The Committee met at 10 a.m.

MEMBERS PRESENT:

| Deputy Áine Collins, | Deputy Eoghan Murphy,         |
| Deputy Paul J. Connaughton, | Deputy Gerald Nash,         |
| Deputy John Deasy, | Deputy Derek Nolan,         |
| Deputy Robert Dowds, | Deputy Kieran O’Donnell, | Deputy Simon Harris,         |
| Deputy Mary Lou McDonald, | Deputy Shane Ross. |

DEPUTY JOHN MCGUINNESS IN THE CHAIR.
BUSINESS OF COMMITTEE

Mr. Seamus McCarthy (An tArd Reachtaire Cuntas agus Ciste) called and examined.

Business of Committee

Chairman: This is a special meeting convened to deal solely with the item on the agenda which relates to matters concerning the Central Remedial Clinic. Deputies Ross and Harris are the lead speakers for today’s session. Other members have also indicated. Unless any member wishes to raise an issue, I suggest we proceed to the business of the meeting.

Deputy Robert Dowds: Chairman, I indicated also.

Deputy Kieran O’Donnell: The HSE is in before us today as well and there is correspondence in the public domain between the HSE and the CRC. Could we request that we would have sight of the documentation?

Chairman: All relevant documents on either side should be made available to committee members. When the witnesses come in we can ask them for the relevant documentation.

Deputy Kieran O’Donnell: What I am asking is that we would get whatever documentation is available upfront at the start of the meeting.

Chairman: The following Deputies have indicated - Deputies Dowds, McDonald, O’Donnell, Nash and Connaughton, in that order. No. 3C refers to documents relating to today’s meeting. The only documents are the briefing material and the update on the progress of section 38 agencies. All of them are to be noted and published. We will request further information from the witnesses when they come into the room. We will now invite the witnesses to take their seats.

2012 Annual Report of the Comptroller and Auditor General and Appropriation Accounts

Vote 39 - Health Service Executive

Annual Report and Financial Statements 2012

Section 38 - Agencies Remuneration

Mr. Jim Nugent (Chairman, Central Remedial Clinic) called and examined.

Chairman: Before we begin, I remind members, witnesses and those in the Public Gallery to turn off their mobile telephones as the interference from them affects the sound quality and transmission of the meeting. I wish to advise witnesses that they are protected by absolute privilege in respect of the evidence they are to give the committee. If they are directed by the
committee to cease giving evidence on a particular matter and they continue to do so, they are entitled thereafter only to a qualified privilege in respect of their evidence.

Witnesses are directed that only evidence connected with the subject matter of these proceedings is to be given and they are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against a Member of either House, a person outside the House or an official by name or in such a way as to make him or her identifiable. I remind Members of the provisions within Standing Order 163 that the committee shall also refrain from inquiring into the merits of a policy or policies of the Government or a Minister of the Government or the merits of the objectives of such policies. I welcome Mr. Jim Nugent, chairman of the Central Remedial Clinic. I ask him to introduce his colleagues.

Mr. Jim Nugent: Thank you, Mr. Chairman. On my right is a fellow director of the Central Remedial Clinic, David Martin, and on my left is Paul Kiely, our former chief executive officer.

Chairman: I ask Ms Laverne McGuinness to introduce the members of the Health Service Executive.

Ms Laverne McGuinness: I am the chief operations officer and deputy director general. Mr. Barry O’Brien is our national director of human resources, HR, and Ms Paula Lawler is senior manager of HR.

Mr. Peter Brazel: I am from the remuneration division of the Department of Public Expenditure and Reform.

Chairman: I invite Mr. Nugent to make his opening statement.

Mr. Jim Nugent: Thank you, Chairman. The Central Remedial Clinic is over 60 years in existence for the provision of many complex services for disabled persons. The HSE contracts with the CRC to provide clinical services and the Department of Education and Science contracts with the CRC for school-based educational services for disabled persons. For the first nine months of this year alone the CRC had 3,561 clients with attendances of 55,571 accounting for 105,333 interventions. The CRC has 278 staff based over a number of locations in Dublin and also in Waterford and Limerick.

The three core values of the organisation have been and still are: 1. No child will be turned away; 2. No family will be charged; and, 3. The CRC sets out to assist each child to achieve his or her potential. We are very pleased to be here at your invitation, Chairman, and we welcome the opportunity to establish the facts and dispel some of the myths that have been circulating. The core issue we want to address today concerns the remuneration arrangements of a number of senior managers. It has been said in some quarters that the levels of remuneration were set without the knowledge of the HSE. The facts are as follows. The CRC was, and still is, contractually bound by employment contracts to pay salaries that subsequently were in excess of those determined unilaterally by the HSE in 2009. At a meeting with HSE top officials in June 2009 - David Martin was one of the directors who attended the meetings - the CRC presented its case that it had these contractual arrangements, an issue which the Minister, Deputy Howlin, acknowledged recently exists in other agencies. The HSE indicated it could only fund salaries as unilaterally determined by it and subsequently notified the CRC. The CRC said that it would pay the balance from its own resources and in November of 2009 wrote to the HSE to that effect. The CRC further confirmed that when management posts concerned fall to be replaced through retirement or resignation, the salary of the incoming replacement will be discussed and
agreed with the HSE. This information is confirmed in correspondence with the HSE.

The issue today centres around a meeting with the HSE in 2009. Following that meeting, all parties were clear on the arrangements in place for the remuneration in question. My colleague, David Martin, attended that meeting and I believe it is important to hear a first-hand account of what happened at the time. Following his contribution, we will be pleased to take any questions committee members may have.

Chairman: I thank Mr. Nugent. Does Mr. Martin wish to make a statement?

Mr. David Martin: Yes, thank you, Chairman. I joined the board of the CRC in 2007. My work on the board is completely voluntary. I receive no remuneration at all. Neither would I seek remuneration. That is the same right across the board. Our work is totally voluntary.

In 2007 a meeting was arranged with the HSE. I attended the meeting on 25 June, along with Des Peelo. The issue being discussed was the salaries of executives of the CRC.

At that time I think what had happened was that the HSE had fixed a particular figure that it considered appropriate remuneration for the executives or people working in the sector. Mr. Peelo, in particular, pointed out that we had a number of executives, I think about nine in total at the time, who had legacy contracts with us - I suppose is the best way of describing them. We were bound by these contracts. We are a private company and we are subject to those such agreements. We explained our particular problem to the members of the HSE at that meeting. Arising from that, I understood when we left the meeting that the HSE acknowledged our position and understood the difficulty we had and that it would have to be worked out. Some of those executives were due to retire within a shortish period thereafter and some others are still there. We explained at the committee meeting that as each of those positions came to be filled they would be filled in accordance with the appropriate HSE rate, which was obviously less than what was being paid to those executives at that time, that we would work that through and that the natural effluxion of time would probably resolve a number of those issues. My understanding was that this was acceptable to the HSE when we left that meeting. At that time, while we had told the HSE the company’s position, nevertheless we had to get the agreement of our board for this to be done. We pointed out that we would have to make up the shortfall on these particular salaries. The HSE, to my understanding, agreed with that position. Subsequent to that, we had a board meeting. The board does not meet every month because it is a voluntary board and we meet as an overseeing board. We met, I think, in or around November subsequent to that. Des Peelo wrote a letter which was discussed by the board before it was sent to the HSE. I have a copy here which I will read if the committee does not have the letter. On 17 November 2009 Des Peelo wrote:

Ms Laverne McGuinness
National Director
Primary, Community and Continuing Care
Health Services Executive
Room 138
Dr. Steeven’s Hospital
Dublin 8
Dear Laverne,

Thank you for your letter 7 Jul ’09 and I also refer to our meeting on 25 June ’09. [That is the meeting to which I referred].

Apologies for the delay in response. The Governors’ meeting re approving the response set out below did not in fact take place until 9 Nov. ’09. On behalf of the Governors I now confirm the following outcome to the HSE:

1. We greatly appreciate the involvement of the HSE with the CRC. We have had a long and good relationship with the HSE and its predecessors. [That was my experience up to then].

2. We undertake that the CRC, as a voluntary organisation, will itself fund the excess of salaries concerned as identified by the HSE with effect from 1 Jan. ’10. [That is what happened subsequently].

3. As and when the management post concerned fall to be replaced through retirement or resignation, the salary of the incoming replacement will be discussed and agreed with the HSE.

We have been very fortunate in the high calibre of management within the CRC over the years and it has always been important to us to be able to attract and hold talented and committed management.

Kind regards,

Yours sincerely

Des Peelo

Chairman

Central Remedial Clinic.

That letter was sent by us. I heard nothing about this until more recently when the issue became a public matter. I started to doubt myself as to whether in fact we had reached this agreement. I looked to see what was my best recollection, bearing in mind that this was four years ago. I saw in the HSE’s own internal report, which the committee has, at page 47, a reference to “One non-acute agency informed internal audit”. I will read it to the meeting. When I read it it was on all fours of my understanding of the agreement that we reached with the HSE at that meeting on 25 June 2009:

One non-acute agency informed internal audit that

Senior Management Remuneration was the subject of a comprehensive review in 2009, involving the Chairman and other Board Members of the [agency], along with HSE ND-ISD, HSE NDOF and HSE HR manager. At that time, it was agreed by the
Board of Governors [we are described as a board of governors] that --- a lesser amount be charged to the HSE, and --- the balance, for employment contractual reasons, would be directly funded by [the agency], the employer. [...] It was also agreed that when the posts concerned fall to be replaced through retirement or resignation the salary of the incoming replacements will be discussed and agreed with the HSE. This agreement took effect from 1st January 2009 and continues to this day. The only change that has affected the agreed rates since then has been the salary reduction imposed on 1st January 2010.

That concurs with my memory of what we discussed at that meeting with the HSE.

Chairman: I thank Mr. Martin for his statement. We will publish Mr. Nugent’s statement. Mr. Martin does not have a copy of his statement for the committee.

Mr. David Martin: No. I am an amateur at this. I was taking it as a viva voce statement.

Chairman: In your statement, Mr. Martin, you spoke about correspondence. For the benefit of members, I ask the parties concerned - the CRC, the HSE and the Department of Public Expenditure and Reform - to make available to the members the correspondence, some of which is in the public domain and some of which has been mentioned here today.

Mr. David Martin: I can send the committee a copy of that now if you wish.

Ms Laverne McGuinness: We have all the correspondence with us. It is all copied.

Chairman: We have the correspondence that Ms McGuinness has just given us. With regard to the correspondence from the CRC to the HSE, the Department of Health or any other Department, or any other piece of correspondence relevant to this hearing, can we have a copy from your side of all that correspondence?

Mr. Jim Nugent: Most certainly, Mr. Chairman. We will expedite that.

Chairman: Is it possible to get it immediately, because we have this correspondence here? Is all the correspondence here, Ms McGuinness?

Ms Laverne McGuinness: All of the correspondence between the CRC and ourselves is there.

Chairman: Has Ms McGuinness made this file of correspondence available to the CRC?

Ms Laverne McGuinness: The CRC has its own correspondence which it has given to us and it has all the correspondence.

Chairman: I understand that but-----

Ms Laverne McGuinness: We have copies with us today.

Chairman: Ms McGuinness is submitting this to the committee. What I want to find out is whether, in submitting it to the committee, she has checked with the CRC, so that we can establish that there is no piece of correspondence not included here - so that the CRC can be happy that this is in fact the entire correspondence between both parties.

Ms Laverne McGuinness: We could certainly do that. We have copies with us today.

Chairman: Can you give them a copy?
Ms Laverne McGuinness: Yes. It is here. They have it.

Chairman: Can we make a copy of this available to each member?

Mr. Jim Nugent: I have not seen a copy.

A Witness: Sorry, Chairman. We just were not aware that we were going to have this.

Chairman: That is okay. I just want to make sure that what you see is this letter.

Deputy Simon Harris: They should have seen it already.

Chairman: The other matter I want to ask about relates to Mr. Conlan.

Mr. Paul Kiely: May I say something following on from the two opening statements?

Chairman: Yes, if you wish.

Deputy Kieran O’Donnell: Does Mr. Kiely wish to make an opening statement?

Mr. Paul Kiely: I wish to put in context the environment within which the questions about the salaries in the CRC were asked in the first place.

This probably first came into the public domain following the HIQA report on Tallaght hospital which was published in May 2012. The quote in the HIQA report about remuneration stated that there was no remuneration committee of the board and that minutes of the board meetings did not record whether remuneration of the chief executive or members of the management team was discussed. It was not made clear to the authority how decisions were made at either board or committee level with regard to the appointment or remuneration of senior executive managers in designated or acting roles. For example, the governance of decisions to substantially additionally remunerate individual post-holders - in one case by more than €150,000 - was not clear.

Following that, the Minister went on the record.

The Department of Health’s press office’s website has a speech, posted on 19 November 2013, by the Minister for Health on a Topical Issue on the HSE audit of section 38 organisations. In it, he addressed the issue of additional payments to individuals above the sanctioned amount paid from the Exchequer. He stated:

This is a Government which is trying to weed out additional sweeteners and expenditures within the health service ... What we need is a clear picture of all payments [made] ... the HSE wrote to all of the agencies in question. On 30 September copies of the HSE’s audit report and Government pay policy were sent to all section 38 agencies with a request that they respond by 28 October, ensuring compliance. [In total,] 33 agencies responded, some with a holding position and others requesting to seek legal advice. On 5 November the HSE again wrote [to them], reiterating the requirement that they respond and ensure compliance, with a deadline of today, 19 November.

As the House will be aware, top-up payments of this nature first came to light in May last year when HIQA published a report on governance at Tallaght hospital. It emerged that an employee of the hospital had been receiving an additional €150,000 in payments since 2005. In total, five senior management staff had received €739,000 in top-up payments ... Last May, I requested that the HSE conduct an internal audit of all section 38 funding recipi...
ents, both hospitals and disability agencies, to ensure similar unsanctioned payments were not being made in other locations. The HSE’s audit report concluded there were 36 different types of allowance being paid to 191 senior managers at an annual cost of €3.224 million ... In some private cases private funding is used to top up approved rates of pay. [A total of] 13 agencies pay additional remuneration or benefits such as company cars, car expenses or pension contributions to a total of 34 managers to a value of €912,472.

The first time this issue came to light was in May 2012 following a HIQA report. The information on senior management salaries in the Central Remedial Clinic, CRC, was as a result of a letter from the HSE, purporting to seek information from section 38 organisations on the payments to senior management in excess of grade 8 salaries. The CRC responded in 2009, not 2005 or 2012, to that request with the information that is now in the public domain. Was the CRC the only section 38 agency to respond in 2009 correctly, honestly and up front?

Chairman: I thank Mr. Kiely. The clerk to the committee made it clear, as well as in various public statements, that the committee wanted to have Mr. Brian Conlan, the former chief executive, before the committee. Can Mr. Nugent explain why he is not here? Will he also enlighten us on why Mr. Conlan resigned?

Mr. Jim Nugent: Since he resigned last week, we have no authority over Mr. Conlan’s decision. Unfortunately, he has taken a decision to make several press statements and not turn up at the committee. We have no way of compelling him to do so.

Chairman: The committee does. Why did he resign from the organisation?

Mr. Jim Nugent: Mr. Conlan was on personal leave at the time this issue broke. He kept in touch during the time he was away. Towards the end of it, I believe he felt there was a great intrusion into his personal life and that he would prefer to resign, given that he had only been a short time with the organisation as chief executive. He had been on the board for nine years as a representative of the Mater hospital, where he was chief executive officer at the time.

Chairman: Just to make it clear, it would have been much better if he had attended the committee this morning voluntarily rather than playing this game. We will hear evidence today from all parties. Members will then decide how they wish to proceed with Mr. Conlan.

Deputy Shane Ross: I thank everyone for attending. Like the Chairman, I regret Mr. Conlan’s absence and, if necessary, I will be seeking compellability powers to bring him here if we need his evidence.

According to media reports, Mr. Kiely received €242,000 in his final year. Is that correct?

Mr. Paul Kiely: That is correct.

Deputy Shane Ross: Will Mr. Kiely break down the figure for us?

Mr. Paul Kiely: Off the top of my head, €223,000 was my salary and there was an allowance of €19,000.

Deputy Shane Ross: Will Mr. Kiely break down the salary? What was the source of that €223,000?

Mr. Paul Kiely: I was paid by the CRC.
Deputy Shane Ross: Are the reports that Mr. Kiely received €106,000 and then a top-up true?

Mr. Paul Kiely: In 2009, when we declared what the salary was, the HSE wrote back to state it considered a more appropriate salary to be €106,000.

Deputy Shane Ross: What happened then?

Mr. Paul Kiely: As Mr. Martin said, the board did not contest it, but it went to see how we could become compliant. He has outlined the process that has taken place since.

Deputy Shane Ross: Therefore, Mr. Kiely was paid out of CRC funds.

Mr. Paul Kiely: I was paid by my employer, the CRC.

Deputy Shane Ross: How often did this happen? Did it happen every year or was that the first year in which it happened? What was Mr. Kiely’s salary the year before?

Mr. Paul Kiely: It would have been akin to that figure.

Deputy Shane Ross: Was it the same?

Mr. Paul Kiely: The figure from 2009 is the one that is in the public domain. Since 2009 it has incurred the pay cuts that were imposed by the HSE.

Deputy Shane Ross: What was Mr. Kiely’s salary in 2009, 2010 and 2011?

Mr. Paul Kiely: It would have been similar because there were no pay rises, just pay cuts.

Deputy Shane Ross: Therefore, Mr. Kiely’s pay was cut. Is that correct?

Mr. Paul Kiely: Yes.

Deputy Shane Ross: Therefore, Mr. Kiely was getting top-up payments every year.

Mr. Paul Kiely: I was not getting any top-up payment. I was employed by the CRC and the remuneration committee gave me a salary.

Deputy Shane Ross: Mr. Kiely was getting a top-up payment from the board.

Mr. Paul Kiely: I was getting a salary from the clinic that would appear to be in excess of what the HSE had “sanctioned”-----

Deputy Shane Ross: Correct.

Mr. Paul Kiely: ----because in 2009, it wrote and stated a more appropriate salary was a figure of which I already was in excess.

Deputy Shane Ross: Whatever one calls it, it was far above what the HSE had authorised, every year.

Mr. Paul Kiely: What it has now authorised.

Deputy Shane Ross: Every year. Can Mr. Nugent tell me from where that top-up was coming?
Mr. Jim Nugent: The Central Remedial Clinic, CRC, has access to funding through its activities, which have been going on for many years. There is no harm in stating at the outset that for the first 25 years of the clinic’s work, there was no State funding whatsoever. All salaries for clinical staff, administrative staff and others were paid from public contributions in one form or another. At that time, many other institutions were doing this, such as, for example, the Rehab Group and the Mater, which were involved in the process of running their own lotteries and pools as a methodology of raising money to meet the expenses of the organisations. In the case of the Central Remedial Clinic, we started to get State funding in 1977 and at that, it was not 100% State funding. This build-up was common enough and obviously, at the time, I understood it was greatly appreciated that the State had started to help because of the nature of the work and its specialisation. It is a highly complex business and in that context, it is very expensive to run.

The development of salaries evolved over time. The people concerned were employed by a private company in the technical sense. The salaries were under an employment contract and therein lies the legacy of our responsibility as a company to the employee. In the case of Mr. Kiely, whatever way the salary built up is one thing but the issue was that when 2009 arrived and we came to 1 January 2010, the HSE at that time indicated the salary it was willing to pay, which was €106,000. The balance was met from funds we have earned through the lotteries. Those funds are significant and over many years have built up into substantial amounts of money. In the first instance, we have used them in the support of the services of the clinic in so far as we can and there are a couple of points I wish to make in that regard. The fund primarily has been used as capital development funds. For example, in recent years we have built a new service centre in Waterford, which is a state-of-the-art operation. The funds we have at present, for example, are earmarked for the CRC in Clondalkin and Scoil Mochua, as well as for a day centre in Swords that has been in preparation for five years and about which we have been waiting to conclude arrangements with the HSE. As these developments take time, we always ensure those funds are managed by appropriate and responsible agencies. The board of the CRC assigns the funds to appropriate institutions to take care of those funds. In building up those funds, it effectively is a reserve we can use from time to time.

There was criticism regarding the issue of service cuts in the Central Remedial Clinic. The Deputy must remember that when a child comes the clinic, he or she is not there just for a short time visit as would be the case were one being admitted into a general hospital, where one might go in for a procedure and then come out and recover and then everything is fine. Our children are with us pretty well for a lifetime and we must think about that. If there are cuts - which there must be in times like this and we have no argument with the HSE about that - we try the best we can to find alternative sources of funding. It is as plain as that. If we could put more money into the day-to-day service, we would but one must have staff to provide a day-to-day service. We have an employment embargo, which we also must accept and we do not have any hang-ups about it. We are stretching the organisation to the very limits at present because of the level of staff reduction that has taken place, while also trying to keep up the service. One cannot simply tell people they had better go home because one has just run out of money. A balancing act is going on constantly and as part of that, to carry out the transition from 2010 to the present, given we already had five or six people who were on a higher salary than the new salaries determined but who were contractually there for us to manage, we have made a reduction, wherever possible. From approximately 11 senior management staff, we are down to approximately five at present and two more will be retiring over the next year or so. Again, they either will be replaced if the HSE agrees we can replace them or we will be obliged to find an alternative way of doing our business. However, we will not be breaking the level of pay,
which will be determined from the 2010 arrangement. It is a transition period and we are doing it through natural reduction. We cannot simply walk in and tell someone we are sorry but we are going to take away half that person’s salary away from him or her because we have been told to so do.

**Deputy Shane Ross:** If that person is being paid €242,000, one can.

**Mr. Jim Nugent:** Legally, you cannot.

**Deputy Shane Ross:** One should anyway.

**Mr. Jim Nugent:** It is a legal problem in employment law.

**Deputy Shane Ross:** I do not dispute much of what Mr. Nugent is saying and all the work that has been done in the CRC is fantastic. There is no dispute about that whatsoever.

**Mr. Jim Nugent:** I thank Deputy Ross.

**Deputy Shane Ross:** I congratulate Mr. Nugent and the board on everything they have done in that regard. I am trying to establish how they can justify paying a top-up for Mr. Kiely’s salary out of funds that were gathered by the Friends and Supporters of the Central Remedial Clinic Limited. Mr. Nugent should answer this.

**Mr. Jim Nugent:** I have no problem in so doing. First, it is about time we stopped playing around with words like “top-up”. If a person has an employment contract, leaving aside the amount of money, which could be €20,000, €50,000 or €100,000, it is an employment contract. That individual has a legal right and he or she can go to the courts and sue on it if one decides to change it without his or her agreement.

**Deputy Shane Ross:** What did the contract state?

**Mr. Jim Nugent:** That one is employed on a particular salary.

**Deputy Shane Ross:** Yes, but about the top-ups? Who negotiated this contract with Mr. Kiely?

**Mr. Jim Nugent:** Mr. Kiely was chief executive for 25 years. I was not around at the time the contract started.

**Deputy Shane Ross:** Can Mr. Nugent tell members what is in the contract? Does the contract give the board the entitlement to give him a top-up, an extra amount, a bonus or whatever one wishes to call it, which is more than his basic salary?

**Mr. Jim Nugent:** No, the contract states his salary. The salary is as the figure the Deputy gave in gross terms, that is, €200,000-odd at the final pitch but obviously, it was not at that level 25 years ago. It grew on foot of all kinds of pay rises, national wage agreements, the benchmarking that took place over the years and it arrived at a figure. That figure is the contractual figure the Central Remedial Clinic has with the employee. This is what we are responsible for delivering and had we broken all of the individual contracts, this is common to a lot of organisations, had we gone down to all the people who were given a new salary level and told them they were not getting any more than that, we would be breaking their contracts. They could sue on it and we estimate one could be into millions of compensation.

**Deputy Shane Ross:** How can Mr. Nugent justify paying him €242,000?
Mr. Jim Nugent: I believe the chief executive of an organisation like the Central Remedial Clinic, in the complex world in which it lives and given the nature of the work it does, must be examined in terms of the level that should be there. Regardless of whether it is this or some other level, when we were taking a look at the new salary level when approaching the question of a replacement for Mr. Kiely, we believed it was going to be very difficult to get the calibre of person needed to run the clinic.

