
AN COISTE UM CHUNTAIS PHOIBLÍ
COMMITTEE OF PUBLIC ACCOUNTS

Déardaoin, 06 Feabhra 2014

Thursday, 06 February 2014

The Committee met at 10 a.m.

MEMBERS PRESENT:

Deputy Áine Collins,	Deputy Simon Harris,
Deputy Paul J. Connaughton,	Deputy Eoghan Murphy,
Deputy John Deasy,	Deputy Gerald Nash,
Deputy Robert Dowds,	Deputy Shane Ross.

DEPUTY KIERAN O'DONNELL IN THE CHAIR.

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

Business of Committee

Vice Chairman: Are the minutes of the meetings of 28 January and 30 January 2014 agreed? Agreed. The minutes of our private meeting on 30 January will be considered at next week's meeting. No. 2 relates to matters arising from minutes. I am advised that late yesterday evening, the committee received a submission from SOLAS on funding allocated to Rehab, and we are now in a position to undertake an analysis of the information received. This will be discussed at next week's meeting, when a decision can be made on taking evidence from Rehab. Is that okay? Agreed.

No. 3 is correspondence received since the meeting of Thursday, 30 January 2014. No. 3A is correspondence from Accounting Officers and Ministers. Nos. 3A.1 to 3A.3 relate to correspondence requested by the committee from the Dublin Docklands Development Authority, DDDA, on credit card payments and foreign travel. These are to be noted and published.

Deputy Eoghan Murphy: There are a couple of points in this regard which relate to the investigation into the Irish Glass Bottle site. No. 3A.1 is information which came in relating to the shareholders' agreement, and members will recall from previous meetings that there was a disagreement on the interpretation of what the authority believed it was entering into and what it entered into. We have information from the authority's financial adviser but has the Comptroller and Auditor General an opinion? There was a disagreement between me and Mr. Paul Maloney at the previous meeting about the issue and perhaps we need to investigate it later this morning.

Mr. Seamus McCarthy: I was going to refer to that in the opening statement for the meeting if the Deputy wants to leave it until then.

Vice Chairman: Was there something else to which the Deputy wanted to draw attention?

Deputy Eoghan Murphy: There is the matter of the credit card expenses. The Chairman, Deputy McGuinness, raised the matter at the last meeting before Christmas, and the witness indicated he did not recall having a credit card. It had been a long meeting but he subsequently wrote to us and stated that he had a credit card but had forgotten about it at the meeting. He indicated that he was happy to write to us with regard to the content of the statements. We received a number of statements and the witness had a card which he signed off every month. The notes are kept in quite some detail. Could we write to him to request information about certain issues? Going through the detail of the credit card statements, there are a lot of travel and hotel expenses, although there are also food expenses as well as entertainment. Significant amounts are spent in places like Lillie's Bordello and Town Bar & Grill for Christmas parties. There is approximately €3,600 in total in 2005. In fairness, in September 2008 there is only €331 spent. There is also a record of a second credit card from Mr. David Higgins which also has entertainment in it. For example, drinks were purchased in Ely in 2007 amounting to €1,400, and something for staff only in Ely again amounting to €2,500 in October 2006. A staff dinner in Odessa amounts either to €370 or €3,700 - I cannot tell which - and this is one of many expenses. I was surprised by that because Mr. Maloney was so adamant that he could not remember having a credit card. Clearly there have been a few held within the authority. Could we afford him the opportunity to write to us about that?

Vice Chairman: We will ask the clerk to write to him.

No. 3A.4 is correspondence, dated 29 January 2014, from the Secretary General of the Department of Agriculture, Food and the Marine regarding an extension of contract for the CEO of Bord na gCon. This is to be noted and published and a copy forwarded to Mr. Dillon who raised concerns about this issue.

No. 3A.5 is correspondence, dated 31 January 2014, from Mr. John Moran, Secretary General, Department of Finance, regarding an update on missing documentation requested at the meeting of 16 January 2014. This is to be noted and published.

No. 3A.6 is correspondence, dated 31 January 2014, from Seán Costello & Co. solicitors regarding their client Sergeant Maurice McCabe. I will ask the clerk to update us on this matter.

Clerk to the Committee: My advice is that the publication of the transcript of a meeting is a procedural rather than a legal matter. The appropriate rules which apply, therefore, are the Standing Orders of the Dáil. I have consulted senior colleagues within the office who have informed me that publishing the proceedings of a private meeting would constitute a fundamental change in procedure for Oireachtas committees and that this could have implications for the future not just of the PAC, but also for other committees to which evidence might be given in private session. The advice I received is that in accordance with Standing Order 99, the matter should be reserved to CPP if the PAC decides that it wants to accede to the request of Sergeant McCabe.

Vice Chairman: I would like to hear members views on this matter. When issues of this nature arose in the past, we always took advice from Ms Mellissa English, the parliamentary legal adviser. Perhaps we might request that she come before us early next week to outline her views on this matter.

Deputy Shane Ross: I do not agree with the course of action outlined. Sergeant McCabe has made a reasonable request and surely he is entitled to a copy of the transcript. We do not need to procure copious amounts of advice in respect of an issue of this nature. We would not be releasing the transcript to the public, we were requested to release it to Sergeant McCabe. He can then do what he likes with it. I really do not understand why there should be any delay and I am of the view that the transcript should be released to him. Sergeant McCabe made a reasonable request for the transcript of the meeting at which he was the chief witness to be supplied to him. I thought we agreed last week that we would give it to him. However, I do not know what the minutes have to say in that regard. I was of the view that we agreed that if he requested the transcript, we would supply it.

Vice Chairman: What was agreed at last week's meeting was that if the witness wished to seek the transcript he would write to the committee and that the committee would consider his request. The initial feedback we have received is that any such request must be referred to the CPP and that the Editor of Debates will not provide a transcript without a direction from the latter.

Deputy John Deasy: We should make a decision on the matter rather than referring it to the CPP. It was a private meeting and the committee agreed that it would be private. The clerk referred to legal advice received, which stated that publication of the transcript would constitute a fundamental change in the way the Oireachtas and its committees do their business. The reality is that there was not a great deal of substance to what was said at that meeting. In the past five minutes, the Comptroller and Auditor General, Mr. McCarthy, debunked quite an amount of what was said in the context of the number of penalty points that were written off. The theory posited by Sergeant McCabe was that tens of thousands of penalty points were written off. The Comptroller and Auditor General made a definitive case to the effect that only hundreds of penalty points were written off.

Outside of that, the committee did not learn a great deal as a result of what was said at the meeting in question. It might be stated that the latter is a good reason to allow publication but I do not believe that to be the case. I return to the fact that publishing the transcript would give rise to a fundamental change in the way Oireachtas committees operate. If someone were to appear before one of the committees in the future to discuss security or privacy issues, there could be a danger that a transcript of the proceedings could be made public in certain circumstances. That is a step too far for the Oireachtas and its committees. I stated at last week's meeting that the committee had, to an extent, entered the twilight zone. We have crossed over into the realm of the politically paranormal where a private meeting becomes a public meeting. Perhaps we should hold a public meeting and ensure that everyone swears on the Bible that he or she will not repeat what was said. It is just absurd. We must be clear and definitive with regard to how we treat private meetings. We must clarify the position completely. Beyond that, we are entering the arena of the nonsensical.

Deputy Eoghan Murphy: I agree with what Deputy Deasy said. My recollection is that at last week's

meeting we agreed that if Sergeant McCabe - for legal reasons - sought a redacted transcript of the proceedings, we would consider his request and make a decision. The first thing to say is that he does not appear to be requesting the transcript for legal reasons.

Vice Chairman: I understand from the clerk that it is not possible to produce redacted transcripts.

Deputy Eoghan Murphy: Then we cannot publish a transcript at all, particularly in view of what transpired at that meeting. The letter received from Sergeant McCabe's lawyers is clearly not a request because the phrase "He has asked that we would write to you" is used. I agree with Deputy Deasy to the effect that we can settle this matter now, we do not need to refer it to CPP and we do not need to publish a transcript.

Deputy Paul J. Connaughton: It cannot be redacted. Is that the case?

Clerk to the Committee: That is correct.

Vice Chairman: Then we cannot release it because there were times during that meeting when both members and Sergeant McCabe were pulled up in respect of what was being said. We cannot go down that road and the transcript simply cannot be released.

Deputy Simon Harris: I largely agree with the point made by Deputy Deasy. We were given very clear legal advice at that private meeting to the effect that if a transcript were to be released under any circumstances, elements of it would be required to be redacted as a result of comments that were made by both the witness and members. It would be absurd to release the transcript without at the very least seeking further legal advice. I agree that if we start publishing transcripts of private meetings, questions will arise as to why those meetings were not held in public.

Deputy Robert Dowds: I am pretty much in agreement with the previous two or three speakers. If I recall correctly, however, Ms English stated that if the transcript were to be published, it would have to be tidied up to some degree. I would be interested in discovering what is the legal position in that regard. If the CPP is the correct body from which to seek advice, then we should refer the matter to it.

Vice Chairman: The initial advice we received came from the Editor of Debates, who is in charge of the section within the office which publishes transcripts of proceedings and who indicated that they cannot be redacted. Any request for a transcript must be referred to the CPP. Clearly, therefore, an issue arises in the context of legalities. In order that it might proceed with the work it is due to carry out today, perhaps the committee might agree to request that Ms Mellissa English provide legal advice on the matter next week.

Deputy Gerald Nash: We must proceed with caution. There are potential implications in the context of how this and other committees might operate in the future. With respect, this issue is much larger than Sergeant McCabe. I expressed some concerns in respect of the unintended consequences to which remarks made at last week's meeting could potentially give rise. We will no longer have control over the transcript - I do not mean that we should seek such control - if it is released. We must be extremely careful and prudent in the context of how we proceed. We would be remiss, in terms of our responsibility to the House and the citizenry, if we did not seek legal advice in the first instance. When such advice is received, we can then make a decision one way or the other.

Vice Chairman: New whistleblower legislation is before the Houses, so it is obvious that there are wider implications as to how this committee and others will function in the future. There are obviously wider legal implications for how this committee and other committees will function in future. I propose that we ask the clerk to the committee to invite Ms Mellissa English, the legal adviser to the committee, to come before us early next week to give legal advice on how we should deal with this matter. Is that agreed?

Deputy Paul J. Connaughton: Do we not know where we stand on this issue? I do not know what Ms English will tell us next week that would change the position.

Deputy Eoghan Murphy: I would be interested to hear what Ms English has to say in the context of whistleblower legislation and how it might change the role of committees in future. As matters stand, how-

ever, we will not produce the transcript. We do not need to drag this matter out week after week. We can make a decision now.

Vice Chairman: As of now, the committee will not produce a transcript because we cannot do so under the rules of the House.

Deputy John Deasy: I agree with Deputy Connaughton. Enough is enough; the committee must make a decision.

Vice Chairman: Is it the general view of members that we should make a decision today?

Deputy Shane Ross: I agree with other Deputies that there is no reason to refer the matter to the Committee on Procedure and Privileges.

Vice Chairman: One of the rules of the House is that if the committee is minded to publish the transcript, the matter must be referred to the Committee on Procedure and Privileges. Those are the Standing Orders.

Deputy Shane Ross: By giving the transcript to Sergeant McCabe, the committee would not be releasing it publicly. Whether Sergeant McCabe releases it is-----

Deputy Robert Dowds: We do not know that.

Deputy Shane Ross: May I continue without interruption, please? It would be absurd if the committee were to refuse to provide Sergeant McCabe with a transcript. I am happy to have Ms Mellissa English come before us next week to give the committee advice. However, the idea that we could bury this by refusing to release the transcript is unthinkable. There is great interest in what is in the transcript. The reason we held the meeting in private was in case something irresponsible was said or allegations were made against individuals. No such allegations were made and once that reason has been dispensed with, there is no reason not to make and release a transcript.

Vice Chairman: I ask the clerk to the committee to go back over the procedure for releasing transcripts.

Clerk to the Committee: The official debate of the Oireachtas is undertaken by the Editor of Debate's office under the responsibility of the Ceann Comhairle. It is a matter for the Ceann Comhairle, ultimately, to direct the Editor of Debate's office. Given that what we are doing now is a change in procedure, under Standing Order 99(1)(b), the Committee on Procedure and Privileges has oversight in respect of all the procedures that are adopted by all committees, whether it is requested or not. That is why there is a safeguard in Standing Orders which provides that if a committee was minded to publish a report, the matter would have to go before the Committee on Procedure and Privileges. It is in Standing Orders.

Deputy John Deasy: We have not made any decision to change procedure. Let us be clear in this regard, the committee has not made a decision on publishing the transcript. As such, there has not been any change to procedure and from what I have heard, such a change will not be entertained.

Vice Chairman: If we consider publishing the transcript, the matter must, under the rules of the House, be referred to the Committee on Procedure and Privileges. The decision we must take is whether the matter should be referred to the Committee on Procedure and Privileges.

Deputy Simon Harris: The meeting was held in private at the request of the whistleblower. Sergeant McCabe asked to meet us in a private forum. If, as Deputy Murphy stated, he and his legal team wish to check aspects of the transcript, that would be a different matter and I would be interested in finding out if there is a facility for his legal team to listen to what was said. That is not exactly what we are being asked, however. We met Sergeant McCabe in private at his request.

Vice Chairman: We must also decide whether we are referring to the Committee on Procedure and Privileges the question of whether the transcript could be published or if we will seek further legal advice. That is a decision for the committee.

Deputy Eoghan Murphy: We should be careful about the terms we used in this discussion. Words such as “bury” are value-laden and imply that we are trying to cover up something. That is not the case. In my opinion and on proper recollection of the private meeting we had, we are protecting Sergeant McCabe’s interests by not producing the transcript. If people have a full recollection of the meeting, they will know exactly what I mean.

