

DÁIL ÉIREANN

AN COISTE UM CHUNTAIS PHOIBLÍ

COMMITTEE OF PUBLIC ACCOUNTS

Dé Máirt, 2 Feabhra 2016

Tuesday, 2 February 2016

The Committee met at noon

MEMBERS PRESENT:

Deputy Paul J. Connaughton,	Deputy Mary Lou McDonald,
Deputy Joe Costello,	Deputy Gabrielle McFadden,
Deputy John Deasy,	Deputy Shane Ross.
Deputy Robert Dowds,	

DEPUTY JOHN MCGUINNESS IN THE CHAIR.

BUSINESS OF COMMITTEE

Business of Committee

Chairman: Today, we will deal with the HSE report to the Committee of Public Accounts on the former foster home in Waterford community care area, which was the subject of the Conal Devine report. I draw the attention of members to three pieces of correspondence; first, correspondence from the Office of the Commissioner of An Garda Síochána relating to today's meeting; and, second, correspondence from Ms Mary Farrell about the wards of court. It is disappointing that at the final meeting of the PAC, this issue still has not been dealt with. We issued the report last June and at this stage we should have had a formal response to our recommendations. It will now be a matter for the next committee. I urge this Department and all other Departments involved in this to deal with the issue of the wards of court as quickly as possible. Wards of court are very vulnerable individuals and the funds in this instance are about to run out. Following the request of the Committee of Public Accounts at its previous meeting for this information, I would have expected those concerned to provide a speedy response. We have not had a response.

Deputy Mary Lou McDonald: Chairman, I was going to say that was astonishing, but it is not. In some ways it is nearly par for the course in terms of the slow response rate of certain Departments and agencies to this committee. I have had correspondence from Ms Mary Farrell on behalf of the families of the wards of court. They are extremely disappointed, frustrated and angry at this stage that not alone is the committee left waiting for the Department's response but, more important, they are left in this position. I cannot understand the attitude of the Department that they can disregard the committee. They have had the report provided by the PAC since July 2015 and have had ample time and opportunity to respond, and now at the conclusion of this Dáil we have not received its response. It will fall to the next committee which must be firm and insistent that when a response is sought by the Committee of Public Accounts, it is supplied in a speedy fashion. It shows the level of contempt for the Committee of Public Accounts and the parliamentarians who are on the committee, but most disgracefully it shows a level of contempt for the families who are directly affected by the issue of ward of court and the fund itself. The families have been left hanging.

In the course of today's meeting with the representatives from the HSE, we will discuss the culture of that organisation, the deficiencies and the issue of accountability. The attitude of the Department of Public Expenditure and Reform to the Committee of Public Accounts and the families involved reflects a major problem of accountability and an issue around its response to the families and to the committee.

Deputy Robert Dowds: Similarly, I had contact on this issue. I agree with Deputy McDonald's comments. What concerns me most, beyond the lack of respect for this committee, is the situation regarding the victims in terms of wards of court. We are talking about vulnerable people, and it is very shoddy that we have not had a response.

Chairman: To add to that, because it is to the Department of Public Expenditure and Reform, it does not say much about its attitude towards reform and the importance of dealing with such issues.

The third piece of correspondence is from Mr. Kieran Byrne, which we will circulate because it has just come in, formerly of Waterford Institute of Technology, WIT, responding to issues raised at the last appearance of the Higher Education Authority, HEA. That will be circulated, and we will note it and publish it.

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The next business for today is the HSE report. We will call in the witnesses.

Deputy Joe Costello: Did we get a reply on the Kevin Browne case or on the Meath waste case?

Chairman: No. At the last meeting we did what we were requested to do, namely, contacted the Departments and so on, but we have had no response to date.

Deputy Joe Costello: No response to either?

Chairman: No. The two items were the waste-----

Deputy Joe Costello: The one of waste-----

Chairman: We got no response on that.

Deputy Joe Costello: -----mismanagement in Meath and the Kevin Browne case regarding the circumstances in which a catering contract was lost, tax issues and so on.

Chairman: We have had no response to that, Deputy Costello.

Deputy John Deasy: What about Tom Galvin, the Department of Agriculture, Food and the Marine? To remind the Chairman, the last note we got was from the Department, which stated that it would be corresponding with the committee very shortly, so we still have nothing.

Chairman: It was in contact with the Clerk just before the meeting to say it would have a draft report and that he will be in touch with the Clerk again, but presumably when the Dáil election is called we probably will not hear any more from that. It will come to the next meeting of the Committee of Public Accounts.

Deputy John Deasy: Did it tell the Clerk when the draft report would be done?

Chairman: It will be in the next few days. He did give a commitment that he would give the report to the Clerk.

HSE Report on Foster Home in Waterford Community Care Area: Discussion

Mr. Tony O'Brien (*Director General, Health Service Executive*) called and examined

Chairman: I welcome the witnesses. Before we begin, I ask members, witnesses and those in the Gallery to please turn off their mobile phones because they interfere with the sound quality of the transmission of the meeting.

I advise witnesses that they are protected by absolute privilege in respect of the evidence they are to give this committee. If they are directed by the committee to cease giving evidence in respect of a particular matter and they continue to do so, they are entitled thereafter only to a qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and they are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise nor make charges against a Member of either House, a person outside the House or an official by name or in such a way as to make him or her identifiable. Members are reminded of the provisions of Standing Order No. 163 that the committee should also refrain from inquiring into the merits of a policy

or policies of the Government or a Minister of the Government or the merits of the objectives of such policies.

I welcome Mr. Tony O'Brien, Director General, Health Service Executive, and his officials to the meeting. I ask him to introduce his officials.

Mr. Tony O'Brien: I thank the Chairman. I am joined by Mr. Pat Healy, who is the National Director of Social Care, and Ms Aileen Colley, who recently took up the post as chief officer for our community health organisation in what we call CHO 5, which covers Wexford, Waterford, Kilkenny and south Tipperary.

Chairman: I welcome also Ms Frances Spillane and Ms Gráinne Duffy from the Department of Health. I ask Mr. O'Brien to make his opening statement.

Mr. Tony O'Brien: I welcome this opportunity to provide further information and to answer questions in respect of the south-east foster home matter. As members are well aware, this involves allegations of abuse and neglect of the most egregious nature. The committee has asked the HSE to provide clarity on two particular matters of concern, which have emerged over the past week, and I am conscious that recent media coverage may have raised other issues that it may also wish me to address. In addressing the committee today, we will be mindful of the fact that this matter remains subject to a live investigation by An Garda Síochána and we will be careful not to prejudice or impede that process.

The committee asked the Health Service Executive, HSE, to address specifically a number of key issues which I will deal with in turn. Before addressing those issues I wish to place on the record that I met the Minister for Health, Deputy Varadkar, and Minister of State, Deputy Kathleen Lynch, yesterday during which meeting we discussed the recommendation to Government for the establishment of a commission of investigation into this matter. I welcome such a commission as it would provide a statutory mechanism to conclude this drawn-out process and allow the 47 users, their families and other interested parties to get answers to the questions they have been asking for many years now on this deeply concerning and dreadful case and to achieve some level of closure for all concerned.

Turning now to the issues and regarding the apology, the intention in early December 2015 was for the HSE to provide an update and an official apology to the 47 users, including Grace, who had contact over the years with the foster home at the centre of the abuse allegations. Letters, which included official apologies, issued by registered post to 43 families. Three service users were untraceable by the HSE or by An Garda Síochána. On 9 December, a verbal briefing, to include an official apology, was to be given to Grace and her mother the next day, 10 December. While the 43 letters issued as planned, the HSE mishandled issuing the important apology to Grace and her mother. In considering how to communicate to Grace in the most appropriate way, the view was taken that this should be undertaken in person in the first instance rather than by letter. With this change in the mode of communication in the case of Grace, it is now evident that the official HSE apology that was intended to be issued to Grace and to her mother was not made at that time. Unfortunately, the desire to offer a formal HSE apology was lost in the communication to the staff members who were to conduct the meeting in person with Grace. Having personally reviewed the situation with those staff involved, I am satisfied that it was the intention to offer a full and frank apology to Grace. I confirm that the HSE has since apologised officially to Grace and to her mother. This official apology has been made by the chief officer both in person and in writing with the assistance of the professionals now caring for Grace. There is correspondence in this regard appended to the opening statement.

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As the director general of the HSE I wrote yesterday to the 44 families to let them know that I am unhappy with the way the HSE mishandled the apology and I also apologised to them for the further distress this mishandling may have caused them or their family member. That letter is also appended in sample form. Furthermore, it is clear from both of the unpublished reports that there were significant failings in the care provided by that foster family and significant failures by the former health board, and subsequently the HSE, to make the situation safe. For this, I offer them and their family member a full, sincere and heartfelt apology.

With regard to the communications to the Committee of Public Accounts, the HSE became aware of concerns being raised in the public domain on 20 January following a report in a national newspaper. The HSE sought reassurance at local level that the apology had in fact been given. As a result of this, a report was provided confirming that an apology had been offered. The report formed the basis of the submission to the committee by the HSE on the morning of 21 January. However, it is the case that the assurance given to the chief officer, which she in turn passed upwards, referred to an individual expression of regret of the senior staff members to Grace and her mother. This expression of regret was then mistakenly taken as confirmation of an official apology on behalf of the HSE. I wish to take this opportunity to offer, in person, an unreserved apology to the Committee of Public Accounts and its members for submitting a document that contained erroneous information at that time. I assure the committee that having met the principals involved, I am satisfied there was no intention to mislead the committee.

Regarding the question of other placements after 2009 when Grace was removed, it is important at this point to assure the committee that based on all the information available to the HSE and having regard to the two investigation reports, the best information currently available is that no new placement was made by the South Eastern Health Board after the primary decision of 1995; Grace was the only health board placed person to remain with the foster family after 1995; and the South Eastern Health Board, now the HSE, is aware of one other person having contact by living arrangement with the family after 1995. I confirm today that she - Ann, as I will call her - remains in full-time, seven-day residential care with a voluntary provider and takes regular visits home to her mother. I also note for clarity that a different name has been used by Fergus Finlay in the *Irish Examiner* today. I believe Fiona is the name he has assigned to her. I want to be clear that we are talking about the same person, but this document was written before we knew that Mr. Finlay was using that name, so I have referred to her as Ann.