Deputy Shane Ross: The clinic got one for €83,000.

Mr. Jim Nugent: Yes, one has to take into consideration that that was-----

Deputy Shane Ross: The previous guy was paid €240,000. The clinic advertised - in fact, it did not advertise - and got a guy for €83,000. Does that not tell Mr. Nugent something about what the clinic was paying Mr. Kiely?

Mr. Jim Nugent: The Deputy is looking at two different things. In the first instance, we were lucky that we had somebody who had just retired from another job in the health service and who, unknown to us - we did not realise he had any interest in taking the position - was willing to take the position at that level. I notice it sounds odd.

Deputy Shane Ross: It is odd.

Mr. Jim Nugent: We were lucky with the calibre of the person available. I would not say he was terribly happy with the salary.

Deputy Shane Ross: He accepted it, did he not?

Mr. Jim Nugent: Yes.

Deputy Shane Ross: He accepted one third of what the clinic had paid his predecessor. The average salary-----

Mr. Jim Nugent: We said from the beginning, in 2009 and 2010, that the salaries would be reduced to meet the stated salaries. There was no way we would want to go back on this.

Deputy Shane Ross: The salary was €242,000. There were no other perks such as a car or anything like this.

Mr. Jim Nugent: No.

Deputy Shane Ross: It was authorised and reviewed by the board every year.

Mr. Jim Nugent: It would have been. The board would have been very aware of it every year.

Deputy Shane Ross: Mr. Nugent was chairman of the remuneration committee. Is that correct?

Mr. Jim Nugent: Yes, until recent times.

Deputy Shane Ross: What did the remuneration committee decide every year - that Mr. Kiely was worth it?

Mr. Jim Nugent: From 2010, if we can take that year as a break point, there was no intention of ever increasing it, irrespective of any movement. Clearly, there were not many pay
increases being made during that period.

**Deputy Shane Ross:** No. To come to that point, the 2012 report stated the clinic was able to cut back on expenditure to achieve close to a break even result. Where were the cutbacks made?

**Mr. Jim Nugent:** There were significant cutbacks in senior management numbers.

**Deputy Shane Ross:** There were cutbacks in what are described as operating costs.

**Mr. Jim Nugent:** In every business-----

**Deputy Shane Ross:** This refers to programmes for patients. Is that correct? There were cutbacks and queues for patients.

**Mr. Jim Nugent:** I am sorry, but there were-----

**Deputy Shane Ross:** There were cutbacks for patients in the programmes. Mr. Nugent has already said the clinic had to do this.

**Mr. Jim Nugent:** Essentially, personnel not being replaced is where the cutbacks occurred.

**Deputy Shane Ross:** There were cutbacks in programmes and there were queues. Deputy Finian McGrath spoke eloquently about the queues which had built up in his constituency as a result of the cutbacks.

**Mr. Jim Nugent:** In fairness, if one reduces the number of service providers, the front-line people, one has a problem in that people will have to wait a bit longer before they can avail of the service.

**Deputy Shane Ross:** Yes.

**Mr. Paul Kiely:** Let me make a point of clarification on that question. When cuts were imposed in the past, the clinic would have taken a decision at board level to subvent these services out of private money, other sources of income, that it had available. What happened in the latter couple of years was that the HSE brought in more red tape, especially in relation to staff ceilings. Where the clinic could have and would have replaced individuals who had left out of private funding, as it had done in the past, it was confined by the HSE which stated in a letter to it that if it breached the employment ceiling, the clinic would be fined €750,000.

**Deputy Shane Ross:** The clinic had €14 million in the bank at the time it was making cutbacks.

**Mr. Paul Kiely:** Yes and some of that money would have been used to buoy up the service and employ additional people, as we had done in the past.

**Deputy Shane Ross:** Some of it was also being used to pay Mr. Kiely’s salary.

**Mr. Paul Kiely:** I am answering one question at a time. I am providing clarification on a point the Deputy raised with the chairman. That is as much as I want to say.

**Deputy Shane Ross:** Let us have a look at the accounts. I do not understand, given Mr. Nugent’s comments on cutbacks, how staff costs increased between 2011 and 2012.

**Mr. Jim Nugent:** To which accounts is the Deputy referring?
Deputy Shane Ross: The 2011 accounts refer to staff costs of €15,005,000 in 2011 and €15,170,000 in 2012.

Mr. Jim Nugent: Will the Deputy, please, give us the reference page?

Deputy Shane Ross: Page 8.

Mr. Paul Kiely: It is quite possible that there were fewer staff in one year than the other - it was still within the ceiling - and who were replaced. I would not have the detail directly at my fingertips and I do not have access to-----

Deputy Shane Ross: Wait a minute. The staff costs increased.

Mr. Paul Kiely: Yes.

Deputy Shane Ross: Did the clinic have more staff?

Mr. Paul Kiely: It is quite possible that we had more staff.

Deputy Shane Ross: It did not have more staff. In 2011-12 it had fewer staff, as shown on page 15.

Mr. Paul Kiely: The figure is in whole-time equivalents.

Deputy Shane Ross: The figure reduced from 297 to 281.

Mr. Paul Kiely: Yes, but one does not know the mix.

Deputy Shane Ross: Of course, I do not know the mix. That is the reason I am asking the question. I presume Mr. Kiely knows the mix.

Mr. Paul Kiely: I do not; I would not have that information. What I am saying is, within the ceiling and parameters set, that there would be always transition of people coming and going, that one is allowed to recruit once one is within the parameters and one does not know the mix.

Deputy Shane Ross: It is an average increase.

Mr. Paul Kiely: One would not know year on year the number of people who left in one year and were not replaced for three or four months. In the following year one may not have allowed the same gap for service purposes.

Deputy Shane Ross: There was an increase of approximately 7% per head in the year in question, which was at a time of cutbacks.

Mr. Paul Kiely: There was no increase in pay.

Deputy Shane Ross: The increase is per head. I do not know how it happened.

Mr. Paul Kiely: It is down to additional staff and having more hands on deck and the whole-time equivalent-----

Deputy Shane Ross: How could one have additional staff when staff numbers were going down?

Mr. Paul Kiely: It concerns the length of time they are in the organisation. One could have
had staff in the previous year who might only have been there for one or two months.

**Deputy Shane Ross:** The staff numbers were down, while staff costs went up. We should find out the reason for this and how it happened because nobody seems to know.

**Mr. Jim Nugent:** I can understand that when one has the whole-time equivalent type arrangements, it can be skewed. We can very rapidly get the Deputy a paper to show him exactly what happened.

**Deputy Shane Ross:** I will move to another item in the accounts. There was a €3 million movement from the Friends and Supporters of the Central Remedial Clinic into the Central Remedial Clinic in the middle of last year. That was for pensions, was it not? Will Mr. Kiely explain this movement? Will he first explain how the pensions worked because that is very important? There are two pension funds. Is that correct?

**Mr. Paul Kiely:** Yes.

**Deputy Shane Ross:** Will Mr. Kiely explain how they work?

**Mr. Paul Kiely:** Over the years, for the very reasons I have outlined, when cutbacks were imposed, staff would not have been sanctioned. The clinic, as a corporate entity in its own right, would have taken the decision to employ individuals over and above those funded by the Eastern Regional Health Board, the Health Service Executive or whoever was the paymaster at the time. In an effort to give the same terms and conditions to staff members working side by side in the same grade, we did not have access to the State pension fund. In the days when there was no access to the State pension fund and no grants coming from the Exchequer, the clinic had a private pension fund through Irish Pensions Trust. The Irish Pensions Trust was used to give the additional staff who were not allowed into the voluntary hospital superannuation scheme terms and conditions similar to those of their colleagues who had what were called possibly legitimate posts within the organisation funded through the Exchequer. The clinic was funding both the salaries and pensions of the staff concerned on a similar basis to those of their colleagues alongside whom they worked.

**Deputy Shane Ross:** In which pension fund is Mr. Kiely?

**Mr. Paul Kiely:** I started in the Central Remedial Clinic in 1977, long before any State pension fund was accessible.

**Deputy Shane Ross:** Mr. Kiely is in the pension fund that was topped up with the €3 million loan.

**Mr. Paul Kiely:** Let me deal with that matter. The Deputy is probably aware that pension funds throughout Ireland are in difficulty. The Central Remedial Clinic’s pension fund was no stranger to this either. Only recently there was a high profile case of ESB workers threatening to pull the plug because the pension fund had not been properly funded.

**Deputy Shane Ross:** Mr. Kiely is in the pension fund.

**Mr. Paul Kiely:** Yes. The Irish Pensions Board set a task for all funds in Ireland to meet the minimum funding proposal, a minimum funding standard. It went on for a couple of years because the Irish Pensions Board kept shifting the due date for submissions to be made to it. Eventually, maybe a year and a half ago, there was a window of opportunity whereby the Pensions Board set a date. The Central Remedial Clinic’s advisers on its pension fund, Irish Pen-
sions Trust, took the opportunity of putting together an application in order that the clinic could address the deficit in the pension fund for the Pensions Board. The proposal had to be balloted on by the staff because it entailed doubling the rate of contribution of staff to the fund. In and around 70 staff members were affected. The 70 staff members were balloted. The partnership arrangement to meet the minimum funding standard by 2017 meant that the individuals had to increase their rate of contribution. They had to double their rate of contribution. The clinic had to increase its rate of contribution by 2.5% and put in a lump sum which was actuarially calculated. Consider the reason the books show the transfer of the €3 million. The €3 million was the lump sum that went in for those 70 individuals because it was unanimously accepted by the staff to protect their pensions. They were delighted that the clinic was standing up to take this responsibility on board and address the deficit. With regard to the reason it was put in is as a loan, there are other contributing factors in the performance of pension funds. One of the performance indicators is the rate at which the investment, the underlying assets of the pension fund perform in the years up to the date set to reach solvency within the fund. Rather than gift the €3 million, the advice from both the actuary, Irish Pensions Trust, and our own financial auditors was that, should the performance of the underlying assets be in excess of what was expected within the plan to become solvent by 2017, a repayment of that money could be made to the Friends and Supporters of the Central Remedial Clinic. One will just have to wait until 2017 to see how the pension fund assets perform before determining whether anything will be due back. One way or the other, the board of the clinic took the decision that because it had a liability, it would address it in partnership with the members of the scheme. That is what it did.

**Deputy Shane Ross:** How much will Mr. Kiely’s pension be worth?

**Mr. Paul Kiely:** My pension will be based on my final year’s salary and the number of years of service.

**Deputy Shane Ross:** Will it be based on the figure €106,000 or €242,000?

**Mr. Paul Kiely:** It will be based on the full salary.

**Deputy Shane Ross:** It will be based on €242,000.

**Mr. Paul Kiely:** It will not kick in for a few years yet.

**Deputy Shane Ross:** Therefore, it will be based on the topped-up salary.

**Mr. Paul Kiely:** It will be based on my salary.

**Deputy Shane Ross:** It will not be based on the one recommended by the HSE but on €242,000. How much will Mr. Kiely’s pension be?

**Mr. Paul Kiely:** I do not know off the top of my head. I have not drawn my pension.

**Deputy Shane Ross:** How much will it be?

**Mr. Paul Kiely:** I was there for 36 years. It will be 36 eightieths of my salary.

**Deputy Shane Ross:** Very nearly half of the €242,000.

**Mr. Paul Kiely:** Not quite.

**Deputy Shane Ross:** That is a staggering figure. The €3 million was transferred from the Friends and Supporters of the Central Remedial Clinic.
Mr. Paul Kiely: I believe so, yes.

Deputy Shane Ross: Therefore, lottery and private funding will go towards paying Mr. Kiely’s pension.

Mr. Paul Kiely: It is going towards paying everyone’s pension.

Deputy Shane Ross: But Mr. Kiely’s, in particular. His will be the biggest.

Mr. Paul Kiely: I might add that since 2009, when the issue of pay came up, another milestone was the early retirement scheme brought in by the HSE. I wrote to the board at the time saying there would be considerable interest in that scheme among the senior management team and those in Irish Pensions Trust. The board suggested I write to the HSE to ask whether the terms were available to that section of the employees within the Central Remedial Clinic who were not in the State pension scheme, the VHSS. Word came back to say “No” on the grounds that the employees were not public servants.

Deputy Shane Ross: The €3 million has gone as a loan from those who contributed, basically the friends and supporters, to pay the pensions of Mr. Kiely and others who are very well paid. It is not going towards the operations of the clinic at a time when there are cutbacks.

Mr. Paul Kiely: Seventy people were involved.

Deputy Shane Ross: Seventy people were involved, but I presume Mr. Kiely was the largest beneficiary.

Mr. Paul Kiely: I would be. That goes without saying.

Deputy Shane Ross: It is based on the topped up salary of €242,000.

Mr. Paul Kiely: On point of clarification, it is nice to bandy figures around, but it would not be on the allowance. Part of my salary was made up by an allowance which was not pensionable.

Deputy Shane Ross: When the transfer was made, was Mr. Kiely the secretary of the friends and supporters company? Was he also secretary of the Central Remedial Clinic?

Mr. Paul Kiely: Yes.

Deputy Shane Ross: Was Mr. Nugent on the board of both at the time?

Mr. Jim Nugent: Yes, I am on the board of both.

Deputy Shane Ross: Is there not a conflict in that he is both a lender and a borrower at the same time?

Mr. Jim Nugent: Regarding the connection with the Friends and Supporters of the Central Remedial Clinic, that company hold funds that are effectively used for charitable purposes. That runs through all activity but, in essence, it is a stand-alone company. There is a cross-over of directors and it was the way it was set up some time ago. In discussions with our auditors recently, we have been looking at the issue of cross-over of directors. Some months back – not during the course of this debate – we identified some people who would be independent of us to come onto the board and we are currently doing the same with the CRC board. In essence, we are looking at the level of good governance needed into the future. We have been doing some
work on that issue and in recent times we have been talking to the HSE about some changes we consider are badly needed. I am being honest about it.

**Deputy Shane Ross:** Mr. Nugent is and he was conflicted. The point I am making, on which I will ask him to comment, is that, in this deal, it is very likely that the Friends and Supporters of the Central Remedial Clinic have been stuffed. Some €3 million has gone from that body. The source of the funds is money given voluntarily, supposedly for sick people. It has gone from the Friends and Supporters of the Central Remedial Clinic to fill Mr. Kiely’s and other people’s pockets with better pensions. That is what happened.

Mr. Kiely is totally conflicted, being secretary at both companies in that situation. This loan is described as a loan and the auditors are obviously extremely doubtful as to whether it will ever be paid back. It says:

During the year the company advanced an unsecured, interest-free, [in other words the Friends and Supporters of the Central Remedial Clinic received no security or interest] long-term loan to the Central Remedial Clinic to assist in financing that company’s pension liabilities. Provision has been made [which means it has been written off in these accounts because they do not expect it necessarily to be paid back] for the amount advanced due to uncertainties regarding the long-term ability of the clinic to repay the loan.

I cannot understand how, knowing that, one could say, “Okay, throw the money across, it may never come back.” They are saying that. In the accounts of the CRC, the recipient of that, it says the loan is unsecured, interest-free and is not repayable in the short term. That is a gift by any other name.

**Mr. Jim Nugent:** I do not quite accept that it is a gift. In the first instance-----

**Deputy Shane Ross:** How will it be repaid? Sorry, go ahead, I apologise.

**Mr. Jim Nugent:** Considerable examination was carried out by the advisers and actuarial people on the pension side and in their best professional view of it we had been advised at the time that the €3 million could be earned back up within the pension fund. At the time the Irish Pensions Board indicated that the shortfall had to be made up we had only two choices. We could go to a bank and borrow money at excessive cost, if we could get it, which was highly unlikely that there would have been money around for that given the period we are talking about. Secondly, we had our own reserve funds through the friends and it was decided to use our own funds out of the friends to meet this compulsory requirement and protect the employees’ pension funds. More than 70 people are involved. We are told that as of now, this defined-benefit pension fund is performing well and that we are on track to repaying that €3 million.

**Deputy Shane Ross:** Did they tell Mr. Nugent the same in 2007? He is gambling on the stock market is he not?

**Mr. Jim Nugent:** No, I do not believe so.

**Deputy Shane Ross:** How will the pension fund increase?

**Mr. Jim Nugent:** We are protecting people’s employment.

**Deputy Shane Ross:** Mr. Nugent is protecting Mr. Kiely and other people at the expense of the Friends and Supporters of the Central Remedial Clinic.
Mr. Jim Nugent: I dispute that. We are not trying to protect one or two individuals in the organisation. The pension rights of some 70 people had to be protected. In all fairness, that fund was there and could be used for that purpose on a loan basis. It is a loan. Of course the auditors would write it up in the books on the basis that it could be at risk, as would their good practice. There are very few things in life that carry no risk. I am not being in any way disingenuous about it. We have phenomenal staff, of whom we are very proud. They do world-class work and I do not see why we should damage them due to pension fund market fluctuations.

Deputy Shane Ross: People all over the country are taking pension reductions or are getting none. It would not be unreasonable to go to the top people in the CRC, especially those who are paid €240,000, and tell them they are also taking a reduction instead of taking money from the Friends and Supporters of the Central Remedial Clinic. Mr. Nugent did not do it. It may be paid back but that is unlikely. The auditors said this is a highly risky loan which they felt compelled to write off.

I have many questions but I will curtail myself. I will leave the interview process by which Mr. Brian Conlan was hired to somebody else. We are getting very conflicting reports on Mr. Conlan’s salary. He has handed some back, is that correct?

Mr. Jim Nugent: It is a matter of public knowledge that when Mr. Conlan was appointed CEO we examined what might be a workable salary. It was in the region of €125,000. The board decided we would try to bring our salary closer to being in line with the new scale the HSE-----

Deputy Shane Ross: Closer or down to it?

Mr. Jim Nugent: There is an unfortunate grey area here, although not from the HSE’s point of view. We have staff whom the CEO is managing who are on a higher rate than the chief executive. Some technical, clinical staff may well be on a higher rate than even the manager who is managing them. It is just how the scales worked out. We are trying to bring that back into line with the new scales. It was driven by the new scales and that is fair enough. We are not arguing with the HSE about it. We are like many other organisations. We have a meeting later this week on this very subject with the HSE as a group of organisations and we welcome it because we need to find solutions. It is only fair to say that the arrangements with Mr. Conlan were revisited and we undertook that from 1 October we would work strictly to the actual scale nominated by the HSE. I met Mr. Conlan and asked him voluntarily to make that move.

Deputy Shane Ross: Is Mr. Nugent telling me that when he gave Mr. Conlan the job he knowingly breached the HSE guidelines?

Mr. Jim Nugent: No, we advised the HSE of what we were doing and we were told we could not, so we did not do it. He has paid back the balance between the two.

Deputy Shane Ross: So the CRC paid him above the HSE limit?

Mr. Jim Nugent: It went through the payroll.

Deputy Shane Ross: So the CRC paid him above the limit despite all these warnings. Is that right?

Mr. Jim Nugent: Yes.

Deputy Shane Ross: That is extraordinary.
Mr. Jim Nugent: It is not, in the sense that we were trying rationally to bring it down from the level it was at previously and we felt that some balance in between for the purposes of trying to get a chief executive-----

Deputy Shane Ross: So the CRC gave Mr. Conlan a top-up out of the Friends and Supporters of the Central Remedial Clinic.

Mr. Jim Nugent: Yes.

Deputy Shane Ross: The CRC went through an extraordinary process. It did not externally advertise the post, as is required. Is that right?

Mr. Jim Nugent: No, we did not. We understood a number of existing staff members wanted to go for the position of chief executive. There were sufficient applicants in that. We had consultations with Amrop Strategis and used it to conduct all the interviews. There was a verifiable process.

Deputy Shane Ross: Who was the recruitment consultant?

Mr. Jim Nugent: Amrop Strategis.

Deputy Shane Ross: Who made the final decisions?

Mr. Jim Nugent: The board would have made the final decisions.

Deputy Shane Ross: The board members all knew Mr. Conlan presumably.

Mr. Jim Nugent: The board members would have known all the applicants.

Deputy Shane Ross: Mr. Conlon was a member of the board and sat on the audit committee with Mr. Nugent. There were just three members.

Mr. Jim Nugent: Yes, and he was on the board for nine years.

Deputy Shane Ross: So Mr. Nugent would have known him very well.

Mr. Jim Nugent: Indeed. He was a very competent and highly expert individual.

Deputy Shane Ross: Why did the CRC not advertise externally?

Mr. Jim Nugent: Among the candidates in front of us, we felt we would definitely get a good CEO.

Deputy Shane Ross: Okay. And you ignored all the warnings you got from the HSE on this during the summer. It said it was highly irregular. Is that right?

Mr. Jim Nugent: The HSE said it was irregular. I was not terribly sure what that meant.

Deputy Shane Ross: So you ignored it.

Mr. Jim Nugent: I must emphasise that, unfortunately, our staff are not public servants, and we did not fully take on board that in a recruitment process-----In a private company, there is nothing unusual about looking at your existing executive team and giving them the opportunity to compete. That is essentially what we did.
Deputy Shane Ross: Okay. I am coming to a close. I want to ask Mr. Nugent one question in response to what he has just said. There is no way you are an independent company. You get €16 million a year, or around that, for the past few years, which is by far the majority of your funding, from the State. That puts you under an obligation to the taxpayer. It puts you under an obligation not to ignore the Government or the taxpayer where they are instructing you about guidelines. It seems to me that you have given two fingers to the HSE - which many of us would like to do on lots of issues, I must say - and in order to bypass it, you have gone to another source of funds, although the donors never intended that money to go to Mr. Kiely and others, either in their pension pots or in the form of pay. I think Mr. Nugent and anybody involved in this should consider tendering their resignation. Would you do that, please?

Mr. Jim Nugent: I do not intend to answer that question, Deputy. I do not believe I have to.

Deputy Shane Ross: No, you do not have to answer it, but I am asking you to consider it because you have let down the State, the taxpayer and also friends and Supporters of the Central Remedial Clinic. Maybe you can consider it.

Mr. Jim Nugent: If I may close with my own remark on the matter-----

Deputy Shane Ross: Yes.

Mr. Jim Nugent: With regard to the HSE, on a personal basis - I know my board will have the same view - we have the height of respect for it and greatly appreciate the relationship. We work very closely with it on a week-by-week and month-by-month basis.

With respect to my attitude towards the taxpayer, or this House or anything else, I have only the height of respect. I have done many years, in various roles, on a voluntary basis. In the context of this organisation, we have always behaved properly and correctly with respect to what our role is in the public eye and in the way the taxpayer would see us. There was nobody here trying to play games with anything, as would seem to be made out.

Deputy Shane Ross: I am finished. Thank you.

Deputy Simon Harris: I thank Mr. Nugent, Mr. Martin and Mr. Kiely for attending. I particularly thank Mr. Kiely for having the decency to attend our committee this morning. That, in itself, is admirable and I am grateful that you are here.

I will start by asking Mr. Nugent two questions. Did you ask Mr. Conlan to attend today? Did you have any conversation with Mr. Conlan in advance of coming here today?

Mr. Jim Nugent: Before he resigned I said to him that it would be compulsory for him to be here.

Deputy Simon Harris: So you asked him to attend-----

Mr. Jim Nugent: Yes.

Deputy Simon Harris: -----and he declined.

Mr. Jim Nugent: He did not decline at the time. He declined after he had resigned.

Deputy Simon Harris: Okay, but you asked him to be here.

Mr. Jim Nugent: Yes.
Deputy Simon Harris: Thank you. For the record, how long are you a member of the board of the CRC?

Chairman: Whoever’s phone is on, can they please turn it off? If your phone is on the bench in front of you, please take it off.

Deputy Simon Harris: How long is Mr. Nugent a member of the board of the CRC?

Mr. Jim Nugent: Probably from around the end of the 1990s.

Deputy Simon Harris: How does one become a member of the board of the CRC?

Mr. Jim Nugent: There are a number of different ways. It goes back to the foundation of the organisation.

Deputy Simon Harris: Okay.

Mr. Jim Nugent: There are founding members and then there is the board of governors. There are a couple of layers in this. It sounds awfully complicated but it is probably not as bad as it sounds.