On the two questions raised by the Vice Chairman, we are not referring anything to the Committee on Procedure and Privileges because we do not need to do so. We do not need to obtain legal advice on the matter either, although I would be interested in hearing a legal interpretation once the Bill before the Houses has been enacted. The issue has been resolved.

Vice Chairman: Do other members have any further comments to make?

Deputy Shane Ross: I propose that we release the transcript to Sergeant Maurice McCabe.

Deputy Simon Harris: The Deputy cannot make that proposal.

Deputy Shane Ross: I can make that proposal.

Deputy Simon Harris: With respect, it is not a valid proposal because the committee does not have the power, under the rules of the House, to produce the transcript.

Vice Chairman: Under the rules of the House, the committee cannot make that proposal because procedurally the Editor of Debates, who is responsible for the transcripts of debate in the House, will not release any transcript without a request from the Committee on Procedure and Privileges. Furthermore, any transcripts that are released will not be redacted. This issue has many legal and other implications.

Deputy Robert Dowds: I would be interested in hearing Ms English’s legal opinion, although I would also be happy if we were to decide not to do anything.

Deputy Gerald Nash: We are re-entering the twilight zone, stepping in and stepping out again as time passes. I resent the claim that the committee is attempting to bury something. That is an objectionable slur on members which should be withdrawn. I am concerned that someone who purports to be interested in protecting whistleblowers would decide to promote this type of agenda by handing over the transcript to the point where nobody, with all due respect to Sergeant McCabe and his team, knows where it will land. That is a questionable position which I will not support. I am also concerned about the view of any such action that other whistleblowers or potential whistleblowers could take in terms of future interaction with the committee. We should proceed with caution. I have made my position clear.

Deputy John Deasy: Deputy Harris made the key point and one worth repeating, namely, that Sergeant McCabe requested a private meeting. There is a little game being played here and we are in danger of taking Deputy Ross too seriously. This is less about transparency and the fullness of truth and more about getting on the six o’clock news. Every journalist in this city knows the content of the meeting that took place last week. If anything earth-shattering had been said at that meeting, it would have been reported already. This is not about the content of the meeting but about political individuals and their insatiable thirst for publicity.

Vice Chairman: This committee operates on the basis of consensus. We have always operated in a non-partisan manner and members have always dealt with issues in the public interest. I ask Deputy Ross to respond to the observations and comments made by his colleagues.

In the interests of consensus, may we assume that it is the committee’s view that the matter should not be referred to the Committee on Procedure and Privileges? Is that correct? Correct. Are members minded to invite Ms Mellissa English before us to discuss the general issue of whistleblowers? That is a decision for the committee.

Deputy John Deasy: Yes.

Vice Chairman: Are members minded to invite Ms Mellissa English to attend before us next week to

discuss the general issue of whistleblowers? That is a decision for the committee. Perhaps Deputy Ross's objections to the matter could be noted in the minutes of the committee, on this particular issue.

Deputy Shane Ross: I thank the Vice Chairman for that. No, I think that if the advice that we are getting is correct, that it has to go to CPP first, then we should ask CPP for permission to release the transcript to Maurice McCabe.

Vice Chairman: Deputy Ross is aware that the legal advice we got is that, in terms of any transcript, one would expect that there would probably be redactions needed, and we are being told by the Editor of Debates of the Houses of the Oireachtas that no transcript can be redacted in any way. If the Deputy is taking into account the best interests of all concerned - and I want to move onto the main body of the work today - we need to make the decision as a committee. I ask the Deputy, in the interest of the workings of the committee, that he takes the bona fides of everyone that works on the committee - which is very important in terms of it being very much in the public interest - and that he would take it that we could move on from the issue and that his objections on this matter would be noted in the minutes. Then we could move onto the main body of work.

Deputy Shane Ross: I do not accept that. Of course I accept everybody's bona fides. There is no doubt about that. The reason they say these things are obviously genuine and they obviously do not have any wish to be on the 6 o'clock news. That is fair enough.

Vice Chairman: I thought that the workings of this committee, Deputy Ross-----

Deputy Shane Ross: I think it is-----

Vice Chairman: -----were about dealing with the public interest.

Deputy Shane Ross: Yes, this is in the interests of the public and it is very, very important. I am not suggesting that this is released to the public immediately. I am saying that the idea that we could refuse - which is what we are doing - Sergeant McCabe permission to look at his own transcript, of his own evidence, is absurd. If it has to go to the CPP - which I was not aware of so this is a new development - so be it. Let us ask the CPP for permission to do that, certainly.

Deputy Paul J. Connaughton: We have discussed the matter *ad nauseum*. The Vice Chairman is not going to get consensus on the matter now. Let us do what we have to do to make a decision and move on.

Deputy Áine Collins: Yes, I confirm that.

Deputy Eoghan Murphy: The view of the committee is clear - we are not referring it to the CPP. If someone wants to push the committee to a vote I can propose one and if they have a seconder then we will vote.

Deputy Shane Ross: What is the proposal at the moment?

Deputy Eoghan Murphy: There is no proposal.

Deputy Shane Ross: What are we doing about it?

Deputy Eoghan Murphy: If the Deputy wants to make a proposal, and he has a seconder, then we will move to a vote.

Deputy Shane Ross: The Deputy is not the Chairman.

Deputy Eoghan Murphy: Come on.

Vice Chairman: Can I take it, Deputy Ross,-----

Deputy Shane Ross: Yes.

Vice Chairman: -----that the issue here is as follows. The Committee of Public Accounts, as a committee, has always operated on a consensus. I believe members are making this point in the best interests of all

concerned, and there are issues of concern. Anything that is referred to the CPP will involve a transcript that is unredacted. It was a private meeting. Can we take it, at this moment in time, that the committee is of the view here today that the issue would not be referred to the CPP, the Deputy can note his own concerns on the issue and that we would move on from that point?

Deputy Shane Ross: No. It is not a matter of noting it. I vehemently oppose it.

Vice Chairman: We can note it in the minutes that the Deputy opposes it and then we can move on from this point.

Deputy Shane Ross: You do not want to vote. Is that what the Vice Chairman is saying?

Vice Chairman: I believe, in the interests of the committee-----

Deputy Shane Ross: What is the decision then? What is the decision of the committee?

Vice Chairman: The decision of the committee at this time from the deliberations of the members here today is that, taking all factors into account - the fact that it was a private a meeting, the fact that it would involve an unredacted transcript being provided - the view of the committee is that it would not, at this time, be referred to the CPP for decision.

Deputy Shane Ross: For the reasons that I have already given, I totally dissent from that decision.

Vice Chairman: We note the Deputy's dissension.

Deputy Shane Ross: Okay.

(Interruptions)

Vice Chairman: We note the Deputy's dissension.

Deputy Shane Ross: That is fine.

Vice Chairman: Item 3B.1 is correspondence dated 4 January received from an anonymous source re mismanagement at St. Vincent's Healthcare Group. It is to be noted and a copy forwarded to St. Vincent's Healthcare Group for a note on the issues raised.

Deputy Simon Harris: I wish to comment, without referring to the specifics of the letter, considering it is an issue about St. Vincent's Healthcare Group. I am sure that many members are continuing to receive - as I am - anonymous letters relating to the St. Vincent's Healthcare Group. I would ask that it not just be referred to the St. Vincent's Healthcare Group but also referred to the HSE.

St. Vincent's Healthcare Group was possibly lucky - for want of a better term - in the sense that a delegation came here on the same day as the CRC. As a result, after a lengthy, explosive, shocking and upsetting meeting with the CRC, St. Vincent's attended here in the afternoon when, I suppose, members and possibly the public were jaded from revelations. There were very serious issues raised about St. Vincent's at that meeting and in the aftermath of that meeting. The one that most particularly sticks in my mind is the issue of the consultants' contract and the potential loss of income to the public hospital as a result. I do not feel that the matter has been satisfactorily addressed.

I shall make the broader point now, the one that I had asked permission from the Vice Chairman to make later. The HSE told us very clearly that the deadline for the 44 section 38 bodies - of which St. Vincent's is one - to sign up to be compliant with public sector pay policy was Friday, 31 January. There was an internal audit, based on which we were working, published on 15 March last year and sent to this committee on 14 November. This committee has done some very valuable work regarding some of those 44 organisations. Possibly as a result of the CRC situation becoming so dominant, many of the 44 section 38 bodies were not in compliance and serious issues were raised. We received an update from the HSE on 6 November which said that at least 27 of the organisation either were not compliant, had only issued a holding letter or had indicated

that they were seeking legal advice. There has been a dearth of information from the HSE in the time that has passed. I have serious concerns about a number - we did not even reach the issues in the National Maternity Hospital - and want to know whether they are going to be resolved.

Vice Chairman: I want a question, Deputy.

Deputy Simon Harris: My proposal is that the HSE provides us with a very urgent update on each of the 44 section 38 bodies, as it has previously done in November. I want to know if they are compliant and if they are not compliant then what is happening. I presume that the HSE will be back in with us soon.

Vice Chairman: I suggest that the clerk to the committee writes to the HSE requesting the information to be provided before next Thursday's meeting. Is that acceptable to the Deputy?

Deputy Simon Harris: Yes.

Deputy John Deasy: Notwithstanding everything that Deputy Harris has said, I wish to raise an issue regarding this entire area and one which is slightly overdue. We need to exercise some caution as to how we do our business when it comes to these charitable organisations or organisations that are in the charities sector. I have been contacted, over the past couple of weeks, by a number of CEOs as well as by people who work at a senior level in umbrella organisations for charities in this country. To say that donations and fund-raising efforts - an issue that the Vice Chairman has raised again and again - has diminished is putting it lightly. They are under severe pressure and have seen huge reductions in their fund-raising efforts. As we do our business on the committee - and there are legitimate questions for some of these organisations that have been raised by individuals on the committee - we need to strike a balance. We need to understand the effect that our deliberations have on the charities sector in Ireland, which has been very damaging and considerable. I am not surmising that but have got that information from people who are at the coalface of charities here. Whether we like it or not, people are watching us and are horrified by some of the revelations that have come from the committee. At the same time we need to be conscious of the effect it is having. As we look at Rehab and these other organisations, we need to be more aware of that. I am referring here to the huge amounts of money being lost to the sector through donations compared with what they were taking in hitherto.

Vice Chairman: I agree with the Deputy. That is why it is imperative that the issue is dealt with as quickly as possible and also that the message goes out that the great majority of organisations in the area do outstanding work. The Deputy's points have been duly noted, well made and stated at the appropriate time.

Item 3B.2 is correspondence dated 24 January 2014, from Mr. Michael Wall, sector organiser, SIPTU, regarding public private partnerships in the Irish Water service. It is to be noted that the use of PPPs is a matter considered by this committee in the context of value for money. I propose that we seek a note from the Department of the Environment, Community and Local Government and from the Department of Public Expenditure and Reform on the issue raised. It is a matter we can deal with when both Departments are before the committee in the months ahead. The clerk to the committee will follow up on the matter.

Item 3B.3 is correspondence dated 27 January 2014, from Mr. Patrick Condon, regarding the transfer of Waterford's HSE south cataract waiting lists to private hospitals. It is to be noted and a copy will be forwarded to the HSE for a note on the matter raised. Mr. Condon is raising a value for money issue and it may be that the Comptroller and Auditor General will examine this in the context of his audit of the 2013 accounts of the HSE. The Comptroller and Auditor General will note that point.

Mr. Seamus McCarthy: Absolutely.

Vice Chairman: Item 3B.4 is correspondence dated 23 January 2014, from Mr. Alan O'Reilly, regarding mobile phone interference at PAC meetings. It is to be noted. This is typical of the complaints we are now receiving and I will be drawing attention to it again when we deal with the DDDA. The secretariat has received a large amount of correspondence on the matter. In the interests of publicity and public interest for the committee, given that we live in that world in terms of the media, we want to speak and we also want to ensure we are heard. Telephones should be on airplane mode at all times. Item 3B.5 is correspondence dated 29 January 2014, from Mr. William Treacy, regarding an appearance before the committee. This is to be noted.

Documents relating to today's committee meeting include 3C.1, correspondence dated 31 January 2014 from Mr. John Crawley of the DDDA, regarding a briefing paper for matters to be considered at the meeting of 6 February 2014. This is to be noted and published. Item 3C.2 is correspondence dated 16 January 2014 from Professor Niamh Brennan, former chairman of the DDDA, regarding issues raised at meeting of the Committee of Public Accounts of 12 December 2013. This is to be noted and published. We will come back to this next week when we have taken the evidence today.

Deputy Eoghan Murphy: From Professor Brennan's correspondence, it seems that she will not be available until September.

Vice Chairman: August.

Deputy Eoghan Murphy: She will be back at her desk in late August. It would be very disappointing if our investigation into the DDDA had to go on until the end of the year.

Vice Chairman: Can I make a suggestion? The clerk to the committee will write to Professor Brennan to say that, in view of trying to bring a conclusion to the issue, she might examine her diary to see if she is available at an earlier date.

Deputy Eoghan Murphy: Can we also make the point that it is no longer the view of the committee that she will be the last person to attend? From previous meetings, we know that people may want to respond. Has Mr. Moylan been invited to appear before the committee? He was the person who drafted the first report. Some members were critical. Perhaps we can speak about the witness list.

The second point concerns what Professor Brennan says in a letter referring to the Comptroller and Auditor General special report about how the committee had not looked at the North Quay Investments Limited, NQIL, and Mountbrook issue. I am not sure the committee intends to do so in so far as the special report is concerned. In our meetings to date, we have not looked at it in detail.

Vice Chairman: Did the Comptroller and Auditor General consider the issue raised in his special report?

Mr. Seamus McCarthy: A chapter deals with planning matters and the NQIL project and the court case the DDDA lost was a significant contributor to its ultimate financial position. The DDDA undertook a process of changing its planning process because there were issues. It is significant and as far as I recall the committee has not focused on the issues that arise from it.