In April 2015, following a national broadcast, the provider, as full-time carer, contacted the HSE, having reflected on their involvement in recent years, and indicated concerns regarding historical unexplained bruising. Two professionals independent of the case were commissioned by the HSE to examine this matter. The investigation report was provided to the HSE yesterday, and nothing untoward is evident in the findings. The provider has also provided information to HIQA and Tusla, and the HSE remains in contact with those organisations. Within the limited powers it has, the HSE is pursuing references to alleged non-residential contact between Ann and her former foster carers. I can confirm she is in a residential placement and this is her primary source of protection.

From the summary review of the information based on files reviewed by Resilience Ireland, I can now summarise the position in respect of Ann. I am conscious that this will be the subject of further detailed consideration and therefore I emphasise that this is a high-level overview. Ann was born in 1980. She is now aged 35 years and has had a severe intellectual disability since birth. Her contact with the foster family, with whom she lived on a part-time basis, commenced when she was 12 years old. All her arrangements were conducted privately by her

family. During June 2011, having been contacted by the Garda Síochána, the HSE team at local level engaged with the family again to confirm that there was a Garda investigation, to advise them of concerns and to invite them to make direct contact with the Garda if they wished. In October 2011, Ann, then 31 years of age, was residing in a five-day week residential placement with a voluntary provider. A seven-day week service was offered with the same provider, but her family confirmed they had no concerns regarding the foster family and wished to continue their part-time contact with the foster mother and had confirmed this to An Garda Síochána. The seven-day week placement was not taken up at that time.

In early 2012, a local HSE team sought legal advice on the case of Ann, which informed them that they could take no further action regarding her placement at that point. From 2011 to 2013, there were various engagements with Ann's family, essentially to persuade them to cease contact with the former foster family. In October 2013, the HSE formally demanded that the foster family cease all care activity which was either current, as in Ann's case, or which they might be minded to engage in towards the future. Later that month, Ann's family was formally written to requesting that they cease the placement, and it ceased shortly thereafter.

Regarding the care needs of those who had any contact with the foster home in question, I confirm to the committee that the service user, who was removed from the foster home in mid-2009, has been fully cared for in full-time residential care by a voluntary service provider since mid-2009. The HSE chief officer and her team in the south east will continue to work collaboratively with the service provider, the service user and advocates to ensure the highest quality of service and support continues to be provided to the service user involved.

An important aspect of the Resilience Ireland report commissioned by the HSE was to look back at all service users who had any contact with the foster home in the south east and to have their care needs reviewed to ensure the necessary supports and services were in place. In the main, the service users were either in residential placement or living at home and availing of day services. As a result of the review, increased respite was provided where needed to those living at home, and specially tailored supports were provided in some other cases.

Other matters were raised by voluntary providers in correspondence. In relation to equity of funding for providers in the south east, outlined in my handout is the funding relevant to the provider in question, from 2009 to 2015. We have full detail in two categories, totalled, with an indication of the percentage changes from year to year. This includes additional funding in 2015 for a new service regarding named individuals, sleepover costs, school leavers and changing needs.

Between 2008 and 2014, the five largest funded organisations in the State providing intellectual disability services received an average reduction in funding of 12%. Since 2009, the disability sector has been generally protected from any decreases in allocation, except for those due to Government reductions such as pay reductions, the Haddington Road agreement and the Financial Emergency Measures in the Public Interest Act. Based on the percentage increases or decreases of the three main providers in the area from 2009 to 2014, the voluntary provider in question had a 4.9% reduction in funding, while the average nationally was 12%, and in the local area the average reduction was 9% for the major providers. The increases in 2015 reflect the intention to support the provider, particularly in the context of the needs of individuals highlighted in the Resilience review.

It is important to assure committee members, those concerned and the wider public that the HSE did not wait for the publication of reports to take actions to improve the service and

management failings identified in child care and disability services and to act on the recommendations of the reports. A comprehensive action plan is in place to address the combined recommendations of the reports. A number of the key recommendations implemented include those related to child care and fostering services in Waterford, for which a full review was undertaken. Recommendations were implemented between 2010 and 2012, with investment in staff and improvements in practice and supervision. Intervention with vulnerable adults is limited in the legislative and policy framework. A key recommendation of the Conal Devine report was the implementation of a HSE safeguarding policy for vulnerable adults. This policy was published in December 2014, with an immediate implementation plan which has progressed through 2015. This included the establishment of professional, resourced safeguarding teams in the nine community health care organisations.

The HSE is establishing a national independent review panel with an independent chair and review team for disability services. Establishment of the panel has been included as a priority in the HSE's national service plan for 2016. It is intended, in the first instance, that the review panel will focus on serious incidents that occur in disability services across the HSE and HSE-funded services. The review panel will be modelled on the Tusla review panel, which reviews cases in which children die or experience serious harm while in the care of the State. In December 2014, I appointed Ms Leigh Gath as an independent confidential recipient to examine concerns and provide help and advice to vulnerable adults, or anyone concerned about a vulnerable adult in a HSE or HSE-funded service.

The HSE received confirmation in writing from An Garda on Friday, 29 January 2016, that its investigation remains ongoing and that clearance is not provided for either of the reports to be published.

Chairman: May we publish your statement, Mr. O'Brien?

Mr. Tony O'Brien: Yes, Chairman.

Deputy John Deasy: On housekeeping matters, I wish to ask the witnesses from the Department of Health what it is they do in the Department. Can they tell us what their positions are?

Ms Frances Spillane: I am an assistant secretary with responsibility for social care, which involves disability services and services for older people.

Ms Gráinne Duffy: I am a principal officer in the disability unit at the Department of Health.

Deputy John Deasy: Thank you very much. I presume that committee members will want to ask questions after me, so I will go ahead, and I might speak again afterwards, once everyone else is done.

I thank Mr. O'Brien and his officials for coming in today. In the third line of his opening statement, Mr. O'Brien referred to allegations of abuse and neglect "of the most egregious nature". Thanks to a number of national newspaper reports, the nature of the alleged abuse has been publicised. It is worth repeating that information here today because it has never been articulated or verbalised at this committee. According to those reports, and I know this to be the case from meetings I have had in my own constituency, we are dealing with allegations of rape with implements. These are allegations of horrific sexual abuse. At previous meetings, I alluded to the fact that this was probably the worst example of abuse I had ever come across.

It is worth pointing out what has been publicised and the horrendous nature of what we are talking about here. Mr. O'Brien referred in his opening statement to allegations of abuse and neglect "of the most egregious nature". He admitted in his report to serious poor care failings and has made apologies. Can Mr. O'Brien, to start with, give us a description of the failings he is talking about and the kind of neglect he referred to as taking place over the course of 25 or 30 years? What exactly, in his own mind, is he apologising for? Can we start with that?

Mr. Tony O'Brien: I thank the Deputy. In the two reports, and the Devine report in particular, there is considerable detail which I cannot go into in the specifics because of the nature of those reports. They relate, in essence, to opportunities that might have been taken to deal with the allegations that were known at the time, which, had they been dealt with in a different way, would almost certainly have produced a different outcome. This occurs on a number of occasions in the period essentially back to the mid-1990s. While the allegations are just that - allegations - and are not probative at this stage because of other processes, they are of a sufficient nature that they could have triggered different actions by the persons dealing with the case.

Deputy John Deasy: That is not really what I asked. Mr. O'Brien has made statements to this committee in which he referred to failings and neglect. What is he talking about there? I want him to describe the neglect he referred to in writing. What is he apologising for?

Mr. Tony O'Brien: I am apologising for the fact that Grace was permitted to remain at risk in that care setting for the length of time she was.

Deputy John Deasy: Mr. O'Brien is apologising to 46 or 47 different individuals; it is not just Grace. Why did he feel it necessary to apologise to everyone?

Mr. Tony O'Brien: At one point or another, all of those individuals were cared for in that foster home and, as a result of that, they were at risk. It is for actions, or, more particularly, inactions that allowed them to be at risk and exposed to risk of the type we have both made reference to that I am apologising on behalf of the HSE and, in effect, also for the former South-Eastern Health Board.

Deputy John Deasy: Who made the decision to leave Grace in the foster home?

Mr. Tony O'Brien: That was made by a group of individuals in the South-Eastern Health Board in the middle of the 1990s, but there were further opportunities later. They are people whose participation in the process is detailed in the Conal Devine report. I have been asked by An Garda Síochána not to publish the report, so I hope the committee understands that I cannot go into line-by-line detail as to what is in the report, because that would effectively be to publish it.

Deputy John Deasy: Let us stick with the individuals who made that decision. It is probably a good example. Mr. O'Brien is probably aware of comments that Ministers have made in recent days on individuals who made the mistakes about which we are speaking and who were responsible, in large part, for the neglect, poor care and, potentially, the very serious sexual abuse that occurred or is alleged. To cut to the chase, outside of Garda investigations and commissions of investigation, there are people still in the system, by which I mean the HSE, who have graduated to other organisations dealing with child protection whose work and involvement in this, in some cases, go back to the 1990s. They are still in the system and are still dealing with children and making very serious decisions at a very senior level when it comes to children. What is Mr. O'Brien doing about this? I want him to answer this question, consider-

ing he is the director general of the organisation. What is he doing? He must have concerns that if there are people who are responsible for this and for the neglect, as he put it, the poor care and the failings then surely the most basic and obvious step would be to have these people step aside until any investigation is concluded.

The public interest dimension of this now requires, in my opinion, these people to step aside while an investigation is concluded. What is not tolerable by the public at this point is for those people who were responsible for this to continue in their jobs, based on the fact they still have senior positions dealing with child protection in this country. If Mr. O'Brien's organisation does not understand this, it understands nothing. This is really, I think, the kernel of the matter today. Mr. O'Brien should probably have addressed it in his opening statement, and I am surprised he did not. Before he leaves the committee room, he will have to address this and satisfy the members of the committee that the individuals involved and responsible for this will account for themselves. That is critical, necessary and obvious.

Mr. Tony O'Brien: In relation to the events of the 1990s, the individuals concerned are no longer in public service. In relation to subsequent events, the Conal Devine report was commissioned specifically to identify-----

Deputy John Deasy: Is Mr. O'Brien sure all of them are not in public service? Is he absolutely sure about that?

Mr. Tony O'Brien: The three who made the decision to which I referred-----

Deputy John Deasy: That is not what Mr. O'Brien said. I am not talking about that specific decision. I am talking about people in the HSE and the health boards who were involved in the foster home and decisions about the foster home. They are still in public service. Is this correct?