Deputy Simon Harris: We will try to follow.

Mr. Jim Nugent: For example, I was approached by Lady Valerie Goulding at the time. I had known her for many years.

Deputy Simon Harris: Okay.

Mr. Jim Nugent: I had involvement in other health care areas where I was voluntarily working with the likes of the Leonard Cheshire people and the Alzheimer Society of Ireland.

Deputy Simon Harris: Okay.

Mr. Jim Nugent: They were just voluntary roles. I was asked would I come on the board. Beyond that, in essence, it is partly a self-elected board, but it does have a rule that one must put one’s self up for re-election.

Deputy Simon Harris: Who elects the members?

Mr. Jim Nugent: I think it is the members, is it not? Or the founding members.

Mr. Paul Kiely: Through the Chair, on a point of clarification, it is in the memorandum and articles of association of the clinic how the board is constituted.

Deputy Simon Harris: Okay.

Mr. Paul Kiely: I do not have a copy of it here with me at the moment.

Deputy Simon Harris: Is there an AGM?

Mr. Paul Kiely: There is an AGM every June.

Deputy Simon Harris: And who votes?

Mr. Paul Kiely: I can tell the Deputy that the category of members is kind of *in loco* shareholders - the board of governors, if you like, would report to the members, who receive the
report of the governors at the AGM. The members have the right to nominate members of the board. The board themselves have the right to nominate members of the board. By a written legal agreement with the Mater Hospital that dates back to the late 1970s or early 1980s, the Mater Hospital has the right to nominate two people to the board.

**Deputy Simon Harris:** Okay. Not to be pedantic, but who are the members? Who are the electors?

**Mr. Paul Kiely:** The members are-----I cannot think of their names off the top of my head.

**Deputy Simon Harris:** Are there ten of them, or a hundred or a thousand?

**Mr. Paul Kiely:** No.

**Mr. Jim Nugent:** No.

**Mr. Paul Kiely:** There are very few of them, in actual fact. There are only about three or four.

**Deputy Simon Harris:** Okay. I genuinely think this is important, because in researching for today I found it quite difficult to get my head around it. How many members are on the board of the CRC? I have a list, but-----

**Mr. Jim Nugent:** There is a list. There are nine at present.

**Deputy Simon Harris:** Okay.

**Mr. Paul Kiely:** There are 13.

**Mr. Jim Nugent:** Yes. If you like, the full amount would be 13. Periodically, people - because of age, health or whatever - tend to step down.

**Deputy Simon Harris:** So there are 13 members of the board at its full composition-----

**Mr. Jim Nugent:** Yes.

**Deputy Simon Harris:** -----and there are nine members currently serving.

**Mr. Jim Nugent:** Nine members currently. I do know of one person who has not resigned but has indicated to me that, for reasons of health, he or she will probably step down in the early part of the new year.

**Deputy Simon Harris:** The reason-----

**Mr. Jim Nugent:** May I just finish, please?

**Deputy Simon Harris:** Yes, please do.

**Mr. Jim Nugent:** It is a matter that is exercising our mind as well, and has been for some time. As a board, we took a decision that we need to take a look at how the formation of the CRC board of governors should be made up. It is something I initiated with the board. We are looking at meeting - I have already indicated this to them - the following stakeholder groupings: the Department of Health, the Department of Education and Skills, the staff of the organisation and the parent-client groupings. There are a number of categories that we would like to have a nominating right of a trustee/governor of the clinic. That process is in hand.
Deputy Simon Harris: That is very welcome, because some of the people I have been talking to in recent days are parents of clients of the CRC who are obviously, understandably, worried. To me it seems absurd that there would not be a representative of the clients, or the parent group of clients, on the board of governors.

Mr. Jim Nugent: In fairness, for many years we did have clients, but it is a few years since there was one. Perhaps it was something that we should have followed through but, very definitely, we had client representatives. I used to sit beside an individual at board meetings who was in a wheelchair, knew all of the difficulties and was a fine contributor.

Deputy Simon Harris: I do not wish to be rude, but I have an awful lot to get through. Mr. Nugent is telling me that the days of the process of a self-electing board are coming to an end and that there are reforms of the board’s composition on the way.

Mr. Jim Nugent: Yes.

Deputy Simon Harris: I welcome that. I wish to clarify the issue of salary top-ups. Before 1 January 2010, all of Mr. Kiely’s salary was paid from public funds.

Mr. Paul Kiely: Yes.

Deputy Simon Harris: From 1 January 2010, his salary, minus €106,000, was paid from Central Remedial Clinic, CRC, funds. Is that correct?

Mr. Paul Kiely: Yes.

Deputy Simon Harris: At any stage did Mr. Kiely take or was he asked to take a voluntary pay reduction?

Mr. Paul Kiely: Could the Deputy repeat that, please?

Deputy Simon Harris: Was Mr. Kiely asked at any stage by the board or did he consider in his own right taking a voluntary pay reduction? He had his contract, but did he ever gift any amount?

Mr. Paul Kiely: No.

Deputy Simon Harris: Mr. Kiely never took a reduction.

Mr. Paul Kiely: I was never asked and never-----

Deputy Simon Harris: Mr. Kiely was never asked. I understand that there were contracts of employment, but did the board ever seek legal advice after the meeting with the HSE that Mr. Martin and others attended regarding Mr. Kiely and others who were in breach of the salary levels?

Mr. David Martin: I am actually a solicitor, for my sins. I was aware of what the employment legislation and entitlements were. I did not need to seek independent legal advice on that matter. Another member of the board was also a solicitor. We were ad idem that there were enforceable contracts in place with Mr. Kiely and other members of staff that we could not unilaterally break.

Deputy Simon Harris: My next question is more for Mr. Nugent and Mr. Martin as members of the board. Does it not seem peculiar that it never asked some highly paid executives to
take pay cuts at a time when many other people in the country were being asked that and when the HSE, effectively speaking on behalf of the taxpayer, told the CRC that it was way over the salary cap? I wonder why this issue never arose.

**Mr. David Martin:** I cannot answer that question. I do not believe that it was considered.

**Mr. Jim Nugent:** No.

**Mr. David Martin:** As I mentioned, I came to the board more recently. In the mid-2000s, Mr. Kiely’s salary was what it effectively is today. There was no issue in that respect. We lived in different times. The one matter that struck me as a board member who met and dealt with Mr. Kiely was his level of expertise, commitment and work. He was a magnificent chief executive officer of the company. That is probably why it did not occur to us to say-----

**Deputy Simon Harris:** This is not about Mr. Kiely, his expertise or the wonderful work done by the CRC. I doubt that there is a public servant in the country who does not feel aggrieved, and probably rightly so, at having to take pay cuts because it is his or her belief that he or she brings a level of expertise and skill. However, they were still asked to work for less money. I do not quite accept that.

**Mr. Jim Nugent:** May I add a brief point?

**Deputy Simon Harris:** Please.

**Mr. Jim Nugent:** I should emphasise that any pay reduction following, for example, the Haddington Road or Croke Park agreement on national pay arrangements would have applied to the senior management.

**Deputy Simon Harris:** I am glad that Mr. Nugent raised that point. Did the Haddington Road pay reductions and Financial Emergency Measures in the Public Interest, FEMPI, Acts apply to the full proportion of the salary, that is, the amount sanctioned by the HSE-----

**Mr. Jim Nugent:** They would have.

**Deputy Simon Harris:** -----and the top-ups?

**Mr. Jim Nugent:** One would reduce the funds.

**Deputy Simon Harris:** Under Haddington Road, Mr. Kiely’s and others’ salaries would have been reduced based on the full amount, including what the CRC was paying from private sources.

**Mr. Jim Nugent:** That is quite right. That was the intention anyway. I am pretty certain that was done.

**Deputy Simon Harris:** It is a major point. Mr. Nugent might clarify for us. Were the topped up portions of pay, in other words, the additional salaries that the CRC was paying above the €106,000 for Mr. Kiely, subject to the pension levy deductions?

**Mr. Paul Kiely:** No.

**Mr. Jim Nugent:** I thought they were.

**Deputy Simon Harris:** In other words, was Mr. Kiely’s salary, minus €106,000, subject to
the pension levy deductions?

**Mr. Paul Kiely:** To clarify, it reverts to the point that I was making about the early retirement and voluntary redundancy schemes. The answer that came back from the HSE was that, because we were in a private pension fund, we were not public servants and, as such, the pension levy did not apply.

**Deputy Simon Harris:** I was concerned to hear on 2 December a current member of the board, Mr. Vincent Brady, state that the board had never sanctioned additional payments for any staff. Regardless of whether someone working in a company earns €200,000 or €20,000, the board of directors or governors are responsible for that remuneration. Was Mr. Brady correct?

**Mr. Jim Nugent:** No. I am certainly clear on my recollection. I presume that Mr. Martin is the same.

**Mr. David Martin:** I am.

**Mr. Jim Nugent:** These matters would have been debated fully. There is a great deal of formal paperwork for our board meetings.

**Deputy Simon Harris:** Mr. Brady was incorrect to say that the board never sanctioned additional payments for any staff.

**Mr. Paul Kiely:** On a point of clarification, the interpretation that Mr. Brady is using is that the board never sanctioned any top-up, but it sanctioned salaries. The HSE determined an amount of money to be paid in salaries and the gap was not regarded as a top-up, as it was already being paid. The board had sanctioned the salary. It was never asked to sanction top-ups.

**Deputy Simon Harris:** I read Mr. Brady’s comments in *The Irish Times*, but I did not read a clarification or request for clarification from him. He clearly stated that the board had never sanctioned additional payments. From January 2010, the HSE was only covering €106,000 of Mr. Kiely’s salary. Presumably, the board would have had to sanction the payment of the remainder of the salary from its own funds. Mr. Nugent is telling the committee that that happened at a board meeting. There would have been a discussion and a decision at a board meeting to sanction the remainder of Mr. Kiely and others’ salaries.

**Mr. Jim Nugent:** We would have regarded the balance as the CRC meeting its legal obligations. I believe Mr. Martin wishes to contribute.

**Deputy Simon Harris:** I take that point, but it is a governance issue. Was this discussed and decided upon at a board meeting?

**Mr. David Martin:** It definitely was. That was what circled around the meeting in June 2009, the subsequent correspondence that was sent and the agreement that we reached with the HSE in that respect. There was never any increase in salary from each individual’s starting point. Salaries remained the same. It was the level of funding that we received from the HSE for those salaries that changed. That was discussed at board level. There is probably some misunderstanding of what was or was not discussed, but the letter of 17 November 2009 was equally discussed at board level. It is quite possible that Mr. Brady may not have been at that meeting. As the Deputy knows, we do not always have full board meetings.

**Deputy Simon Harris:** I have heard Mr. Martin make a point at this meeting and Mr. Des Peelo make it on the national airwaves, namely, that the HSE was well aware of the arrange-
ment - I am paraphrasing - and the CRC’s contractual obligations. Nowhere in the file of correspondence between the HSE and the CRC, which went backwards and forwards over a long period, can I see any written confirmation of this from the HSE. What I can see is a written letter from Mr. Peelo to the HSE outlining what had been agreed. Sure, I could write Mr. Martin a letter and tell him what we had agreed, too. I see no written confirmation from the HSE as the paymaster and deliverer, as it were, of the service level agreement. If there is written confirmation, perhaps Mr. Martin could refer me to it.

Mr. David Martin: There is not, but I can refer the Deputy again to the HSE’s acknowledgement in its internal report on this matter, unless that related to some organisation other than the CRC. That is on all fours with what we discussed and, as far as I am concerned, agreed with the HSE in June 2009, subsequently confirmed in November 2009.

Deputy Simon Harris: Did Mr. Martin view it as peculiar that the HSE never confirmed it in writing?

Mr. David Martin: A lot of things may be peculiar in our overall health service, but not necessarily so in this case, as what we discussed in June 2009 was followed through in practice and fell into place in January 2010, that is, the splitting of the amounts that we paid. I do not consider it unusual that there was no letter. In so far as that agreement was concerned, if there had been a difficulty on the question of what had been agreed, the first thing I would have expected would have been a letter back saying that it had not been agreed. We did not receive that.

Deputy Simon Harris: I want to talk about the friends and supporters group.

Chairman: Before coming to that, do Mr. O’Brien or Ms McGuinness wish to respond to Deputy Harris?

Ms Laverne McGuinness: I need to put a context on how it arose.

Deputy Simon Harris: Please do so.

Ms Laverne McGuinness: Mr. Kiely referenced the fact the CRC was singled out separately. The Secretary General of the Department of Health asked us to examine the disability sector with regard to salaries and pay scales in the first instance. This is where we commenced. Having done so, the CRC replied to us in this regard.

I wrote to Mr. Peelo on 24 April 2009, setting out that the Secretary General had requested us to examine the salary scales of the CRC. I set out the fact the salary levels were far in excess of what had been determined by Government pay policy and what would be expected. At the time I requested that the board would immediately review and take steps to significantly reduce the level of remuneration for senior management and let me know within two weeks how it proposed to do so.

I received a response from Mr. Peelo on 8 June 2009. He set out very clearly that he was disappointed with the sentiment set out in the letter and that the board could only in effect take account of the fact that it was an independent legal entity, which it is and we recognise this. He stated:

It is our firm contention that the level of Management salaries is a matter solely for the Board of Governors of the CRC to determine. It would be utterly inappropriate to simply unilaterally “significantly reduce the level of remuneration of senior management staff in
the CRC” and indeed it may very well be contrary to the principles of Employment Law.

This was referenced by Mr. Martin.

On foot of this we further wrote on 15 June, when I stated that it would appear from the data in the letter the CRC was contesting the amount of money we stated was appropriate for the particular salary scale and was suggesting we may have made some inaccuracies in our comparisons. We tried to assure the CRC that any comparisons on remuneration of senior staff were made either with organisations of similar size in the disability sector, many of which had a very comparable range of specialist health services, education, vocational training and social and personal services, and with various roles in the HSE where general managers were responsible for large budgets across a wide range of specialist services in this regard.

In the same letter I set out that although the contention was:

that the level of Management salaries “is a matter solely for the Board of Governors of the CRC to determine”... as the main funder of the CRC, the HSE has a responsibility to ascertain whether the current remuneration levels of senior staff in your organisations, as outlined in the information supplied by your organisations represents best use of funding from public sources.

At that point I requested the CRC attend a meeting with me and Mr. Liam Woods, the director of finance at the time, and suggested a date. The meeting took place on 25 June.

My reply to the meeting of 25 June was set out on 7 July 2009, and it is important because it does not necessarily concur with statements made by Mr. Peelo. We acknowledged very clearly the CRC plays a vital role in providing a significant and excellent service to the patients and clients it serves. We stated we understood its position, that it had historical arrangements, but:

the Board of Governors will appreciate the requirement for the HSE to ensure the best value for money in the expenditure of organisations which are substantially funded by the Executive. This applies even in situations where the organisation has access to other sources of funding.

At that point I enclosed a list of senior executives and the rates of applicable pay and set out clearly in the second page that I would appreciate if the chairman would review the information on the salary scales with the board of governors and revert to me with proposals on how the senior staff salary levels could be brought into line with the levels we indicated were appropriate.

We received a reply from the CRC dated 17 November 2009 which stated: “We undertake the CRC, as a voluntary organisation, will itself fund the excess of the salaries concerned as identified by the HSE.” The arrangement as agreed at the meeting on the management posts concerned was that, “As and when the management posts concerned fall to be replaced through retirement or resignation, the salary of the incoming replacement will be discussed and agreed with the HSE”.

There was no response to this and we did not agree any amount of extra funding or where the funding was to come from in this regard. We put in place a set of governance arrangements through a section 38 agency and the parameters under our legal obligations with regard to the public funds which we administer. Mr. O’Brien can refer to the note. It was not that there was agreement.
Mr. Barry O’Brien: It would be important to stress reference has been made to our internal audit on page 47 with regard to senior management remuneration. The most important line is the first line, which refers to one non-acute agency informing internal audit. The report states the exact information the CRC gave to internal audit. At the previous hearing into this matter, my colleague, Dr. Geraldine Smith, stated:

The purpose of the audit was to ascertain the environment. We were trying to develop a picture. What is clear from the audit report is that there was much speculation over the years about whether allowances were being paid privately, etc. The purpose of the audit was to take a snapshot, particularly of the private element, which had not been done previously.

It is in this context that the direct reference was made to our internal audit report, but this is a reflection on exactly what the CRC told our internal auditor.

Deputy Simon Harris: I thank Ms McGuinness and Mr. O’Brien. That is very helpful. I wish to ask about the friends and supporters, medical devices and the appointment of the now former CEO.

With regard to Ms McGuinness’s comments and her quotations from Des Peelo’s letters, are the witnesses from the CRC now embarrassed a letter was written by the board of governors signed on their behalf and discussed at their meeting which stated the level of management salaries is a matter solely for the board of governors of the CRC to determine, because it is not?

Mr. David Martin: It is.

Deputy Simon Harris: No, it is not.

Mr. David Martin: If Deputy Harris would let me answer.

Deputy Simon Harris: I will, but it is not.

Mr. David Martin: The CRC is a private company. Unless Deputy Harris is suggesting the HSE is shadow director of the CRC-----

Deputy Simon Harris: No.

Mr. David Martin: -----the only people who can make a decision on the running of the CRC is the board of CRC. This is laid down by company law and this is what we have to do. We have to apply this.

Deputy Simon Harris: Yes, this is true and correct, but, as Deputy Ross very clearly pointed out, the CRC is not just a private company. Does it want the HSE to hand it a blank cheque and send it off? It is bound by a service level agreement. When the HSE, which dispensed the service level agreement, states certain criteria must be met, the CRC might run into contractual difficulties, and I am willing to cede this point because I believe the HSE is also, but it is not solely responsible for management salaries. It must be cognisant of Government policy. If one wants to be responsible for Government policy, one runs for the Dáil. If one is a member of a board of governors receiving taxpayers’ money, one must be cognisant of Government policy. Does Mr. Martin accept this point?

Mr. David Martin: Obviously we take these matters into account.

Deputy Simon Harris: So Mr. Martin is not solely-----
Mr. David Martin: No.

Deputy Simon Harris: -----responsible.

Mr. David Martin: Wait, Deputy Harris. We must make the decisions.

Deputy Simon Harris: Yes.

Mr. David Martin: These decisions are not made for us. We discuss what decisions we should make which we consider are in the interests of the company, that is, the CRC. We discussed the question of the contracts of employment which members of senior management had with the company. We are contractually bound by these. The issue with regard to the contract with the HSE raises other issues for us which I will not go into now. There is an element of whether they are ultra vires of our powers. There is a lot here.

Deputy Simon Harris: Yes, there is.

Mr. David Martin: As a director of the company I must look at this and make a decision on what I consider is right in the circumstances. Someone cannot say to me that someone else made the decision for me.

Deputy Simon Harris: Do Mr. Martin as a director of the company and Mr. Nugent as a director and now the interim CEO accept that they are responsible for any decision they make that could jeopardise the flow of public funding to children and adults with disabilities attending their services?

Mr. David Martin: Of course. We would not want to jeopardise it, and we have not done so. Obviously, there was correspondence into that.

Deputy Simon Harris: We will get to that in a moment. We have established that Mr. Nugent is a director of the Friends and Supporters of the Central Remedial Clinic. Mr. Kiely was its secretary while CEO. Is he a director?

Mr. Paul Kiely: No.

Deputy Simon Harris: Is Mr. Martin?

Mr. David Martin: No.

Deputy Simon Harris: I have noticed comments from the Central Remedial Clinic, CRC, regarding the Santa Bear Appeal and the likes. There seems to be a differentiation between certain fund-raising campaigns and those of the Friends and Supporters of the Central Remedial Clinic. From where does the latter get its money?

Mr. Jim Nugent: Essentially, the funds that come into the Friends and Supporters of the Central Remedial Clinic arrive from the lottery proceeds. There is a company that runs lotteries on behalf of three beneficiaries - Rehab, the CRC and the Mater hospital. They are the funds that we would see as earned funds in term of a programme of work that is done on our behalf by the particular company. The other public donations would come into the particular account in the CRC itself.

Deputy Simon Harris: If I buy a Santa bear, which is an ongoing campaign, that money goes directly to the CRC, not to the Friends and Supporters of the Central Remedial Clinic.
Mr. Jim Nugent: That is right.

Deputy Simon Harris: I do not wish to put words in Mr. Nugent’s mouth, but I am not sure of the situation. Is the only source of income for the Friends and Supporters of the Central Remedial Clinic the funding generated by the lottery or are there other funds?

Mr. Jim Nugent: That is all.

Deputy Simon Harris: People who play the lotto. I must pick up on another matter. Mr. Nugent is a former member of the board of the Central Bank.

Mr. Jim Nugent: Yes.

Deputy Simon Harris: He is a very experienced hand, if I could use that phrase, and a former chairman of the State board CERT. One would imagine that he understood corporate governance very well. He must concede that there is a serious corporate governance issue when making a request is basically talking to oneself. I do not mean him personally, but the directors of the board of the CRC asked the directors of the Friends and Supporters of the Central Remedial Clinic, who happened in some instances to be the same people, for a transfer of money. That is not good corporate governance.

Mr. Jim Nugent: There are issues that we have already addressed. The Friends and Supporters of the Central Remedial Clinic, as a company, was essentially set in place to support the work of the CRC as a connected organisation.

Deputy Simon Harris: Yes, but does Mr. Nugent believe it appropriate that he should be a director of both?

Mr. Jim Nugent: We have commenced a process of separating the directors as a matter of governance.

Deputy Simon Harris: Would Mr. Nugent envisage a situation in which a member of the board of the CRC would no longer be a member of the board of the Friends and Supporters of the Central Remedial Clinic?

Mr. Jim Nugent: Correct. The sooner the better, but not because of today.

Deputy Simon Harris: Sure.

Mr. Jim Nugent: We have been working on this for some months. I have been in the chair over the last few months. We have taken on a job of work. Mr. Martin has been close to this issue as well. We would like to look at the governance issue in some depth. That is why I mentioned that we were going to change the way people joined the board, how the boards related to each other and how decisions were taken about the transaction of funds between boards. The other dimensions that we have been looking at in some depth for some considerable months are the level of transparency and how we produce information for the public domain. It is all part of a recognition that our relationship with the public sector of our funding needs to be moved onto a different level.

Deputy Simon Harris: I must leave the medical device issue to someone else, as I am conscious of my time. The witnesses can credibly argue - it does not mean that I agree with them - that many of the issues discussed today were a sign of a different time, a legacy, contractual obligations, etc., but I want to discuss the here and now. On 20 separate occasions in
2013, the HSE wrote to Mr. Nugent in many cases or to Mr. Goulding or Mr. Kiely in other cases. They were dated 30 January, 25 April, 2 May, 13 June, 26 June, 28 June, 8 July, 10 July, 15 July - this is important - 23 July, 6 August, 8 August, 14 August, 26 August, 27 August, 4 September, 16 September, 13 November, 6 December and 10 December. We all have the correspondence to read and share. On each occasion, the HSE waved a flag reading “Stop”. This relates directly to the appointment of the missing man, Mr. Brian Conlan, as CEO. The witnesses can argue around the houses - to some degree, we will need to - about Mr. Kiely’s level of remuneration and contractual obligations, but there is general agreement that they knew from 2009, including from further correspondence up until this year, how to go about making future appointments. Despite this, the CRC was issued with a second performance notice by the HSE for non-compliance under the service arrangement, something the HSE described in a letter to Mr. Nugent dated 14 August as being unprecedented in its relationship with its non-statutory provider organisations. It was issued a first performance notice on 15 July and a second on 6 August. This point relates to my question about not being solely responsible, in that, while the board must make decisions, it is duty bound to the taxpayer to adhere to Government policy and the HSE service-level agreement. This notice clearly states that the board did not, since it did not seek prior approval before hiring Mr. Conlan or advertise externally. The HSE expressed concern about the fact that the CRC involved an external agency to undertake the recruitment process yet filled the post internally. Some of the CRC’s own letters referred to the appointee as being a staff member, but Mr. Conlan was actually a board member. There seems to have been considerable vagueness about the pension entitlements and remuneration of the now former CEO. What was happening?