Vice Chairman: Perhaps Deputy Murphy can pursue this with the clerk in terms of bringing Mr. Moylan before the committee. We will ask Professor Brennan to come in earlier and the matter can be looked at in that context. Perhaps Deputy Murphy can raise it today.

Deputy Eoghan Murphy: It is something to be cognisant of because, to date, we have only been looking at the Irish Glass Bottle site. We must be clear on the focus of the report the committee will issue.

Vice Chairman: What is Deputy Murphy's request?

Deputy Eoghan Murphy: We need to decide if we will look into this chapter of the special report of the Comptroller and Auditor General. If so, there are people we need to talk to again. Unfortunately, that will delay our final report.

Deputy Gerald Nash: Excuse me for jumping ahead but, in anticipation of what the Comptroller and Auditor General may say in his opening remarks, there is a clear issue in respect of the decision taken in two weeks to increase the financial exposure of the organisation in terms of the joint venture from €9 million to over €61 million. It may be intimated that members of the board who were *in situ* at that time may assist us in our examination of the issue. I support what Deputy Murphy says. We should have a discussion about the remaining individuals we need to talk to in the interest of completeness.

Mr. Seamus McCarthy: The NQIL case was heard before the High Court and a determination on the events that led up to that particular planning permission and its unfolding at a later stage. Matters have been

ventilated in the High Court.

Vice Chairman: When did it come to a conclusion in the High Court?

Mr. Seamus McCarthy: October 2008. The report draws attention to the fact that there was a court case and it was lost by the DDDA. The court case explains why it was lost. The focus of the chapter was on what the DDDA did subsequently to mend the defects in its systems. We need to be careful about going back into issues and actions of individuals that have already been dealt with by the court.

Vice Chairman: Will Deputy Murphy pursue it with the clerk?

Deputy Eoghan Murphy: We can clarify it now. The Comptroller and Auditor General is referring exactly to what I want to focus on. Reading the chapter of the special report dealing with the North Quay Investments Limited site, it is very different to the Irish Glass Bottle site. We had to do investigative work to find out how things unfolded. If we do not have to look into the chapter of the special report and if we are focusing on the Irish Glass Bottle site, Professor Brennan needs to be told that. From her correspondence, she is waiting for us to investigate that chapter as well. If we are not going to do that, there is no need to wait.

Vice Chairman: We will converse on that point with the clerk to the committee.

Item 3C.3 is correspondence dated 5 February 2014, from Eileen Quinlivan of the DDDA. It is her opening statement and is to be noted and published. Item 4 is the reports, statements and accounts received since the meeting of 30 January. The accounts are to be noted.

Item 5 is the work programme and it is now on the screen. Do members have comments? No. Is there any other business? No.

Can we agree the agenda for Thursday, 13 February 2014? Agreed. We will deal with the 2012 annual report of the Comptroller and Auditor General, Chapter 2, Government debt, Chapter 28, accounts of the National Treasury Management Agency, Chapter 29, clinical indemnity scheme, the annual report of the National Pensions Reserve Fund and its accounts for 2012.

We will now call the witnesses into the room.

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

Dublin Docklands Development Authority

Annual Report and Financial Statements 2012

Ms Eileen Quinlivan (*Acting Chief Executive Officer, Dublin Docklands Development Authority*) called and examined.

Vice Chairman: I welcome the witnesses. We will now move on to item No.7, the Dublin Docklands Development Authority annual accounts for 2012. Before we begin, I remind members and witnesses to turn off their mobile phones because interference from them affects the transmission of the meeting. We have received complaints from the public in this regard and the constant interference is sending out a negative image of our proceedings.

I advise the witnesses that they are protected by absolute privilege in respect of the evidence they are to give to the committee. However, if they are directed by the committee to cease giving evidence on a particular matter but continue to do so, they are entitled thereafter only to 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 are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise nor make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable. Members are reminded of the provision within Standing Order 163 that the committee shall 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 Ms Eileen Quinlivan, acting CEO of the Dublin Docklands Development Authority, and Mr. John Crawley, financial advisor. I also welcome Mr. Paul Dunne, principal officer, Department of the Environment, Community and Local Government. I will now ask the Comptroller and Auditor General to make his opening statement.

Mr. Seamus McCarthy: I thank the Chairman. As the committee is aware, the Dublin Docklands Development Authority was established in 1997 to secure the physical, social and economic regeneration of the docklands area on a sustainable basis. It is a non-commercial State body with a commercial mandate and has operated generally without Exchequer funding. In May 2012 the Government announced its decision to dissolve the authority and transfer its planning and development functions to Dublin City Council. The actual dissolution date has not yet been determined. In the meantime, the authority has a transition business plan in place to resolve the liabilities of the authority through the liquidation of assets, including the transfer of the relevant infrastructure, and to deal with any remaining litigation.

The authority's gross surplus for 2012 was €2.3 million as compared with €7.6 million in 2011. After taking account of operating and other expenses and impairment costs charged in the year, the authority reported an operating deficit of €5.5 million. In addition, the 2012 financial statements recognise an exceptional gain of €8.4 million as a result of a commitment given in July 2013 by the Department of Public Expenditure and Reform that it will assume the authority's future pension liabilities on dissolution. At the end of 2012, the authority had net assets of just over €5 million. It held investment properties valued at €23 million and had creditors that were owed €24 million. A significant proportion of the liabilities was made up of a bank loan and amounts due to other State agencies in respect of levies collected on their behalf. The authority recognised that its capacity to meet its liabilities depended on its ability to liquidate its property assets and to collect its debts. I understand that the authority disposed of significant amounts of property during 2013 and in the early part of this year and the authority has provided the committee with an update in that regard.

I would like to take this opportunity to comment on a matter raised by Mr. Paul Maloney when he appeared before the committee in connection with the Irish Glass Bottle site acquisition and in subsequent correspondence. This concerns the executive board's decisions about the authority's financial exposure to the Becbay joint venture. My understanding is that Mr. Maloney takes the view that the executive board was fully aware at the meeting of 2 November 2006 that it was agreeing to a financial exposure for the authority in excess of €61 million, comprising a guarantee to Anglo Irish Bank of €26 million, 26% of the interest that would accrue on Becbay's loans for two years and up to €35 million in other shareholder funding.

As explained in Mr. Crawley's note to the committee of 21 January 2014, these are the terms given effect in the shareholders agreement signed on 9 November 2006. We estimated that the authority's exposure increased to around €82 million by the end of 2010. Further liabilities had accrued by the time the authority concluded its agreement with NAMA in July 2011. The point raised by Mr. Maloney relates to the executive board's decisions about the financial commitment, as documented in the board minutes and papers.

I have reviewed those records again and note a number of key points, which follow. The board minutes of Friday, 20 October 2006 record, at paragraph 7, that the authority's equity contribution to the joint venture would be €9 million, to be provided from existing resources. The board also noted that the remainder of the required funding would be raised through bank borrowing, secured solely on the Irish Glass Bottle site. The board minutes of Tuesday, 24 October 2006 state that the director of finance outlined to the board that the maximum liability to which the authority would be exposed if the proposed site acquisition agreement went ahead was €36 million, comprising shareholders loans and equity amounting to approximately €29 million and an additional €7 million in recourse finance which would have to be available to the joint venture company. It was on this basis that the decision to commit to the bid for the site was made.

The board minutes of Thursday, 2 November 2006 deal with a number of issues that had arisen in the course of progressing the agreement terms with the joint venture partners and the joint venture funders. The minutes include references to guarantees to be provided by the authority in relation to Becbay's proposed borrowing, subject to upper limits being set in relation to the potential liability arising from the guarantee. A related board paper refers to the proposed guarantee provisions increasing the liability of the authority. Estimates of the additional exposure related to the guarantee are not given but a limit of €35 million is mentioned.

The draft heads of the shareholders agreement presented to the board on the same day state that all the costs incurred or losses in the joint venture shall be shared *pro rata* between the shareholders, provided always that the total recourse to the Dublin Docklands Development Authority under any loans to the joint venture company, guarantees or in any account whatsoever in respect of the acquisition of the Glass Bottle site or otherwise "shall not in aggregate exceed €35 million".

In my view, taking account of Mr. Maloney's evidence, the records kept by the authority in relation to the executive board's decisions on this matter are ambiguous at best. Evidence from members of the board may ultimately be required to clarify the matter. In effect, Mr. Maloney's evidence appears to be that the executive board decided in less than two weeks to increase the authority's financial exposure to the joint venture from €9 million to over €61 million. In my view, decisions of that nature should be very clearly stated in the relevant records. The justification for the increases in financial exposure and the implications for the expected returns from the investment should also be clearly recorded.

Vice Chairman: I thank Mr. McCarthy. Have we permission to publish his opening statement?

Mr. Seamus McCarthy: Yes.

Vice Chairman: I now invite Ms Quinlivan to make her opening statement.

Ms Eileen Quinlivan: I thank the Chairman and the committee for inviting us to this meeting. My name is Eileen Quinlivan and I am the acting CEO of the Dublin Docklands Development Authority. I am joined today by my colleague, Mr. John Crawley, the authority's financial advisor. We are here today to discuss the 2012 annual report and financial statements and to bring the committee up to date on developments in the authority since the Comptroller and Auditor General issued his special report No. 77 on the authority.

Last week we submitted a briefing document to the committee which we will be referring to this morning. On 31 May 2012 the Minister for the Environment, Community and Local Government announced the Government's intention to dissolve the authority. A new council and executive board were appointed to the authority in June 2012 to oversee the transition. The Minister envisaged that the authority would remain in place for a transitional period during which it is required to wind up existing operations, prepare the transition to new arrangements and make recommendations to him on appropriate structures for the future. These structures should ensure the docklands brand and international marketability as an attractive and prime location for investment and high-value development is maintained and enhanced, an appropriate fast-track planning regime remains in place, the local community and the business sector continue to be involved in the regeneration project and job creation is facilitated. In addition, the board has also considered and made recommendations to the Government on how best to achieve the Minister's key objectives for the future regeneration of the docklands in a way that the board considers will build on the positive elements of the authority's legacy in terms of social, physical and economic regeneration. A series of key objectives and associated risks were identified to implement the Government decision, as reported on in the 2012 annual financial statements.

In July 2013, the Cabinet approved Dublin City Council as the successor to the authority and instructed the Department of the Environment, Community and Local Government to put the final transition arrangements, including enabling legislation, in place. A dedicated unit within the city council is being established to carry forward the docklands regeneration project upon the coming into effect of the strategic development zone planning scheme and the dissolution of the authority. The city council is providing services to the authority to resource day-to-day operational activities. The transition of responsibilities to the city council has commenced through this process. The key wind-up issues being addressed by the authority include: the completion of the remaining asset sales and the discharge the authority's remaining liabilities; the management and resolution,

where possible, of all litigation against the authority; the implementation of the transition of the authority's functions, obligations and responsibilities to transfer infrastructure to Dublin City Council; and the transfer and disposal of any authority interests in joint ventures and subsidiaries. This work will be substantially completed in the first half of 2014 with residual issues being transferred to appropriate State bodies.

The transition objectives set by the board of the authority fall broadly into three categories. The first objective - the stabilisation of the authority - is substantially complete. Key deliverables in this regard include the repayment in full of the authority's bank borrowings, which at their highest rose to €35 million; the successful conclusion in the authority's favour of the high-profile €100 million claim by Bernard McNamara and Donatex against the authority; and the resolution of €20 million in other claims against the authority without any cost. In one case, the authority received a €500,000 benefit. The authority continues to dispose of its investment assets at good market prices in the current environment in order to settle its remaining liabilities. The remaining litigation continues to be managed out.

The second objective relates to planning for the future. Two new structures have been designed and are in the process of being implemented. An strategic development zone planning scheme has been prepared by the city council for the area covered by the authority's North Lotts and Grand Canal Dock planning schemes. This is currently on appeal to An Bord Pleanála. The authority has also recommended to the Department of the Environment, Community and Local Government that a docklands forum be established to ensure the continued involvement of the local community and businesses in the regeneration of the area. The third objective relates to the transfer of responsibilities from the authority to the city council, which has commenced. In this regard, the city council is providing ongoing resources to facilitate the continuation of the section 25 fast-track planning function and is mobilising resources to take responsibility for the authority's infrastructure, for example roads and lighting.

The detailed briefing paper submitted by the authority to the committee last week is intended to provide Deputies with a full update on four key areas. It contains an update on the findings and conclusions reached in the Comptroller and Auditor General's special report. It sets out the progress of the authority's finances from 2010 through to the audited financial statements for 2012. As the authority is being wound up, we have prepared a summary of the moneys received by the authority since its inception and how those funds were spent. The briefing paper also outlines a proposed delivery mechanism for the continuation of docklands regeneration into the future.

In summary, the authority's finances have been stabilised. In conjunction with the city council, the authority has put in train a process to develop alternative fast-track procedures. We have put forward a framework for the continued involvement of local communities in the future regeneration of the docklands area. In addition, the transition into the city council, as directed by the Minister, is at an advanced stage. My colleague and I will be happy to deal with the committee's queries to the best of our knowledge and ability.

Vice Chairman: I thank Ms Quinlivan. Can we take it that it is in order for her statement to be published?

Ms Eileen Quinlivan: Yes.

Vice Chairman: I thank Ms Quinlivan. Deputy Eoghan Murphy is the lead questioner today.

Deputy Eoghan Murphy: I thank the Chair. With his agreement, we might park the second part of the Comptroller and Auditor General's statement, regarding the document given to us by Mr. Crawley, and return to it at the end of the meeting. It relates particularly to the Irish Glass Bottle site.