Mr. Tony O'Brien: Let me answer the question again.

Deputy John Deasy: No, answer that question. Is that correct?

Mr. Tony O'Brien: If I was unclear in my first answer, I need to restate it. I know the Deputy will allow me to do so. I referred in my first answer, when the Deputy asked me for what I was apologising, to a specific decision that was made to leave Grace in the foster home in the 1990s. This was made by a three-person panel, for want of a better word, and those three persons are no longer in the public service to be clear about that.

The Conal Devine report was commissioned specifically to lay out in full unvarnished detail who did what and when, and would be the basis upon which any action in the disciplinary space would be taken. From the outset of its commencement, there was close liaison with An Garda Síochána, and it was always understood and intended that the report would be published and available, whatever action may be necessary. However, since its conclusion in 2012, it has not been possible to use it for that purpose, and that is why no disciplinary action has been proceeded with on foot of the Conal Devine report.

Deputy John Deasy: I am saying it is not sufficient. I am saying this has gone on for 30 years. We talk about the circumstances of Ann, in particular, in 2013 and maybe before then. Considering that we are talking about a current situation and that very serious issues were raised in the early 1990s, Mr. O'Brien's answer is not sufficient. He cannot stand over what he just said with regard to the means of dealing with the people who are potentially responsible for

making these mistakes, which are very horrendous and serious. It is just not going to wash any longer. Mr. O'Brien has got to accept that. The public will not allow it to wash. This matter dates back 20 or 30 years. We are talking about something in 2013 that was raised back in the early 1990s. Mr. O'Brien is going to have to come up with something better. I am sorry, but he will have to deal with the issue of those individuals who were responsible for this, who allowed it to continue and who have not been brought to book by his organisation because it would actually become an issue for it in terms of its corporate culture and the fact that the HSE's attitude to everything has become so defensive and litigious. The HSE has become incapable of dealing straightforwardly with problems and, as a result, it has actually become a danger to the very people it is meant to protect in the first place. That is the issue.

I ask Mr. O'Brien again - I am sure other members will ask him as well - what he is doing about the individuals who, from the early 1990s, made these decisions and who are still in the system in some cases. Mr. O'Brien should please not hide behind the Conal Devine report and the Garda investigations any longer. He will have to come up with a better answer with regard to making these people account for themselves. They are within his organisation in some cases.

Mr. Tony O'Brien: I know the Deputy believes - he has said this to me before - that we are hiding behind either the Conal Devine report or our inability to publish it. If the committee has any doubt that I am not in a position to publish and proceed, it is able to take its own legal advice. I imagine and am certain it would be advised in the same way that I am advised, that is, that I cannot use that report in any way until I am cleared by An Garda Síochána to publish it. If I were to do so, I would be prejudicing an ongoing criminal investigation, which I do not have the right to do. If one had an unfettered ability to rewrite the law book, one might do things differently. In the case of Áras Attracta, for example, where there are currently prosecutions, the same issue applies.

Deputy John Deasy: Hang on a second. What is preventing Mr. O'Brien from picking up the phone and calling the individuals who were in charge at the time and who are still within his organisation? Has he done that?

Mr. Tony O'Brien: To bring them into any process, I have to be in a position to give them the evidence that exists in relation to their conduct.

Deputy John Deasy: I am not talking about the evidence. I am talking about Mr. O'Brien, as the CEO or director general of the HSE, picking up the phone and asking the individuals what happened. He is not prevented by law from asking them what happened. He is not prevented by law from asking the people around him why, in the first instance, he was not told about the issues associated with Ann being in the home until 2013. If some members of the public were talking to Mr. O'Brien, they would say, "Tony, why don't you pick up the phone and find out what actually happened and who was involved here, and why don't you speak to them about the decisions they made from the 1990s up until 2013?" Has he spoken to them? Has he spoken to the people around them? Has he made any attempt to-----

Mr. Tony O'Brien: They have all been interviewed as part of the Conal Devine process and I have not myself spoken to them. It would be neither normal nor appropriate given that I have an appeals function in relation to any disciplinary action that would follow. I would be prejudicing the process. I do not live in the world that the Deputy and I probably wish I did live in where I could just do what I like. I cannot. I have to follow the process-----

Deputy John Deasy: That is the problem and the world is going to have to change. It is

not tolerable any longer. It is not acceptable.

Mr. Tony O'Brien: With respect-----

Deputy John Deasy: It is not going to wash any longer.

Mr. Tony O'Brien: With respect, the world that I operate in is one governed by laws that are determined in this place, not where I work. It does not change the fact that I may be equally frustrated but I still have to follow the appropriate pathway within the legal framework that currently exists.

Deputy John Deasy: Mr. O'Brien has been in to this committee on quite a few occasions and I am afraid that I have come to the conclusion that he is hiding behind these reports. He is hiding behind the Garda investigation and-----

Mr. Tony O'Brien: Deputy Deasy has said that a number of times. I would challenge him to obtain legal advice from the advisers that exist in the Houses of the Oireachtas so that he can know that I am not hiding behind these reports. It is very easy for the Deputy to say that but has he got legal advice that tells me I can do it? I do not think he has.

Deputy John Deasy: Perhaps I will change the subject here Chairman. If this is basically going to be the stonewall here today, as has been the case in every meeting with Mr. O'Brien at which this issue has been discussed, we are probably not going to get anywhere. With regard to the reports the invocation of one of the health Acts so the Minister and the junior Minister involved can finally request the reports after all this time is curious. It is curious and problematic for us that, after years and months of being told that "there is no way we can actually get or read these reports", they finally have the reports. All that had to be done was to read an Act and see that the definition of the Acts does allow these reports to be obtained.

Mr. Tony O'Brien: Yes-----

Deputy John Deasy: Hang on a minute. Mr. O'Brien has got to let me finish. Again, the kernel of this is the public interest dimension. Now Mr. O'Brien has admitted the mistakes and the failings - we know the detail of the allegations involved and we know the people who are still within the system in many cases while some have moved on to other organisations dealing with child protection. The reality is that a previous Garda investigation collapsed. This second Garda investigation may not go anywhere and commissions of investigation take time. People retire or leave the system. The people who are actually charged with making these mistakes remain in situ and have access to files and e-mails and are sitting on potential evidence. That is a big issue. If Mr. O'Brien is so frustrated legally and is saying "Oh my God I cannot do anything ... these people", has he asked anyone whether or not there needs to be a change of course with regard to his powers internally? If it is the case that he is going crazy in not being able to deal with this and not being able to make these people account for themselves, has he just given up and left it at that? Is that effectively the answer to the committee here today?

Mr. Tony O'Brien: No it is not. I know the term "stonewalling" has a certain cachet. I am not stonewalling the committee. I am prepared to answer any question I can that does not involve me effectively publishing the two reports that An Garda Síochána has asked me not to. I want to be very clear that this is the only reason they were not published. The reports were accepted when they were submitted; the Conal Devine report in 2012 and the Resilience report in March 2015. The recommendations are being pursued and the intention of the commissioning of the Conal Devine Report - which preceded my own time - and it is written in to the terms

of reference, was that it would be for publication. It has been prepared carefully so it can be published but it cannot be published in the face of a Garda objection to its publication.

Deputy John Deasy: I have asked Mr. O'Brien this question a couple of times. He stated at our previous meeting that he had not read the reports.

Mr. Tony O'Brien: I have read the reports.

Deputy John Deasy: So now he has read the reports. All right. What change prompted Mr. O'Brien to read the reports? When I asked him the question at our previous meeting he stated he had not read the reports. Will he remind the committee of the reasons he felt he could not read the reports? Why has he changed his mind?

Mr. Tony O'Brien: It was never the case that I could not read the reports. It was the case that I had not read them, although I was obviously aware of the recommendations and monitoring their implementation. When I was last here and we talked about this, I shared correspondence with the committee concerning the decision of the Information Commissioner and the pending cooling-off period, subject to whether there would be an appeal, etc. In that period, recognising that it was likely that the recommendations would all be in the public domain, I took the opportunity to read the full reports. I re-read them last weekend and I am now very familiar with what they say, but I still cannot tell the Deputy all that they say.

Deputy John Deasy: Okay; well, answer this question. Now that he has read the reports, does Mr. O'Brien have any personal concern that the people involved in making these decisions are still involved in child protection?

Mr. Tony O'Brien: I am very concerned that I am unable to publish them and unable to-----

Deputy John Deasy: That is not what I asked.

Mr. Tony O'Brien: I need to give a complete answer, if I may.

Deputy John Deasy: Mr. O'Brien is giving me a legalistic answer.

Mr. Tony O'Brien: No, I am not. I am not a lawyer.

Deputy John Deasy: Now that he has read the reports, does Mr. O'Brien have any personal concern that the people involved in making these mistakes - the neglect and poor care that he has described in writing to this committee - are still involved in child protection?

Mr. Tony O'Brien: There are a wide number of people whose actions are detailed in the report. It is clear from my reading of the report that there were many instances - missed opportunities - but not all of the people covered were on, shall we say, the downside of that. I am concerned that there is an ongoing delay to enabling us to publish the reports, which would enable each of those involved - each of the persons implicated, as it were - to have an opportunity to answer what it says in the report so that those who have something to account for can account for it and those who are blameless can have their names restored, as it were.

Deputy John Deasy: We have gone from abuse and neglect of the most egregious nature to "missed opportunities." That is my problem here. Mr. O'Brien started off in the opening paragraph of his opening statement-----

Mr. Tony O'Brien: There were missed opportunities to prevent-----

Deputy John Deasy: Will Mr. O'Brien explain what he means by "missed opportunities"?

Mr. Tony O'Brien: As has been in the public domain, and answering the Deputy at a general level so as not to open the documents themselves, there were occasions on which there was information available which, had it been treated differently, would have removed Grace from that situation earlier than she was removed, and, on the basis of what is alleged to have happened, she would therefore have been protected from the egregious abuse that is alleged to have occurred.

Deputy John Deasy: And these people are still working in the HSE?

Mr. Tony O'Brien: There are many people who were involved in different ways in those processes. One of the features of this is the disagreements that occurred at different times as to what should have occurred, and different people were on different sides of those disagreements. Some of those people are still working in either the HSE or Tusla.