Mr. Jim Nugent: We addressed part of that at the outset. Essentially, we see the function of the board of the CRC as complying with individual directors’ corporate responsibilities. We felt it was a matter for the board to recruit a new CEO quickly in light of Mr. Kiely retiring. We were well into that process when the letters the Deputy referred to started to arrive. We had pretty well selected. The interviews were over. We had choices to make and we made them. I believe that we made an excellent choice. We got an experienced individual. It would have been good for the clinic. In fairness, during his first few months he performed exceptionally well.

Deputy Simon Harris: All of that may be true, but Mr. Kiely-----

Mr. Jim Nugent: I am sorry, but I take the Deputy’s point that time has moved on. I wrote to the HSE only the other day advising it that, during the next round of recruitment, we will work precisely to the arrangements that it wishes us to follow.

Deputy Simon Harris: What was wrong with this round? Why was it not done this time? For the purpose of this discussion I am accepting the argument about Mr. Kiely’s remuneration. There was no doubt whatever from what I can see - the witness may correct me if I am wrong - as to the procedures that should have been followed in the recruitment of Mr. Kiely’s successor. To Mr. Kiely’s credit, on 24 April 2013, Mr. Goulding, the then chairman of the board, had written to Ms McGuinness to state that “Mr. Kiely has told us of his intention to retire at some time in the coming months and we are initiating the process of identifying [a successor]”. Mr. Kiely was not running off into the sunset but he was giving the Central Remedial Clinic, CRC, the time to fill the vacancy appropriately. I am not an expert in service arrangements but according to two performance notices, clause 16 was not complied with, clause 3.2(c)(v) was not complied with, clause 9 was not complied with and there are concerns about section 38 of the Health Act. Perhaps Ms McGuinness or Mr. O’Brien might cast some light on the non-compliance and
why the HSE felt it necessary to take what witnesses have termed an “unprecedented” move.

Ms Laverne McGuinness: It is in correspondence set out by the acting area manager on 2 May in terms of what is to be complied with under the section 38 arrangements. It is following the correspondence that came from Ms Goulding. The requirement is set out that they would need to adhere to the following - a robust business case to be provided for the post and the continuation of the post; clear evidence that the restructuring, reorganisation and redeployment options have been exhausted, so nobody could just be assigned to a role; a ceiling compliance requirement and the whole-time equivalent impact; evidence of a link to staff suppressions etc.; evidence of proactive absenteeism management and also comparative data; and the appropriate approval sanctioned at senior management level. By and large, the section indicates that in order to recruit at a grade 8 level or above, approval must be received from the area manager in the first instance in order to proceed with the recruitment. That is set out in a section of the service level arrangement.

In a follow-up letter of 13 June to Mr. Goulding, Ms Anne O’Connor, our area manager, wrote:

I am writing to you as I have been made aware that the board of the Central Remedial Clinic has now appointed a new CEO, Mr. Brian Conlon, to replace the outgoing CEO, Mr. Paul Kiely, with effect from 1 July 2013. I would note that I have neither seen nor approved any application to replace Mr. Kiely.

That is set out in the service level arrangement, which is managed at area level with the organisations. Ms O’Connor continues by setting out the stipulation for the provider: “The provider, if required, will comply with its obligations in respect of employment monitoring reports”. That is the section of the Act and it is set out clearly in the correspondence of 13 June 2013.

On 26 June we wrote again about the issue, indicating there was a clear breach with regard to the service arrangements in place. It was indicated that the process for replacing any post above grade 8 level was clearly outlined in circulars and also in the service level arrangement, and it was advised that these were issued to the CRC in April 2007. It was also indicated that the process was outlined to the outgoing CEO at the integrated monthly meeting on 25 April 2013. As part of the management of our section 38 service level arrangements, a monthly meeting would take place with representatives of the agency. The letter continues “The non-adherence to this process is viewed by the HSE as a very serious matter.” At that stage there is a formal notification that there was no approval to proceed and Mr. Kiely had agreed not to leave his post until a replacement was ready to commence, thereby enabling the CRC to continue the level of service provided heretofore. The letter essentially asked the CRC not to proceed with the process.

We acknowledge that we received a letter from the CRC on 27 June in which the organisation set out its search arrangements for the replacement of Mr. Kiely. It was indicated in the letter that the preferred option was to fill the post from within its existing resources and there were expressions of interest. In the letter it is stated the priority of “the board of governors has always been the provision of top quality service to our clients”, and it was also indicated that the CRC had suppressed one additional post. It indicated that the recruitment process would proceed.

There is ongoing correspondence and on occasions we indicated that we were disappointed
we had not received a request. There was much correspondence before we took the step of taking out the first performance notice. We were not getting the level of information required at any point.

**Deputy Simon Harris:** On how many other occasions has the HSE issued a performance notice to a non-statutory body?

**Ms Laverne McGuinness:** In my time in the HSE we have not issued any performance notices to any other agencies. It is unprecedented for two performance notices to be issued to any agency from the HSE.

**Deputy Simon Harris:** That is why I believe the position of the board of the CRC to be untenable. It has never happened that one performance notice would be issued, let alone two, and to see €242,000 of taxpayers’ money being potentially withheld or jeopardised because of the failure of the board to comply with the service agreement is extremely concerning.

**Mr. David Martin:** The Deputy is making the point with regard to the agreement. I make the point that we, as directors of the CRC, were obliged to make the decisions ourselves and not to have them made by somebody else. By doing that we would be *ultra vires* and I would be in breach of my obligations and duties under the Companies Act to have put them to somebody else.

**Deputy Simon Harris:** I respectfully suggest that members of the board are in breach of their obligations and duties to people with disabilities by jeopardising their funding from taxpayers due to their inaction.

**Deputy Robert Dowds:** I thank the witnesses for coming before the committee. In particular I thank Mr. Kiely for coming in. I was a teacher in a school under CRC management and I am very concerned that the organisation should emerge stronger from this issue. I am very aware of the very important work that so many people do in the organisation from the ground up. I know how hard-working and dedicated are most of the staff. Are the witnesses from the CRC aware of how embarrassed and distressed are many of the staff? Have they been updated on developments in this controversy?

**Mr. Jim Nugent:** We very much regret the hurt that has permeated the organisation with respect to the way the issue became public. Mr. Ham Goulding and I have met all the groups, spending many hours listening to what they had to say.

**Deputy Robert Dowds:** Is that right across the organisation?

**Mr. Jim Nugent:** I understand we must still meet one small group.

**Deputy Robert Dowds:** I am aware of one organisation that has not been informed of events, at least as of the day before yesterday. Why was the job not publicly advertised?

**Mr. Jim Nugent:** We looked at internal applicants and any of them would have fitted the bill in filling the post. Perhaps it is the influence of the private sector but there is a sense that there can be good succession planning by having good executives developed within an organisation, so an internal competition would be sufficient. We are hearing a very different argument now.

**Deputy Robert Dowds:** Does the witness not think new blood could have been brought in if the CRC had looked outside the organisation? Mr. Conlan was on the board.
Mr. Jim Nugent: Yes, I appreciate he was on the board. He knew an extensive amount about the performance and work of the organisation. Coming from a similar background, it made sense.

Deputy Robert Dowds: The top-up payments to Mr. Kiely have been discussed at length. I understand a number of other people are getting top-up payments. Can Mr. Nugent say either who they are or the positions they hold and why it was considered necessary to give them extra remuneration over what the other members of staff received, which would be in line with State payment policy?

Mr. Jim Nugent: We have probably been through most of that. When the original situation developed in 2009, there were 11 senior managers. There are five left from that group, and four of them are on contractual arrangements that are higher than what has been sanctioned by the HSE.

Deputy Robert Dowds: What positions are those and how much are the top-ups for those positions?

Mr. Jim Nugent: I have that information here somewhere.

Mr. Paul Kiely: The list is part of the record on the HSE documentation.

Deputy Robert Dowds: While the list is being-----

Mr. Jim Nugent: I do not want to get it wrong because there was one piece in a publication that carried something that caused a lot of trouble.

Mr. Barry O’Brien: To assist the Deputy, we received an e-mail from Mr. Kiely on 25 May setting out information to us and the HSE-funded payments for CRC senior management as at 30 April 2012. There was a medical director, a manager of client services, an administrator, a HR manager and a manager of IT. It says that at that time, 30 April 2012, the CRC-funded part of the salary was €116,944 for the chief executive, nil for the medical director, €32,357 for the manager of client services, €32,357 for the administrator, €32,357 for the HR manager and €37,841 for the IT manager.

Deputy Shane Ross: Can I have the figures again?

Mr. Barry O’Brien: At 30 April 2012, the CRC funding part was as follows: the salary for the chief executive was €116,949, plus an allowance of €19,016; the medical director was nil; the manager of client services was €32,357; the administrator was €32,357; the HR manager was €32,357; and the manager of IT was €37,841.

Deputy Mary Lou McDonald: What does that come to?

Mr. Barry O’Brien: I do not have the total here but I can give the HSE funding part. Our contribution at the same date was: €106,900 for the chief executive officer; €118,703 for the medical director; €79,000 for the manager of client services; €79,000 for the administrator; €79,000 for the manager of HR; and €79,000 for the manager of IT. If they are totalled, the Deputy will get the overall salary.

Deputy Robert Dowds: Why was it considered necessary to give those particular people top-ups and not others who, I am sure, were working to their full capacity as well?
Mr. Jim Nugent: The individual managers referred to all had what is now called a legacy contract. They were essentially under the same issues as the CEO. They had employment contracts we could not break, without being sued I guess. It is a choice.

Deputy Robert Dowds: Does Mr. Nugent believe, with hindsight in the current circumstances, that those top-ups were morally justifiable, given the impact it is having on the funding coming to the CRC from voluntary sources and, indeed, by extension, to other charitable organisations?

Mr. Jim Nugent: If one looks at it at the time-----

Deputy Robert Dowds: I mean “Yes” or “No”.

Mr. Jim Nugent: May I answer? Perhaps 2009 was the time when this whole thing should have been sorted out. We have never denied that the salary contracts were being maintained, with part of it paid out of our resources. I do not know what choices one would have.

Deputy Robert Dowds: Mr. Nugent is not answering the question about whether it was morally justifiable-----

Mr. Jim Nugent: I am telling the truth. Basically, I am saying that if a person has an employment contract, the employer has an obligation to fulfil it.

Deputy Robert Dowds: Could the CRC not ask them to give up their extra payment voluntarily? Has that been done?

Mr. Jim Nugent: In terms of asking the managers-----

Deputy Robert Dowds: I am referring to the people who were getting salaries in excess of the HSE guidelines.

Mr. Jim Nugent: No, we did not ask them.

Deputy Robert Dowds: Would Mr. Nugent consider doing so, given the very negative impact this has had on an organisation which does such good work and the extending damage it does to other charitable organisations which have nothing to do with this directly? I ask him to consider that question.

Mr. David Martin: There is no obligation on those people if we did ask them to take a reduction.

Deputy Robert Dowds: I appreciate that. Judges were asked to take a reduction and, in fairness, a small number did.

Mr. David Martin: Judges are irrelevant to me in this regard. As a private company we have binding contracts with these people, as Deputy Dowds well knows. We can ask them but if one tells somebody that they must take a reduction, there is almost an issue that one is getting into areas of constructive dismissal as well. It is a legal minefield for us in this respect. The Deputy talks about the money but I would not put at peril further substantial funds which we might have to award these people by way of damages, which would be gone from the funding that would otherwise be given for the services.

Deputy Robert Dowds: If they voluntarily agreed, they would not be pursuing the CRC in that regard.
I have a query about adult services. I worked in the Clondalkin facility, which included a school and clinical services. At a certain stage, moves were made to introduce adult services. I am not sure of the year but it was around 2003. I understand a grant was given by the HSE to do this and a building went onto the school site to do with that. Yet, those services came to an end very rapidly, which is most regrettable. I appreciate the witnesses might not be able to answer my question directly but how much of a grant did the HSE provide for that and for how long was it drawn down? Why were those services terminated? I appreciate this is probably the most difficult question the witnesses have been asked today, in the sense that they are probably not-----

Mr. Jim Nugent: Just about. Can we refer back to the Deputy with the answers?

Deputy Robert Dowds: Yes. Mr. Kiely might be able to throw some light on it because he would have been the chief executive.

Mr. Paul Kiely: I cannot recall the grant amount. The senior manager for adult services would probably hold the file on that and should be able to give the Deputy a written answer in a very short time.

Deputy Robert Dowds: Could a written report be sent to the committee?

Mr. Jim Nugent: Absolutely.

Deputy Robert Dowds: At the time it caused a great deal of distress, because it was a very good idea to try to provide adult services. There is a problem with adult services in the west Dublin area. It continues to this day. How much money was received from the HSE and how was it spent? How long was it drawn down for? Who benefited from it and why did it collapse?

Mr. Jim Nugent: We will provide a comprehensive report to the committee Chairman. The Deputy’s comment concerns the CRC in the Clondalkin area. It is no harm to reiterate that we have developed plans for a major investment in both the clinical services and educational services in the region.

Deputy Robert Dowds: I am aware of that and I welcome it.

Mr. Jim Nugent: The fund is of the order of €9 million and is a major upgrade. Adult services will be taken into consideration in that regard. The Deputy has gone back in history and it is hard to pull it together.

Deputy Robert Dowds: What services are provided elsewhere in the organisation for adults?

Mr. Jim Nugent: I must revert to the committee in detail on that. We will provide it as part of the same report.

Deputy Robert Dowds: Moving on to the Friends and Supporters of the Central Remedial Clinic, like other questioners I am concerned about the overlap between the two organisations. What are the names of the board members of the Friends and Supporters of the Central Remedial Clinic? Mr. Nugent mentioned he is a board member.

Mr. Jim Nugent: Ailbhe Rice Jones, Ham Goulding and me. The secretary is usually the chief executive of the CRC. We are separating that at the moment.
Deputy Robert Dowds: Who from the CRC is on the current board? Is it the list of the governors, which is the same as the board?

Mr. Jim Nugent: Yes, that is the board.

Deputy Robert Dowds: Each of the governors of the Friends and Supporters of the Central Remedial Clinic is on the CRC board. I will not pursue it any further as Deputy Harris went into detail on that.

All of the money in the Friends and Supporters of the Central Remedial Clinic fund came from the lottery alone. Is it correct that the lottery was sufficient to raise nearly €28 million between 1998 and 2011?

Mr. Jim Nugent: Yes, that is about the amount we invested.

Deputy Robert Dowds: Of that, some €7.7 million was passed on to the CRC. What was the money for?

Mr. Jim Nugent: These moneys were spent through the CRC because it involves developments for the CRC, whether capital development or service provision. In the current climate, to provide a service we need technical expertise such as physiotherapists or psychologists or whatever the mixture of staff required. Due to the embargo on recruitment, we cannot utilise the funds for that purpose. Otherwise, we would face a serious fine from the HSE or the Department of Health.

Deputy Robert Dowds: Am I correct in thinking a fund of €20 million remains?

Mr. Jim Nugent: There was never a €20 million fund. There is a fund of €14 million, which has been earmarked for the development of Clondalkin, which is a €9 million package. We have been trying to get a day centre for the north County Dublin area, based in Swords, off the ground for four or five years. With the HSE, we have a location ready to be built on but there is the matter of how to provide normal revenue to run the service. We have been in negotiations with the HSE over the past number of months about that.

Deputy Robert Dowds: That money is specifically ring-fenced for those projects.

Mr. Jim Nugent: There is always a small reserve, like in any business, in case of emergency.

Deputy Robert Dowds: I appreciate the detail the witnesses have given on the board, how it is elected and its membership. In view of the recognition of the board that it must be more expansive and in view of the current problems, I respectfully suggest the board members should resign and allow a new grouping to take up the reins. It will be to the advantage of the CRC. Unlike others, I have had a personal involvement in it and I enjoyed working in the place. It will also help to turn over a new leaf and assist the CRC and other organisations raising funds from voluntary sources.

Deputy Mary Lou McDonald: I welcome the witnesses. Can Mr Nugent clarify the proportion of his overall funding the €16.182 million grant from the HSE represents?

Mr. Jim Nugent: It is approximately 80%.

Deputy Mary Lou McDonald: Can Mr Nugent not be more exact?
Mr. Jim Nugent: I cannot.

Deputy Mary Lou McDonald: What is the overall income stream?

Mr. Paul Kiely: Turnover for the past few years has been about €19 million.

Deputy Mary Lou McDonald: Can Mr Nugent clarify the moneys raised by the Friends and Supporters of the Central Remedial Clinic on an annual basis?

Mr. Jim Nugent: It varies every year.

Deputy Mary Lou McDonald: I will accept an average.

Mr. Jim Nugent: The running average of our beneficial amount is approximately €1.5 million. That is the amount the CRC or the Friends and Supporters of the Central Remedial Clinic receives.

Deputy Mary Lou McDonald: Is that raised through lotteries?

Mr. Jim Nugent: Yes.

Deputy Mary Lou McDonald: Mr. Kiely was not unique in the organisation in receiving a top-up. Mr. O’Brien very helpfully gave us some figures and, on a rough calculation, it appears the CRC was supplementing or topping up salaries to the tune of €280,000 per annum. Is that correct? I did a quick tot of the figures read out and they applied to five members of staff - the chief executive, the client services manager, the administrator, the manager of human resources and the manager of IT. There are, in total, 278 staff across three locations.

Mr. Paul Kiely: That is full-time equivalents. The actual number of bodies involved in running the services in the clinic is approximately 430.

Deputy Mary Lou McDonald: Okay. I thank Mr. Kiely for that but none the less, there are 278 posts. I do not want to quibble about it.

Mr. Paul Kiely: There is the Department of Education and Skills as well.

Deputy Mary Lou McDonald: Will Mr. Nugent or Mr. Kiely describe the categories of staff that encompasses?

Mr. Jim Nugent: If Deputy McDonald does not mind, I might ask Mr. Kiely because he-----

Mr. Paul Kiely: We have medical staff, paramedical staff, nursing staff, teachers, care assistants, clerical staff and administrative staff.

Deputy Mary Lou McDonald: I thank Mr. Kiely. Is that not the fabric of the Central Remedial Clinic? They are the people who so excellently and in such a dedicated fashion care for people with disabilities. Their record speaks for itself and their public reputation has been outstanding, and remains so. Would Mr. Kiely not agree?

Mr. Paul Kiely: I would hope so.

Deputy Mary Lou McDonald: Curiously enough, they are also people who were never considered for additional payments or top-ups - do not mind the vocabulary - from the clinic. Is that not an interesting thing? I will tell the witnesses why I raise it and why it struck me so forcibly. I read a letter from Mr. Nugent to Mr. Leo Kinsella, regional director of operations,
HSE Dublin north east, dated 19 July 2013. Ms Laverne McGuinness, who is with us today, described this particular letter in an e-mail we have - I hope she does not mind me referring to it - as coming short of telling the HSE to get lost, and I do not disagree. The issue I want to focus on here is where Mr. Nugent justifies the appointment of Mr. Conlan in quite trenchant language. I would consider this an aggressive letter if it landed on my desk. Mr. Nugent made the following commentary. “The person who leads an organisation is at the very heart of its performance [fair enough], its ethos and its function.” That is stated in this letter. It just occurs to me, and I wonder if it has occurred to the staff of the Central Remedial Clinic, what the pay practices and the decisions which Mr. Martin so robustly defends citing company law represent in terms of the ethos of the clinic not at a local level or at a front-line level, but at the very top end of management. Would Mr. Nugent care to comment on that?

Mr. Jim Nugent: In my opening statement, I indicated that we have three core values which relate to the fact that we do not turn away any child brought to the clinic, that we do not charge families, so there is no hardship on them, and we try to do everything we can to assist a child achieving his or her potential, or as much of his or her personal potential as he or she can achieve.

Deputy Mary Lou McDonald: I think everybody would applaud those. Mr. Nugent indicated to me that the average charitable income garnered through charity and the lottery is approximately €1.5 million per annum.

Mr. Jim Nugent: Yes.

Deputy Mary Lou McDonald: I put it to Mr. Nugent that the total top-up bill per annum was working out at €280,000.

Mr. Jim Nugent: Yes.

Deputy Mary Lou McDonald: That is a very substantial portion of the moneys raised through the generosity of people and public confidence in the clinic.

Mr. Jim Nugent: I have two comments on the Deputy’s point, or question. First of all, can I just take the generality of staff to whom, as the Deputy put it, no top-up was ever applied? I think the best way I can describe it is that the vast bulk of the staff were on salaries that were in line with their employment contracts and there was no requirement on us to reduce their employment contract entity or the amount of money given to them under their employment contract.

Deputy Mary Lou McDonald: I do not understand.

Mr. Jim Nugent: The issue of 2009 arose around one grade of people. They had contracts of employment with salaries that were higher than the new grade rates were going to be. This was separate from any wage reductions due to the likes of the Haddington Road agreement or whatever.

Deputy Mary Lou McDonald: I am very conversant with the FEMPI legislation, which was not simply aimed at people at the upper scales. FEMPI hit people in public service grades across the board like a hammer-----

Mr. Jim Nugent: I appreciate that.

Deputy Mary Lou McDonald: -----including people on very low salaries.
Mr. Jim Nugent: I am very aware of that. The Deputy was asking me about the ethos.

Deputy Mary Lou McDonald: Mr. Nugent started to tell me about the salaries. Is he telling me that there was a cohort of the 278 whole-time equivalent posts, in the case of teachers, nursing staff, carers, and clerical people, who were in line with public sector pay, HSE guidelines and so on? Is that what Mr. Nugent is telling me? The issue did not arise with these people.

Mr. Jim Nugent: The issue did not arise. It was effectively at the senior management level that the issue arose. At the time, we had 11 people there. We have worked assiduously to reduce the number by way of creating savings. We have made substantial annual savings.

Deputy Mary Lou McDonald: Mr. Nugent already said that.

Mr. Jim Nugent: With respect to the current position, as of today, the figure that still remains in these contracts is in or about the order of €100,000.

Deputy Mary Lou McDonald: So what happened in the Central Remedial Clinic is that the vast majority - it is worth saying this in this forum - of the staff were fully in line, fully compliant with public sector pay policy. They took the belt of the FEMPI legislation. There was no issue there. There is no question mark over their level of remuneration. The controversy and the disquiet arises in respect of five individuals and the top-up-----

Mr. Jim Nugent: Currently, it is five. It was 11 originally.

Deputy Mary Lou McDonald: It was 11 in the clinic’s senior management ranks. It strikes from everything said by the witnesses that they find the HSE to be a bit of a pest. They seem to be very happy to take the money. Why would they not be because it is more than 80% of the clinic’s entire funding stream? However, when it comes to observing the rules or respecting the governance criteria, they are not so enthusiastic about it. Would that be a fair assessment of the position?

Mr. Jim Nugent: It would not be a fair assessment. I can speak for the board, because clearly a board would have many conversations around relationships with stakeholders. We deeply respect the HSE. I quite enjoy working with it.

Deputy Mary Lou McDonald: The board’s actions have been deeply disrespectful of the HSE, if I might suggest. It moved unilaterally to put in place Mr. Conlan, a member of the governing fellowship for many years. It spun some entirely implausible fiction around outside assistance from a recruitment agency. It then claimed-----

Mr. Jim Nugent: That is not fiction. That occurred.

Deputy Mary Lou McDonald: Hold on. It then claimed those files were confidential on the advice of the recruiter. It subsequently made them available to the HSE. On inspection, they reflect the fact that the board went ahead with an entirely internal procedure because it thought that was best. They essentially told the HSE to get lost with its rules, regulations and interference in what they believed to be the sole preserve of the board of governors. That is what happened. Nothing that Mr. Nugent has said today mitigates against that, which is profoundly worrying. It is profoundly worrying from an organisation which is excellent in its service provision but which relies on the State for over 80% of its funding. Does Mr. Nugent not grasp how worrying that is? Does that not compute in his mind?
**Mr. Jim Nugent:** I think what is not being considered here is that, as Mr. Martin has pointed out, the directors on a board of a company have a responsibility to appoint a chief executive officer.