I thank Ms Quinlivan and her officials for coming in today. I would like to go through the 2012 accounts and try to get up to speed with where we are today. My colleague, Deputy Nash, will ask about the exceptional items in the Comptroller and Auditor General's report on the accounts for 2012. I would like to ask a quick question before I begin. We dealt today with some correspondence regarding the Dublin Docklands Development Authority's expense accounts between 2005 and 2010. Does the authority have any credit cards or expense accounts at present?

Ms Eileen Quinlivan: I believe there is one credit card, but it is not used. I think the only time it was used

since 2010 was to pay for an information technology licence.

Mr. John Crawley: We have one expense that goes through it - online software renewal, which costs approximately \$100 a year.

Deputy Eoghan Murphy: Does Mr. Crawley sign off on that card?

Mr. John Crawley: Ms Quinlivan signs off on it.

Ms Eileen Quinlivan: I sign off on it.

Deputy Eoghan Murphy: So it has not been used for any foreign travel.

Ms Eileen Quinlivan: No, there has been no travel since 2009.

Deputy Eoghan Murphy: Is it still possible for entertainment or food expenses to be charged to the authority?

Mr. John Crawley: No.

Ms Eileen Quinlivan: There have been no such charges since 2010.

Deputy Eoghan Murphy: When the current board was put in place in June 2012, it was estimated that it would take 18 months to wind down the authority. Has there been a delay? If so, why?

Ms Eileen Quinlivan: We have continued to work to wind down in an orderly fashion. A number of items that are outside the control of the authority need to be put in place in order to effect the dissolution. First, legislation is required. It is currently with the Government and will obviously have to go through the Oireachtas process. Second, in order to have an alternative fast-track planning system in place, the Government designated the North Lotts and the Grand Canal as a strategic development zone in December 2012. The city council was designated as the development agency in that case. A statutory procedure has to be followed to develop a planning scheme for this strategic development zone. That was approved by Dublin City Council on 5 November 2013. It is currently with An Bord Pleanála. Those two things need to be in place before the authority can be wound up.

Deputy Eoghan Murphy: Is the legislation to which Ms Quinlivan refers that which will move the authority permanently into Dublin City Council?

Ms Eileen Quinlivan: I refer to the legislation to dissolve the authority.

Deputy Eoghan Murphy: Ms Quinlivan said in her opening statement that “this work will be substantially completed in the first half of 2014”. Is it the case that there is not yet a fixed date because it depends on the legislation and on An Bord Pleanála’s ruling on a planning decision?

Ms Eileen Quinlivan: Yes.

Deputy Eoghan Murphy: Ms Quinlivan spoke about “residual issues being transferred to appropriate State bodies”. What are those residual issues? Was Ms Quinlivan referring to things like lighting?

Ms Eileen Quinlivan: If any issues are outstanding, they will go to the relevant body.

Deputy Eoghan Murphy: Is it anticipated at this stage that there will be any outstanding issues?

Ms Eileen Quinlivan: No.

Deputy Eoghan Murphy: At the moment, there is a board and a community council.

Ms Eileen Quinlivan: The docklands council, yes.

Deputy Eoghan Murphy: Yes. What will happen to that board upon the dissolution of the authority?

Will it cease to exist?

Ms Eileen Quinlivan: I assume so, yes, but that would be matter for the legislation.

Deputy Eoghan Murphy: It will be determined by the legislation. I understand that the authority currently has 15 staff.

Ms Eileen Quinlivan: We currently have two staff.

Deputy Eoghan Murphy: Sorry. It was 15 in 2012. Ms Quinlivan is currently working in the head offices of the authority.

Ms Eileen Quinlivan: Yes. I am seconded part time from Dublin City Council. I am also working in Dublin City Council.

Deputy Eoghan Murphy: When the authority ceases to exist - when the legislation is passed and An Bord Pleanála has made its ruling - what will happen to the premises? It says in note 27 of the accounts that the authority owns the freehold. Is it anticipated that the site will be sold or leased?

Ms Eileen Quinlivan: At the moment, the intention is to retain that asset in State ownership.

Deputy Eoghan Murphy: Would it transfer to Dublin City Council?

Ms Eileen Quinlivan: The question of which assets get transferred to which agency will depend on the legislation.

Deputy Eoghan Murphy: Has the authority provided advice to the Department on what the legislation should or should not contain?

Ms Eileen Quinlivan: Yes. We provided information when the Department requested it.

Deputy Eoghan Murphy: When did that happen?

Ms Eileen Quinlivan: That would have happened over the last couple of months.

Deputy Eoghan Murphy: Looking at the figures, we are almost at the point where the authority will no longer exist. What is the current position in terms of its net value?

Ms Eileen Quinlivan: I will hand over to Mr. Crawley to speak about the financial details.

Mr. John Crawley: The accounts the Deputy has before him show the authority has a net asset value of approximately €5 million. This means that if we disposed of everything on the balance sheet, on that date there would be €5 million in surplus assets over liabilities, as at 2012. We are currently in the process of preparing the 2013 accounts, which are in draft form, but have not been audited yet. On the face of it, it looks like the net asset value is holding at around that level. In accounting terms, I suspect the value will be in the order of €5 million, but this does not include a number of other assets we do not record on our balance sheet, approximately €3 million.

Deputy Eoghan Murphy: Does the €5 million figure already take into account the fact that the pension liability is transferred away?

Mr. John Crawley: Correct. That is net of the pension liability.

Deputy Eoghan Murphy: If the pension liability had not been transferred, would the authority have been in deficit?

Mr. John Crawley: Yes, it would be in deficit.

Deputy Eoghan Murphy: Does that include the assets that are not counted on the books?

Mr. John Crawley: We record approximately €5 million on the balance sheet and approximately €3 million off the balance sheet, amounting to €8 million. Then, we have transferred an €8 million pension liability back to the State, of which approximately €1.1 million will fall due in the next five years and approximately 50% will fall due from about 20 years out.

Deputy Eoghan Murphy: When we count the balance sheet assets that will remain when the authority dissolves and the assets that are not on the balance sheets, does it look more like a break even point of view for the authority, taking into account the pension liability transfer?

Mr. John Crawley: Yes, if one was to take the pension liability into account and in terms of looking at the State costs - it would be approximately break even point.

Deputy Eoghan Murphy: Was the pension liability moved too early then?

Mr. John Crawley: No, as part of the dissolution of the authority, we needed to address all of the issues on the balance sheet and we quickly entered into discussions with the Department in regard to what would happen with staffing. It was a priority for the board that staffing be dealt with. Therefore, how the future pension arrangements for deferred pensions would be dealt with was taken as a priority. Once the Department, in conjunction with the Department of Public Expenditure and Reform agreed the liability would transfer to the State, the correct accounting treatment was to discontinue accounting for it in the accounts of the authority. We disclose it separately so the liability is clearly set out on the balance sheet, but it has an opposite offset and equal offset which effectively shows the State will underwrite it, and that has been audited.

Deputy Eoghan Murphy: Thank you. To return to Ms Quinlivan, has it been decided yet where the balance, if it is the €5 million surplus we mentioned, will transfer to? Will that be a matter for the legislation?

Ms Eileen Quinlivan: Yes, and I presume it will be a matter for the Department, as the Department with oversight.

Deputy Eoghan Murphy: At the time of the 2012 accounts, investment assets were valued at €20.95 million, but there has been progress made since then. Will the authority representatives talk me through the assets that have been sold since that date?

Mr. John Crawley: Approximately €20 million in value of assets has been disposed of since the balance sheet date.

Deputy Eoghan Murphy: Does that include the Custom House Quay building, CHQ?

Mr. John Crawley: It includes CHQ, which accounted for €10 million of that.

Deputy Eoghan Murphy: I have the breakdown for the others, retail units €2.96 million, office units €3.4 million and a car park €4.8 million. At end 2012, the liabilities were €24.4 million. That figure has come down now.

Mr. John Crawley: The bank loan, approximately €12 million, has been repaid. The remaining liabilities on the balance sheet are now, substantially, intra-State liabilities.

Deputy Eoghan Murphy: Will Mr. Crawley explain that?

Mr. John Crawley: They are moneys that are owed to other State agencies. There are moneys owed to Dublin City Council, to NAMA and to the Railway Procurement Agency.

Deputy Eoghan Murphy: Does that amount, in total, to approximately €12 million?

Mr. John Crawley: Yes.

Deputy Eoghan Murphy: Therefore, the asset position is approximately €2.95 million and liability is approximately €12 million.

Mr. John Crawley: Correct.

Deputy Eoghan Murphy: I am somewhat confused. In the notes to the accounts, mention is made of the authority's capacity to deal with the liabilities based on disposable assets. How is that going to work out then? How can those two sets of figures be squared?

Mr. John Crawley: Some of the proceeds we have received are now in cash, so we have substantial cash balances.

Deputy Eoghan Murphy: Okay.

Mr. John Crawley: I will try to reconcile the figures for the Deputy. We currently have approximately €8.5 million of assets. We had approximately €23 million at the end of 2012. We have had sale proceeds of assets of approximately €18 million. This included approximately €5 million in value higher than we originally anticipated in 2012. In other words, we recorded an accounting profit. Therefore, we now have approximately €9 million worth of assets on our balance sheet today which we can sell. We have approximately €4 million in cash on our balance and approximately €3 million of debt receivables on the balance sheet, all in all amounting to €17 million. Then, we have €12 million of liabilities. When we balance one figure against the other, we are left with €5 million.

Deputy Eoghan Murphy: Thank you, that is clear. In regard to the remaining €9 million assets, what are they?

Mr. John Crawley: They are some commercial units in the Grand Canal Square area, some retail units on The Camshires and a couple of small properties on the north side of the city.

Deputy Eoghan Murphy: When was a valuation last carried out for them?

Mr. John Crawley: The valuation process we have involves a couple of valuations. A formal valuation takes place every three years, so we had one in 2010 and another one is due as at 2013. Each year, when the directors sign off on the accounts, they assess the value of the assets and sometimes we take informal soundings in the market to see what is going on. The value of €9 million for assets still on the balance sheet, is a combination of market value since 2012, as updated in the market over the past couple of months. It also includes our own assessment as to what guide price we are putting on those properties, as we are in the process of selling them currently. We have agents engaged on the sale of those assets. I expect that €9 million is a solid figure. The assets are out to formal valuation at the moment.

Deputy Eoghan Murphy: Is that being done because of the move to sell them or because of the process of revaluation done every three years?

Mr. John Crawley: Both. We have the process of revaluation every three years, so we must do it because it is the third year. Also, as we put each asset on the market for sale, we ask the agent who wins the tender for the sale to give us a valuation and that influences our guide price.

Deputy Eoghan Murphy: Mr. Crawley said earlier that the authority had achieved €5 million more than it expected from the disposal of the assets it has disposed of since 2012. Is there an argument for transferring assets to some other State entity rather than disposing of them in the market if the prices are rising?

Mr. John Crawley: There is that argument and we have looked at that. The direction the board has given us is to dispose of the assets and pay down the liabilities, against the background that we are getting reasonably good value on the properties we are selling at the moment. It is difficult to predict what way the market will go, but at this point in time we believe we can get fair values that will allow us to dispose of the liabilities we have.

Deputy Eoghan Murphy: I would now like to look at some of the notes on the accounts. Note 1b on page 34 of the 2012 accounts mentions an impairment in 2012 of €2.08 million.

Mr. John Crawley: Correct.

Deputy Eoghan Murphy: What was that?

Mr. John Crawley: That related to the CHQ building.

Deputy Eoghan Murphy: Was that the final impairment figure on the CHQ building?

Mr. John Crawley: Correct. In 2011, we had the CHQ building valued at approximately €12 million. In the 2012 accounts, we took it down to €10 million, which was our estimate of what we would-----

Deputy Eoghan Murphy: Which is what it was finally sold for.

Mr. John Crawley: -----sell it at, and actually did.

Deputy Eoghan Murphy: The impairment in 2012 was for the CHQ building before it was sold. There is a valuation surplus of €651,000.

Mr. John Crawley: That relates to upward valuation of some of the investment properties we had in the Grand Canal dock area.

Deputy Eoghan Murphy: A separate impairment in 2012 of €230,000 is detailed in note No. 13 on a site transfer to the Department of Education and Skills at nil consideration.

Mr. John Crawley: Correct. That is an intra-State transfer of a site that we had acquired under our area and social regeneration programme. It was to be developed as a special school. With the wind-up order on the authority, that was not something with which the authority could continue. We entered into discussions with the Department of Education and Skills, which was a better fit from the State's point of view to continue developing that site.

Deputy Eoghan Murphy: Why was it transferred for free? Was there a commitment to put the site into the Department's ownership?

Mr. John Crawley: It was an intra-State transfer. As such, we felt that there was no point in looking for value for it and that it was better for the Department to take on the project. The authority had always planned to invest in the project. As it sat on our books as a quasi-investment asset, we ascribed a value to it, but it was never the authority's intention to sell it for a profit. It was acquired to-----

Deputy Eoghan Murphy: It was never on the books as something that would make money for the authority.

Mr. John Crawley: No. It was designed to be an investment by us to develop the school. Significantly larger sums would probably have been contemplated for selling and developing it at the time. It is effectively a derelict site.

Deputy Eoghan Murphy: In this document it is counted as a cost to the authority.

Mr. John Crawley: Correct.

Deputy Eoghan Murphy: Have there been discussions with other State agencies about taking properties off the authority's books at nil consideration?

Ms Eileen Quinlivan: At nil consideration, no.

Deputy Eoghan Murphy: I understand that the authority might not have intended to make a profit from it, but the authority has submitted a loss from it for transferring it for free to the Department. Was there ever a request to the Department to pay?

Mr. John Crawley: I do not recall. I was not involved directly in the negotiations. I would need to check the files to see if there was a request to pay. As an accountant, I would always request a payment, but this was a social regeneration initiative and the decision to transfer for nil value probably rested on that factor.