Deputy John Deasy: One of the reports in the newspapers today quoted one of the whistleblowers as saying that when he visited the foster home in question, there had not been a HSE inspection of that foster home in six years. Can Mr. O'Brien confirm that?

Mr. Tony O'Brien: I cannot confirm that detail but I can confirm that the issue of the frequency and appropriateness of visitation, inspection and compliance with the relevant legislation at that time is the subject of the Conal Devine review.

Deputy John Deasy: Is that a missed opportunity, as Mr. O'Brien referred to? After everything that happened and the failure of Mr. O'Brien's organisation to visit the individual in question in the foster home, is Mr. O'Brien seriously describing this as "disagreements," "differences of opinion" and "missed opportunities"? Is that really what he is getting at? I would refer to that a bit differently. I would refer to that as extremely serious and as constituting negligence of extraordinary proportions, not a missed opportunity. It is serious.

Mr. Tony O'Brien: I will tell the Deputy why I use the term "missed opportunity". It is exactly the same language that HIQA uses in its reports, and I am borrowing that language for no other reason.

Deputy John Deasy: I ask Mr. O'Brien not to use HIQA lingo.

Mr. Tony O'Brien: Let us be clear. I have already described the nature of the allegations. We are not in disagreement. I have accepted that up front.

Deputy John Deasy: What we are in disagreement about is what to do with the people who were responsible at the time-----

Mr. Tony O'Brien: We may not even be-----

Deputy John Deasy: -----who are still working in the system and how Mr. O'Brien is dealing with that.

Mr. Tony O'Brien: We may not even be in any disagreement about that.

Deputy John Deasy: Okay.

Mr. Tony O'Brien: What we have a difference of view on, I think, is what is within my power to do right now. We have a difference of view on how much of that turns on the ability

to publish the Conal Devine report.

Deputy John Deasy: Does Mr. O'Brien trust the people around him to give him full and clear information, and does he believe that the people around him have given him the full facts every time he has asked questions with regard to the details of this foster home and everything around it?

Mr. Tony O'Brien: When the Deputy says "the people around" me, is he referring to the two people who are accompanying me today?

Deputy John Deasy: I refer to the people whom Mr. O'Brien has asked to report to him on this issue.

Mr. Tony O'Brien: The honest answer to that question is that I do not always get the answer to the question I am asking first time and, a bit like the Deputy, I often go back with follow-up questions.

Deputy John Deasy: I really should try again. Actually, Mr. O'Brien should try again. I asked him a question.

Mr. Tony O'Brien: I ask Deputy Deasy to tell me the question again, if that is all right, Chairman.

Chairman: Of course it is.

Deputy John Deasy: It is clear from Mr. O'Brien's interview on Sunday that, for him, it was new information-----

Mr. Tony O'Brien: Sorry; what was new information?

Deputy John Deasy: That this individual, Ann, had been in the foster home until November 2013. Is that the case?

Mr. Tony O'Brien: That information is contained in the Resilience report and, in that sense, it is not new information.

Deputy John Deasy: Okay. Let me ask Mr. O'Brien my question again.

Mr. Tony O'Brien: I will tell the Deputy why I appeared to hesitate at the end of that interview. I had had a number of discussions with people directly involved in this on Friday arising from the events here on Thursday. I had not expected that particular question and I was a little fuzzy on one or two of the details, so I gave a slightly broader answer so as not to mislead in any way. I then asked the relevant questions and was able within a couple of hours to confirm the detail to RTE, the broadcaster in question, and that was confirmed to other media as well.

Deputy John Deasy: That is fair enough.

Mr. Tony O'Brien: I am sure the Deputy has been in that situation.

Deputy John Deasy: I will ask the question again so. When Mr. O'Brien has asked questions about this issue in the past couple of years, is he happy that the information he received was accurate? Is he happy that he was not misinformed? Is he happy that the people whom he asked to deal with this gave him the correct answers at all times?

Mr. Tony O'Brien: I am certainly happy that every effort has been made to give me the correct information. On occasion I have had the opportunity to question something - is that complete, is that whole, is the sequence of that correct - but on the broad issue of trust, the answer is "Yes." From time to time I do not trust everybody, but on this one, given the existence of the two reports which are clear and unambiguous and the other information that has been provided, I have a good degree of trust.

Deputy John Deasy: Finally - for the time being, anyway - on the issue of the apology, Mr. O'Brien mentioned the rebuttal to the *Irish Examiner*. Frankly, if Daniel McConnell had not written that story in the *Irish Examiner*, we would not be sitting here talking about this today. With regard to Mr. O'Brien's two-page rebuttal, which was very detailed and very specific with regard to individuals - how they did it, what they said - is he comfortable that he was given the correct information? He stated that it was a misunderstanding; I do not believe that. I think it was dressed up. I believe the two individuals who were meant to give that apology were never instructed to give the apology, and they made it clear to people after the fact that they did not give the apology. With regard to Mr. O'Brien's version of events, which I will not go into, I do not believe it occurred the way it has been characterised. In some ways that is a good thing, because we would not be talking about this and we would not have a commission of investigation if Mr. O'Brien had not gone to the bother of rebutting that story in the two-page letter to the committee. It was, as it has turned out, not a negative thing. The director general can go ahead.

Mr. Tony O'Brien: I set out, in my opening statement, the information that I obtained from meeting the principals involved which included the two individuals - the one who made the phone call to Grace's mother and the other who met Grace. I also saw the correspondence. I should say, at the outset, that I was not happy with the nature of the apology at all in relation to the 44 letters that went out, which is why I have subsequently issued a much more appropriate apology myself and there is a copy of that attached to the opening statement. That is the first thing to say.

In relation to the miscommunication, misunderstanding, mis-interpretation or whatever we care to call it, I have spoken to all of the parties involved, including those two. Having looked at the whites of their eyes and sat down with them for over two and half hours, I am satisfied that there was a miscommunication and that there was no intention to mislead. I cannot imagine why the people involved - the chief officer, for example, has been working in Ireland for about four or five months, having been in Australia for a long time. The two individuals concerned, I cannot imagine why they would wish or have any motivation to concoct a story in relation to this apology given that the three of those, and those to whom they sent that information, but the three of those had no hand, act or part in the previous substantive issues that we are talking about. I do not see any motivation there either to misunderstand or mislead and I accept their bona fides. I agree that the net effect is that an incorrect story was told and this committee was given incorrect information and, again, I apologise for that.

Deputy John Deasy: I will ask my last question, Chairman, for the time being. When the Minister of State, Deputy Lynch, and I am not going to get political here, asked for the full information on this foster home and asked if anyone else remained in the home, she was given faulty information.

Mr. Tony O'Brien: I do not accept that. When she asked was in early 2014 and in early 2014 there was no one remaining in the foster home.

Deputy John Deasy: That is Mr. O'Brien's answer with regard to that matter. Did Mr.

O'Brien tell her about Ann at that time or did he say that Grace was the last resident in the foster home?

Mr. Tony O'Brien: I did not have that conversation.

Deputy John Deasy: Yes.

Mr. Tony O'Brien: I have had subsequent conversations with her.

Deputy John Deasy: So the Minister of State was not told about Ann. Is that what Mr. O'Brien is saying?

Mr. Tony O'Brien: No. I am saying I did not have that conversation.

Deputy John Deasy: Mr. O'Brien does not know. So Mr. O'Brien does not know if the Minister of State was given faulty information then. Was she informed about Ann or not?

Mr. Tony O'Brien: When I spoke to her on Sunday, just this Sunday gone, we discussed the issue of what information was provided to her and when. Partly because of the issue that we talked about earlier, at the end of that interview I was slightly equivocal because I was unclear of the exact dates. She picked up on that herself. We spoke and she was concerned to know whether, when she was briefed in early 2014, had anyone remained in the home. When I was able to confirm that that was not the case, then she was satisfied.

Deputy John Deasy: When the Minister of State asked the question initially, she was not told about Ann.

Mr. Tony O'Brien: That I do not know. The Deputy will have to ask her about that.

Deputy John Deasy: It is pretty clear that she was not, at this point. It is clear from the Minister of State that she was not.

Mr. Tony O'Brien: I have not had that conversation about that. The central point-----

Deputy John Deasy: I am looking at Mr. O'Brien's opening statement. He said there were "various engagements" from 2011 through to 2013 concerning Ann, internally and within the system.

Mr. Tony O'Brien: All I can say is the central point that we talked about, and I cannot speak to other things, was whether anyone had remained beyond the point to which she had been given an assurance that no one remained there, and that point was in early 2014.

Chairman: Time.

Deputy John Deasy: I thank the Chairman. I will come back in later after other members have contributed. The hallmark of this entire issue with Mr. O'Brien's organisation has been when anyone asks a question, in here or at ministerial level, they are given just enough information to suffice with regard to kicking the matter down the road. The hallmark of this matter is that full information has not been given by Mr. O'Brien's organisation at times. The HSE, as the Chairman has said, has been dragged kicking and screaming, in many respects and on many occasions, to give us that information. That is the hallmark of this entire issue and that has been our experience in this committee. I am afraid that is a big problem for me.

Mr. Tony O'Brien: I think our shared frustration stems from the fact we cannot give the

Deputy what he wants, which is the two reports. If we were able to do that, many of his concerns would be addressed in that he would have full information. The reports pull no punches. They lay this out in full detail and the issue that creates this difficulty is that we cannot give him those reports.

Deputy John Deasy: I will say one last thing to Mr. O'Brien. He should have read those reports a long time ago. He tells us he has read them now, when these allegations date back to the early 1990s and are very serious. For Mr. O'Brien to feel compelled now to read them tells me everything. He should have done it a long time ago and it is inexcusable that he did not considering what we have brought up in this committee, what the concerns have been and their seriousness. That tells us an awful lot.

Chairman: Thank you, Deputy Deasy. For the information of members, Deputy Costello has indicated, as have Deputies McDonald, Dowds and McFadden. That is the order in which members will contribute. Before I call Deputy Costello, I want to bring the meeting back to the reason we are here. It arises from poor information or misinformation, the work of the whistleblowers and their bravery in coming forward.

I would have thought, Mr. O'Brien, given the content of what has been told to the HSE by the whistleblowers and the extreme nature of the abuse we are speaking about, that you would have availed of the opportunity to be a lot more open in your opening statement. I see the English language being used to strengthen the veil of secrecy around what is going on. It is a pathetic attempt to continue what happened at our previous meeting.