**Deputy Mary Lou McDonald:** Of course they do. Nobody is disputing that.

**Mr. Jim Nugent:** That is the job we did.

**Deputy Mary Lou McDonald:** Yes, it is.

**Mr. Jim Nugent:** We made a decision. We felt we did the right thing.

**Deputy Mary Lou McDonald:** Of course the directors have duties that they have to fulfil. Nobody is gain-saying that but as a director of the Central Remedial Clinic, Mr. Nugent must be cognisant of the fact that the vast bulk of the clinic’s funding comes from the HSE. It is public money. He also has to be cognisant of the fact that in association with that public money, there are rules, regulations and oversight. No responsible director or board sets those aside in such a cavalier fashion to protect some notion of themselves and their fellow governors. That strikes me as a very peculiar approach in terms of discharging one’s duties. I do not believe that respecting the HSE governance requirements and remuneration policy and adhering to them in any way undercuts the role of directors or undermines the authority or function of the board. That is not true. Mr. Nugent keeps repeating it but it is not true.

**Mr. David Martin:** The case that Deputy McDonald makes here is probably more for the HSE having a representative director on the board of the CRC who could then put those points to the board and decisions could be made. It occurs to me that Deputy McDonald is making that case now.

**Deputy Mary Lou McDonald:** That is a diversion. Mr. Martin has changed his tune from half an hour ago in terms of what------

**Mr. David Martin:** I have not changed my tune.

**Deputy Mary Lou McDonald:** Excuse me. Mr. Martin gave a robust defence of the integrity, position and decision-making capacities of the directors. He cited company law and suggested that to respect the regulations, rules and oversight associated with substantial public moneys would somehow run counter to the standing of the board. I am putting it to him that is rubbish. It is a very lame defence of what went on here and I wish he would desist from it. Whether or not the HSE should have a director on the board is an argument for another day, although it is probably a good suggestion. The directors have failed to give a full explanation as to why Mr. Conlan was put in place when the board knew full well that certain procedures had to be gone through. The correspondence just indicates that he was the best person for the job and that was it. That is astonishing. The directors have also tried to explain away the circumstances surrounding Mr. Kiely’s individual salary arrangements and those of other individuals on the basis of “legacy” contracts, fear of litigation and further costs to the clinic. Yet, with the very same Mr. Conlan, as my colleagues have established, the directors were happy to breach pay regulations and HSE guidelines yet again. This suggests to me, whatever about the technicalities and details, an incredible level of arrogance that I suggest does not sit well with the ethos of the CRC. It is very worrying and at the risk of being repetitive, I do not believe one can have a board of directors charged with the provision of such critical services to people with disabilities who, quite frankly, find the HSE a nuisance, find concerns expressed by the
taxpayer a nuisance and want to take money from the Exchequer and then drive on and operate in whatever way they wish. Then, to top it all, they come before a committee of the Oireachtas and in a very robust fashion, put that position forward. I was alarmed, worried and concerned coming into this meeting. I am now more alarmed, having heard what the directors have said.

Mr. Jim Nugent: May I respond to that Chairman?

Chairman: Yes.

Mr. Jim Nugent: We came here today in a voluntary capacity, very willingly and with the intention of telling the story in what we believe is a balanced and fair way. The board of the HSE has always been a stakeholder with us. The services that we provide are, as the Deputy rightly said, well funded by the HSE and the Department of Health. Everyone is very conscious that it is public money. In anything we did in terms of finding the best candidate to fulfil the position of CEO that arose, we did not set out to run a cavalier show at all - quite the opposite, in fact. There was great concern about how we were doing it and that is why we had an expert from outside to oversee what we were doing. The board of the CRC at the time, as I said earlier, sought to protect the ethos and something of the independence of the organisation.

Deputy Mary Lou McDonald: Would Mr. Nugent accept now, with the benefit of hindsight, that the board has failed in that? In fact, the actions of the directors, collectively, have potentially undermined the ethos of the clinic and have, one imagines, caused terrible distress for the staff and users of the services. They have also gravely dented public confidence, the public upon which the CRC relies for charitable donations. Can Mr. Nugent appreciate at all the level of that damage, which is a negative for the clinic?

Mr. Jim Nugent: There is no doubt there are no winners in the context of the way this payroll issue has come up. Deputy McDonald is alluding, in part, to the appointment of Mr. Conlan. My understanding and feel for the way people in the organisation had responded to him was that they recognised a very competent and capable person who had tremendous energy for his position.

Deputy Mary Lou McDonald: That is not the issue and Mr. Nugent well knows it. The issue here is about the board, when making a senior appointment, going through a process that is open, transparent and beyond reproach. I would imagine that in any set of circumstances for a service such as the CRC, that would be the standard to be applied but particularly so when the clinic is in receipt of substantial public moneys. How this looks to a person looking on is that there was, dare I say it, a bit of boy’s club, with insiders. We have seen it in other organisations. It is very unhealthy. While promotion from within the ranks is legitimate, when promotion is purely an internal process one has to question how good that is for any organisation. When an organisation is in receipt of public moneys it is not a runner. I have made my point.

I do not know any of the witnesses but I am surmising, given their commitment to an organisation such as the Central Remedial Clinic, that they are people of good will and intent. That is my working supposition. With the greatest of respect to the witnesses individually, however, I have to say that the facts reflect that enormous damage has been done. I do not believe that damage can be repaired while the current board is in place. That is not possible.

On pension arrangements, about which I do not propose to speak at length, is it correct that Mr. Kiely will receive only one pension?

Mr. Paul Kiely: Yes.
Deputy Mary Lou McDonald: That is the private pension scheme.

Mr. Paul Kiely: Yes.

Deputy Mary Lou McDonald: We heard that 70 staff members are involved in the scheme. Is that correct?

Mr. Paul Kiely: That is correct.

Deputy Mary Lou McDonald: What about the balance of the staff?

Mr. Paul Kiely: The balance of staff are covered by the voluntary hospital superannuation scheme.

Deputy Mary Lou McDonald: Why are the 70 staff in the alternative scheme not in the voluntary hospital superannuation scheme?

Mr. Paul Kiely: They would like to be in it. I wrote to the HSE in relation to treating all staff in a similar way. It was at the time of the early retirement and voluntary redundancy schemes at the end of 2010. I thought that, in the interest of equity for the staff, all of them could have been treated the same and those schemes could have been opened up to them. One of the ways of doing that would be to freeze the pension they were already in and allow them to accrue benefits under the VHSS going forward. That would have been of great benefit, if one likes, to the financing of the deficit in the private pension fund as well.

Deputy Mary Lou McDonald: Is that discussion with the HSE still live?

Mr. Paul Kiely: No; it was rejected by the HSE.

Deputy Mary Lou McDonald: Some suggestion was made in the course of the week that perhaps you would not appear before the committee. I need you to tell me that it was always your intention to come before this committee.

Mr. Paul Kiely: I know it is a cliché because the new chief executive said he was away when this broke but, as a matter of fact, I was away with my daughter. I retired in June and had not taken any break outside the country. I drove over with my daughter on 17 November and my intention was to stay for one month and bring her back for Christmas. When this broke, I did not have a problem and I knew that if it was going to come to this I would come home. I came home last night.

Deputy Mary Lou McDonald: If management, a member of the board or whomsoever was the appropriate person had approached you at any stage in respect of your salary and had set out the facts to you, in terms of the sourcing of the moneys, the current climate, public sector pay policy, the reputation and standing of the clinic and so on - all of the issues that are now at play in the public domain - would you have been willing to take a salary adjustment? Would you have been willing to have that conversation? You were in the job and were associated with the clinic for a long time and obviously such an approach was not made. If it had been made, what would have been your position?

Mr. Paul Kiely: I would like to think that I would have considered it.

Deputy Mary Lou McDonald: You would have considered it.

Deputy Kieran O’Donnell: Mr. Conlan has refunded €40,000 to the Health Service Ex-
ecutive, according to media reports. Mr. Conlan was on a salary of €125,000, which means he had a top-up of approximately €40,000. Was this top-up paid for by private funds raised for the Central Remedial Clinic?

**Mr. Jim Nugent:** First of all, the actual-----

**Deputy Kieran O’Donnell:** All I want to hear is a “Yes” or “No” answer. Mr. Conlan was paid €125,000 up to 1 October. Was the top-up of €42,000 paid for from private funds raised from the private Friends and Supporters of the CRC fund-raising company?

**Mr. Jim Nugent:** The simple answer is “Yes”. It would have had to come from there. It could not have come from the HSE fund.

**Deputy Kieran O’Donnell:** If that is the case, is the HSE surprised that it got the €40,000 back from Mr. Conlan, as we read in the media?

**Ms Laverne McGuinness:** We just heard today about both the €125,000 and the €40,000. It has not been confirmed in any correspondence to us that that amount is being paid. What our correspondence says, even though we have asked for the remuneration levels, is that with effect from 1 October the CRC would be compliant with the salary scale we set out, which was the equivalent of a local health manager, at €83,000.

**Deputy Kieran O’Donnell:** Mr. Conlan has seen fit to refund €40,000 but, given that the top-up appears to have come from private funds, he is refunding to it to the wrong party. Mr. Kiely, do you not believe you have a moral obligation to make a similar refund to the CRC private fund, taking into account the Government’s guidelines on pay?

**Mr. Paul Kiely:** I would certainly take the Deputy’s suggestion on board.

**Deputy Kieran O’Donnell:** From what we have heard this morning it seems, in view of the work done by the CRC and charity sector overall, that as a board your position is untenable. Do you not think that as a board they need to step down?

**Mr. Jim Nugent:** We have been in the process of moving the way the board functions into a new era. It will bring about-----

**Deputy Kieran O’Donnell:** I am asking a very direct question. The CRC receives significant income from fund-raising. The situation is that the board completely ignored the HSE. I have read the correspondence. It only replied to the HSE on 27 July, having received a performance warning letter the previous day. Furthermore, it informed the HSE in the letter that it was going ahead in appointing Mr. Conlan come hell or high water. For reasons of integrity and to restore trust in the non-profit voluntary sector, do the board members not feel they have a moral obligation to step down?

**Mr. Jim Nugent:** As Mr. Kiely has responded in relation to his income, I will bring the Deputy’s views back to the board members and we will communicate a response in depth.

**Deputy Gerald Nash:** I welcome the witnesses. We have been over considerable ground this morning but I would like to make a couple of points and put some questions to them. The recently resigned chief executive, Mr. Conlan, was a member of the board of the CRC previously. According to media reports in the past two days, he has been replaced by an individual by the name of Ms Joan Hurley. I understand Mr. Nugent also has a role as acting interim chief executive. I understand the arrangements are that he will act as the interim chief executive
while Ms Hurley will undertake a role of looking after day-to-day operations. Is it the case that Ms Hurley currently works for or has worked for the CRC?

**Mr. Jim Nugent:** The person to whom the Deputy refers is a long-term member of staff. She is the senior manager in charge of clinical services and has been in place for a considerable number of years. As the most senior of the senior management team, she was the obvious choice to co-ordinate the day-to-day activity. In respect of the idea of myself standing in as something like an acting CEO, I cannot give it 100% of my time.

**Deputy Gerald Nash:** Is Mr. Nugent paid for that role?

**Mr. Jim Nugent:** Good heavens, no. I am doing it to keep the thing together. We are actively looking at how we do something about that. I have been in discussions with the appropriate person in the HSE in respect of the actions we need to take. I certainly do not want to be there for any length of time whatsoever.

**Deputy Gerald Nash:** Can Mr. Nugent clarify the exact role of Ms Hurley in the organisation? Without wishing to personalise this, can he give me some sense of what her salary was and whether she was in receipt of a top-up payment or whether she was exclusively receiving the salary as described by the HSE?

**Mr. Jim Nugent:** The clinical services senior manager is one of the group that had old legacy contracts.

**Deputy Gerald Nash:** So Mr. Nugent is telling me that very few lessons, if any, have been learned. He has appointed somebody who, from a previous role, is in receipt of a top-up salary, and let us call that what it is. Now that individual will be responsible for the day-to-day operations on a global scale of the CRC, and yet she is still in receipt of her top-up payments, so nothing has been learned. This is a game of musical chairs for very well remunerated back-sides, is it not?

**Mr. Jim Nugent:** No.

**Deputy Gerald Nash:** That is exactly what it is.

**Mr. Jim Nugent:** The Deputy is being extremely unfair about this situation. There was a major gap when Mr. Conlan resigned and did not return on the Monday to go back into his position as CEO. We had to take some action. It is a very interim action.

**Deputy Gerald Nash:** Ms Hurley’s salary, according to the HSE scale, would be €79,000. However, as manager of client services, as described here, she would receive an additional €32,357 from CRC funded payments. Is that correct?

**Mr. Jim Nugent:** That combined figure is the figure that is in her employment contract. In the current situation, she is taking on the extra responsibility. There is no extra payment for it. Whatever I do is being done on a voluntary basis.

**Deputy Gerald Nash:** Could it be argued that she is moving to a new role and the commitment was made previously by Mr. Nugent to the HSE that any new role-----

**Mr. Jim Nugent:** It is not a new role. It is a co-ordinating role.

**Deputy Gerald Nash:** We could argue that she is enjoying a new position as director of
operations, which is what it is described in the media. Therefore, it would be timely and appropriate to review her salary and take that down to the HSE level. I would appreciate the HSE’s view on this.

**Mr. Jim Nugent:** I will certainly communicate precisely what we are doing to the HSE. There is no extra position being created. There is no extra funding required. The arrangement is only until the end of this month. I wish to emphasise that. She was willing to help out because of the vacuum that was there. We needed someone to be on the spot all the time. I cannot do that, and I am in discussions with the HSE as to how I resolve that.

**Deputy Gerald Nash:** How does Mr. Nugent intend to advertise the post when it arises?

**Mr. Jim Nugent:** I have sought permission to advertise it, as is required, and it will be a full competition. We have had discussions with the HSE officer in charge to look at using the public recruitment body to work with us on it. There is a number of steps like that to be taken, and if it is helpful to the committee, we will set out the steps that we are taking so that we can demonstrate the openness with which we are coming at this and other changes that will arise as a consequence.

**Deputy Gerald Nash:** Mr. Kiely has outlined his pension arrangements to a degree. Was he given a lump sum payment when he stepped down from the organisation?

**Mr. Paul Kiely:** Yes I was.

**Deputy Gerald Nash:** Can he clarify for the record what that lump sum was and how it was calculated?

**Mr. Paul Kiely:** It was calculated at the maximum amount allowable by the Revenue Commissioners.

**Deputy Gerald Nash:** Did that involve cognisance being taken of the HSE portion of the salary and the topped up portion?

**Mr. Paul Kiely:** Yes.

**Deputy Gerald Nash:** Okay. What was the sum again?

**Mr. Paul Kiely:** It was €200,000.

**Deputy Gerald Nash:** What is Mr. Kiely’s pension worth again?

**Mr. Paul Kiely:** I do not get my pension for another-----

**Deputy Gerald Nash:** Has Mr. Kiely put a value on the entire pension pot at this stage?

**Mr. Paul Kiely:** I do not know what that is.

**Deputy Gerald Nash:** Surely when stepping down from an organisation, having worked there for a considerable period of time, it would be human nature to take some interest in what one’s future pension would be.

**Mr. Paul Kiely:** I think the future pension will probably be around €90,000.

**Deputy Gerald Nash:** Does that gradually go up or gradually come down?
Mr. Paul Kiely: As far as I know, the pension arrangement is index linked up to 5%, depending on the CPI.

Deputy Gerald Nash: So the pension will be approximately €90,000 in perpetuity.

Mr. Paul Kiely: Yes.

Deputy Gerald Nash: Mr. Kiely was there a long time until he stepped down. How frequently would his contract, pay arrangements and pay structure be reviewed by the board and by the remuneration committee?

Mr. Paul Kiely: Very seldom.

Deputy Gerald Nash: What would Mr. Kiely’s salary have been in the late 1990s, compared to what it was when he stepped down recently?

Mr. Paul Kiely: Before the euro came in, it was between £120,000 and £130,000.

Deputy Gerald Nash: Was it in any way performance related?

Mr. Paul Kiely: No.

Deputy Gerald Nash: So there were very infrequent reviews, if ever. Mr. Kiely had an expectation that this would be his salary. How was that expectation defined? Was it on a fairly informal basis with the board?

Mr. Paul Kiely: It was quite informal. The remuneration committee would deliberate. The last review was probably 2001 or 2002, and other than that it was national wage agreements, which were minuted. National wage agreements and general pay rises or cuts would apply.

Deputy Gerald Nash: Mr. Nugent was on the remuneration committee. He joined the board in the late 1990s. When did he join the remuneration committee?

Mr. Jim Nugent: Only a few years back.

Deputy Gerald Nash: So Mr. Nugent was not involved in any formal review of the chief executive’s salary, or anybody else’s salary for that matter.

Mr. Jim Nugent: No.

Deputy Gerald Nash: What was the purpose of the remuneration committee if it was not being reviewed?

Mr. Jim Nugent: In the first instance, an audit committee and a remuneration committee are recommended as a regular governance issue. The fact that we would not have been increasing salaries and reviewing them to increase them was because everyone was largely covered by whatever was going on with regard to the national wage agreements. Broadly speaking, it just involved overseeing that, but there was no requirement on us to do a major exercise on individuals or groups of individuals with respect to special increases. They were all pre-set way back in history.

Deputy Gerald Nash: Earlier on, Mr. Nugent extolled the virtues of Mr. Conlan as somebody of quality, as somebody the board could trust and somebody in whom he had great confidence to carry out the functions of a chief executive of a very significant organisation. Mr.
Nugent clearly rated him. Does he still rate him and his opinion?

**Mr. Jim Nugent:** I would rate him very highly of course. Nothing has changed in that respect.

**Deputy Gerald Nash:** In his final gesture as CEO, Mr. Conlan said that the CRC could start afresh with a clean slate. The inference there is that the slate can only be wiped clean if you take on board his advice. My understanding of his advice, and it would be the advice of this committee, is that you consider your position. My opinion and that of my colleagues is that your position and that of other board members is completely untenable.

It seems to me from the remarks that you made to the media in recent days that you are blaming those who have uncovered this debacle, and the media, as opposed to focusing on your own management and that of the board of the organisation. That is a ridiculous and, dare I say, very arrogant position to take. Would you accept Mr. Conlan’s advice that the slate needs to be wiped clean and that the only way to do that is to replace the board?

**Mr. Jim Nugent:** As your colleague raised the same issue I have the same answer. We will go back to the board and have a discussion with it. I will give a reply to the Chairman.

**Deputy Paul J. Connaughton:** I will keep this brief and continue on the point that Deputy Nash finished on. What reason did Mr. Conlan give the board for resigning his position?

**Mr. Jim Nugent:** The core point of his resignation statement, to me, was that he found what was happening to be very intrusive into his personal life. I suppose he had been consulting with his family and those close to him. Beyond that, I have had no further detailed comment from him.

**Deputy Paul J. Connaughton:** On that point, is it not fair to say, as recent media speculation suggested, that he had done nothing wrong? He was inside pay policy. There was no issue with remuneration. He had done nothing wrong, yet he still decided he should leave.

**Mr. Jim Nugent:** We have no evidence of anything else. I know that when we got to grips with what the arrangement should be with the HSE salary I worked with him in bringing about the contract that would be the correct contract. Subsequently, as Ms McGuinness said, the contract was effective from 1 October. That was the date agreed. Because he had gone on leave, the only way I had of communicating with him, because he was abroad, was periodic phone calls. Certainly up to the last few days before he resigned it was never even hinted that he might think of resigning. I just assumed he was coming back to work. He resigned on the Friday and did not turn up on the Monday. All I got was the message that he felt it was intrusive and he did not particularly wish to go forward.

**Deputy Paul J. Connaughton:** Can you not understand why red flags were going up all over the place, in the media and among the general public, when the chief executive decided to leave, considering he had done nothing wrong? He made a statement that he believed it would be better for the CRC to have an outside appointment next time around. Can you not understand the concern of the general public that this has taken place since the story broke?

**Mr. Jim Nugent:** I certainly can understand your point on it.

**Deputy Paul J. Connaughton:** I am trying to find out why he felt he should go when you and the board do not feel you should go.
Mr. Jim Nugent: Mr. Conlan should be the one answering why he felt he should go. I cannot read his mind.

Deputy Paul J. Connaughton: I understand that, and that will be discussed later when we try to make him come in and explain. I do not expect you to answer for him, but he did make the point that for a fresh start the next head should come from outside the CRC. Do you have any understanding of why he would say that? Had he ever discussed that with you before?

Mr. Jim Nugent: No.

Deputy Paul J. Connaughton: You have no idea why he would even float that idea now?

Mr. Jim Nugent: I have no idea what was in his mind when he said it. That is all I do know. Having experienced the last number of weeks, having listened to the views of this body here, and listened very carefully, I have put forward a situation in which a variety of change programmes have been put in place. It is not over by a long way. There is a need to create the changes we want in a controlled environment, not necessarily controlled by me or anyone else. It is a transition that needs to be taken care of and that will happen.

Deputy Paul J. Connaughton: Over what length of time?

Mr. Jim Nugent: We are working on it day and night at the moment. We are talking about probably a few weeks.

Deputy Paul J. Connaughton: I come to this from the point of view that a range of other charities are saying that their fund-raising efforts have been hammered coming up to Christmas because of this controversy with all the section 38s. I do not know that a change plan will suffice to put the mind of the general public at ease - to convince them that this has now stopped and it is all better all of a sudden.

Mr. Jim Nugent: That is not what I am saying. I have already answered two Deputies and I will do it again. In light of the discussions we have had here today, I will call a board meeting and we will consider where we are at.

Deputy Paul J. Connaughton: What will you consider at that meeting? Will it just be your own positions on the board?

Mr. Jim Nugent: I am sure I will not have to relate the detail of what went on here because I am sure it is in the public domain and everybody is tuned in to it. I think that what went on here is what will be discussed. People will make up their own minds.

Deputy Paul J. Connaughton: Thank you.

Deputy John Deasy: I want to clear something up with regard to the lump sum of €200,000. Where did it come from and how was it funded?

Mr. Jim Nugent: I am just making sure I am talking about the right account. There are so many different accounts. The lump sum would have been paid from the Friends and Supporters of the CRC support fund - the reserve fund.

Deputy John Deasy: Were you aware, Mr. Kiely, that the €200,000 lump sum you received had come from that fund?

Mr. Paul Kiely: I do not want to say it is complicated, but it is. It is complicated, and
the whole thing does not play out for another three years. My entitlement is to the maximum amount of the-----

**Deputy John Deasy:** I understand that. That is fair enough. Did you have any qualms about the lump sum coming from that fund?

**Mr. Paul Kiely:** Have I qualms? I have qualms about everything to do with this - absolutely everything to do with it. I am looking at the situation where there is entitlement, if that entitlement is bestowed by the Revenue Commissioners in a personal fund threshold.

**Deputy John Deasy:** Do you know what? I feel slightly uncomfortable about parts of this myself, but I have to ask that question.

What are the HSE guidelines when it comes to lump sum payments in that regard, or does it have any?

**Mr. Barry O’Brien:** The payment of lump sums-----

**Deputy John Deasy:** Did you know that money was coming from the Friends and Supporters of the CRC?

**Mr. Barry O’Brien:** It is important to say that earlier, Mr. Kiely clearly advised the committee that he was not a member of the voluntary hospitals superannuation scheme, that he was a member of a private scheme and that 70 of his colleagues in the CRC-----

**Deputy John Deasy:** I got that answer.

**Mr. Barry O’Brien:** Therefore, we would not have any influence or decision-making power because we would have no control over the terms of that scheme as they applied personally to Mr. Kiely.

**Deputy John Deasy:** So you do not have a guideline in that regard.

**Mr. Barry O’Brien:** If you are a public servant, a member of the health service, you are a member of the superannuation scheme. The remaining 208 staff of the CRC are members of the voluntary hospitals superannuation scheme, which has clear rules and regulations and into which we pay lump sums based on people’s consolidated salary scales as approved by the Departments of Health and Public Expenditure and Reform.

**Deputy John Deasy:** I will ask the question again. Was the HSE aware that the lump sum was coming from that fund?

**Mr. Barry O’Brien:** We had no knowledge of that.

**Deputy John Deasy:** With regard to what we are dealing with today, I must ask Mr. Nugent whether he thinks it was appropriate that the huge amount of money involved - an average of €1.4 million was donated to the fund each year - should be used for that purpose.