Deputy Eoghan Murphy: It would have been a decision of the board ultimately to-----

Mr. John Crawley: It was a decision of the board.

Deputy Eoghan Murphy: Could we have the minutes of that meeting, if Mr. Crawley would not mind? They would be interesting.

Mr. John Crawley: That would be no problem.

Deputy Eoghan Murphy: We briefly mentioned the properties not recognised on the balance sheet. They are included in the breakdown that Mr. Crawley supplied to me of the €9 million in assets.

Mr. John Crawley: Correct.

Deputy Eoghan Murphy: Why were they not recognised on the balance sheet?

Mr. John Crawley: Those assets are broken up into two categories. We acquired some for public area development and infrastructure purposes. These are sites that we acquired, typically along the Campshires and the River Liffey. From time to time, the authority acquired properties that it effectively expensed, in that it was buying them to knock them. However, this will not now happen to one asset that is on our books. The circumstances have changed.

Deputy Eoghan Murphy: Which asset is that?

Mr. John Crawley: It is in the Grand Canal dock area. As it is currently subject to sale and if the Deputy does not mind, I will not go into detail, as the matter is slightly commercially sensitive. We will report it to the committee in the fullness of time. The rationale changed over a period. Previously, we had expensed the asset's purchase as a cost, but we now recognise that we may achieve some value for it commercially and have recorded it off the balance sheet.

A number of other assets fall into the infrastructure-type space. For example, we have a comprehensive ducting network in the IFSC and the Grand Canal dock area. We expensed its development. However, it has a commercial value because we rent it and we value it as a multiple of the rent that we achieve on it on an annual basis.

These are the two principal categories, although there are a number of smaller items.

Deputy Eoghan Murphy: Moving on to note No. 5 on page 36, operating expenses. In 2012, legal fees amounted to €1.2 million. Just under €1 million was spent on defending the Irish Glass Bottle, IGB, site case.

Mr. John Crawley: Yes.

Deputy Eoghan Murphy: For what was the remainder? Was there other litigation?

Mr. John Crawley: The Deputy wants an analysis of the €1.2 million.

Deputy Eoghan Murphy: Yes.

Mr. John Crawley: Approximately €1 million was spent on the Donatex case, approximately €135,000 is a provision against another case in which we are involved, approximately €70,000 was spent on debt collection and approximately €500,000 represents the cost of our in-house legal team. There was also some HR advice for €30,000 and miscellaneous advices, small €2,000 or €3,000 bills, amounting to approximately €30,000.

Deputy Eoghan Murphy: There is an in-house legal team.

Mr. John Crawley: Yes.

Deputy Eoghan Murphy: I believed that the DDDA used consultants, in that it acquired its legal services externally.

Mr. John Crawley: It is consultancy. To distinguish it from the external solicitors involved in cases, we call it in-sourcing a legal team. It is an external service.

Deputy Eoghan Murphy: The DDDA bought it in.

Mr. John Crawley: Correct.

Deputy Eoghan Murphy: From which firm?

Ms Eileen Quinlivan: McNerney Solicitors, which was engaged through an open tender process.

Deputy Eoghan Murphy: Was it engaged for all of the authority's litigation or just the IGB case?

Ms Eileen Quinlivan: It currently provides all legal advice and services to the authority.

Deputy Eoghan Murphy: The authority was not awarded costs in its defence of the IGB site case.

Ms Eileen Quinlivan: We were, but they are unrecoverable.

Deputy Eoghan Murphy: How does that get treated?

Mr. John Crawley: We treat them as an expense and have written them off as such.

Deputy Eoghan Murphy: Note No. 25 refers to contingent liabilities in respect of certain legal matters. Mr. Crawley mentioned that the authority had dealt with a number of legal matters since 2012. Does the authority still have contingent liabilities in that regard?

Mr. John Crawley: We do. Approximately 16 cases are in the legal or quasi-legal sphere. They are not necessarily all in court. We are working hard to ensure that some do not get into court. These cases range from title issues and disputes to contract enforcement issues. To the extent that we consider costs or potential settlements to be associated with these cases, we have already reflected those in the accounts. Anything that we are working on now has been reflected in the 2012 accounts. There was little or nothing new in 2013.

Deputy Eoghan Murphy: The authority made provision in 2012 to account for potential costs.

Mr. John Crawley: Correct. Some could have been accounted for in earlier years. They may have been running for a number of years.

Deputy Eoghan Murphy: Can the authority wind up while these issues are outstanding?

Ms Eileen Quinlivan: Yes. They would transfer over to the city council, which would deal with the continuation of any outstanding case.

Deputy Eoghan Murphy: That will form part of the legislation to come, but it will have to take on its-----

Ms Eileen Quinlivan: Yes. That is part of what we are working on with the city council so that it can get up to speed with the various issues.

Deputy Eoghan Murphy: The city council will become the body to defend these issues.

Ms Eileen Quinlivan: As the successor to the authority, although we will be expected to turn out.

Deputy Eoghan Murphy: I will briefly examine the other expenses detailed in note No. 7 on page 38. In 2012, administrative expenses amounted to €354,000 and the depreciation and impairment of tangible fixed assets amounted to €483,000. What are the current figures?

Mr. John Crawley: The majority of the administrative expenses - over 50% of it - relates to bank fees, which is a negotiation fee that we have to pay to the banks. I refer to the draft numbers for 2013 in terms of operating expenses. I wish to make sure I am comparing like with like. Bank fees are expected to be little or nothing and general administrative expenses are about €122,000, which is significantly lower. It is about a

third of the cost in 2012.

Deputy Eoghan Murphy: Are facility expenses at €260,000 still the same?

Mr. John Crawley: The facility expenses will continue to be in or around the same because a significant part of it is insurance. It sounds like an awful lot of money for lighting but it includes lighting up the Campshires and it includes lighting some of the public utilities which are run off our account.

Deputy Eoghan Murphy: The total figure for other expenses was €1.1 million in 2012. What will it be at the end of 2013?

Mr. John Crawley: It will be, including depreciation, just short of €1 million. The depreciation charge will be a good bit higher. It will be approximately €100,000 higher because some of the fixed assets have been prudently written down to zero in our 2013 accounts because we are just not clear at this stage as to what will happen to those. It depends on what happens with the authority's premises in Custom House Quay. We may need to revisit the number but we have just taken a conservative view at this stage that they may have reached the end of their useful life.

Deputy Eoghan Murphy: What kind of assets is Mr. Crawley talking about?

Mr. John Crawley: The authority moved back into those premises about two years ago and had to refurbish the property at a cost of about €300,000 or €400,000. We were depreciating the refurbishment cost over about five years. We have speeded that up to completely write it off on the assumption that we are not sure as to what will happen the building post the wind-up of the authority. That is a fluid number. It is about €100,000 or €150,000.

Deputy Eoghan Murphy: Mr. Crawley is being conservative in the estimate.

Mr. John Crawley: Correct.

Deputy Eoghan Murphy: It might come back-----

Mr. John Crawley: If one were to suppose it would continue as an operating building we probably would not write it off. Our successor would then probably just take over the depreciation charge and then write it off over what it would consider to be the remaining useful life.

Deputy Eoghan Murphy: Okay. To return to note 5A - bad and doubtful debts - there was a write-off in 2012 of €865,000 in bad debt. Does that pertain to legal fees?

Mr. John Crawley: No, it does not actually. It relates substantially to a loan that the authority had issued. It is broadly in the space of the CHQ property. I will not go into the exact details because I do not wish to mention a particular tenant but it relates to loans that had been provided for refurbishment of properties which are not now recoverable. They were effectively reflected in the sale price of the property that we achieved. We passed the debt on to the new owner.

Deputy Eoghan Murphy: Did the authority issue a loan to someone who owned a property in the authority's area?

Mr. John Crawley: The property was leased.

Deputy Eoghan Murphy: It was leased. What was the purpose of the loan?

Mr. John Crawley: It was to assist in the refurbishment of the premises.

Deputy Eoghan Murphy: It was done with a view to continuing the lease but then the business could not continue the lease and-----

Mr. John Crawley: No, it is a continuing operation and the loan was being repaid but we effectively sold the loan with the property. It was treated as a loan on our book so from an accounting point of view we re-

corded the CHQ transaction in its simplest terms as a €10 million sale proceeds and approximately €800,000 loan write-off. Our net gain out of the transaction was about €9.2 million.

Deputy Eoghan Murphy: I see what was done there. In effect, when we talk about the asset value of the CHQ when it was sold, the Dublin Docklands Development Authority sold it for €9 million rather than €10 million in terms of its valuation.

Mr. John Crawley: In terms of its-----

Deputy Eoghan Murphy: Was the CHQ valued at €10 million or €9 million when it was sold?

Mr. John Crawley: It was very difficult to get a valuation on the CHQ. We had valuations that ranged from much lower numbers, potentially half what we anticipated it to be. We anticipated that we would achieve approximately €9 million net for it. We recorded it as a €10 million asset on the balance sheet and then we had made a provision against the loan for the €800,000.

Deputy Eoghan Murphy: The authority anticipated selling it for €9 million but it was sold for €10 million and the extra money was used to write off the loan as a bad debt. When the authority entered into negotiation with the purchaser, did it do so on those terms?

Mr. John Crawley: Yes. It was a tender type of process. We had provided information to the short-listed people who were making bids on the property and one of the details that was provided to them was that we were asking them to take over the loan so they had to price that into the transaction.

Deputy Eoghan Murphy: I thank Mr. Crawley. In terms of the banking facilities the authority now has, the proceeds of the CHQ sale were used to settle the liability. Does the authority have a loan outstanding?

Deputy Gerald Nash took the Chair.

Mr. John Crawley: It does not. As a matter of fact, it is in cash surplus at this stage.

Deputy Eoghan Murphy: I am sorry, Mr. Crawley mentioned that earlier.

Mr. John Crawley: We do not need banking facilities at this stage.

Deputy Eoghan Murphy: The interest payable on bank loans was €473,000 in 2012. Will that figure not exist for 2013?

Mr. John Crawley: That is correct. There will be no bank fees other than processing charges. There is no fee for maintaining a loan and there will be no bank interest. There will be surplus bank interest but it will be reasonably modest.

Deputy Eoghan Murphy: I will jump ahead to note 14 on page 41. It relates to debtors. The total is €3.8 million. Could Mr. Crawley explain who is covered under the €3.2 million?

Mr. John Crawley: The €3.2 million of debtors refers to moneys that are due in from developers for development levy contributions which are in turn payable to the Railway Procurement Agency, RPA. They are included both in debtors and creditors. They are on both sides of our balance sheet. The reason for that is that we are the legal authority that is obliged to collect the levies for both the authority and the RPA. We record them as receivables and then we also record them as payables. Deputy Murphy will see from the note that the debtor number is net of some provisions we have made. A substantial part of the sum of €5.9 million also relates to development levies that are due, but they are due to the authority for the authority's account.

Deputy Eoghan Murphy: What is the difference? What is the figure for what is owed to the authority separate from what the authority is collecting for any other body?

Mr. John Crawley: It is about €4 million.

Deputy Eoghan Murphy: It is €4 million. The authority is responsible for collecting levies for other

authorities and the responsibility will transfer to Dublin City Council.

Mr. John Crawley: To the extent that they are uncollected at the date of transfer. We are working hard to make sure that will not be the case.

Deputy Eoghan Murphy: What about the €4 million that is owed directly to the authority?

Mr. John Crawley: It is the same number of people that we are dealing with so, in other words, the debtors we are pursuing owe levies both to the authority and the RPA. It is effectively the same case. To the extent that we can recover on those liabilities, some of those funds will be for our own account and some will be for the RPA's account.

Deputy Eoghan Murphy: How are those debts being pursued?

Mr. John Crawley: Through a combination of the legal process and enforcement. We are working with a number of receivers at the moment.

Deputy Eoghan Murphy: Who is covering the cost for that? Is it a shared cost with the RPA?

Mr. John Crawley: In some cases it is a shared cost with the RPA. The RPA is underwriting its portion of the legal fees.

Deputy Eoghan Murphy: As a final point, note 22 refers to joint ventures and subsidiary undertakings. What are they?

Mr. John Crawley: There is only one substantial operation here and it relates to the management company we operate in the Grand Canal Dock area. When we acquired the gasometer site and created the Grand Canal Dock area, we created a management company in that area, as we had previously done in the original International Financial Services Centre, IFSC, and subsequently in the North Lotts area. The process is that we set it up, build it out, and then transfer the management company to the owners of the property in the area. We still have not completed that project for the Grand Canal Dock area. When the economic tsunami hit, that process slowed and development stopped. We are now in the process of winding up our interest in that company, which will necessitate disposing of our shares in that company. That is the substantial entity that is referred to in note 22. For legal reasons, the authority has one or two other small entities that it uses for title purposes.

Deputy Eoghan Murphy: When the authority disposes of the shareholdings, is it disposing them to another State agency or-----

Mr. John Crawley: No, to the owners of the property in the area as envisaged by the planning scheme for that area, which is exactly the same as what has happened on the north side.

Deputy Eoghan Murphy: The final area I want to examine is in regard to NAMA. When the authority was settling with NAMA in terms of the Irish Glass Bottle Company site, it transferred €7.85 million worth of assets to settle its liabilities. Does Mr. Crawley know what the asset value is for the properties the authority transferred at the time? Does he know what it is now?

Mr. John Crawley: Do I know what the asset value is now for those properties we have transferred over?

Deputy Eoghan Murphy: Yes.

Mr. John Crawley: I am sorry, Deputy. I would not know that. NAMA would be-----

Deputy Eoghan Murphy: Is the authority no longer involved with those properties?

Mr. John Crawley: We are not involved with those properties. They are under the control of NAMA. As I understand it, they are all substantially still in the control and ownership of NAMA. I believe only one of them has been disposed of.