I want to answer the question that Mr. O'Brien asked Deputy Deasy. He might answer it in a different way, having reflected on it. Mr. O'Brien asked him if he understood the legal advice and the legalities of where Mr. O'Brien stood. Let me be clear about this. Mr. O'Brien said that he shares our frustration. He has no idea of the degree of frustration and anger that exists throughout the country, beyond this committee, concerning this issue. As we get nearer to the centre and to the families concerned, and we experience the sadness and watch on their faces the question marks and the fact they have misplaced their trust in Mr. O'Brien's organisation, one cannot even begin to answer them or to understand that sadness. I do not know how the individuals who suffered in this foster home feel.

To answer the question about this legal discussion that Mr. O'Brien had with Deputy Deasy, what about the rights of the 47? What about the breach of their rights? What about the fact their rights were trampled upon, kicked around and ignored by the State and Mr. O'Brien's organisation? What about those rights?

Mr. O'Brien can find all the fancy words in the English dictionary to describe this. It is alleged rape. It is alleged sexual abuse of the most horrific kind. It is physical abuse. It is in the form of evidence where the clients appeared in hospital, battered and bruised. It is in the form of evidence from the whistleblowers as to what happened. Yes, we speak now about Grace and Ann, but there are 47 people affected by this who cannot speak for themselves, who could not speak for themselves at the time and who are intellectually disabled. Your defence is not of them; your defence is of those who ignored that house to one degree or another, those who failed in their duty of care. That would seem to be your defence. I find that absolutely shocking because of where we are today and because we are here today. I understand the legalities around the publication. However, I want you to understand this - it is not about the members of the Committee of Public Accounts and what we feel. It is about you giving some sort of comfort to these 47 and to all others in care in this State on this day, but I do not get that comfort

from your statement. I do not get a sense that the HSE gets it. That is what is coming across in the opening questions from Deputy Deasy and the conversation around those questions.

I will call Deputy Costello next, and I am honestly asking you to please reflect on the state of play within the HSE and on those within the HSE who know exactly what happened because they do know. I wish to remind you that in 1993 the South-Eastern Health Board carried out investigation after investigation because of the Kilkenny incest cases. There was a spotlight on the South-Eastern Health Board for a long time during this period. There was a concentration on the care for the intellectually disabled and those in care. How this home escaped all of that, I do not know. I am not convinced that what was going on was not widely known within the HSE at the time.

I will finish on this. In his opening remarks Mr. O'Brien adverted to those who were referred to this service by the HSE or the health board, as it was then. There were other referrals - from the Brothers of Charity I think - but they stopped those referrals because of suspicions they had in 1990. However, the HSE or the health board continued.

A further aspect is that individuals were taken into that foster home independently of either the HSE or the Brothers of Charity. I would have expected you to avail of the opportunity today to give an overall context to how this house existed at all, to its interaction with the HSE or the health board and the Brothers of Charity and to how they independently took in individuals.

Lastly, I thought you would have dealt with the complaint made by an authority in England. We are told an authority in the United Kingdom made a complaint in respect of the service and concerns certain individuals had. That is the context for today's meeting. Let us not forget the horrific nature of the abuse in this case as you answer questions.

Deputy Joe Costello: Thank you, Chairman. I thank Mr. O'Brien and his team for coming before the committee today. The matters we are discussing are extremely serious. I do not think we have had an issue of such a horrendous nature before this committee previously. Important issues of accountability and responsibility arise before us today as well as the question of the entire operation and ethos of the HSE. We are discussing a very serious matter.

Mr. O'Brien gave us a briefing and said that the HSE sent us a briefing paper on 10 December. In the opening points in that document the HSE states that no individuals have been placed with the family by the South-Eastern Health Board, the HSE or voluntary service providers since 1995. Is that the situation?

Mr. Tony O'Brien: Yes, that is confirmed in both of the reports.

Deputy Joe Costello: Does that tell the full story?

Mr. Tony O'Brien: I am sorry. I do not understand.

Deputy Joe Costello: Was the HSE aware of anyone else being placed in a private capacity?

Mr. Tony O'Brien: The Resilience report contains the information relating to Ann, which I have included.

Deputy Joe Costello: We are not necessarily discussing the Resilience report, but the actual situation that pertained since 1995.

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Mr. Tony O'Brien: The Resilience report, from which I will draw this information-----

Deputy Joe Costello: Sorry?

Mr. Tony O'Brien: I have to rely on a source of information, so I am telling the Deputy what it is.

Deputy Joe Costello: The HSE had no further information about anyone else going in any other capacity to-----

Mr. Tony O'Brien: I am about to give the Deputy the information that he is asking for, but I am citing where I am drawing it from for the sake of clarity, if that is okay. The Resilience report - the second report - was a look-back or tracing exercise and made reference to nine persons known to have been placed there under private arrangements throughout the totality of the period. The last of those was Ann. According to the information in the Resilience report, she was the only one who was there beyond 2009.

Deputy Joe Costello: Was the HSE aware of anyone else being put there in any capacity? Is that the full story now?

Mr. Tony O'Brien: Yes, that is the full story.

Deputy Joe Costello: Mr. O'Brien is telling me what the full story is from the Resilience report.

Mr. Tony O'Brien: The Resilience report was commissioned specifically to-----

Deputy Joe Costello: I am aware of the Resilience report and its commissioning, but I will move on.

Mr. Tony O'Brien: The aim of the report was to identify the totality of persons who had experienced "care" in that setting. It identified nine who had been placed there privately, that is, not by the South Eastern Health Board, SEHB, or the HSE. The HSE never actually placed anyone there. Placements ceased in 1995.

Deputy Joe Costello: Did the HSE give us the full story on 10 December? The impression that was clearly given was that no individuals had been placed - to the letter of the law, that was accurate - by the South Eastern Health Board, the HSE or any voluntary service provider, but that was not the full story. Was the HSE aware at the time of a broader story of private placements that whoever wrote this chose not to divulge?

Mr. Tony O'Brien: The HSE has had the Resilience report since March 2015 and, therefore, was aware that there had been nine private placements, one of whom was Ann.

Deputy Joe Costello: Why did the report used to brief the Committee of Public Accounts not contain that extra information? We are discussing vulnerable people in the care of an institution that we were given the impression no one was in after 1995.

Mr. Tony O'Brien: No. It was clear that the person we now call Grace was there until 2009. The term "placement" is intended-----

Deputy Joe Costello: I know, but no one-----

Mr. Tony O'Brien: I will ask Mr. Healy to respond, if I may.

Mr. Pat Healy: That is the distinction that the Deputy mentioned concerning private placements. The focus of the report was on identifying who the health service had placed there. The health service, the South Eastern Health Board, voluntary providers and public providers had-----

Deputy Joe Costello: This conceals the fact that other people were there. It gives the impression that the only people who were going there were the ones who were coming either from the SEHB, the HSE or the voluntary service providers. Now we know that other people were there. We could not have known it from the information provided by the HSE.

Mr. Pat Healy: The distinction is that-----

Deputy Joe Costello: The witnesses cannot just rely on the-----

Mr. Pat Healy: The significant issue is that, when the State takes a decision or allows a situation where it has responsibility for people with intellectual disability, it places them. That is what happened in the case of Grace. The State was looking after Grace as a child from an early age and placed the child in this location. That is the most significant issue where the State has responsibility for provision. That is what we were communicating.

Deputy Joe Costello: I am well aware of that, but this briefing-----

Mr. Pat Healy: If I could make a further point. In Ann's case, we are trying-----

Deputy Joe Costello: I have not asked Mr. Healy about that case yet. Why was further information not divulged to us about other people who were there subsequently, having been placed in a private capacity and of whom the HSE was aware? It had read the Resilience report, which referred to this matter, but the HSE did not advert to it.

Mr. Pat Healy: The focus was-----

Deputy Joe Costello: We were discussing the totality of vulnerable people who were in that foster home. Mr. Healy gives the impression that there was another cohort that was not there at all.

Mr. Pat Healy: In writing the report, the clear intention was to clarify what the State had done in putting people there. The distinction is that in the case of the private placements, they were not placed there and living there, as Grace was, but rather they were living at home or they were attending residential or day centres and came on a weekend or on a respite visit. That was the reason the emphasis in this report-----

Deputy Joe Costello: It was not just a question of emphasis, the other was excluded. Let us go on-----

Chairman: Would Mr. Healy tell Deputy Costello just how many people we are talking about, including independent referrals, referrals from the Brothers of Charity, referrals from the HSE and these other cases he is talking about?

Mr. Pat Healy: What we sought to do in the report, actually-----

Chairman: Just give me the numbers.

Mr. Pat Healy: There was a total of 47.

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Chairman: There is, therefore, no number beyond 47 about which we have to be concerned; it is 47.

Mr. Pat Healy: It is 47 and that was the reason for including 47-----

Chairman: That is the answer, Deputy Costello.

Mr. Pat Healy: In the table-----

Deputy Joe Costello: It is not quite the answer. There is no reference to those other people in the response that came to us initially. They are included in the 47, but they are not included in the information that was divulged to us.

Mr. Pat Healy: The challenge we had in dealing with this was that on the day we wrote this report we had received an approval to release into the public domain the information cleared by the Information Commissioner - the 12 pages that were allowed, principally the terms of reference and most of the recommendations, which were non-personal in nature. That was what we had. We took the opportunity to include some additional information, which would not raise issues in respect of the Garda investigation or anything like that, which was very significant, to be of assistance to the committee. That is what we sought to do.

Deputy Joe Costello: For clarification, is it 47 plus nine, or-----

Mr. Pat Healy: No, it is 47. The nine are in that. The purpose-----

Deputy Joe Costello: What is misleading, if I may so, is that there is no reference to the nine in the 47.

Mr. Pat Healy: The reason-----

Deputy Joe Costello: In the briefing document that was given to us on 10 December, the impression is given that there is nobody else there at all other than the people who were referred by the South-Eastern Health Board, the HSE or the voluntary providers. There is no reference whatsoever to private referrals or other charitable referrals.

Mr. Pat Healy: Just to say to Deputy Costello, the information we gave here related to the placements. We set out in 1.4 the placements in respect of-----

Deputy Joe Costello: The information that has been given in relation to 47 should have included the fact that there were people other than those referred by the HSE and the SEHB, because that concealed the fact that there was another channel of referrals, which should have been referred to in all of this. I want to move on-----

Mr. Pat Healy: Can I clarify, Chair? It actually identifies the totality. What it was setting out was the overall-----

Deputy Joe Costello: Where does it identify the totality?