**Mr. Jim Nugent:** The fund is there to support the CRC. The CRC had a pension fund to which both the employees and the employer contributed.

**Deputy John Deasy:** Leaving aside the top-up arrangements, when people hear about this matter I do not believe they will feel good about that amount of money from the fund being used for the purpose in question.
Mr. Jim Nugent: I take what the Deputy is saying. At the end of the day, the CRC must get funds from somewhere. If it is not part of the public sector pension fund - and it could not be, which is fair enough - then we must find funding to do it.

Deputy John Deasy: I understand that.

Mr. Jim Nugent: I think everyone in this room would accept that the vast majority of people in employment have salary packages and pension packages. The companies for which they work have to find ways to earn that and pay it out. That was the process.

Deputy John Deasy: It was very important to clarify from where the €200,000 lump sum came. We have clarified that now. If anybody else wants to follow up on the matter, that is fair enough. Some people present have asked that the board of the CRC resign. I have studied this matter and it seems that the HSE knew very well what was happening. It issued letters and warnings and posed questions for a number of years. The HSE was responsible for policing this. When is enough enough and where does the HSE draw the line with regard to infractions of guidelines which it has responsibility for policing? In my opinion, the HSE was aware for a long period that there was widespread disregard for the guidelines in the context of public sector wages as they relate to section 38 agencies. I am of the view that the executive engaged in a paper-pushing exercise over a number of years and that it never actually drew the line. It never instructed boards or made it clear to them that this type of behaviour would not be tolerated. We have now arrived at the point where public hearings into the matter have been required. If individuals are going to request that board members resign, they should also look to the HSE and those responsible for policing this. The fact that the people who were responsible for that policing work in government should not mean that they are immune from that kind of sanction. I understand that the problem may have been identified and that it was made clear to the boards in question that what they were doing was contrary to public sector wage guidelines. However, the HSE could have done more in the context of dealing with this matter definitively. I do not believe it did deal with it definitively.

Mr. Barry O’Brien: I refer Deputy Deasy to what his colleague, Deputy Harris, said in very clear terms, namely, that on over 20 occasions this year alone we were involved in direct consultations with the CRC when we became aware of the practices that were in place, specifically in the context of the replacement of the post of CEO. The HSE takes the responsibilities conferred upon it under the Health Acts very seriously. The detail identified by Dr. Geraldine Smith in the audit, the quality of the audit report and the identification of each of the agencies involved clearly indicates that it was far more than a paper-pushing exercise.

I received the report in March and within six days I, as the manager responsible for implementing all of the recommendations, gave a comprehensive reply. If the Deputy considers the period since March, he will see what has happened. A new formal pay policy for the health sector has been approved by the Departments of Public Expenditure and Reform and Health and every manager and every section 38 voluntary agency has been advised of this in order to ensure full compliance. We have come before the group and by way of an update we forwarded a note which says that tomorrow we will be meeting all of the chairs of the section 38 agencies, with each to be accompanied by one other board member.

Yesterday I issued notification to 353 agencies which are deemed to be section 39 bodies. We used the threshold of €250,000 as being the grant aid we give to each of these agencies. There are a couple of thousand below that threshold. Despite the fact that they are not covered by Government pay policy, we have brought it to the attention of each of the agencies to which

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I refer that in the context of the remuneration of their senior managers, particularly CEOs, they should have regard for Government public sector pay policy. We have been very diligent. There is a very important point to be made here. What the audit has discovered is that - through no fault of the HSE - there is now a due diligence process required for individual employees of section 38 agencies who have contractual entitlements to certain rates of pay where no approval was given by the Department, the former health boards or, since 2005, the HSE. That is a reasonable analysis of where we find ourselves today from the perspective of the HSE.

**Deputy John Deasy:** I wish to thank Mr. Kiely for attending this meeting.

**Chairman:** I am conscious of the fact that our guests have been answering questions since 10 a.m. However, there are a number of other matters which must be dealt with. I propose to conclude proceedings at 3 p.m. but perhaps people would indicate whether they wish to take a break for 15 minutes. Is Mr. Martin getting upset with me?

**Mr. David Martin:** Not in the slightest. It is pressure coming from another quarter, otherwise known as clients. I had understood that this meeting would last approximately two hours. There are some clients I was supposed to meet in my office this afternoon and I am currently trying to rearrange times. It is really a case of moving the deckchairs around.

**Chairman:** I appreciate that. However, our client base is slightly larger than that of the CRC.

**Mr. David Martin:** And mine pays me but this does not.

**Chairman:** Well, €16 million is a reasonable sum-----

**Mr. David Martin:** I receive nothing for this.

**Chairman:** I am not stating that Mr. Martin receives anything. What I am stating is that we have a job to do. Would our guests like to take a 15 minute break?

**Mr. David Martin:** As long as proceedings will be finished by 3 p.m.

**Chairman:** We will take a 15-minute break and conclude at 3 p.m.

**Mr. David Martin:** That is fine. I was worried the meeting would go beyond 3 p.m.

*Sitting suspended at 1.30 p.m. and resumed at 1.55 p.m.*

**Deputy Áine Collins:** I thank the witnesses for being with us today. I wish to address a question to Mr. Nugent. How many directors are there in the Friends and Supporters of the Central Remedial Clinic?

**Mr. Jim Nugent:** There are three directors. I gave the names to one of the Deputy’s colleagues.

**Deputy Áine Collins:** I am sorry, I missed that. Am I correct that it is a company limited by guarantee?

**Mr. Jim Nugent:** Yes.

**Deputy Áine Collins:** I thought that under company law it was a requirement to have seven directors of a company when it is to be a limited company by guarantee.
Mr. Jim Nugent: No. I will refer the question to my legal expert.

Mr. David Martin: No, there is a requirement to have seven members not directors.

Deputy Áine Collins: Seven members.

Mr. David Martin: Yes and the board of the company can have two.

Deputy Áine Collins: Are there seven members registered for the company?

Mr. David Martin: I presume so. I am not involved in any of that legal work despite my training. I am assuming that when the company was set up, it was set up properly and all returns are done. Any issues in that respect from a secretarial point of view would have been taken care of.

Deputy Áine Collins: It is common in practice that the seven members of the company are usually seven directors as well. Was there a reason for that?

Mr. David Martin: No, that is not necessarily so. My rugby club set up a trustee company. The only directors of that are the trustees and there are seven members of it. I do not think it necessarily follows.

Deputy Áine Collins: A limited company is a statutory company limited by guarantee which requires seven members. Mr. Martin is absolutely correct, but usually in practise, from my experience, they usually end up being the directors as well. I wondered whether there was a reason for that.

Mr. David Martin: I bow to the Deputy on that.

Deputy Áine Collins: In the context of what we have been discussing this morning, from what I see in the 2012 accounts, there is €905,000 from donations, of which €400,000 came from lottery funding. Is that correct?

Mr. Jim Nugent: Sorry Deputy, I was a bit distracted.

Deputy Áine Collins: In the 2012 accounts, some 85% of funding came from the State - the €16 million which comes in every year to run the organisation - and of the other 15%, some €905,000 comes from charities and donations, of which I understand €400,000 came from the lottery funding, or the friends and supporters company. Am I correct?

Mr. Jim Nugent: It does not sound right. I will just check. In 2012-----

Deputy Áine Collins: The Central Remedial Clinic had a turnover of €19 million in total.

Mr. Jim Nugent: That sounds right. Income from other activities was €1.884 million, donations and fundraising was-----

Deputy Áine Collins: -----€905,000. My understanding is that €400,000 of that came from the friends and supporters or lottery.

Mr. Jim Nugent: I will get the Deputy a breakdown of that figure.

Deputy Áine Collins: Some €905,000 has come in from donations from the public. That is correct based on the accounts in one form or another, whether that is the lottery----
Mr. Seamus McCarthy: If I might assist the Deputy on this, note 19 to the financial statements discloses in the final sentence that fund-raising income includes a donation of €400,000 from the Friends and Supporters of the Central Remedial Clinic. It is the related parties transactions.

Deputy Áine Collins: Thank you.

Mr. Seamus McCarthy: That would seem to support the Deputy’s point that €400,000 of the €904,000 shown on the income side is from the Friends and Supporters of the Central Remedial Clinic.

Deputy Áine Collins: Thank you. My point is that €905,000 has come in from the public in different forms of charity, of which 28% was paid out in top-up payments. That has done phenomenal damage to every charity the length and breadth of the country. We all stand for local charities in our communities and we all work with them. It is absolutely frightening that 28% of the money that came in is going back out in top-ups to salaries. I request that we get the CVs of current staff who receive top-ups. Can I request that information?

Chairman: Yes, we can request the information.

Mr. Jim Nugent: Could I look at that issue, please?

Chairman: Yes. It is a data protection issue.

Mr. Jim Nugent: There is a data protection issue but the people may give the information voluntarily.

Mr. David Martin: I doubt that we can give it without their consent.

Mr. Jim Nugent: We will look at it.

Chairman: That is on account of data protection but the CRC can look at it.

Mr. David Martin: As the Chairman has said, and in the context of the data protection, I am concerned that we cannot do so without their consent.

Deputy Áine Collins: Okay.

Mr. David Martin: It is not covered under section 8 of the 1988 Act.

Chairman: We understand.

Deputy Áine Collins: I accept that but as the board, and as Mr. Martin eloquently said earlier, it is his role and that of the directors to manage the organisation, and 85% of the CRC’s funding comes from the State. The CRC objectives state:

We agree to be prudent and, whenever possible, resourceful, in our use of time and money on the Clinic’s behalf and to participate willingly and enthusiastically in all appropriate activities intended to improve the availability of these essential resources.

In light of what has been said here this morning and the information in the public domain, do the witnesses think the board has met those objectives?

Mr. David Martin: Mr. Nugent might comment better than I on that matter. We can look at the services that we have been providing and the growth of the CRC in the recent past, and
its continued growth as shown in what it intends to do, in its plan. The CRC is not a charity or institution that has stagnated. It has grown from humble beginnings and from scratch.

**Deputy Áine Collins:** I accept that.

**Mr. David Martin:** As of today, one might ask the question and put it into a finite point. If one looks at the global effort that has been made by the clinic, across the board and from the board down, it is an institution that is serving the people very well right now.

**Deputy Áine Collins:** Earlier this morning Mr. Martin stated that the board is responsible for the management of the organisation. We accept that more than 400 people work in the organisation and do an excellent job. We also accept that more than 3,000 people receive a fantastic service. Nobody is taking away from that. I have a direct question for him. With regard to the CRC’s objectives and what has been said this morning, do the witnesses think that they have been prudent managers? Have they been resourceful with the money? Has the money been spent wisely? My question relates to what has been said this morning and the revelation about top-ups and salaries paid. We are talking about a CEO being paid more than the Taoiseach, at a particular time.

**Mr. David Martin:** I will not make a glib response. The answer, in my opinion, is “Yes.” The Deputy can fillet me here for the next half an hour but I will not change my opinion in that regard. I am not someone who has worked hands on every day of the week regarding the running of the organisation. Along with the rest of the board, we have done the job entirely on a voluntary basis to the best of our ability. One must look at the services and end product that have been delivered. I think that we are delivering a very good service to people who need it.

**Deputy Áine Collins:** I repeat that I am not talking about the service. I have never questioned the service and nobody is questioning that.

**Mr. David Martin:** I am answering the question, I thought.

**Deputy Áine Collins:** Yes. My question was on pay in the context of what we have discussed here and the reason for us being here. Does Mr. Martin think that CRC management has been prudent?

**Mr. David Martin:** Pardon me. With regard to that particular question, as I said earlier, we took a view. When we spoke to the HSE back in 2009 we explained the difficulties that the CRC had with a number of contracts that people had with the clinic regarding their salary. In that respect, we took a view - sorry we did not take a view - but are legally bound to meet those commitments. I am not going to go out there and start breaking contracts that were legally binding. Apart from the fact that when we looked at it, we said okay what if we do that, then what will it cost us. It is the lesser of two evils, as always.

**Deputy Áine Collins:** The board did not even discuss it with management.

**Mr. David Martin:** It was discussed with management.

**Deputy Áine Collins:** Was management asked to take-----

**Mr. David Martin:** Pardon me, it was discussed at board level.

**Deputy Áine Collins:** When one looks at how far Ireland has come since 2008-----
Mr. David Martin: I would not-----

Deputy Áine Collins: Can I make the following point?

Mr. David Martin: Sorry.

Deputy Áine Collins: Since 2008 practically every private company in the country, or at least most people at senior level, have taken reductions in their salary. Everybody has been affected. The witnesses, in the prudent management of the board, made a decision, without discussing it with the five members of staff in receipt of a top-up, in some cases the top-up was almost as much as their salary and in other cases it was almost 30% of a top-up-----

Mr. David Martin: Yes.

Deputy Áine Collins: -----based on their recommended salary.

Mr. David Martin: True.

Deputy Áine Collins: Does Mr. Martin still think that was prudent?

Mr. David Martin: There were nine people at the time, in 2009.

Deputy Áine Collins: Sorry, nine people. I was looking at 2012 figures and apologise.

Mr. David Martin: Part of what happened in the interim is that the number is reduced to four, I think, in that respect. We have reduced our management overheads. In so far as some of those people, when they departed from the organisation at management level, some of their duties were assigned to the current incumbents and they took on further duties.

Deputy Áine Collins: Mr. Martin is not answering my question. I asked if he thought it was prudent.

Mr. David Martin: I am answering it on the basis of the way we looked at it at the time. If the Deputy wants to turn the clock back and talk in terms of hindsight or 20/20 vision regarding all of that then it throws up, maybe, the answer is “Yes.” I do not know what the fall-out would have been from that.

Deputy Áine Collins: I appreciate that but in the board’s prudent management of the organisation it did not discuss it with the management staff and ask them that question.

Mr. David Martin: Not in person.

Deputy Áine Collins: That was at a time when everybody else in the country took a pay cut.

Mr. David Martin: I do not know whether everybody was.

Deputy Áine Collins: Not everybody, that is generalisation. A significant number of people in the country took pay cuts, across all organisations.

Mr. Jim Nugent: During Mr. Paul Kiely’s stewardship, the period that we are talking about,-----

Deputy Áine Collins: Yes.
Mr. Jim Nugent: As our way of trying to get the overall savings, we reduced the senior management team. The effect would have been to bring about savings in excess of €900,000 to the HSE bill. A lot of things were done.

Deputy Áine Collins: Yes.

Mr. Jim Nugent: We were reduced from 11 to five or six.

Deputy Áine Collins: I accept that and that has been done in every organisation-----

Mr. Jim Nugent: There may be other areas that we should have tackled.

Deputy Áine Collins: -----operating under section 38 and 39 around the country. I am not taking from that. The CRC objectives state: “We agree to be prudent and resourceful, in our use of time and money,” and that relates to how the organisation is managed. The CRC was advised, as outlined in the service agreement, that the salaries were above the scale or the recommended scale. However, the board did not take it upon itself to have a conversation with the staff. That is questionable. Other people have referred to the matter this morning regarding the board and how it looks. I appreciate that the board will take time to reflect which is wise.

In light of what has happened, why has the board not examined the possibility of engaging an interim CEO from outside of the organisation? Loads of private companies can provide interim CEOs.

Mr. Jim Nugent: I have had active discussions with the HSE.

Deputy Áine Collins: Right.

Mr. Jim Nugent: I am sure that Ms McGuinness will confirm that. There are three or four key areas and as late as last evening we worked on it and that is one of the issues.

Deputy Áine Collins: I accept that.

Mr. Jim Nugent: I have no great desire to stand in as CEO - which is a week old, as it happens. We are just trying to keep the ship of state afloat and get the solutions as quickly as possible.

Deputy Áine Collins: I accept and appreciate that. There are recruitment agencies that provide interim CEOs for organisations and they can be found the length and breadth of the country and globally. I highly recommend using one such agency when things like this happen and someone can be brought in. I respectfully suggest that my recommendation is implemented, as a matter of urgency, and in light of what we have all heard here today.

Mr. Jim Nugent: At the break I conversed with Ms McGuinness. We will meet tomorrow to discuss the matter. We have just agreed to catch up and get it sorted.

Ms Laverne McGuinness: I wish to confirm that we have been in discussions with the chairman as late as last evening, as he said. There are three proposals that we have made as an interim measure, that we are working towards and will work with the CRC on. They are as follows - first, the use of the Public Appointments Service to select a new candidate for the CEO appointment in the future; second, the appointment of independent trustees to the board of the CRC; and, third, consideration should be given to assignment, in the interim, of an agreed executive by the HSE to fill some of the interim roles and support the interim responsibilities, with
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the CRC, during the period of search. Those matters are under consideration. The chairman will discuss them with his board and has until 13 December to do so. We will meet tomorrow to discuss the matter, with the regional director as well.

Deputy Áine Collins: I appreciate that all of that shall take some time, even to find a new appointment to put in place and so on. I suggest in the interim-----

Ms Laverne McGuinness: In the interim, we are also seeking to discuss with the chairman the possibility that there should be an agreed executive nominated by the HSE to fulfil some of the interim duties of the CEO of the CRC - just to work with the chairman in that regard. He has to go back to his board on that. We are meeting on it tomorrow with the regional directors as well.

Deputy Áine Collins: I thank the witnesses.

Chairman: Can I ask Mr. Nugent about the company providing appliances for mobility? What is the background to that? How was it established? Who established it?

Mr. Jim Nugent: Mr. Kiely may wish to answer as he may have the best recollection of the detail. I am sorry, Chairman, I am trying to get the best answer together for you.

Chairman: It is okay.

Mr. Paul Kiely: I will take some of that. We had an assistive technology and custom seating department within the clinic. A lot of assessments would be done on children with physical disabilities for their seating requirement and recommendations would be made for the purchase of specialised seating for certain clients. That seating would then be purchased on the market.

A business case was brought by one of the senior managers to cut out the middle man and that we would set up a company to supply specialised seating and, hopefully, make a profit and create an income stream. A business case was made for it, the company was set up, it started trading, and the recession hit and orders collapsed. They tried to trade their way out of it and when I was leaving the organisation in June, they were putting together a proposal for its future as to whether it could trade out of the difficulties it was in or would be put for sale.

Chairman: In what year was that company established?

Mr. Paul Kiely: It is probably about five to six years ago. It was tantalisingly close to making a profit. In the business case, had the end-sales of the first year repeated each of the subsequent years, it would have created a very substantial income stream.

Chairman: Was there a loan provided for that company?

Mr. Paul Kiely: It was underwritten, to the best of my knowledge, by the friends and supporters.

Chairman: Underwritten to the tune of what?

Mr. Paul Kiely: I do not know.

Chairman: Would Mr. Nugent or Mr. Martin know?

Mr. Jim Nugent: I can confirm that there was a working capital position supported, not from HSE funds but from the friends, of some €500,000.
Chairman: A senior manager put the business case, set up the company under the umbrella of CRC or something close to the CRC, and the friends gave that company €500,000. Did the senior manager remain with the CRC or did he go with the company?

Mr. Paul Kiely: He stayed with the CRC.

Mr. Jim Nugent: He had a whole variety of duties as senior manager.

Chairman: Did he stay? He presented the business case and €500,000 was put into the company.

Mr. Jim Nugent: When we took it over there was a staff already with the business.

Chairman: The CRC had €500,000 of working capital in there, is that right?

Mr. Jim Nugent: That is right.

Chairman: Did the manager stay with the CRC? Is he still with the CRC?

Mr. Jim Nugent: He is. He has a wider role in the CRC. The seating area, the gait clinic and all that, would be the biggest part of his job.

Chairman: Okay. What happened the company when it got into difficulty?

Mr. Jim Nugent: The best way to explain it is once you enter into fitting seating - it is those very specialised wheelchairs - and once you start into a process of getting them for those who are approved by the HSE to have them, we then are committed in terms of getting it done. There is a few blocks of time where we could not just literally close it down but we cut the cost down. I suppose, it was getting into the point where it would be on a break-even basis.

Chairman: Do you still own the company or who owns the company?

Mr. Jim Nugent: We have sold the company and it is in transition. Only in recent months have we negotiated a deal with another private sector company. It is buying over the goodwill, the stock and it has paid some money. We are completing some final discussions on detail of stock.

Chairman: Is the manager who originally suggested the business plan part of the company?

Mr. Jim Nugent: No.

Chairman: Will he work for that company?

Mr. Jim Nugent: No. He is a senior manager with-----

Chairman: Is he still with the CRC?

Mr. Jim Nugent: It is just that this area of work came under his division of the job he has.

Chairman: Will he still remain with the CRC?

Mr. Jim Nugent: Yes. At the moment, he has a contract of employment.

Chairman: What about the €500,000 loan that you put into the company? You put €500,000, Mr. Nugent stated, from the friends into that company. Do you get that back? Do friends get
Mr. Jim Nugent: Being very frank, I would say of the recovery rate, with respect to the structure of the deal that was done - I cannot just remember the absolute figure off the top of my head but I can supply it - by the way we are acting now towards it, I doubt if we will recover all of it.

Chairman: Will you recover any of it?

Mr. Jim Nugent: We will.

Chairman: Some of the €500,000 will go back to the friends.

Mr. Jim Nugent: It goes back to the friends, yes.

Chairman: On the correspondence, I put it to the HSE that in 2009 there was a certain level of correspondence with the CRC. It is clear from the correspondence that although Mr. Nugent states he had a good relationship with the HSE, it reminds me a little of my relationship with the HSE - it is a little on and off. The CRC certainly wrote to the HSE in terms that would give me the impression that the CRC was determined to do its business independently of the HSE, make its own decisions and implement them, and any of the recommendations or rules that were being applied by the HSE were certainly not acknowledged in the course of 2009.

I put it to the HSE that it had little correspondence after 2009. It did not respond to Mr. Peelo’s letter which, essentially, tells the HSE what transpired at this meeting. It would give anyone reading this the impression that all was well. That was dated November 2009.

One must go to 28 September 2012 before the next piece of correspondence. At best, the HSE was haphazard in the way it managed the section 38 organisations. The HSE certainly seemed to have been pushed about by the CRC and the HSE, in its correspondence, was not up to then intent on laying down the law and making the CRC comply because one must go along to another letter dated 2013 to where the HSE refers matters to Arthur Cox. The HSE seems to be laying a paper trail in 2013, as it were, covering its tracks, to show that it had been heavily engaged with the CRC, but that does not seem to be the case from 2009. Again, I refer Mr. O’Brien to his comments on the correspondence from the CRC where he said it was good as “get lost”.

It is clear to me from reading the correspondence that the HSE knew about this. What it did not do was constructively engage with the CRC to deal with the real issue, which is the legal contracts the CRC had with its employees. That might have been a better course of action for the HSE to take because it would then have unravelled the series of arrangements the CRC has in respect of the various employees. The year 2013 was a big year for the HSE in terms of trying to get the CRC sorted and to engage but the real issue is that back in 2009 when these contracts were being established and when these top ups were being paid, the HSE knew about them and knew about the contracts because that is Mr. O’Brien’s area of expertise.

Mr. Barry O’Brien: I am the director of HR.

Chairman: That is your area of expertise.

Mr. Barry O’Brien: I was not the incumbent at that time but I am in the post.

Chairman: Presumably there was someone equally as qualified as Mr. O’Brien in that...
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position back then and he or she did not identify that there was a problem that needed to be addressed. On the other hand, with regard to the CRC as far as I can see from this correspondence the HSE just carried on and I believe it had no intention of changing things. There is a lot correspondence but it tells the one tale. In correspondence dated 25 September 2013 in respect of the appointment of Mr. Conlan, Mr. Nugent agreed that the following provision was included in Mr. Conlan’s contract:

In pursuance in his/her duties hereunder, the Chief Executive shall perform such services and accept any office in any trade, sectoral body or association as the Agency may from time to time reasonably require without any further remuneration unless otherwise agreed with the Minister for Health given with the consent of the Minister for Public Expenditures and Reform.

Was that being put into the contract because he was considered to be a public servant? What was the purpose of it?