Deputy Eoghan Murphy: Deputy Nash wants to deal with the important issues relating to the exceptions

in the auditor's report, but to be clear, once An Bord Pleanála reports on the strategic development zone, STZ, the only outstanding issue then is the legislation.

Ms Eileen Quinlivan: Yes, that is correct.

Deputy Eoghan Murphy: Given her interaction with the Department in recent months on what the legislation might include, does Ms Quinlivan have any understanding as to when that legislation will be in train?

Ms Eileen Quinlivan: No. The Deputy would have to ask the Department that, but in terms of the STZ, the target date An Bord Pleanála has published is 10 April.

Mr. Paul Dunne: We are currently preparing draft heads to go to Government and we would hope to have that done within the month. Given Government approval, Oireachtas time and some drafting issues, we would hope to have it enacted before the summer recess.

Deputy Eoghan Murphy: That is the intention at the moment.

Mr. Paul Dunne: Yes.

Deputy Eoghan Murphy: And at that point the authority ceases to exist.

Mr. Paul Dunne: Yes, or depending on where we are, the Minister could appoint a date-----

Deputy Eoghan Murphy: In the legislation, at which point it would cease to exist.

Mr. Paul Dunne: -----or by order, at which point it would cease to exist.

Deputy Eoghan Murphy: Thank you.

Deputy Kieran O'Donnell resumed the Chair.

Deputy Gerald Nash: I thank the witnesses for the comprehensive notes they have provided on the accounts, which are very helpful and allow us to come to a much quicker understanding of the financial position of the authority. I want to raise a number of points, the first of which relates to the pension liabilities. How many individuals are involved in terms of the organisation's pension liabilities into the future? The note in terms of the realisation of those liabilities over a period of years is very helpful. How many pensioners are in the scheme?

Ms Eileen Quinlivan: I will let Mr. Crawley deal with the details of the pension scheme.

Mr. John Crawley: I do not have the exact number but I can give the Deputy an approximation, and we can provide him with the exact details. There are probably somewhere in the region of 100 people who will have entitlements to deferred pensions. Some of those will be for very short periods, perhaps somebody who just worked for the authority for five years. The authority's staff numbers rose to the mid-60s at the height-----

(Interruptions).

Mr. John Crawley: It is now down to two, but there would have been people who would have come and gone from 1997 through to today. There is probably somewhere in the order of 100 people who would be entitled to deferred benefits.

Deputy Gerald Nash: In terms of the previous chief executive, what would be the value of Mr. Moloney's pension pot in the context of his work with the Dublin Docklands Development Authority, DDDA? Is Mr. Crawley in a position to-----

Mr. John Crawley: I would need to check with our actuaries to work that out. I will have tables that will support - this is done on an individual basis-----

Deputy Gerald Nash: If it were possible to forward that information to the committee, it would be very helpful.

Mr. John Crawley: Yes.

Deputy Gerald Nash: Given that it was always the case, and had been the stated position of the authority over the years, that pension obligations would be met from accumulated reserves from its development work, it is clear that was not possible given the economic tsunami that hit the organisation, a phrase Mr. Crawley used, although probably in a different context. Obviously, discussions opened with the Department of Public Expenditure and Reform in terms of who would pick up the tab for the €8.4 million. Is it not the case now that the taxpayer will have to pick up the tab? Were any discussions opened with Dublin City Council, for example, given that Dublin City Council would be the successor authority to take over the responsibilities of the organisation? Would it not have been more appropriate if Dublin City Council had taken on that liability as opposed to the Department of Public Expenditure and Reform? Does Mr. Crawley have a view on that?

Mr. John Crawley: I understand from the legislation that our reporting line is through the Department because we are a State agency under the Department of the Environment, Community and Local Government. Therefore, that was the logical port of call for us to continue with. There are two different issues here. One is how we account for the liability, and we have clearly not accounted for it now as a result of the accounting treatment we have taken. In terms of who pays for that, as Ms Quinlivan said, ultimately, it is the decision of the Department as to how any surplus or deficit for the authority is to be dealt with.

Deputy Gerald Nash: The Department of Public Expenditure and Reform sanctioned that arrangement but it is actually the Department of the Environment, Community and Local Government that will be responsible for the pension provisions. Is that not the case?

Mr. John Crawley: It has not decided where it will be rested and administered from at this point.

Vice Chairman: The Comptroller and Auditor General would like to comment.

Mr. Seamus McCarthy: Local authority pensions are paid on a pay-as-you-go basis with funding that emanates from central government. Who will sign the cheque may not yet have been determined but, ultimately, it will come back to the Exchequer one way or the other.

Deputy Gerald Nash: I accept that clarification from the Comptroller and Auditor General, which is useful. Regarding matters to do with public procurement, I note from the associated documentation provided to the committee - I refer to point No. 2 on page 21 - that in regard to procurement the witnesses want to draw our attention to the fact that the authority delayed procurement of some services in 2011 and that the bottom line was that because of the nature of the issues the authority had to deal with, and that it appeared the authority, even at that stage, would no longer exist in its current structure, the Department of Public Expenditure and Reform agreed to roll over two particular contracts. Those contracts were in regard to financial services advice and IT.

Ms Eileen Quinlivan: Correct.

Deputy Gerald Nash: What was the value of those two contracts?

Ms Eileen Quinlivan: The total value in 2012 is €429,000.

Deputy Gerald Nash: And they were not tendered for through the normal procedures.

Ms Eileen Quinlivan: The financial services contract initially was tendered through direct invitation of five people in 2010.

Deputy Gerald Nash: It was through direct invitation.

Ms Eileen Quinlivan: Yes. That was re-tendered again in late 2012 and Crawley Business Consulting was appointed in January 2013. Again, that was through a direct invitation. The other contract relates to an

IT contract that was of long standing and on a roll-over basis and that was re-tendered.

Deputy Gerald Nash: Notwithstanding the fact that in 2010, the Comptroller and Auditor General pointed out some deficiencies from the authority's point of view in respect of its tendering processes, as far as I can recall, the authority then decided simply to proceed to roll over these contracts. However, I suppose the key point is the authority had the sanction of the Department of Public Expenditure and Reform to roll over those contracts because of the uncertainty regarding the previous board.

Ms Eileen Quinlivan: We had sought advice from the Department and were advised to roll it over, given the uncertainty over wind-up and how long the authority would exist. Consequently, the new board then decided to re-tender.

Deputy Gerald Nash: Okay.

Vice Chairman: To clarify, Ms Quinlivan referred to the financial service contract. With whom is it?

Ms Eileen Quinlivan: That is with Crawley Business Consulting.

Vice Chairman: That contract originally was tendered for in 2010.

Ms Eileen Quinlivan: Yes.

Vice Chairman: For how many years was the contract? I ask because it does not appear to have gone back out to tender until-----

Ms Eileen Quinlivan: Late 2012.

Vice Chairman: For how many years was it? Is it unusual to have a contract for two or three years without it being re-tendered?

Ms Eileen Quinlivan: Not necessarily, no.

Vice Chairman: Ms Quinlivan knows the context. When Crawley Business Consulting got the contract, for how long was it?

Ms Eileen Quinlivan: I will have to check to see what was the original one, unless the-----

Vice Chairman: Does the Comptroller and Auditor General know?

Mr. Seamus McCarthy: My understanding is that originally, it was a contract for six months.

Vice Chairman: On an annual basis, how much was that contract worth in 2012?

Ms Eileen Quinlivan: In 2012, it was €316,000.

Vice Chairman: It was €316,000. Can the Comptroller and Auditor General indicate how much that contract was worth when it originally was granted?

Mr. Seamus McCarthy: I will try to find the figure for the Vice Chairman.

Vice Chairman: I apologise to Deputy Nash.

Ms Eileen Quinlivan: It was €152,000.

Vice Chairman: It was €152,000 in 2010 and it more than doubled in less than two years.

Ms Eileen Quinlivan: The figure for 2010 was for half a year.

Vice Chairman: It was for half a year. So it is a contract for €316,000, which was for a six-month contract initially-----

Mr. Seamus McCarthy: Sorry Chairman, no specific amount was set in 2010. It was €750 per day, plus VAT, for six months.

Vice Chairman: The contract was for €750 per day, plus VAT.

Mr. Seamus McCarthy: For a six-month period.

Vice Chairman: To do what?

Mr. Seamus McCarthy: It would be required to provide, as necessary, the following: to assist the authority with the restructuring of its investments; to assist with the implementation of the highest standards of corporate governance for the authority complying with latest Government regulations and combined code; to support the acting chief executive officer on the development of an updated financial planning model for the authority; to monitor and provide advice on the authority's property assets; to monitor the control and review of risk for the authority in line with the current risk review register; and to provide, if and as required, accurate and timely financial information to the chief executive officer and the executive board.

Vice Chairman: Before I let Deputy Nash back in, does it not seem extraordinary that in the case of a body that had cost the taxpayer astronomical amounts in the millions, that the authority had a contract for €316,000, which was based on €750 per day in 2010 but which appears not to have been the subject of annual tender? Does Ms Quinlivan not find that to be unusual? Is that not a reasonable view to take?

Ms Eileen Quinlivan: In 2010, the board found itself in a position in which it was not able to recruit a finance director on the departure of the previous finance director. The board needed comprehensive and skilled experience to be brought in for the board to be able to deal with the financial issues it faced. Consequently, the board thought this was the only option it had.

Vice Chairman: To confirm, this was Mr. Crawley's own company.

Mr. John Crawley: Correct.

Vice Chairman: Can Mr. Crawley remember the circumstances of the appointment of his company and the reason it did not go out to re-tender? I am not in any way casting a negative view but simply am considering this in respect of corporate governance for a body of this size. Can Mr. Crawley recall the circumstances?

Mr. John Crawley: I was not involved in the initial appointment, I was simply an applicant to the tender process. From memory, there was a significant piece of work with the negotiation of what we now call the NAMA settlement, which ran on longer than six months. My firm was asked to continue with that work. There were changes of chief executives along the way and as I read the file in preparation for this meeting, it appears that under the previous board, mindful of the fact that under the Fine Gael manifesto, there was to be a wind-up of quangos, it was decided the board would continue to roll forward contracts. I think there is some reference to this, which may be in one of the reports provided. Discussion was had with what we now know as the Department of Public Expenditure and Reform but which was the Department of Finance at the time, on whether it was okay to roll those contracts over. As part of its hand-over to the current board, the previous board identified this as an issue. When the current board took over and asked for a transition business plan, which was prepared at the Minister's request, at that stage it was clear that this would take more than a couple of months to continue and therefore, it was put back out to tender at that stage.

Vice Chairman: In early 2013.

Mr. John Crawley: No, it was in 2012. From memory, it was approximately a three-month process and so it concluded in early 2013.

Vice Chairman: I invite Deputy Nash to continue.

Deputy Gerald Nash: Mr. Crawley reapplied for the tender. Is that correct?

Mr. John Crawley: I reapplied for the tender, yes.

Deputy Gerald Nash: Okay, and obviously successfully secured it, as Mr. Crawley would not be sitting in front of the committee otherwise.

Mr. John Crawley: I would not have the pleasure of sitting here today.

Deputy Gerald Nash: This is an unusual situation to arise, whereby-----

Mr. John Crawley: The Deputy has a consultant in front of him.

Deputy Gerald Nash: That is right. It is most unusual. It might be useful, were the committee to obtain the minutes of board meetings that considered this issue in the interest of completeness, as well as correspondence between the authority and the Department of Public Expenditure and Reform. There are a couple of issues on which I seek clarification. It would be useful, were those items to be secured.

Ms Eileen Quinlivan: We can get that for the committee.

Mr. John Crawley: That is not a problem. It is readily available.

Vice Chairman: I will get the clerk to follow up in this regard.

Deputy Gerald Nash: I will move on to issues concerning staffing and recruitment.

Vice Chairman: Did that contract with Crawley Business Consulting relate to just one individual? Is the €750 per day for one individual?

Mr. John Crawley: My contract covers a number of people. At any point in time, there could be approximately four people working in my firm. However, they are not all working full-time in the authority. We dip into resources, as are required.

Deputy Gerald Nash: I wish to put a number of questions to the witnesses on the issue of staff recruitment. Clearly, a moratorium was introduced on staff recruitment in 2009 by the previous Government. I believe there was a reduction of six staff between that period and 2011 and that at the end of 2011, the headcount was 15. That number now has fallen to just two, a very small number indeed. However, it appears as though the moratorium was breached and Mr. Crawley made reference to this in the documentation he provided to the committee. Four members of staff were provided with contracts of indefinite duration. I assume this arose under a usual set of circumstances whereby an individual who is engaged by an organisation has two or more fixed-term contracts, after which he or she essentially derives additional benefit from that and under law, contracts of indefinite duration are provided. Consequently, in Mr. Crawley's own words, the moratorium was breached. I will read the observation back to him and put it on the record-----

Mr. John Crawley: Can the Deputy indicate the page to which he refers?

Deputy Gerald Nash: Sorry, it is on page 21, where it states, "I bring to your attention that a second contract was entered into with an existing staff member in October 2009 after the announcement of the Government moratorium". This was done by the former CEO. Was that Mr. Maloney?

Mr. John Crawley: No. I do not think that was in Mr. Maloney's time, I think that was subsequent.

Deputy Gerald Nash: This was done by the former CEO without the knowledge of the board and contrary to clear instructions from the board to the executive that under no circumstances was the moratorium to be breached. That matter only came to the attention of the board for the first time at its March 2012 board meeting. In regard to this staff member, the Department has confirmed that the person now has a contract of indefinite duration. Who was the chief executive at that time?

Mr. John Crawley: I think it would have been Mr. Kelly who was the chief executive at that time. Mr. Maloney had departed the authority in 2009. This issue was-----

Deputy Gerald Nash: It was October 2009 that the existing staff member was provided with the contract of indefinite duration.