Mr. Pat Healy: It is set out on page 5. There is a table there that sets out the total. What it is seeking to do-----

Deputy Joe Costello: Page 5 of which document?

Mr. Pat Healy: Page 5 of the report. It sets out the totality and it goes through every single

one. In 1.5 on page 6 there is a summary analysis.

Deputy Joe Costello: It is certainly not there on page 5. I see the table, but it does not show the origins or the referrals.

Mr. Pat Healy: It was not intended to do that. What it was doing-----

Deputy Joe Costello: Why is Mr. Healy saying it is doing it, then? It is not doing it.

Mr. Pat Healy: Can I just explain? If Deputy Costello goes to page 6 of the report, at 1.5, it sets out there that of the 46 users who were identified, 35 families were interviewed and 36 service users. What we were trying to communicate out of the Resilience report, without going into it-----

Deputy Joe Costello: Thirty-six service users.

Mr. Pat Healy: Forty-seven service users and 46 families. One of the families had two children involved

Deputy Joe Costello: If Mr. Healy is saying that is clear about the nine families-----

Mr. Pat Healy: The purpose of communicating this was-----

Deputy Joe Costello: I know what the purpose is. What I am pointing out-----

Mr. Pat Healy: What we were doing was setting out-----

Deputy Joe Costello: I do not want to dwell on it much longer. The document Mr. Healy sent to us clearly indicated that no individuals had been placed in this foster home since 1995 and that the totality of those who were there was described by the South Eastern Health Board, the HSE and the voluntary service providers. Now he is giving an apology. Why should he be apologising to these people when he had nothing to do with them being placed in this home and he did not even refer to them in the original document?

Mr. Pat Healy: Can I explain what we were setting out? We were indicating what was covered by the Resilience report. The Resilience report was-----

Deputy Joe Costello: That is not what it is. That is what Mr. Healy is saying.

Mr. Pat Healy: What it is-----

Deputy Joe Costello: Sorry, I am not going to dwell any longer on it. All I am saying is that the report submitted to the Committee of Public Accounts did not say a word on the outside about being a Resilience report.

Mr. Pat Healy: The table is an extract, Deputy Costello. What we have done is that we have summarised key pieces of the report that we felt we could put into the public domain.

Deputy Joe Costello: The point I am making is that misleading information was given to this committee. That is what happened at our last meeting as well. Misleading information was given to us at the previous meeting.

Mr. Pat Healy: I do not believe that.

Deputy Joe Costello: There was a categorical statement that people had gone to the ser-

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vice user and that they had made an apology. The two people who met the service user and the birth mother have declared categorically that they were not asked to make an apology. Is that a fabrication? Who actually wrote the note that came to us on 21 January?

Mr. Pat Healy: The note-----

Deputy Joe Costello: The note described something that did not happen. I refer to the non-apology.

Mr. Pat Healy: I think-----

Deputy Joe Costello: It described in graphic and detailed terms how an apology that never took place was supposed to have taken place and how two people went along to make the apology. We know now that no apology ever took place. Maybe there was some expression of regret, but there was supposed to be an apology, as outlined by Mr. O'Brien today. It never happened. Surely that is misleading.

Mr. Tony O'Brien: I have agreed and accepted that the committee was misled. The issue is whether it was deliberate.

Deputy Joe Costello: That is accepted now. We were misled-----

Mr. Tony O'Brien: Yes.

Deputy Joe Costello: -----by whoever wrote that particular-----

Mr. Tony O'Brien: It is very clear that because the information was not accurate, it had the effect of misleading the committee.

Chairman: Who wrote the note?

Mr. Pat Healy: It came from our parliamentary affairs department. It would have come through my office up from the chief officer.

Chairman: Does Mr. Healy take responsibility for that?

Mr. Tony O'Brien: Could I just say-----

Chairman: No, Mr. Healy-----

Mr. Pat Healy: Of course I take-----

Chairman: "Yes" or "No".

Mr. Pat Healy: I think the information we have set out-----

Chairman: Does Mr. Healy take responsibility for the inaccuracies that were presented to us?

Mr. Pat Healy: Ultimately, as the national director, of course, yes.

Chairman: "Yes" is the answer.

Mr. Tony O'Brien: Can I-----

Deputy Joe Costello: Can I ask a further question? Mr. Healy is taking responsibility

for an inaccurate and misleading note that was rushed to the Committee of Public Accounts to counter an article that had been published in the *Irish Examiner*. Is that correct? Mr. Healy never checked his facts.

Mr. Tony O'Brien: I need to-----

Deputy Joe Costello: All he needed to do was to ask the two people who were alleged to have spoken and to have given the apology whether they had done so. They have said not only that they did not give an apology, but also that they were not asked to give an apology.

Mr. Tony O'Brien: With respect, I have spoken to these individuals. I went to see them specifically in order to prepare for this encounter today. The individuals concerned confirmed that when asked if an apology had been given - they were asked that in the context of responding to this issue - they said "Yes". They also confirmed that they were not saying they had given an official apology. In the course of expressing their remorse, the word "sorry" was used. When they were asked had they apologised, they confirmed yes. The person asking the question did not ask them whether they had given personal expressions of remorse. That person was asking them whether they had given an official apology. There was a request for an apology to be included in the overall process, but that was not picked up. In my view, having spoken to all concerned, this was an honest mistake. That mistake influenced what happened at the meetings and in the telephone call. It carried through to the information that was provided to the committee, which was incorrect, and to that extent it misled the committee. The question is whether anyone set out to mislead the committee. Having spoken to all of those involved, I do not believe they did.

Deputy Joe Costello: I refer to the note we received from the Waterford Intellectual Disability Association. It states that:

The two HSE representatives to whom the HSE have attributed the apologies to our client and to her mother have both confirmed to us that they were never asked to apologise, that they did not apologise, and they told the HSE chief officer that no apologies were given, yet the HSE continued to issue repeated statements containing fabricated information about meetings that did not happen, apologies that were never covered, never offered, and conversations that never took place.

Is Mr. O'Brien saying that is an untruth?

Mr. Tony O'Brien: No. What I am saying is that those are not the words of the two individuals concerned. One of the people who was party to those conversations, Ms Aileen Colley, is sitting to my right, and I will ask her to respond to the Deputy's question.

Ms Aileen Colley: In response to that, when we go back to the intent, the intent was very much on 7, 8, 9 and 10 December to issue an apology to all 47 people. In the discussions, teleconferences, preparations and communications it was always the intent to actually send a letter to all of the people and their families. Over the course of that time, with the local people involved - a local HSE team - it was decided that the best way of communicating to Grace and her mother would involve more personalised communication. In the translation between the letter right through to the actual meeting that vital apology got lost.

Deputy Joe Costello: I will stop Ms Colley at that. Everybody was getting an apology, and the HSE was going to give a special apology to Grace and her birth mother. How could it end up that no apology at all took place, if the HSE was going to give a special apology?

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Ms Aileen Colley: I guess that is exactly the point of how-----

Deputy Joe Costello: How could it be that the two people who were supposed to give the apology deny that they were ever to do so? Are they telling lies?

Ms Aileen Colley: The sequence of events shows that the apology was always one of the key themes for the interactions that happened in December. When one then brings that forward to January, and the people in question were asked if they had given the apology, their first response was that they did apologise. On the back of that, the information was supplied from the local team through to the national office and the Committee of Public Accounts. It was subsequent to that that we actually discovered what happened, through my direct interactions with the two people concerned, and they clarified for me that when they had said they had given an apology it was actually a personal statement of sympathy and remorse. On finding out - that was after the Committee of Public Accounts-----

Deputy Joe Costello: I really cannot buy that. If this was supposed to be a special apology, how could it be a watered-down statement of remorse?

Ms Aileen Colley: That is where the miscommunication happened.

Deputy Joe Costello: That is not miscommunication. How does one miscommunicate a special apology with a watered-down version?

Ms Aileen Colley: I think, as the director general states, there was a two and a half hour meeting between the other two individuals, myself and himself where we put the evidence before all of us to in order to go through the sequence of events. It very much confirmed that the intent was always there and it is with much regret that the apology did not take place when it should have, as was described in the Committee of Public Accounts documents.

Deputy Joe Costello: I know it is, but a document was rushed to the Committee of Public Accounts for our meeting of the 21st to say categorically that what was in the *Irish Examiner* was inaccurate, false and untrue without the facts having been checked.

Ms Aileen Colley: The facts were checked, and as I said it was the interpretation of what an apology was and what context that was given-----

Deputy Joe Costello: It is very hard for those of us on this side of the table to buy that. This was an important case. We have had a few inquiries into it. We have the Resilience and the Conal Devine reports and a review from the Minister. We have evidence highlighting that not only was an apology not given but the Committee of Public Accounts, which was considering this issue in depth, was informed categorically that it had all been done correctly. Nobody checked the facts. There is no good in telling me there was a misunderstanding. There was a significant misleading response to the Committee of Public Accounts. One cannot come to a conclusion other than it was deliberate.

Ms Aileen Colley: It has been stated elsewhere that the two people directly involved are recent recruits to that service, as I am. Why would we wish to mislead?

Deputy Joe Costello: If this apology was so important, why was it left to two people who were new to the service and not allocated to somebody with a high level of responsibility and accountability?

Ms Aileen Colley: The reason is that although these two people were new to the service,

they were not new to this position or to a higher level of responsibility. They had a relationship with the organisation and one of the parties had at least met Grace before. It was in the context of how we could do the best thing in terms of the person involved and taking due regard of trying to lessen any distress that some of these decisions were made

Mr. Tony O'Brien: Having spoken to them, my view is that if they had not tried to do a tailored response and if they had not tried to do the right thing, this particular issue would never have arisen. They were moving from a standardised letter with an apology in it, which I do not think was a sufficient apology but nonetheless included an apology and which would have satisfied the expectations that were reflected in the document that was sent to the committee on 10 December 2015. The timetabling around this was influenced by the decision of the Freedom of Information Commissioner, the expiration of the appeal period and the timing of the meeting. There was a strong desire on the part of the social care division to get that part of the report that was approved to be released into the public domain to the committee by that date. A significant level of effort had been made to ensure the individuals involved and their families - there were 47 families, 44 of whom could be contacted - were made aware in advance of release that it could lead to some parts of this information coming into the public domain. The social care division made a decision that an apology should be included in that letter. It was in the case of 43. The decision was made locally in the case of the person to whom we are referring to as Grace that this should be done in a different way. That in essence is where it went wrong.

