



Ms Sarah Cremin
Committee Secretariat
Committee of Public Accounts
Leinster House
Dublin 2 D02 XR20

Your ref: S0692 PAC33

20 January 2022

Dear Ms Cremin,

I refer to your letter dated 10 January 2022 requesting a quarterly update to the Public Accounts Committee on the Department's investigation into the employment status of workers engaged by RTE.

By way of background the Committee will be aware that the Department does not normally comment in public or at committee on the status of any individual claim or investigation - whether that be in respect of an individual's entitlement to a benefit, a fraud investigation or an employer inspection. The purpose of this policy is not just to respect confidentiality and comply with data protection obligations but also, and importantly, to protect the integrity of the decision making process and in particular to provide assurance that decisions are taken with due consideration, in line with statutory provisions and free from pressure or influence from whatever source. In particular, we are aware that any public comment on specific cases could lead to any decision being challenged or could undermine the sustainability of any decision that may be appealed.

Subject to that caveat this Department is always willing to provide the information that may be helpful to assist the Committee in fulfilling its role. In that regard and in the context where the employer in this instance had already provided an update to the committee, I provided a general briefing on progress into the investigation of the social insurance status of workers engaged by RTE in the run up to and again during my appearance at the Committee in December. In giving that update I highlighted how this is a complex investigation involving a large number of individuals and so will take some time to work through with an expected completion date of late this year or early in 2023. I also advised that as all decisions of the inspectors will be retrospective in impact to the correct date without limitation as to time, all workers in respect of whom social insurance status might be modified will get the full benefit of that changed social insurance status notwithstanding that adherence to due process in the investigation may mean that it will take some time to reach any determination. In addition, the Department will pursue recovery of any social insurance contributions due for the full period where social insurance status may have been misclassified.

The Committee will be aware of the complex nature of the task of determining the correct social insurance classification where there is a difference of opinion between employer and the worker as to whether the worker is engaged on a 'contract for service' or a 'contract of service'. In such cases it is not uncommon for any determination made by an inspector to be challenged by one of the parties concerned.

Accordingly, in these types of cases and, given the consequences of the decisions they take, it is particularly critical not just that the inspectors act independently and objectively in the exercise of their functions but also that they are seen to do so free from external pressure and are also allowed, and are seen to be allowed, the time necessary to conduct proper investigations.

Separately the Department would be concerned that any reporting on the status of ongoing investigations involving identifiable parties would negatively impact how other parties would engage in the future with Department's investigations. It is important to note that investigations are conducted on an 'open-mind' basis with no pre-judgment as to outcome and all parties to the investigation are entitled to the presumption of *bona fides*. In addition, even where a determination may be perceived as negative this is not, of itself, determinative of malfeasance on the part of a person or organisation. - Given this context we would be concerned, for example, of the consequences of a situation where an employer perceives that any investigation would, even prior to any outcome being determined, be the subject of debate and negative commentary either within the confines of the Oireachtas or in the wider public in response to information disclosed by the Department.

It is not unreasonable to expect that any employer faced with a risk of their reputation being compromised in such a manner might adopt a conservative approach to the way they deal with the Department (e.g. by making, as they would be entitled to do, increased use of legal and other professionals to mediate their engagements with the Department). I would be concerned that this could further complicate an already complicated process and reduce the Department's ability to carry out its functions effectively and therefore harm the public interest.

Taking all of the factors set out above into consideration I believe that it would be inappropriate and ill-advised for the Department to provide regular reports, as a matter of routine, to the Committee on the status of this, or indeed any investigation into employment status where that investigation concerns identifiable parties.

In saying this I would emphasise that the Committee already has a good overview of the investigation and a clear timeline for its conclusion. In addition, in order to maintain our continued cooperation with the Committee, I suggest that this Department will provide a further update to the Committee on completion of the investigation later this year or early in 2023. This would ensure equity in treatment for RTE and its workers on the same basis as accorded to other parties investigated by this Department.

Accordingly, I would respectfully ask the Committee to allow the Department the space in the meantime to pursue a thorough and professional investigation into this matter in the normal manner.

I trust this clarifies the position for the Committee. The Department is available to provide any further assistance required.

Yours sincerely,



John McKeon
Secretary General