Mr. John Crawley: I do not think Mr. Maloney was with the authority at that stage.

Deputy Gerald Nash: So it was Mr. Kelly.

Mr. John Crawley: That would have been Mr. Kelly at that stage.

Deputy Gerald Nash: What of the staff member who was provided with that contract of indefinite duration?

Mr. John Crawley: That person is no longer with the authority. That person is working elsewhere in the public system.

Deputy Gerald Nash: Was that person redeployed?

Mr. John Crawley: We have a national redeployment system in place and that person availed of an opportunity under the redeployment scheme to transfer elsewhere.

Deputy Gerald Nash: At what level was that person working in the authority?

Mr. John Crawley: It would have been a direct report of the chief executive.

Deputy Gerald Nash: Who was the person?

Mr. John Crawley: Am I supposed to mention names?

Deputy Gerald Nash: I do not expect that there is a difficulty in doing so.

Mr. John Crawley: It was the previous company secretary, a Mr. O'Sullivan.

Vice Chairman: It would be a matter of public record anyway.

Deputy Gerald Nash: It is, as I understand it. What was the salary?

Mr. John Crawley: I do not know that salary. Just based on the grades, it would have been somewhere in the region of €60,000 or €70,000, probably. It would have been that sort of level, but I would need to check the exact salary level.

Deputy Gerald Nash: I have a couple of final points. Vice Chairman, am I in order to discuss some areas around the previous use of credit cards?

Vice Chairman: Yes.

Deputy Gerald Nash: It is in reference to something mentioned earlier that is, Mr. Maloney's use of the company credit cards. Mr. Maloney is on record as stating that he would be happy to assist the committee in regard to expenditure on those credit cards. I am open to correction, if my memory does not serve me well on this. I seem to recall Mr. Maloney said that if the committee had information in regard to credit card statements, he would be happy to respond to those if they could be sent to him. On foot of that, I ask the authority representatives before us today whether Mr. Maloney has made contact with the organisation to gain access to credit card statements and those records. If not, could they forward them to him because he appears to be interested in receiving them to help jog his memory?

Mr. John Crawley: He has not been in contact. We have no difficulty in supplying them.

Deputy Gerald Nash: I would imagine if Mr. Maloney is interested in addressing the concerns expressed here around the use of a company credit card that his first port of call would be to his previous employer, not to the committee. He has not been in touch.

Ms Eileen Quinlivan: He has not been in touch.

Deputy Gerald Nash: Can Ms Quinlivan state categorically he has not been in touch since he appeared

before this committee on 12 December last?

Vice Chairman: According to the clerk to the committee, Mr. Maloney has them currently and he is looking at them. The clerk to the committee will seek an indication from Mr. Maloney as to when he expects to come back with the information. Has Deputy Nash concluded?

Deputy Gerald Nash: Yes.

Vice Chairman: I would make a couple of points in the interest of completeness. When the financial services contract went out to tender in 2013, did many apply under the tender process?

Ms Eileen Quinlivan: It was a direct invitation for five tenderers to bid.

Vice Chairman: Did five bid?

Ms Eileen Quinlivan: Yes.

Vice Chairman: Did it go through a process?

Ms Eileen Quinlivan: Yes.

Vice Chairman: Obviously, Deputy Nash is looking for the information.

The €113,000 for IT was the balance. According to the accounts for 2012, as audited by the Comptroller and Auditor General, €429,000 was paid. Was the €113,000 for IT consultancy?

Ms Eileen Quinlivan: IT support.

Vice Chairman: Who were the consultants in that area?

Ms Eileen Quinlivan: Ergo.

Vice Chairman: What were the circumstances around that as to the tender process there?

Mr. John Crawley: I can take that one. As I understand it, Ergo changed hands a couple of times and so it would have had different names. As I understand it, Ergo had been the IT service provider to the authority for a good number of years, possibly ten or 15 years. Indeed, this was one of the contracts that was identified by the Comptroller and Auditor General during the 2010 audit.

We were, and are still today, unable to dig out the original tender documents for that but it is unlikely that it was given a tender for ten or 15 years.

Vice Chairman: Why would Mr. Crawley think that?

Mr. John Crawley: It is more likely than not that is not the case.

Vice Chairman: It is highly improbable.

Mr. John Crawley: Therefore, it will be out of contract. By the way, this service is now terminated.

The view of the authority over the years, in particular, 2010 and 2011, was that notwithstanding the fact that the numbers of staff were going down, there are, unfortunately, complicated IT systems in the authority. Extracting records from those systems was important to us. There was not a clear path in terms of the design or the architecture of that system and we needed the corporate memory of the company to assist us in fully understanding what records were held on the system. The committee will recall that we had a major litigation where we had a discovery order served on us that we had to comply with so it was not going to be to our advantage to change the supplier, unfortunately, and therefore we did not re-tender that contract. We scaled it down over 2013. Now we have the systems documented, we have the systems audited and the IT function in the city council is now in a position to take over the custody of those records and the remaining operation.

Vice Chairman: This was highlighted by the Comptroller and Auditor General in 2010. He still felt it necessary in the accounts to make reference to it in 2012. It seems incredible that there was a ten-year contract. How many staff were working in the organisation at peak?

Mr. John Crawley: I think 63 to 65.

Vice Chairman: I assume this Ergo contract was a maintenance contract.

Mr. John Crawley: No. It is the provision of labour on site. In other words, it had provided an IT person on site.

Vice Chairman: Was it one person?

Mr. John Crawley: Yes, one person.

Vice Chairman: At a cost of €113,000?

Mr. John Crawley: Correct.

Vice Chairman: I would not be hugely knowledgeable on computer maintenance but that figure seems very high. If that is the case, why did the DDDA not look to employ someone?

Mr. John Crawley: Unfortunately, we were not in a position to because of the moratorium.

Vice Chairman: Point taken. In terms of corporate governance, an area with which Mr. Crawley would be familiar, why was it not put out to tender over the years?

Mr. John Crawley: I can only answer from 2010 onwards. To restate, the position in which we found ourselves was that we were at a sensitive stage with a discovery order on a case with shrinking numbers of staff and little or no corporate memory left in the organisation. We found ourselves having to interrogate the systems ourselves to understand, with the assistance of the IT personnel, as to who did what to whom and when. It was necessary. It would have been our preference, naturally, to put it out to tender.

Vice Chairman: It went out to tender for the financial services in early 2013. This contract is now concluded.

Mr. John Crawley: That contract is now concluded.

Vice Chairman: On page 31 of Mr. Crawley's briefing, there is a map that shows the North Lotts, the IFSC and Grand Canal Dock. How much of that holding is now under the control of NAMA? I refer to the undeveloped parts.

Ms Eileen Quinlivan: We would not have that information on land ownership.

Vice Chairman: The delegates might provide that to the committee.

Mr. John Crawley: I am not sure we can actually provide that information. It is probably a question the Deputy would need to direct to NAMA.

Vice Chairman: Would it not be based on the sale to NAMA itself? Could details be provided on what assets ended up in NAMA?

Ms Eileen Quinlivan: Is the Deputy referring to assets that were formerly in the ownership of the authority that it can identify as having been transferred to NAMA?

Vice Chairman: Yes.

Ms Eileen Quinlivan: They would not comprise the substantial part of the land-holding there. There is 22 ha of development land.

Vice Chairman: I am talking only about the land that would be owned by the DDDA. That is all I am interested in.

Ms Eileen Quinlivan: We can provide that.

Vice Chairman: Let me refer to the buildings the authority sold, including the CHQ. Is it called CHQ or is it the Customs House Quay building?

Mr. John Crawley: CHQ.

Vice Chairman: Was it in the possession of the DDDA? What is its history?

Ms Eileen Quinlivan: I am not entirely sure how it came into the possession of the authority. That would have happened many years ago.

Vice Chairman: The renovation cost was €45 million. How much was the building sold for?

Ms Eileen Quinlivan: It was €10 million.

Vice Chairman: When?

Ms Eileen Quinlivan: In 2013.

Vice Chairman: When was the cost of €45 million for renovation incurred?

Mr. John Crawley: In the early 2000s.

Vice Chairman: The early 2000s. Was that building occupied?

Ms Eileen Quinlivan: It was in a derelict condition when the authority received it so the money the authority invested was to restore it for use-----

Vice Chairman: When the €45 million was spent, was it occupied or let? What were the circumstances surrounding it?

Ms Eileen Quinlivan: It was intended to be a shopping centre or mall. I do not believe it ever achieved full occupancy.

Vice Chairman: There is a €35 million loss to the taxpayer associated with that building alone. In total, 11 rental units were occupied and 22 were vacant. Of the vaults, one was occupied and four were vacant. Therefore, the majority, or two thirds, of the units were unoccupied. Does the authority know what type of due diligence procedure applied when putting €35 million in taxpayers' money at risk? Has it had a chance to examine that?

Ms Eileen Quinlivan: No. It would have been long before our time, but we can check the files if the Deputy wishes us to.

Vice Chairman: In North Lotts, €50 million was spent acquiring the development lands. Page 28 of Mr. Crawley's briefing states the authority spent approximately €50 million acquiring development land sites that were subsequently transferred to NAMA at a value of €7.85 million. This represents another loss, of €42 million. The sum of €35 million and €42 million is €77 million, which represents a loss of nearly €80 million in respect of the CHQ building in the IFSC, North Lotts and the development sites. Do we know much about the circumstances of the development sites and of the due diligence procedures that were applied? Has the authority examined this? Nearly €80 million in taxpayers' money is probably down the drain if one includes legal fees, etc.

Mr. John Crawley: There were three substantial sites that we transferred to NAMA. According to the records, two of them were acquired under compulsory purchase orders.

Vice Chairman: Which ones?

Mr. John Crawley: What we know as the Jones Oil site and another site known on our files as the Artbrook site, which is down near the Point village. The third site was the old Readymix concrete site.

Vice Chairman: What losses were made on those on the transfer to NAMA by the DDDA?

Mr. John Crawley: On the Jones Oil site, it looks as if we paid about €19 million. It had a book value of €2 million when we transferred to NAMA. We revalued it down by €17 million a year after we bought it.

Vice Chairman: What about the next site?

Mr. John Crawley: The Artbrook site, which was also subject to a compulsory purchase order, was acquired for €8 million in 2006. We revalued it down by €7 million in 2008. Therefore, it had a value of €1 million on transferring to NAMA.

Vice Chairman: That is a loss of €7 million.

Mr. John Crawley: The Readymix site cost €23 million. We revalued it down by €20 million. It had a value of €3 million.

Vice Chairman: Some €3 million.

Mr. John Crawley: On the south side, there is a site at Britain Quay, which is at the bottom of Sir John Rogerson's Quay. That was acquired as part of the general Campshires. I understand the cost attributed to that was €9 million and it was revalued down by €7 million to €2 million.

Vice Chairman: A loss of €7 million.

Mr. John Crawley: The tot of those losses is approximately €8 million.

Vice Chairman: I came up with €34 million. On the Jones Oil site-----

Mr. John Crawley: My apologies. Bearing in mind the tot of the transfer value to NAMA, the tot of the cost of them was €59 million.

Vice Chairman: It was €59 million. They were transferred with a value of €7 million. Is that correct?

Mr. John Crawley: Approximately €8 million, give or take.

Vice Chairman: That is a loss of €50 million.

Mr. John Crawley: We revalued them down by €51 million in 2008.

Vice Chairman: There was a loss of €35 million on the CHQ building in North Lotts. Development sites resulted in a loss of €42 million. If one adds another €50 million, the total is €127 million, or nearly €130 million in taxpayers' money down the drain. Are there more sites on which there were losses? I will speak about the Irish Glass Bottle Company site later. Speaking on behalf of the taxpayer, I must question whether I am missing anything.

Mr. John Crawley: They are the sites that we transferred to NAMA. All the other properties the authority had in its accounts at the time of the transfer to NAMA are commercial assets that we subsequently sold or are in the process of selling. There are no other development sites. The major development site that the authority had acquired was the gasometer site, which is now the Grand Canal Dock area. That was all completed.

Vice Chairman: What is left to sell of the assets that were valued at approximately €24 million?

Mr. John Crawley: About €9 million worth.

Vice Chairman: What does Mr. Crawley expect the assets to realise?

Mr. John Crawley: Approximately €9 million is my current estimated value.

Vice Chairman: Does the authority anticipate that it will break even when winding down? How will the balance sheet look?

Mr. John Crawley: At this point in time I would say there is about €5 million in accounting profit – assets over liabilities – and approximately €3 million in off-balance-sheet items, which we talked about earlier.

Vice Chairman: Assets.

Mr. John Crawley: They are assets.

Vice Chairman: Some €8 million.

Mr. John Crawley: About €8 million. Separately, we have now written back the €8 million pension liability. Had we continued with the pension liability on our books, it would-----

Mr. John Crawley: How much will the authority be handing back to the State in cash terms on the wind-down of the DDDA? Will it be €8 million?

Mr. John Crawley: It is €5 million plus about €3 million in assets.

Vice Chairman: Can I refer to the granddaddy of them all, the Irish Glass Bottle Company site? What was the total legal fee in the Donatex case?

Mr. John Crawley: It was approximately €2.5 million.

Vice Chairman: Does the authority have other legal fees?

Mr. John Crawley: Is the Vice Chairman referring to that case?

Vice Chairman: I ask about overall legal fees on cases.

Mr. John Crawley: As I noted earlier, we are managing approximately 16 active legal files where lawyers could be involved.

Vice Chairman: What is the authority's exposure?

Mr. John Crawley: I cannot quantify an exposure in terms of costs against the State. It is my judgment from an accounting point of view that there will not be a settlement cost to the State on those files.