Deputy Joe Costello: I will not pursue this point further other than to say it smacks of either fabrication or incompetence of a very high order. I wish to put a question in respect of Ann who was in this home during the period from 2011 to 2013.

Mr. Tony O'Brien: She was there in different ways for a period much longer than that. The original contact started 23 years ago.

Deputy Joe Costello: I understand the HSE sought legal advice relating to Ann in 2012, despite the fact there were serious problems of abuse from 1995 and the HSE took no action. The HSE tried to persuade the family not to send Ann into the abusive care. Why did it not close it down and put a stop to it? It took the HSE another three years from the time of the legal advice to send a letter which was, as Mr. O'Brien stated in his remarks, "demanding the foster family cease all care activity". Then and only then was Ann's family written to formally to request that they cease the placement. Surely that is gross incompetence.

Mr. Pat Healy: Certainly this is one of the issues that is addressed in the reports. It goes back to my earlier conversation with the Deputy that we talk about the "foster home" and the "foster mother" although they had ceased to be that in the 1990s. This is dealt with in the Devine report in a very clear and comprehensive way. It had ceased to be a foster home and this person had ceased to be a foster mother. That is clear, but we talk about the individual as the foster mother.

What happened was that when this situation arose in respect of Grace, the Devine report was carried out, which examined all of the issues around that. It focused particularly on Grace - that is why it was constituted - but in the course of the work, the investigation team identified four other cases of significance. Ann was not identified as part of that. There were concerns of a serious nature in respect of that, and they were followed up. The issue in-----

Deputy Joe Costello: I know that, but it is the way they were followed up that leaves a lot to be desired.

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Mr. Pat Healy: The issue is in respect of this particular placement of Ann. She was residing at home. She was not placed in this foster home. She was never in care; she was never in the care of the State. She was living at home with her family.

Deputy Joe Costello: That is Ann, but what about the foster home? Why did the HSE not close it down earlier? It was telling the family not to send her there but it was doing nothing about the home itself.

Mr. Pat Healy: Because it was not a recognised foster home.

Chairman: On that question, can the Department of Health tell me whether it intervened at any stage, in the context of the continuation of services at that foster home, asking that it be reconsidered and that they continue to use the foster home. Is that true or false?

Ms Frances Spillane: To the best of my knowledge, that is false. We did get representations in the mid-1990s asking the Minister to intervene to allow the home to continue, but the reply that issued indicated very clearly that this was a matter for the South Eastern Health Board.

Chairman: Does Ms Spillane have correspondence from her Department that was sent?

Ms Frances Spillane: Yes, we do.

Chairman: Can we have copies of that correspondence?

Ms Frances Spillane: Yes.

Chairman: -----because we have correspondence that offers information to the contrary.

Can Mr. Healy tell me when he first heard of the foster home?

Mr. Pat Healy: When the protected disclosures were-----

Chairman: When was that?

Mr. Pat Healy: At the end of 2009.

Chairman: Mr. Healy knew nothing about it up to then.

Mr. Pat Healy: I knew nothing about it.

Chairman: What did he do when he heard about it?

Mr. Pat Healy: How we became aware of it was through protected disclosures. That was already being addressed through the authorised officer and an investigation was being initiated, so when I heard about it I contacted the local head manager. I was the regional director at the time and there was-----

Chairman: By “regional director,” does Mr. Healy mean he was the regional director of the South Eastern Health Board?

Mr. Pat Healy: No. I was responsible for the south from Wexford to Kerry, and so I was responsible for that area at a regional level. Each particular local area had its own area manager, management team and so on, but once an issue of protected disclosure arose it was brought to my attention. I was responsible for the totality of that area, a million people-----

Chairman: Do not try to minimise it.

Mr. Pat Healy: I am not at all. The scale of it is the important-----

Chairman: It is, but Mr. Healy had a job to do.

Mr. Pat Healy: Absolutely, and so when I heard about that-----

Chairman: Do not minimise it. Mr. Healy did this the last day he appeared before the committee, and I would prefer it if he stuck to the facts.

Mr. Pat Healy: Absolutely.

Chairman: The fact is that Mr. Healy heard about it in 2009.

Mr. Pat Healy: Yes, and so I-----

Chairman: When did he hear about it again after that?

Mr. Pat Healy: What happened at that point was that I asked for a report in respect of the issue but, given the protected disclosures at that time, they had looked at it nationally and it was agreed that there would be a commissioned report, which was undertaken and commenced in March 2010. At that stage, additional protected disclosures had been received and the terms of reference were adjusted to take account of the totality of those.

Chairman: Did Mr. Healy have a report in 2010?

Mr. Pat Healy: No. The investigation regarding Grace commenced in March 2010.

Chairman: Did Mr. Healy familiarise himself with the issues that had come to light in 2009?

Mr. Pat Healy: The issue that was identified at the time-----

Chairman: No - Mr. Healy familiarised himself with the issue-----

Mr. Pat Healy: Yes. I was advised-----

Chairman: -----and the action he took was to-----

Mr. Pat Healy: The establishment of this investigation.

Chairman: Which investigation?

Mr. Pat Healy: The investigation of the Devine report.

Chairman: The Devine report was finished and handed over to the HSE in 2012.

Mr. Pat Healy: No. I was the regional director. It was commissioned by the area manager who had responsibility for that area. It was returned to her in March 2012.

Chairman: Was this issue raised at a conference, generally speaking?

Mr. Pat Healy: It was raised much later when I was the national director of disability. In more recent times, it was raised in December 2014.

Chairman: It was raised in November 2014.

Mr. Pat Healy: It could have been November but I think it was December.

Chairman: It was 17 November. Mr. Healy and Mr. O'Brien heard this at a conference. What I am asking now is, did it not ring alarm bells for them that in 2014 they were still being asked about something that happened in this home many many years ago that was just horrific? Is that right?

Mr. Pat Healy: At that point in time-----

Chairman: I just want to ask the question. Did Mr. Healy hear it at that conference?

Mr. Pat Healy: The question that was asked at the conference was why we were not publishing the reports and-----

Chairman: Yes, but arising from the question Mr. Healy would have known that the issue was not being dealt with it. It had not come back to his attention or that of the HSE and this was five years down the road.

Mr. Pat Healy: It had come back to my attention at that stage.

Chairman: So Mr. Healy knew about it. Is there such a position as national director for quality and patient safety?

Mr. Tony O'Brien: There was until early 2015 when that post was divided into two different categories.

Chairman: Is Mr. O'Brien aware that the individual in the position of national director for quality and patient safety was notified about a lot of the issues that we are talking about today?

Mr. Tony O'Brien: I am not, but I am aware that this was referenced I think in a radio interview that the Chairman may have given earlier this morning.

Chairman: Yes, but Mr. O'Brien should have known about it beforehand. This is his organisation. Is he aware of the fact that the individual holding that most senior office within the HSE did not see fit even to acknowledge the letter?

Mr. Tony O'Brien: Only from the Chairman's radio interview. I have not had an opportunity to speak to him or to find out any of the detail.

Chairman: Therefore, what kind of investigations were the HSE conducting that it did not even find that piece of correspondence?

Mr. Pat Healy: May I respond to that question?

Chairman: Yes.

Mr. Pat Healy: In regard to what was done when I first became aware of the issue, I became aware of it in 2009. The area manager oversaw an investigation report by Devine, which came in 2012. Subsequent to that, a look-back exercise was undertaken and that is the Resilience report. What we have done is that we have taken the individual, specific situation that was identified in 2009, all the recommendations on that and an action plan was identified to implement those. We also undertook a look-back to see, and that was the purpose of the Resilience

report, and anyone who had any contact in relation to that home has had a look-back. That was the purpose of the communication that Deputy Costello talked about; we were setting out the interviews that would happen. There were 47 people, and 35 people were interviewed, including Ann's mother. They were engaged with, initially, by the Garda Síochána. The agreement in relation to the look-back exercise was that there was full engagement with An Garda Síochána, a protocol was put in place - it was called a contact protocol - and the Garda would meet people individually first and go through all of that. When they were cleared, the project team undertaking this met with them. Professional staff met with them, both with-----

Chairman: Where is Mr. Healy going with this answer?

Mr. Pat Healy: I am setting out what actually happened. The Resilience report was concluded in 2015. It was in the context of those reports being undertaken that the question was asked at the national summit in relation to whether the reports were going to be published. Subsequent to that, I wrote to the individual who asked the question at the summit, advised him of the legal situation that we were precluded, as has been outlined here before, but arranged for that individual to be met and the matter discussed with him if he so wished.

Chairman: That sounds great. This person, namely, the national director of quality and patient safety, was written to on 24 November 2014 and the detail of the issues was outlined. It was intimated that should the director be interested in hearing about the experience of the people in question as whistleblowers, the director should contact them. However, there was no reply; nothing; zilch.

I have a last question before calling Deputy McDonald. The HSE had a group of three people within the South Eastern Health Board who made the decision to leave Grace in that care. I believe that is what Mr. O'Brien said.

Mr. Tony O'Brien: I did.

Chairman: Is there a minute available regarding that decision? While I understand I cannot get it today, is there a note that informs Mr. O'Brien why that group of three saw fit to leave Grace where she was and ignore her rights?

Mr. Tony O'Brien: This is covered in the Devine report. As part of that report, all three individuals consented to being interviewed and were interviewed by the reviewers who produced the report, so the answer is yes, there is very substantial information relating to that event.

Chairman: Can you say that substantial information stands up their decision to leave Grace there?

Deputy John Deasy: Can Mr. O'Brien tell us the basis for that decision?

Mr. Tony O'Brien: I feel if I were to do that, I would be straying into the effective publication of the report. As I said earlier, I am happy to tell the committee, to the best of my ability, the types of things it covers-----

Chairman: Are you satisfied they made the right decision?

Mr. Tony O'Brien: Based on reading the-----

Chairman: A simple "yes" or "no" will do, Mr. O'Brien.

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Mr. Tony O'Brien: No, I must be more careful than that, unfortunately, because I have certain functions regarding this which I will later have to discharge. Based on reading the Devine report, and subject to the individuals having an opportunity to respond to it, I have very serious questions in my mind about that decision.