Mr. Barry O’Brien: I would like to make a couple of points. If you look back at the opening statement on the last day from Mr. Tony O’Brien, our director general, it is important to note that he clearly advised members of the committee that between March and November 2011, the HSE at the request of the Department of Health sought to establish the level of compliance by section 38 agencies with various aspects of approved public sector pay policy. We would have corresponded with all section 38 agencies rather than with the CRC specifically. We were actively pursuing compliance with public pay policy in 2011 and were doing a number of things whereby we would have asked them to confirm their compliance with FEMPI and the issue of pay-related schemes. We also restated the fact that in September 2011, we sought specifically from all section 38 agencies confirmation that CEOs were not in receipt of additional remuneration from any services or duties required by virtue of their role. We were pursuing these matters across all the section 38 agencies.

Chairman: Where is that?

Mr. Barry O’Brien: It is the opening statement.

Chairman: What date was it?

Mr. Barry O’Brien: The HSE sought that information in September 2011.

Chairman: I raised this with Mr. Cathal Magee when he was before us at a meeting of the committee. I asked him specifically about section 38 agencies, how they were accountable and if there was an audit in respect of their compliance in terms of the understanding they have with the HSE regarding the funds of which they are in receipt. In honesty, only after that, did the HSE get serious about it. Mr. O’Brien is quoting letters from 2011. What happened after 2009? What happened in 2010? I am not forgiving the CRC. I am just saying that if €0.6 billion of taxpayers’ money is going into section 38 agencies, the HSE had a very flawed way of overseeing that or auditing that money and that is why the CRC is here today. I would also put it to Mr. O’Brien that the HSE did not flex its muscle as a provider of those funds in ensuring that they complied with everything that was going on. That is what I take from this correspondence. The HSE is as guilty as the CRC in terms of what is going on here and in respect of the management of the funds.

Ms Laverne McGuinness: The Chairman raised a number of points that I will address. One point related to 2009. The Chairman referred correctly to the letter from Mr. Desmond
Peelo in November 2009. He said this references what actually took place at the meeting. I am referring to my letter dated 7 July 2009 which is directly after the meeting that took place on 25 June. I refer the Chairman to the second page of the letter where I said very clearly that I have given the CRC a copy of the levels of pay that were applicable to the grades.

_Chairman:_ What letter is that?

_Ms Laverne McGuinness:_ It is my letter to Mr. Peelo on 7 July 2009, which is directly after the meeting we had at our request with the CRC on 25 June 2009. On the first page, I said that we have an obligation because of our public accountability and the level of funding we give to the CRC to discharge our functions in that regard. On the second page, I said that I would appreciate if the CRC would review the information with its board of governors and revert to me with its proposals on how the senior staff salaries can be brought into line with the levels we indicate as appropriate and we set out those levels. The response from Mr. Peelo concerned how the CRC was going to do it.

I must draw the Chairman’s attention to our legal obligations and our governance abilities under both the Health Act and section 38 arrangements. This will bring things on from 2009. Up until 2009, there were many different types of contracts in place with various service providers, of which there are over 4,000. During the course of 2009, a very lengthy engagement took place between the providers of the disability sector, etc., with a view to drawing up what is known as a standardised service level arrangement, which is a very comprehensive arrangement. There are two sections to that setting out the entire volume of service to be provided and the level of funding that we can provide in order to carry out those particular services. That is the extent of our legal ability under section 38. It is in respect of public funds.

During the course of those discussions and negotiations, it was very clear that these entities and organisations are independent and cannot be treated as subsidiaries of the HSE and that level of independence had to be recognised very clearly. Part of it is contained in the service arrangement itself. The accountability set out in the service arrangement is in respect of the public funds. We further built on that in 2010 with a view to having those section 38 arrangements signed and then built into it the requirement to comply with public pay policy as a result of what came to light when we wrote to them.

_Chairman:_ Is it fair to say that in respect of the public pay policy and the HSE’s audit or control of that, €106,000 was being paid to Mr. Kiely and once the HSE established that control it was not that concerned about the €116,000 or the rest of it? I know Ms McGuinness’s letter was before Mr. Peelo’s response but if I got his response, I would have responded immediately and told him “No” and would have referred him back to the letter within which was given two weeks to respond. However, Ms McGuinness did not do that. In fact, there was no response in respect of the demand from the HSE to respond within two weeks. As a result of that and of Ms McGuinness not persisting with it but easing off a little, which might be the way to describe it, Mr. Peelo responded and it was left at that.

_Ms Laverne McGuinness:_ There was an acknowledgement of that letter on 15 July 2009 by the chairman of the CRC saying that he would be in touch at a point in time and then his letter of November arrived. As has been set out in the correspondence, salaries and salary levels are matters for the board of governors. We could not compel the organisation. It clearly advised us that it had legal obligations or legal contracts. We were clear that when the posts came up for renewal or reappointment, the appointments and salary levels would have to be agreed before they could be renewed. We went on to enhance our entire governance arrangements-----
Chairman: We understand that, but the point is that the HSE did not follow up fully with the CRC and, as a result, the matter drifted along. In the correspondence under discussion the HSE did not engage with the CRC on its legal obligations. Mr. Martin continues to tell us that it will cost a lot of money to break these contracts. There is a bigger issue in respect of section 38 providers. In regard to compliance with health sector pay policy, the HSE has stated that, for the avoidance of doubt, employees of section 38 providers are public servants. Does Mr. Nugent agree with this?

Mr. Jim Nugent: In terms of section 38-----

Chairman: That is what it stated. The Department of Health has stated clearly that section 38 provider employees - it emphasised it for the avoidance of doubt - are public servants.

Mr. Paul Kiely: As I have indicated, in the latter months of 2010, when the HSE put in place the early retirement and voluntary redundancy schemes, the people in the private pension fund, although being paid by the HSE and part of the ceiling, were told they were not public servants.

Chairman: The correspondence from the Department of Health states clearly that, for the avoidance of doubt, employees of section 38 providers are public servants. Presumably that correspondence issued from Mr. Brazel’s section. Will he confirm whether he has corresponded with the Department of Health or the HSE on any of these matters?

Mr. Peter Brazel: No, we do not have-----

Chairman: Was Mr. Brazel aware of this matter in 2009?

Mr. Peter Brazel: We had some knowledge that the HSE and the Department were writing to bodies about the issue, but we had no knowledge of the payments that arose in the audit and no correspondence on them. On the other issue raised, public servants are defined in the financial emergency measures legislation. There was confirmation earlier that the Financial Emergency Measures in the Public Interest Act 2009 was applied to the staff in question. It would not have been applied if they were not public servants under the Act.

Chairman: As far as Mr. Brazel is concerned, they are public servants.

Mr. Peter Brazel: Yes.

Chairman: As far as the Department of Health and the HSE are concerned, they are public servants. What does Mr. Nugent think?

Mr. Jim Nugent: I find that we are in a grey area.

Chairman: It is written down before me. The official from the Department of Public Expenditure and Reform gave his opinion. It is set out by the Department of Health and repeated by the HSE. However, Mr. Nugent says it is a grey area.

Mr. Jim Nugent: As Mr. Kiely noted, there is correspondence on file on people who were not allowed to be in the public sector pay area. I take it that if the decision flows the way the Chairman argues, they are public servants but anomalies remain in terms of pension rights, etc.

Mr. Barry O’Brien: Dr. Geraldine Smith made it clear at the last hearing that to gain access to a public pension, one had to be paid according to the consolidated salary scales approved by
the Government. The issue arising is that there was a separate pension fund rather than a debate over whether the individuals concerned were public servants. One of the key recommendations was clearly enunciated approval by the Department of Public Expenditure and Reform of a public sector pay policy. As the Chairman noted, it was stated they were public servants.

**Chairman:** The other anomaly is that we were given a list of six positions, with salary top-ups applying to five. On the appointment of the new CEO, Mr. Conlan, the recommended pay scale was €83,000, but the client service manager, the administrator and managers of HR and IT would have been on higher salaries. They were being paid salaries and top-up payments.

**Mr. Barry O’Brien:** The correspondence between the HSE and the CRC clearly indicates that both parties recognise the need to have full regard for what is stated in the service level agreement. To be in full compliance with public pay policy, the CRC wrote to reassure us that Mr. Kiely was about to retire and, as previously committed to by Mr. Peelo, it would re-engage with us. What actually happened, however, was that it proceeded to make the appointment without getting formal approval for the salary the post would attract. It subsequently emerged that the board of the CRC had determined the pay rate Mr. Conlan would attract without approval or direct engagement by the HSE. That is where the issue arose subsequently when, on a retrospective analysis, we stated €125,000 was never the approved salary for the job. Therefore, we agreed that from 1 October a contract of employment at an agreed pay rate would apply.

**Chairman:** That does not address the anomaly that continues. When the next CEO is appointed, he or she will be on a salary of €83,000 and five of the existing managers will be on salaries and top-up payments of approximately €79,000, plus €32,000.

**Mr. Barry O’Brien:** Having regard to employment law and the uniqueness of the employer-employee relationship, the onus is on the employer, in this instance the CRC, to take action. We do not have the capacity to take action to instruct, direct or say it needs to cut people’s salaries. The Chairman says everyone was aware, but the reality is that direct responsibility for action lies with the employer and we do not have any facility to intervene.

**Chairman:** I understand that, but when Mr. O’Brien quoted the law to Mr. Nugent and the CRC, they, by and large, ignored him and trundled on. The HSE did not enter into constructive engagement to assist them in overcoming this difficulty whereby new recruits at the top level of the CRC would be paid less than existing managers. That is a problem for the CRC and the HSE.

**Mr. Barry O’Brien:** The HSE is limited by the Government to authorising the consolidated salary scales only.

**Chairman:** I understand that. I am speaking about ways to sensibly resolve some of these issues in order that hearings of this nature could be avoided. We would also have avoided the huge damage done to public confidence and the collections made up and down the country to support charities. We have an obligation to try to resolve this and I am sure it was not helped by the payment of a top-up to Mr. Tony O’Brien.

**Mr. Barry O’Brien:** Ms McGuinness wants to make a comment but I would like to reference that directly when she is finished.

**Ms Laverne McGuinness:** As the Chairman correctly says, there is a position now that we have to find a way out regarding the other people who have been paid salaries over and above the consolidated pay scales at this point in time. The section 38 arrangements that we cur-
rently have state they have to now comply with public pay scales. That is in respect of the new people coming into employment into those organisations. We are now moving a step further to enhance our governance arrangements and, as the chairman has said, we are meeting with the chairmen of all the section 38 agencies tomorrow. We are putting in place an enhanced governance arrangement and a new compliance statement. In the statement, we will look for the chairman of the board and one other director to sign off on the level of compliance regarding pay, risk management systems of control, etc. We will also ask in areas of non-compliance how long there has been non-compliance, when they will be compliant and how we will work with them to ensure that compliance takes place.

Chairman: Who are the auditors of CRC?

Mr. Jim Nugent: Ernst & Young.

Chairman: Did they draw attention to the arrangements the CRC has of topping up salaries from another fund relative to its obligations to the HSE? Were issues raised by them regarding their audit?

Mr. Jim Nugent: No.

Chairman: Were they aware of the CRC’s obligations to the HSE regarding salary scales and everything else?

Mr. Jim Nugent: I am pretty certain they would have been. It is a detailed audit.

Chairman: They audited the organisation’s books and they looked at its overall governance and compliance. They knew about the problem with salaries and the HSE and they made no comment.

Mr. Jim Nugent: They would have seen it as the same issue we are confronted with. We have a contractual problem here.

Chairman: I understand that but did they ever raise it with Mr. Nugent as part of their audit?

Mr. Jim Nugent: No.

Chairman: Surely they look at governance issues and the CRC’s arrangements with outside bodies for funding. Did they not do that either?

Mr. Jim Nugent: I am just going back over the past period but I do not recall anything of that nature arising.

Ms Laverne McGuinness: On that, we are including in our service arrangement that the external auditor of the particular organisation would comment on the requirement to comply with public pay policy-----

Chairman: It is a bit late now.

Ms Laverne McGuinness: -----and to include it in the compliance statement of the chairman.

Chairman: I welcome that but it is a bit late now to be doing that. When €16 million is going to one organisation and the overall fund is €1.6 billion, these requirements should have been laid down at the beginning. If they had been, this would not have happened.
Ms Laverne McGuinness: They are independent auditors.

Chairman: I understand that and McGuinness keeps on saying that. However, this is taxpayers’ money and the HSE should have taken every step to ensure the audit was set down properly and protocols were put in place and it should not be doing that now. That is why we have this problem today. The problem was created by the CRC and the HSE, which did not try to resolve it. I am amazed that the Department of Public Expenditure and Reform in overseeing a budget of €1.6 billion going from one Department to the other and to the HSE did not raise the issue and did not see what was going on in the Department of Health or the HSE. I would have expected more scrutiny of this issue. Has Ms McGuinness a list of organisations and the top-ups paid to employees within them? Is she aware of a list? The CRC issue, for example, came about because a question was asked. Deputy Ross spoke about the accounts and then we asked a question. Does she have a table of organisations and the number of employees in receipt of top-ups reflecting this issue or problem? If so, can she make it available to the committee?

Mr. Barry O’Brien: Page 32 of the audit gives a point in time as to where every agency, the grade of the job and the relevant jobs were. Our work that is currently in process is seeking further exact detail of the current position with regard to each of the section 38 organisations. We will make that available-----

Chairman: So the HSE does not know them yet.

Mr. Barry O’Brien: No, we are saying that the table we provided, which sets out the monies, in our internal audit report is from the time of the audit but the Chairman is asking whether we have an up-to-date one. I will get him an up-to-date position.

Chairman: We want the facts and figures relative to each organisation so that we can determine the extent of the problem, the extent of the payments, what is going on and the HSE’s response to it. I am concerned that the HSE has referred to withholding or withdrawing money or whatever the process will be but we must be concerned about the service users in this instance. The fact that there is poor governance should not negatively impact on them and we have to protect them. I am appalled by that correspondence, the lack of engagement with CRC and the lack of effort from 2009 onwards to bring closure to a serious problem.

Mr. Barry O’Brien: The Chairman referenced an allowance being paid to Mr. Tony O’Brien, our director general. In the interests of clarity, it is a completely separate matter to what is before the committee but Mr. O’Brien was requested by the HSE to take up a new role in 2016 that effectively changed his substantive position. On this basis, he entered into a pay arrangement. He received written confirmation of these new terms from the HSE. He was not aware until recently that the HSE had failed to properly process the new arrangement. Had Mr. O’Brien known that the arrangement had not been properly processed, he would have ensured that it was immediately rectified in order to correctly reflect the agreement.

As far as we are concerned, a genuine error was made and Mr. O’Brien entered his role in good faith and has carried out all the duties of that role. His current role as director general is totally separate and it has been fully and appropriately approved and negotiated by the Departments of Public Expenditure and Reform and Health.

Chairman: It was the HSE’s fault, not Mr. O’Brien’s.

Mr. Barry O’Brien: Yes, we are acknowledging there was a problem.
Chairman: Are you acknowledging that it was the your fault?

Mr. Barry O’Brien: My fault?

Chairman: No, the HSE’s fault. Mr. O’Brien should not play with words. Someone made a mistake and at these meetings no one answers a question properly and upfront. Did the HSE make the mistake? Was it the HSE’s fault?

Mr. Barry O’Brien: Yes, the HSE made an error.

Chairman: Good man. Thanks very much. If we had a little more of that kind of clarity, we might get our business done much quicker.

Deputy Kieran O’Donnell: I refer to the CRC medical devices company. What year was that established?

Mr. Jim Nugent: I am sorry. We have gone through that.

Deputy Kieran O’Donnell: I want more clarity.


Deputy Kieran O’Donnell: Was it formed as a direct subsidiary of the CRC?

Mr. Jim Nugent: Yes.

Deputy Kieran O’Donnell: Is it correct that at the time a loan of €460,000 was given by the CRC to the medical devices company?

Mr. Jim Nugent: Yes.

Deputy Kieran O’Donnell: I am told the medical devices company is now a subsidiary of Friends and Supporters of CRC. It was originally a subsidiary of the main company and received this loan. Mr. Nugent stated it effectively indemnified the loans of CRC Medical Devices. Is this correct?

Mr. Jim Nugent: Yes.

Deputy Kieran O’Donnell: Explain to me why a company which was a subsidiary of the main company transferred to be a subsidiary of Friends and Supporters of the CRC Limited.

Mr. Jim Nugent: It required support because of the way the marketplace had gone in terms of the product it was distributing. Essentially, we transferred it and that allowed us to pay the loan back from Friends and Supporters of the CRC Limited.

Deputy Kieran O’Donnell: In essence-----

Mr. Jim Nugent: The CRC will not be out of pocket.

Deputy Kieran O’Donnell: In essence, Friends and Supporters of the CRC Limited receives money from collections made by people up and down the country. A loan of more than €500,000 was transferred onto the backs of the people throughout the country who collected money, made private donations and collected the proceeds of the Santa bear appeal which went to Friends and Supporters of the CRC Limited and the company was transferred to be a subsidiary of the fund-raisers.
Mr. Jim Nugent: The only money going to Friends and Supporters of the CRC Limited comes from the lottery side. It is separate.

Deputy Kieran O'Donnell: It is still money collected from the public. To a layman looking in, it looks like CRC Medical Devices which appears to have been a loss maker, bar one year, had accumulated loans of more than €500,000 and it was transferred from being a subsidiary of the CRC group. Effectively, the CRC was bailed out by Friends and Supporters of the CRC Limited for this dead duck of a company which Mr. Nugent told the Chairman had been sold. To whom has it been sold? For how much has it been sold? How much money which should have been used for front-line services will Friends and Supporters of the CRC Limited end up having to use to bail out what is, effectively, a commercial concern? Will Mr. Nugent put figures on it? Am I correct in saying the loan is approximately €550,000?

Mr. Jim Nugent: That is the round figure. Let me make a suggestion in the interests of speed. I will get our auditor to do a trail in order that the committee will have proper detail.

Deputy Kieran O'Donnell: I have no problem with Mr. Nugent coming back. It is a very simple question. He is chairman of the board. The company is being sold to Munster Medical Supplies which I assume Mr. Nugent had to approve. He must know how much the sale of CRC Medical Devices will raise. How much of a black hole will emerge for Friends and Supporters of the CRC Limited? How much is the CRC getting for its medical devices company?

Mr. Jim Nugent: There are a number of sections in respect of payment. We have some funds coming up-front, some coming from stock and other-----

Deputy Kieran O'Donnell: Give me a bottom-line figure.

Mr. Jim Nugent: I do not have it off the top of my head.

Deputy Kieran O'Donnell: Mr. Nugent must have it.

Mr. Jim Nugent: I am sorry.

Chairman: Mr. Nugent has offered to give the information.

Mr. Jim Nugent: I can get it no bother.

Deputy Kieran O'Donnell: With due respect, I am pursuing a line of questioning. The figure for how much CRC Medical Devices was to be sold would have to have been decided. What is the total?

Mr. Jim Nugent: I know the overall plan in terms of the deal is to get back in the region of €500,000 to make up for what was lost.

Deputy Kieran O'Donnell: Over how long a period of time.

Mr. Jim Nugent: A couple of years. What I meant was I would break it down and show precisely what the game plan was. It is not very difficult; I just cannot remember the individual sectors.

Chairman: That is fine. Mr. Nugent will let us have the information.

Mr. Jim Nugent: I will have it in a day or two.
Deputy Kieran O’Donnell: Does Mr. Nugent anticipate the loss on the loan to be in the order of €50,000. Is that what he is stating?

Mr. Jim Nugent: Approximately. It will be between €50,000 and €60,000.

Deputy Kieran O’Donnell: Has the actual company been sold? What is the structure of the CRC medical services company? Who are its directors?

Mr. Jim Nugent: CRC Medical Devices.

Deputy Kieran O’Donnell: Yes.

Mr. Jim Nugent: Vincent Brady, Ham Goulding and me.

Deputy Kieran O’Donnell: What is the legal structure of the company?

Mr. Jim Nugent: It is a limited liability company.

Deputy Kieran O’Donnell: Are salaries paid? Are there employees?

Mr. Jim Nugent: There were employees, some of whom transferred. We are only in the middle of doing this.

Deputy Kieran O’Donnell: Did the directors receive fees?

Mr. Jim Nugent: No.

Deputy Kieran O’Donnell: There were no fees.

Mr. Jim Nugent: I wish to make a statement. A director of the Central Remedial Clinic and any other company associated with it, even the lottery company which is at arm’s length, is not allowed any remuneration or expenses. If there is a CRC function in Waterford and I want to be at it, I will pay my own expenses. There are no perks or junkets. This is a rule which has been in place from the beginning and we are religious about it. I would like to get this out of the way.

Deputy Kieran O’Donnell: I want to go back to Friends and Supporters of the CRC Limited. Between 1998 and 2011 it raised approximately €27.856 million, of which almost €8 million went to the CRC and approximately €15 million was set aside for the provision of loans for associates. There was a balance of approximately €5 million. Of what do the provisions of loans for associates consist of?

Mr. Jim Nugent: I have never come across that statement. We have approximately €14 million under management and the money is earmarked for the projects the Central Remedial Clinic wants to complete. We are in very advanced negotiations and discussions with the HSE on a major day centre and local service area in north county Dublin and the same for Clontarf. There are old buildings which are past their sell-by date and we are looking to build a new school and clinic. The vast bulk of the money is set aside for this purpose. Approximately €1.5 million or €2 million is kept aside for emergencies such that if something goes awry in a period of economic downturn such as this, we have some money to help people.

Deputy Kieran O’Donnell: Of the €28 million, €8 million went to the CRC and somewhere between €12 million and €14 million is set aside at any one time for various projects. That is generally-----
Mr. Jim Nugent: In a broad thrust, yes. We have it tabulated by project.

Deputy Kieran O’Donnell: Mr. O’Brien made reference to consolidated pensions. I presume the HSE is funding the portion of Mr. Kiely’s pension to the approved limit. Is that correct?

Mr. Barry O’Brien: What Mr. Kiely stated was the private pension fund of which he was a member was funding the entirety of his pension.

Deputy Kieran O’Donnell: Are there circumstances where the pensions of employees of agencies covered by section 38 are funded by the HSE?

Mr. Barry O’Brien: Those covered by section 38 are in the voluntary hospitals superannuation scheme. The section 38 organisations are in the voluntary hospitals superannuation scheme, VHSS, which we administer centrally in Manorhamilton. We only calculate entitlements based on a consolidated salary approved scale.

Deputy Kieran O’Donnell: My final question is for Mr. Nugent and relates to the correspondence regarding Mr. Conlan’s appointment. On what date was he appointed to his post?

Mr. Jim Nugent: 1 July.

Deputy Kieran O’Donnell: A letter dated 19 July was a response to a letter to Mr. Leo Kinsella and was signed by Mr. Nugent’s good self. It reads:

In response to your letter of 8th July on the above subject, I have to inform you that the appointment of Mr Brian Conlan to the position of Chief Executive has already taken place. On 26 July the CRC entered into a contract of employment with Mr Conlan...

The letter is dated 19 July, yet Mr. Nugent claimed that the CRC entered into the contract on 26 July. There appears to be a discrepancy in the dates. Was it June?

Mr. Jim Nugent: I will check. It might be a typo. There was a contract signing date. Maybe that is what it is about.

Deputy Kieran O’Donnell: This is the key letter, in that the CRC stated that it was going ahead with the appointment of Mr. Conlan regardless. The dates are contradictory. I am surprised that it was not picked up by the HSE.

Not to reiterate, but when one considers everything that has happened to date, for the sake of the CRC and the charity sector it would be important that the board strongly consider its position, which is untenable. Mr. Kiely must reflect on how Mr. Conlan handed back his €40,000 top-up. In the interests of the public, morals, the CRC and the entire charity not-for-profit sector, which does phenomenal work, the witnesses have a decision to make. I ask them to reflect on this matter strongly.

Chairman: Deputy Murphy is next. I apologise to him about the time, but we must conclude at 3.20 p.m.

Deputy Eoghan Murphy: It is fine. I will be brief, as we have had a long session. I only have two questions. Did Mr. Kiely state that his severance package was €200,000?