Vice Chairman: In respect of six developments, CHQ represented a loss of €35 million, the sites in the North Lotts represented €42 million and the sites in Jones Oil, Artbrook, Readymix and the southside together represented a loss of €50 million. How much of a loss does Mr. Crawley expect the DDDA and, ultimately, the Irish taxpayer to realise on the Glass Bottle site?

Mr. John Crawley: The figure for the Glass Bottle site is €52 million.

Vice Chairman: That is cash.

Mr. John Crawley: No. From the authority's point of view, it exited the transaction with the transfer of €8 million in assets to NAMA. If one considers it from the State's point of view, the figure will not be known until NAMA reaches a settlement on those sites. At this point in time the figure is €52 million.

Vice Chairman: The former CEO, Mr. Maloney, appeared before this committee on a previous occasion. The board minutes of 20 October 2006 stated that the Glass Bottle site represented an exposure of €9 million to the DDDA. Four days later, on 24 October, the figure had increased to €36 million, comprising shareholders' loans and equity amounting to €29 million and an additional €7 million in recourse finance. By 2 November, the figure had increased again to €61 million. In the space of 12 days, the figure increased by €52 million. There was no independent valuation or proper cost-benefit analysis. Due diligence was not properly followed. The matter has all the characteristics of a vanity project for management and directors of the DDDA.

The aforementioned seven projects cost a total of €130 million, and a further €52 million were put in. The total loss to the taxpayer between these seven projects is, therefore, approximately €185 million. That is a disgrace. When people deal with the taxpayer's money they should treat it as if it was their own. Have Mr. Crawley and Ms Quinlivan taken the opportunity to investigate what happened in respect of the Glass Bottle site that made costs run amok in the space of 12 days? Was the tail wagging the dog? I do not accept the argument that the assets will end up in NAMA because the decision should not have been made in the first place.

Ms Eileen Quinlivan: Our focus has been on winding up the authority and achieving the Minister's objectives for the future of the docklands. That is the remit of the transition board. The Comptroller and Auditor General has undertaken an extensive investigation into these matters, as has this committee, and we consider that the best use of our time is to focus on the transition and the future of the docklands rather than rehearse the history of this site.

Vice Chairman: I ask Mr. McCarthy to comment on the issue.

Mr. Seamus McCarthy: I would have expected the records of the authority to be clearer about decisions of that nature. The record is ambiguous. The authority's record keeping was not of the highest standards in the years preceding the period in which Ms Quinlivan and Mr. Crawley have been involved. I understand that it was an enormous task to compile material for the defence in the Donatex case and to comply with disclosure requirements. Ultimately, the evidence is available to the extent that it has been presented and it is up to the committee to reach its conclusions and, perhaps, make recommendations more generally. Such recommendations will not apply to the DDDA because it will no longer exist but the committee may use its report to outline what lessons should be learned and what pitfalls avoided.

Vice Chairman: In Mr. Crawley's view, were there weaknesses in corporate governance in the DDDA? Did it fall under his remit to examine that issue?

Mr. John Crawley: My remit was to put in place a corporate governance regime for the authority from 2010 onwards. The processes we put in place are available to be examined on our website. We did not conduct an examination of what had happened previously. The Office of the Comptroller and Auditor General carried out a comprehensive review of the process and we agree with its findings.

Vice Chairman: If Donatex had won its case, how much would it have exposed the DDDA and the Irish taxpayer?

Mr. John Crawley: The short answer is quite a bit of money.

Vice Chairman: How much?

Mr. John Crawley: At the end of 2011 or 2012, we had accrued a further €5 million or €6 million in annual incremental interest costs. That figure would have increased over time because nobody was paying the interest.

Vice Chairman: How much was Donatex claiming in the legal case?

Mr. John Crawley: There are two different figures. Donatex was claiming €100 million. Separately, it was our understanding that we had provided guarantees of approximately €29 million to Becbay, the joint venture in which we owned a 26% shareholding. Annual interest was also accruing on these figures. In a theoretical situation, had the case been successful, one could add €100 million to the figures.

Vice Chairman: Are we speaking about €100 million or €200 million?

Mr. John Crawley: The authority's liability under the guarantee for Becbay was approximately €20 million. We had also invested equity of approximately €32 million in Becbay.

Vice Chairman: I am more interested in the perspective of the ordinary person looking on. Had the DDDA lost the court case, how much would it have had to pay to Donatex?

Mr. John Crawley: Had we lost the case we would have lost €100 million.

Vice Chairman: So the DDDA would have lost €152 million on the Irish Glass Bottle site and the total loss on developments would be up around €280 million, close to €300 million. The DDDA was playing with fire. On 20 October 2006 the DDDA had a potential exposure of €9 million. We suddenly find that had the DDDA lost the court case, that exposure would have increased to €152 million. It is astounding. It makes no sense. It is an abuse of taxpayers' money. In Mr. Crawley's final remit in the wind-down, I ask that he examine that area to see what could be learned and make that known to the Comptroller and Auditor General, who could deal with it. Like everything, one needs a beginning, middle and end. With the rate of exposure of €152 million, which could have been a pension for the Irish Glass Bottle site, and €180 million with other assets, we are talking of the order of €300 million. It is €150 million with the other six development sites and another €150 million for the Glass Bottle site, a total of €300 million. It is an astronomical figure.

Ms Eileen Quinlivan: The €100 million claim does not arise so it is inaccurate to try to portray it that the €100 million is legitimately considered in there.

Vice Chairman: With due respect, the board put the DDDA and the taxpayer in a position where they had to fight a legal case based on making an investment over a 12-day period when the investment went from an exposure of €9 million to €61 million with no independent valuations provided. Major questions have to be answered here. Looking at it now it is clear that it was invested at the peak of the market. Had proper due diligence been done on it at the time and an independent valuation sought, that investment might never have gone ahead and the DDDA might still be functioning and playing the role it was meant to play, the redevelopment of business, social, educational and recreational aspects of the docklands.

Ms Eileen Quinlivan: I accept those points, and the findings of the Comptroller and Auditor General, but on the €100 million, we successfully defended the case and it was dismissed so it would be inaccurate to factor it in.

Deputy Eoghan Murphy: I refer to pages 21 and 22 of the updated briefing document regarding payouts that were made to staff members as the authority was winding down. The total amount is €103,000 and change, and was divided between a settlement payment of €14,750 gross made to a staff member in lieu of time off for working unsocial hours over a five-year period. A staff member was awarded a payment of €88,379 gross in respect of increments for the period 2001 to 2011, which should have previously been paid. When were those two decisions on those two payments made?

Mr. John Crawley: It was reported in the 2012 accounts, so some time in 2012.

Deputy Eoghan Murphy: A decision was made to make those two payments?

Mr. John Crawley: Correct.

Deputy Eoghan Murphy: Was it the case that the individual in the first instance, who was recompensed in lieu of time off for working unsocial hours over a five year period, requested that money in each of those five years and it was not paid, and eventually in 2012 it was decided that it was a liability that had to be covered? How was that determination reached?

Mr. John Crawley: Both of these were mistakes by the authority. They are payments that should have been made. As part of the wind up of the authority I specifically examined the human resources issues regarding the various people in the authority. We audited the files of the various people who were still with the authority and identified these two errors. My memory fails me in one case, but in the case of the €88,000 the person had previously requested that those payments be made. That person was on a scale and the authority had not been paying the staff member the increments. The person had formally raised it under a previous regime, maybe a couple of chief executives back, and then the gentleman brought it to my attention in early 2012. We took legal advice on it, reviewed the situation, discussed it with the board----

Deputy Eoghan Murphy: Who took the legal advice?

Mr. John Crawley: We did, and our conclusion was that the authority had made an error.

Deputy Eoghan Murphy: Okay, but he had been protesting about this lack of pay over a number of years and it had not been listened to.

Mr. John Crawley: Correct.

Deputy Eoghan Murphy: The second point I want to raise is on the issue Deputy Nash raised. In October 2009, when the moratorium was in place, the former CEO signed the contract without notifying the board although the board had clearly instructed him not to do it. Is that it?

Mr. John Crawley: Correct.

Deputy Eoghan Murphy: Was that Mr. Kelly?

Ms Eileen Quinlivan: We can check the records.

Mr. John Crawley: We believe it was Mr. Kelly. Looking at the dates, logically it could not have been Mr. Maloney.

Ms Eileen Quinlivan: We can confirm that for the Deputy.

Deputy Eoghan Murphy: If Ms Quinlivan could. What happened to that CEO as a result of such a clear breach of his responsibilities? I do not know if it is a breach of the law or not; that is a separate matter.

Mr. John Crawley: I do not know.

Deputy Eoghan Murphy: How long was Mr. Kelly with the authority?

Mr. John Crawley: In his capacity as chief executive, maybe two years.

Deputy Eoghan Murphy: Who replaced him?

Mr. John Crawley: Ms Loretta Lambkin, who has been before this committee.

Deputy Eoghan Murphy: Would it be fair to say Professor Niamh Brennan might have some information on that situation regarding Mr. Kelly?

Mr. John Crawley: Professor Brennan was the chairperson at the time.

Deputy Eoghan Murphy: Was she chairperson at the time it was discovered or at the time it occurred?

Mr. John Crawley: Both. Professor Brennan took up the chair of the authority around late 2009.

Deputy Eoghan Murphy: Was she in place until Mr. John Tierney was appointed?

Mr. John Crawley: Yes, in mid-2012.

Deputy Eoghan Murphy: That might be something to bring up with her at a later stage. My final point relates to something the Comptroller and Auditor General said in his opening statement. We had back and forth on this with Mr. Maloney in a previous meeting and in meetings before that. There was a difference of opinion between Mr. Crawley and Mr. Maloney as to what the board believed it was entering into. We received a note from Mr. Crawley on that matter, document 3A1C. I want clarity on this because it will be important later on. Does the Comptroller and Auditor General believe Mr. Crawley's note backs up what Mr. Maloney was claiming?

Mr. Seamus McCarthy: The note Mr. Crawley provided deals with what was in the shareholders' agreement. The "back and forth" between Mr. Maloney and me was regarding what the board authorised, directed or decided should be in the shareholders' agreement and regarding the investment. I have no difficulty with what is in Mr. Crawley's note. Those are the facts and I am satisfied with that. The difficulty arises around

what the board thought it was doing or agreeing to at the time. In practice we were restricted to relying on the board minutes which Mr. Maloney and I agreed should be a comprehensive record of what was decided.

I have tried to outline this morning that this was the sequence of decisions, and the Chair has referred to the speed at which the decisions appeared to be changing. I was also trying to draw attention to the lack of clarity about what those decisions were, even in respect of this limit of €35 million. It appears, when we look at the executive board minutes, that what they were talking about was a limit on the exposure through the guarantee. In fact, the limit of €35 million was on everything else except the guarantee. The guarantee had a separate scope of limitation. Effectively, the guarantee was 26% of €100 million, or €26 million, plus 26% of the interest on the Beccay borrowing for a period of two years. In the event, that is not the way it panned out, and by the time the authority came to do the deal with NAMA at the end of 2010, it had racked up a total exposure of about €82 million. Further liability would have accrued up to July 2011. Had a deal not been done with NAMA, that liability would have continued to increase.

There are two points involved. The first is that the attempt to limit the exposure did not work, and the second is the fact that the amount that they were agreeing to commit was changing within the space of days. That is something that should be very clearly documented in minutes and very clearly understood by boards when they make decisions like these.

Deputy Eoghan Murphy: It was said that the board minutes for the authority were the most detailed for any State authority or semi-State body, but Mr. McCarthy thinks that the records are ambiguous when it comes to this matter.

Mr. Seamus McCarthy: I think so, in particular the minutes of 2 November.

Deputy Eoghan Murphy: If we go back to the exchange that Mr. McCarthy had in December, Mr. Maloney said the following:

On the figure of €35 million, we all agree now that it was a funding guarantee liability to do with recourse and interest. At the time of the shareholders' agreement, the €32 million for equity was also in the shareholders' agreement. The authority knew it had a €35 million liability, plus the €32 million equity. Does the Comptroller and Auditor General accept that?

Mr. McCarthy replied, "No, I do not".

Mr. Seamus McCarthy: The first point read out by the Deputy was that the €35 million applied to the guarantee. It does not apply to the guarantee, and that is not what is in the shareholders' agreement. It is everything other than the guarantee.

Deputy Eoghan Murphy: The position on that has not changed.

Mr. Seamus McCarthy: I think it is ambiguous as to what the records actually say. There appears to be contradictions between the various documents.

Deputy Eoghan Murphy: If I take the Acting Chairman's point, perhaps he was inferring that the speed at which this changed, if we go by Mr. Maloney's interpretation, means that it might lack credibility if that is what the board would move to agree on in such a short period of time. That is a matter for the PAC.

Mr. Seamus McCarthy: The recorded value of the site was changing between the various minutes.

Vice Chairman: It went from €350 million on 20 October to €412 million on 24 October. That was only in the space of four days.

Mr. Seamus McCarthy: At the beginning of October, there were references to site values of €240 million and €300 million. There is a difficulty with all of this in that the record, in my view, is not sufficiently accurate and comprehensive for an investment of this scale. That is the point we were trying to make in the report.

Vice Chairman: Does Ms Quinlivan wish to make any final comment?

Ms Eileen Quinlivan: No, but we would like to thank the committee for the opportunity to come in today. Since the report of the Comptroller and Auditor General and the difficulties that have been discussed at length by this committee, I hope that we have conveyed that the authority has made sincere and successful efforts to rectify its financial position and to bring about its orderly wind-up, and secure the successful continued regeneration of the docklands for the future.

Vice Chairman: I thank Ms Quinlivan, Mr. Crawley and Mr. Dunne for appearing before us. Is it agreed that the committee dispose of the annual accounts of the Dublin Docklands Development Authority for 2012? Agreed.

The witnesses withdrew.

The committee adjourned at 12.45 p.m. until 10 a.m. on Thursday, 13 February 2014.