in dispute as he or she considers appropriate. Where one or more parties to the dispute do not accept the recommendation(s), the President may take such measures in relation to the issues in dispute as he or she considers appropriate.

The University will pay the reasonable costs and expenses of the independent person or persons appointed by the President in connection with the foregoing dispute resolution procedures.

- (E) If the President decides to take such other measures as he or she considers appropriate, such other measures may comprise any or all of such measures as he or she may be entitled to take at law, including any or all of such measures as he or she may be entitled to take under the Act and may include, without limitation, the referral of the issues in dispute to the independent person or persons referred to above where one or more of the parties to the dispute refuse to accept the appointment of the independent person or persons nominated by the President and where the President is of the view that such referral would be beneficial.

#### **4. Intervention by President**

Where the President becomes aware of a dispute in the University, otherwise than by referral as provided for in Statute K.1 above, he or she may intervene in a manner similar to that provided for in Statute K.2 above, with a view to having the issues in dispute resolved.

**5. Other Measures**

Nothing in the foregoing will prevent the University from taking any measures which are within its competence, with the object of resolving or otherwise dealing with the issues in dispute.

**6. President party to dispute**

Where in any case the President is himself or herself a party to a dispute which comes within the scope of these procedures, the Governing Authority will, where appropriate, assume the functions of the President.