Mr. Paul Kiely: As I explained, I have no expectation other than my entitlement under the pension.
Deputy Eoghan Murphy: The severance package amounted to €200,000.

Mr. Paul Kiely: It is all part of the one thing.

Deputy Eoghan Murphy: It was built into Mr. Kiely’s pension.

Mr. Paul Kiely: Yes.

Deputy Eoghan Murphy: Was the amount tax free?

Mr. Paul Kiely: The €200,000 is a tax-free lump sum.

Deputy Eoghan Murphy: It went into Mr. Kiely’s pension.

Mr. Paul Kiely: Yes.

Deputy Eoghan Murphy: Will Mr. Conlan receive a lump sum in his severance package?

Mr. Jim Nugent: No. He resigned voluntarily with no expectation and has made a donation to the clinic.

Deputy Eoghan Murphy: I thank the witnesses. My second question relates to the HSE and a point raised by Deputy Deasy and the Chairman. Do section 39 agencies, including the CRC, only have an obligation to the HSE for their spending of public moneys or do they have additional obligations?

Ms Laverne McGuinness: Our legal obligation and framework with section 38 agencies extend to the public funds. Under the section 38 arrangement, we enter into a contract with the agencies to provide services for that amount of money. They are not subsidiaries of the HSE and cannot be treated as such. They are separate entities. This is in line with the legal advice we received when framing our section 38 arrangement.

Deputy Eoghan Murphy: The HSE only has an influence over the delivery of services and payment of salaries where public money is used.

Ms Laverne McGuinness: Legally.

Deputy Eoghan Murphy: To what degree does it have an influence? If there was a problem, as there is in this case, could the HSE exercise control and get an agency to change direction?

Mr. Barry O’Brien: The expectation clearly set out in policy is that all section 38 agencies should only pay the consolidated salary scales set out in our service level agreement and that no employee should be in receipt of any other payment from any other source. Therefore, an employee should be at the same rate of pay as a public servant.

Deputy Eoghan Murphy: Appointments must be made with the HSE’s approval.

Mr. Barry O’Brien: Correct.

Deputy Eoghan Murphy: When that does not happen, what recourse does it have?

Mr. Barry O’Brien: As mentioned earlier, for the first time in the HSE’s history two formal sanctions were issued to the CRC as an extraordinary measure.
**Deputy Eoghan Murphy:** What does that mean?

**Ms Laverne McGuinness:** The Deputy’s question is on the sanctions available to the HSE. The HSE is slow to stop funding to a particular agency, given the impact on services. Performance contacts ask agencies to undo something that they should not have done or to comply. That is what we were asking of the CRC in respect of the appointment of Mr. Conlan. The CRC stated that it would be in compliance with the salary scale with effect from 1 October as a result of those performance contacts.

**Deputy Eoghan Murphy:** The HSE does not have the power to stop an agency from doing something. It does not want to withdraw funding, as that would hit services, and the agencies know this.

**Ms Laverne McGuinness:** It is open to us to withdraw funding. We alluded to it in the performance contact. However, we did not need to do so, as the agency reverted to us and stated that it would comply with the salary scale with effect from 1 October.

**Deputy Eoghan Murphy:** The HSE threatened to withdraw funding, but only to an amount of between €200,000 and €300,000.

**Ms Laverne McGuinness:** Yes.

**Deputy Eoghan Murphy:** Which the CRC could find itself.

**Mr. Barry O’Brien:** We are responsible for the implementation of the Government’s pay policy, section 7(2) of which states:

Salaries for approved grades must be in accordance with the Department of Health Consolidated Salary Scales. The payment of any allowance or perquisite which is not encompassed by, or in line with the Scales, and which has not previously been sanctioned in writing by the Minister for Health, with the consent of the Minister for Public Expenditure and Reform, must cease with immediate effect.

**Deputy Eoghan Murphy:** I understand that, but how strong are the service level agreements if a section 38 organisation can appoint someone in complete disregard of the HSE’s letters and sanctions until such time as the issue becomes a crisis and needs to be addressed as such?

**Ms Laverne McGuinness:** The first situation arose in 2009 and predated the revised service level arrangement. This was further strengthened in 2010 and 2011, particularly in terms of compliance with public pay policy. We are not strengthening the service level arrangement again, but we are putting in place a new arrangement involving compliance statements signed by agencies’ boards. A chairman and director must state that their agency is fully compliant or, if it is not, where that failure in compliance has occurred and how it will be addressed. In this regard, a meeting has been arranged with the chairmen of all section 38 agencies for tomorrow evening. This issue will form part of the discussion, as will additional enhanced corporate governance arrangements for boards, the various committees that should be in place - the CRC already has some such committees - and the independence of some of the boards.

**Chairman:** Deputy Murphy can raise this matter again next week. The HSE will be attending to discuss that issue.

**Deputy Eoghan Murphy:** Ms McGuinness is implying that the HSE has a soft power over
the governance of the organisations because it is giving them money.

**Ms Laverne McGuinness:** We have powers in terms of the public funds. They are laid out clearly under section 38. The agencies are not subsidiaries of the HSE; they are separate legal entities. Tomorrow, we will discuss with their chairmen the enhancement of their corporate governance arrangements, in particular, board membership, independence of directors and various good practices that should obtain in good corporate governance and that are already in place in some section 38 agencies. Enhancements could be made in other agencies.

**Deputy Eoghan Murphy:** I am sorry, but I have a final question. From the correspondence it is clear the HSE has had many dealings with the CRC over a number of views. What is its view of corporate governance?

**Ms Laverne McGuinness:** There are separate entities, as we know. There is no mandatory code for corporate governance. In the HSE we comply with public sector corporate governance and we have a controlled assurance statement that pertains throughout our statutory sector. We are moving to putting in place a compliance statement, and that is being elevated. Our service level arrangement is in place and signed by the chief executive of the organisation and the area manager.

**Deputy Eoghan Murphy:** I was referring to the Central Remedial Clinic. One of the e-mails effectively told the HSE to get lost.

**Ms Laverne McGuinness:** That was an internal e-mail in response to the letter that has been read out. They told us the CRC had appointed a chief executive anyway. Irrespective of the fact that the organisation had written to us and told us it would engage with us on 19 April, although we continued the engagement the organisation made the appointment and was bound legally by it. That is why we went into the performance area.

**Deputy Eoghan Murphy:** Did the CRC mislead the HSE?

**Ms Laverne McGuinness:** It probably would not be fair to say they misled us but we did not get the information from them. They wrote various letters but there were no specifics about the arrangements. The CRC indicated it was an internal process and that concluded with the appointment of the candidate, as the committee knows. At that stage we wrote to state that the position was very unsatisfactory.

**Chairman:** There will be a final question from Deputy Ross. Was Mr. Conlan in receipt of a pension when he was getting the salary?

**Mr. Jim Nugent:** I do not know of his arrangements in that respect. As I understand it, he had a contract with the Mater Hospital as chief executive officer. Beyond that I do not have a clue.

**Chairman:** Does Mr. O’Brien know?

**Mr. Barry O’Brien:** I would have to check. We assist on the voluntary hospitals’ superannuation scheme by way of calculation. Although I must confirm it, to the best of my knowledge it is the Mater Hospital that would operate the pension scheme by way of making payment. It also makes payment for the CRC scheme.

**Chairman:** The witness is before us again next week so will he tell us before then whether Mr. Conlan had some other arrangement of income from a previous employment while he was
working with the CRC?

**Mr. Barry O’Brien:** It is important there is no confusion. It would be helpful if the CRC could answer as to whether Mr. Conlan was in receipt of a pension when they paid him and if they abated his salary with the pension.

**Chairman:** They will not answer. I am anxious to get the answer.

**Mr. Barry O’Brien:** I can establish from our pension side but I would not know the payment arrangements they would have had for Mr. Conlan. Our pension scheme is clear. If he was a member of the voluntary hospital superannuation scheme and further employed, his salary should have been abated, having regard to his pension.

**Chairman:** How can we find out? Mr. Nugent will tell us his salary but will he go back to the salaries section and find out?

**Mr. Jim Nugent:** I will have a precise answer tomorrow from our end.

**Chairman:** I thank the witness. We are getting very precise.

**Deputy Shane Ross:** There is much to cover but I just want to raise one item which is puzzling me. It was touched on by Deputy McDonald and others when I was absent. It concerns governance. There is an elephant in the room that disturbs me and should be mentioned, or it certainly deserves explanation. So many of the directors and people in positions of power in the CRC have close associations with the former Taoiseach, Mr. Bertie Ahern. I am thinking in particular of the late Mr. Tony Kett, who had a senior position and was a great friend of Mr. Ahern. I am also thinking of Mr. Des Peelo, a former chairman who represented him in the tribunal and was a close friend of Mr. Ahern. I am thinking in particular of Mr. Vincent Brady, a current director, who was a Cabinet colleague, Mr. Kiely and Mr. Nugent, who both received preferment under Mr. Ahern’s Government. Is this purely a coincidence or are these people part of a very narrow pool who somehow got picked in that way? Is it totally coincidental?

**Mr. Jim Nugent:** May I make a statement? I do not think this is particularly relevant to the agenda but I should say that I knew Lady Valerie Goulding from the mid-1970s, long before I was absent. It concerns governance. There is an elephant in the room that disturbs me and should be mentioned, or it certainly deserves explanation. So many of the directors and people in positions of power in the CRC have close associations with the former Taoiseach, Mr. Bertie Ahern. I am thinking in particular of the late Mr. Tony Kett, who had a senior position and was a great friend of Mr. Ahern. I am also thinking of Mr. Des Peelo, a former chairman who represented him in the tribunal and was a close friend of Mr. Ahern. I am thinking in particular of Mr. Vincent Brady, a current director, who was a Cabinet colleague, Mr. Kiely and Mr. Nugent, who both received preferment under Mr. Ahern’s Government. Is this purely a coincidence or are these people part of a very narrow pool who somehow got picked in that way? Is it totally coincidental?

**Mr. Jim Nugent:** May I make a statement? I do not think this is particularly relevant to the agenda but I should say that I knew Lady Valerie Goulding from the mid-1970s, long before I was asked to take on the position of chairman of CERT, as I was regarded as technically competent in sorting out a major problem there. I did a long number of years on it, with a number of different Taoisigh asking me to stay on. It was a very successful programme of work that sorted out the requirements of the tourism industry. Subsequently, out of the blue, I was asked to go on the board of the Central Bank. I did not expect that. When I came to the CRC it was at the request of Lady Valerie Goulding and had nothing to do with any interest I had, one way or the other, in politics.

**Deputy Shane Ross:** The witness can see the dangers of people who have such close affiliations, including the chief executive. These people are making decisions on futures, preferment, salaries and issues like that.

**Mr. Jim Nugent:** Yes, and there are many others on the board of the CRC and I would not have a clue what politics they have.

**Deputy Shane Ross:** Yes, but a large number have political links to Mr. Ahern. That is absolutely without any doubt. Is that true?

**Mr. Jim Nugent:** There are two of us on the board. It is not so much a connection to Mr.
Ahern. I got involved with Fianna Fáil before the 1977 election. I had no activities with Mr. Ahern at that time.

**Deputy Shane Ross:** So there are three.

**Mr. Jim Nugent:** I do not get the purpose of the analysis.

**Deputy Shane Ross:** If these people have loyalties to a political party they may possibly be in danger or be vulnerable to the accusation that they give each other preferment and preferential treatment. That is the purpose of the analysis. I want to be assured that this is not the case.

**Mr. David Martin:** I would like to deal with that. I have absolutely no involvement - good, bad or indifferent - in any political party. I am almost apolitical, and although I might express views about politicians, that would be as far as I would go.

**Deputy Simon Harris:** They may not be very complimentary.

**Mr. David Martin:** At no stage in the five or six years I have been on the board of the Central Remedial Clinic have I ever seen a scintilla of anything the Deputy is suggesting is occurring. I have only ever seen decisions made by the directors for the right reasons as we saw them. I never saw any favouritism and if any such favouritism was applicable, I would have stood up immediately to it. That never occurred. I am satisfied in my own mind that it is a very clear and independent board, clear and free of any political intervention in that respect as the Deputy might suggest. If the Deputy asked where my appointment came from, I was asked by a person involved in the disability area to join the board.

**Deputy Shane Ross:** I did not ask that but I thank the witness for answering.

**Mr. David Martin:** I thought I would give the answer before the Deputy asked.

**Deputy Shane Ross:** The question is how these people got on, or how so many associates got on the board. There are three at the moment, including Mr. Brady, Mr. Kiely and Mr. Nugent, who are all closely allied to Fianna Fáil.

**Mr. Paul Kiely:** I am not a member of the board. I have resigned from it.

**Deputy Shane Ross:** Since when?

**Mr. Paul Kiely:** It happened when this news broke.

**Deputy Shane Ross:** I did not know that. It is an appropriate decision and I congratulate Mr. Kiely. I wish more would follow his particular example in this case. Is Mr. Ahern associated with or does he visit the clinic?

**Mr. Paul Kiely:** No.

**Deputy Shane Ross:** He has not visited the clinic in the past six or eight months.

**Mr. David Martin:** Very few politicians visit the clinic.

**Deputy Shane Ross:** Is that because they are not invited?

**Mr. David Martin:** They are very welcome to come out and see what is going on out there and down in Waterford. The Deputy would be impressed.
Chairman: We might go out some day.

Mr. David Martin: I will be there if I am still a director.

Deputy Shane Ross: I do not quite understand the association with the Mater Hospital. The only reference to it that I can find in the annual report states that the Mater Hospital acts on behalf of the Central Remedial Clinic as an agent in the operation of the second pension scheme and charges a fee of approximately 10% to 13% of relevant gross salaries, which amounted to €666,000. What does it do for that?

Mr. Paul Kiely: It administers the scheme.

Deputy Shane Ross: What is the total value of the scheme?

Mr. Paul Kiely: There is no----

Deputy Shane Ross: How much money is involved?

Mr. Paul Kiely: There is no fund.

Deputy Shane Ross: So what does it do?

Mr. Paul Kiely: The VHSS is not a fund. I think it forms part of the income of the Mater Hospital. It charges us that for administering the fund on behalf of the members-----

Deputy Shane Ross: There is no fund?

Mr. Paul Kiely: There is no fund that I know of. The people who retire out of the VHSS are paid out of current revenue.

Deputy Shane Ross: It charges €666,000 for administering a phantom fund.

Mr. Paul Kiely: Yes.

Deputy Shane Ross: Did Mr. Kiely ever challenge that?

Mr. Paul Kiely: I did, yes.

Deputy Shane Ross: What happened?

Mr. Paul Kiely: It was kicked out of the water. I was told it is what it is and that is the way it is to stay.

Deputy Shane Ross: That is outrageous.

Mr. Paul Kiely: Yes.

Deputy Shane Ross: Then why does the CRC pay it? Is it paid by cheque or is it deducted?

Mr. Paul Kiely: It was set up a long time ago to facilitate staff in the clinic to become members of the VHSS. They were technically at the time considered employees of the Mater Hospital because the clinic was not recognised as a body that would be eligible for the VHSS. The Mater Hospital, in a book transfer, came up with the idea that it would pay the full gross salaries of the individuals to the Central Remedial Clinic and the Central Remedial Clinic, in return, was to send the full gross salary of the individuals back to it, plus a 10% to 12.5% pre-
mium for the Mater Hospital.

**Deputy Shane Ross:** That is crazy.

**Mr. Paul Kiely:** It was ridiculous. I tried to break it on numerous occasions, but nobody wanted to know. The Department of Health did not want to know. I do not know whether I raised it with the HSE, but nobody wanted to know.

**Deputy Shane Ross:** So it gets €660,000 for administering a fund which does not exist.

**Mr. Paul Kiely:** That is right.

**Deputy Shane Ross:** This is bonkers.

**Deputy Eoghan Murphy:** Did Mr. Kiely raise it with the board?

**Mr. Paul Kiely:** I did.

**Deputy Eoghan Murphy:** However, Mr. Kiely was asked to leave the boardroom.

**Chairman:** What do you think of this, Mr. O’Brien?

**Mr. Barry O’Brien:** We in Manorhamilton, through a shared services arrangement, do all the calculations for the VHSS and we then advise. To my knowledge, the only thing the Mater does is make a run through its payroll of what we would tell it is the appropriate pension entitlement for a pensioner. I have no idea why it would be charging anybody any fee as we do the work centrally for it as part of the shared services provided service for all of the pension funds.

**Chairman:** Who can get us a report on that?

**Mr. Barry O’Brien:** I will get it.

**Chairman:** Can you get it for next week?

**Mr. Barry O’Brien:** Yes.

**Deputy Shane Ross:** Does the CRC send the Mater Hospital a cheque?

**Mr. Paul Kiely:** Yes.

**Deputy Shane Ross:** Why does the clinic not refuse?

**Mr. Paul Kiely:** I was told it was a legal agreement that dates back more than 30 years ago.

**Chairman:** Can we check that legal agreement?

**Mr. Paul Kiely:** There is a legal agreement that ties the clinic to the Mater Hospital.

**Chairman:** Can Mr. O’Brien give us a briefing on that?

**Deputy Shane Ross:** I still do not understand the connection between the Mater Hospital and the CRC, Chairman, except that many of the employees of the Mater Hospital appear to end up in the CRC. There is a connection there, but it might be purely anecdotal. It includes Mr. Kiely. I believe he was in the Mater at some stage.

**Mr. Paul Kiely:** That is a misnomer. I never worked in the Mater Hospital.
Deputy Shane Ross: I am sorry.

Mr. Barry O’Brien: It would not be unreasonable to suggest that as the CEO of the Mater Hospital was a member of the board of the CRC, there would have been some discussion at the board of the CRC about the matter. That is a fairly obvious question, with respect, Chairman.

Deputy Eoghan Murphy: To clarify, did the witness say that when he raised the issue with the board, he was asked to leave the board?

Mr. Barry O’Brien: I will get an answer as to the arrangement.

Mr. Paul Kiely: I raised the issue years ago.

Deputy Eoghan Murphy: Did Mr. Kiely raise it at the board?

Mr. Paul Kiely: The board would have been aware of the charge the Mater Hospital was imposing.

Deputy Eoghan Murphy: Did Mr. Kiely raise it as a concern as CEO?

Mr. Paul Kiely: I had raised it in direct correspondence with the Mater Hospital to see whether, even if it could not be broken, it could be parked at the level it was at ten years ago and not to have it as an accumulating amount-----

Deputy Shane Ross: Mr. Kiely just should not have paid it. This is amounting to millions. It is €600,000 for one year, so it will run to millions being paid for it doing absolutely nothing. The CRC could have kept that money and spent it on all the things that have been cut-----

Mr. Paul Kiely: Yes.

Deputy Shane Ross: -----for the patients and disabled people. It is absolute madness.

Mr. Paul Kiely: It is money going around the houses, because when the Mater Hospital receives the money it becomes part of its income for the year, so presumably it lessens the amount the HSE must give it. On our side, it increases by the same amount, so the HSE must give us that money to give to the Mater Hospital.

Deputy Shane Ross: It makes life very easy for the Mater Hospital. It gets €600,000 for doing nothing.

Mr. Paul Kiely: Yes, and it increases. At present, it is not increasing because we are not increasing our staff. It probably would be reducing somewhat. However, I tried to stop it at the time that the number of staff was increasing. It was just daft that every employee coming into the clinic was costing me an extra 10% to 12% on top of their salary.

Deputy Shane Ross: I thank Mr. Kiely. Can the HSE tell us how many other crazy arrangements there are like this within the hospital sector? Are there others or is this unique?

Mr. Barry O’Brien: All I can say is that this arrangement has just come to light in the last five minutes.

Deputy Shane Ross: It is in the report.

Chairman: He always leaves questions like that until the last five minutes.
Mr. Barry O’Brien: I will get a report on our role in the management of the VHSS pensions as it relates to CRC and the Mater Hospital for next week. If there is any broader requirement, Chairman, I would appreciate if you would advise me.

Chairman: We agreed to finish at 3 p.m., but Deputy Ross has opened something new.

Deputy Eoghan Murphy: Can I clarify something Mr. Kiely said? Did he say he raised that payment with the board of the CRC?

Mr. Paul Kiely: It would have been brought up at the board, but it is a long time ago.

Deputy Eoghan Murphy: Is it ten years or more?

Mr. Paul Kiely: It could be more than that.

Deputy Eoghan Murphy: It was shot down by the board.

Mr. Paul Kiely: I would say the last correspondence about it would be in the early 2000s, although the Deputy should not hold me to that. I think I tried to break it again-----

Deputy Eoghan Murphy: However, the board decided not to pursue it.

Deputy Shane Ross: That means it has been paying it for ten years without questioning it.

Mr. Paul Kiely: I always questioned it.

Deputy Shane Ross: Mr. Kiely always questioned it, but he always paid it.

Mr. Paul Kiely: I always paid it because-----

Chairman: Are you saying you paid it because it was a legal agreement?

Mr. Paul Kiely: -----it would not administer it and we could not get ourselves registered. I tried to get the clinic registered for VHSS so we would not have to go through the Mater Hospital at all, but it was refused.

Deputy Kieran O’Donnell: Was the CRC dealing with the Mater private or public hospital?

Mr. Paul Kiely: The public hospital. Had the clinic been recognised as an employing agency that had the right to put its employees into the VHSS, there would have been no problem. We would have administered it ourselves with a grade 3 clerk.

Deputy Shane Ross: It is a complete rip-off.

Deputy Eoghan Murphy: We need more time to discuss this, but is now the opportune time to do that?

Chairman: No. In fairness, we have been here since 10 a.m. and we agreed to finish at 3 p.m., and the issue is bigger than a 15 minute conversation. The HSE representatives will appear before the committee next week, and Mr. O’Brien’s homework is getting larger as we continue. However, he might bring some information to the committee about that. If there is a legal agreement, Mr. Kiely, whoever has it might give us sight of it. Who signed it and where is it?
Mr. Paul Kiely: It would be on the files in the CRC that I do not have access to anymore.

Chairman: Will Mr. Nugent check it?

Mr. Jim Nugent: I will.

Chairman: I am sorry to put all this work on you, but it is an issue we will return to next Thursday.

Deputy Simon Harris: Could we have copies of any correspondence from the CRC to the Department of Health about the matter as well?

Chairman: Yes.

Deputy Kieran O’Donnell: Did Mr. Kiely seek legal advice at the time as to the status of the legal agreement? Did the board seek legal advice? A sum of €600,000 per annum was being paid for something that, as he said, a grade 3 clerk could do. How much would a grade 3 clerk be paid?

Mr. Barry O’Brien: Between €27,000 and €33,000.

Mr. Paul Kiely: I honestly cannot remember whether legal advice was sought on it. However, in correspondence with the Mater Hospital, I was told ours was not the only organisation for which it was doing this.

Deputy Shane Ross: Where did it get the figure of 10% to 13% of gross salaries?

Mr. Paul Kiely: I do not know.

Chairman: I wish to advise the HSE that obviously this matter must be dealt with in detail next week. On the issue of other organisations doing the same thing, as Mr. Kiely mentioned, we must find somebody who can tell us about the other organisations. If that means bringing in someone from the section in the hospital or whoever deals with it, then we will have to ask that person to come along next week because I am sure that people watching these proceedings consider this to be an absolute farce. Deputy Ross was correct to raise it in this way.

We are at the end of a long session and I respect the witnesses being here for all this time. Next week, as an opener, we will deal with that issue specifically. We will ask for someone from the Mater Hospital to come before us to assist us with that inquiry. If Mr. O’Brien would forward the information - the correspondence - requested by Deputies Harris and Eoghan Murphy, we can deal with that. Is that okay?

Mr. Barry O’Brien: Yes, Chairman.

Ms Laverne McGuinness: Yes.

Chairman: I thank the witnesses for coming along, particularly Mr. Kiely, as we were not sure whether he was going to be here. It is regrettable that Mr. Conlan took the course of action that he did. We found sufficient information around his employment and circumstances but he showed poor respect for the CRC and the Committee of Public Accounts. It is something that the members will deliberate on at a later date. I thank the witnesses again for coming along. I also thank the witnesses from the HSE and the Department officials for attending.

The committee adjourned at 3.35 p.m. until 10.30 a.m. on Thursday, 12 December 2013.