Deputy Joe Costello: Before Deputy McDonald contributes, I would like an answer to my question about Ann. Mr. O'Brien said that various engagements were made with the family to persuade them to cease contact with Ann's foster family from 2011 to 2013, but that it took the HSE until 2013 to demand that the foster family cease all care activity, and that immediately after the letter was written to Ann's family to request that they cease contact with the foster family, they did so. Once the HSE made the decision and closed the care facility, Ann's family immediately went along with that decision. Given its awareness of the situation, why did the HSE not close that care facility, which it knew to be a site of abuse, instead of simply trying to dissuade the family from having any contact with the foster family? Surely there is gross negligence on the HSE's part in this matter.

Mr. Pat Healy: The important thing to say is that this was not a care facility at that point.

Deputy Joe Costello: It was a care facility. It could be described as a care facility. Mr. O'Brien, in his remarks, described it as a care facility.

Mr. Pat Healy: It was a foster home for a time and was funded as such. What we are saying, and this is one of the challenging areas that is addressed in the reports, is that in the Resilience report - I must be careful about going through the detail of it - this family were met-----

Deputy Joe Costello: Will Mr. Healy please answer the simple question? Why did the HSE not order that facility to cease operating as a care facility in 2011? Why did it wait until 2013 to decide to terminate it as a care facility if it was trying to persuade people not to go there in 2011?

Mr. Pat Healy: The issue is-----

Deputy Joe Costello: Just give me a straight answer.

Mr. Tony O'Brien: Having examined this issue, it is clear to me that the HSE lacks the necessary formal authority to direct a private citizen, in this case the parents, to desist from this arrangement that they had made privately with this other person who is the operator of the former foster home. Efforts were made-----

Deputy Joe Costello: Mr. O'Brien is not answering the question.

Mr. Tony O'Brien: I am trying to.

Deputy Joe Costello: The question is based purely on Mr. O'Brien's own remarks to us this morning. In October 2013, the HSE formally demanded the foster home to cease all care activity. Now Mr. O'Brien is saying that the HSE did not have the authority then-----

Mr. Tony O'Brien: Yes.

Deputy Joe Costello: -----but it did so later, in 2013. The HSE had the same authority in 2011 as in 2013. Is that correct?

Mr. Tony O'Brien: Yes, that is correct. And if-----

Deputy Joe Costello: So why did it not take action in 2011?

Mr. Tony O'Brien: Can I tell you? The emphasis of the actions during that period was on persuasion, because when push comes to shove, the HSE does not have the legal authority to stop that parent entering into this arrangement in respect of Ann.

Chairman: If I treated little dogs, Mr. O'Brien, the way those people were treated, I would be arrested.

Deputy Joe Costello: That is the most evasive answer I have ever heard.

Deputy John Deasy: This is very important. Mr. O'Brien said the HSE did not have the authority. But during these various engagements, did its representatives tell the family about the nature of the concerns with regard to potential sex abuse?

Mr. Tony O'Brien: Arrangements were made for those discussions to take place between the family and An Garda Síochána, and they were involved throughout this period too.

Deputy John Deasy: In these various engagements, did the HSE inform the family about the tenor or the substance of the concerns?

Mr. Tony O'Brien: My understanding is that An Garda Síochána provided that information to the family.

Deputy John Deasy: The HSE did not, in other words.

Mr. Tony O'Brien: That is my understanding. Yes.

Deputy John Deasy: This is the key thing. Mr. O'Brien says that the HSE had all these engagements with the family, but it never really told them what it was all about and what the concerns were.

Deputy Joe Costello: And the end result was that that person was open to abuse for all those years.

Deputy Mary Lou McDonald: I will take up that line of questioning, but first, I ask Mr. O'Brien to set out for the committee the term over which this home was a foster home, the financial arrangement between the State and the foster home, and the moneys that were handed over.

Mr. Tony O'Brien: I will ask Mr. Healy to give that information.

Mr. Pat Healy: Our understanding from the reports is that the home was a foster home up to 1995. There were boarding-out arrangements in that period, prior to 1996, and the home would have been paid the foster allowance at that time. Once the foster children were aged 18, the home ceased to receive the allowances. The arrangement ceased in 1995, according to the best information that the investigation team could find. When Grace reached the age of 18, no more foster payments or boarding-out payments were made from that time. Grace, as an intellectually disabled individual, would have received what was, I think, DPMA at that time. Subsequent to that-----

Deputy Mary Lou McDonald: What is that?

Mr. Pat Healy: The disabled person's maintenance allowance. It is now known as the dis-

ability allowance.

Deputy Mary Lou McDonald: What happened to her disability allowance? Did it go to the home?

Mr. Pat Healy: Yes, it went to the home.

Deputy Mary Lou McDonald: Once she turned 18.

Mr. Pat Healy: I believe that is the case.

Deputy Mary Lou McDonald: Would that payment have been made directly from the State to the foster parents?

Mr. Pat Healy: The records are poor in relation to the payments. The investigating team sought to establish detail around that and they were able to find records for two years, as I understand it, but the details were missing. However, DPMA would have been paid. At that time in the 1990s, it would not have been unusual. It was paid for the individual but the family would have been in charge of it.

Deputy Mary Lou McDonald: What happened after that? That was the state of play until-----

Mr. Pat Healy: That was the case until she was taken into care, I would say. She would have been entitled in her own right to payments-----

Deputy Mary Lou McDonald: I am aware of that.

Mr. Pat Healy: -----of disability allowance, and I am assuming that DPMA may have been converted to disability allowance and that that would have continued.

Deputy Mary Lou McDonald: So, whether directly or through an intermediary, those payments were made in respect of Grace to the home, which - whatever its official status was - was no longer a foster home. In other words, there was a funding stream from the State directly into this place.

Mr. Pat Healy: Yes, exactly, and-----

Deputy Mary Lou McDonald: Was that the case also in respect of Ann?

Mr. Pat Healy: No. Ann was residing at home with her family. I am not privy at the minute to the details of the individual payments she was receiving, or the status of those payments. She is residing now full-time-----

Deputy Mary Lou McDonald: No, no, no. Please, let us keep it to the point. Let us talk about Ann specifically. What State moneys went to this home for her care? I understand she was residing at home and was in this place at weekends. Is that correct?

Mr. Pat Healy: No money would have gone from the State to this facility in respect of Ann, as far as we are aware.

Deputy Mary Lou McDonald: Is Mr. Healy saying she stayed in this place in a part-time capacity and no money changed hands, that she stayed there free *gratis*?

Mr. Pat Healy: If any money changed hands, it was from her mother. This was a private ar-

rangement. That is what is meant by a private arrangement. If the mother made an arrangement with this woman to look after Ann on a weekend visit or whatever, that was the arrangement. There was no State money.

Deputy Mary Lou McDonald: Let us just roll the tape back and talk a little about Ann. The witnesses have told us in their opening statement that Ann was born in 1980. We are told contact with the foster family commenced when she was 12 years old, which would have been 1992.

Mr. Pat Healy: Correct.

Deputy Mary Lou McDonald: As it happens, that is the same year in which the South Eastern Health Board was made aware of concerns around this particular foster home. The dates tally. When Mr. Healy says contact with the foster family began at that point, was it a part-time arrangement even then, when Ann was 12?

Mr. Pat Healy: Yes, the records from the look-back in this regard are-----

Deputy Mary Lou McDonald: Will Mr. Healy give me a “Yes” or “No” answer? Was it a part-time arrangement?

Mr. Pat Healy: It would appear to have been a part-time arrangement.

Deputy Mary Lou McDonald: In respect of that part-time arrangement, presumably mon-
eys were handed over for Ann’s weekend stays?

Mr. Pat Healy: We are not privy to that. We do not have that information. We are not clear on it and there is no detailed information.

Deputy Mary Lou McDonald: Why is Mr. Healy not clear? He has told us it was a foster home officially until 1995.

Mr. Pat Healy: We do not have any records in regard to that.

Deputy Mary Lou McDonald: Why does the HSE have no records in regard to it?

Mr. Pat Healy: They were not available at the time. One of the issues the Devine report identified was poor record-keeping. It is a reflection, I suppose, of child care services and fostering services at that time that the extent of the records that would be kept today were not kept then.

Deputy Mary Lou McDonald: Mr. Healy is telling us this child was placed, albeit on a part-time basis, at the age of 12, in what was still officially a foster home in the very year concerns about that place were brought to the attention of the authorities. He is also telling us he does not know and cannot tell us what the financial arrangement was and what, if any, State money or subsidies were paid to this place in respect of Ann, and we are talking about her in particular? Is all of that correct?

Mr. Tony O’Brien: The subsequent sentence in my statement indicates that all of her arrangements were conducted privately.

Deputy Mary Lou McDonald: I will come to that, if Mr. O’Brien does not mind.

Mr. Tony O’Brien: It is absolutely germane.

Deputy Mary Lou McDonald: I will come to it. I just want to put the pieces of this together.

Mr. Tony O'Brien: It was entirely private.

Deputy Mary Lou McDonald: That is what we have established so far. The child was placed in 1992 at 12 years of age on a part-time basis. The delegates from the HSE have no idea and cannot tell the committee what, if any, moneys were paid in respect of that child to what was still a foster home.

Mr. Tony O'Brien: That is because they were not paid by the State.

Deputy Mary Lou McDonald: Pardon?

Mr. Tony O'Brien: They would not have been paid by the State.

Deputy Mary Lou McDonald: However, Mr. O'Brien cannot tell me that because he does not have records.

Mr. Tony O'Brien: What I can tell the Deputy, because the Resilience report tells me this, and I quote from my statement, "All her arrangements were conducted privately by her family."

Deputy Mary Lou McDonald: I will come to that in a moment.

Mr. Tony O'Brien: It is part of the answer to the Deputy's question.

Deputy Mary Lou McDonald: I ask the questions and Mr. O'Brien answers them.

Mr. Tony O'Brien: If I can, I will.

Deputy Mary Lou McDonald: In 1998, Ann would have turned 18. We need to figure this out and the delegates must be clear on it. Once Ann reached the age of majority, what was the status of the then health board in terms of its duty of care and what was the status of her family? I am raising this very particularly because the delegates are going to very great lengths to emphasise these were private arrangements. It is actually very reminiscent of the Magdalen laundries, this private arrangement carry-on. The initial statement looks to me kind of dishonourable in that it wishes to hang the culpability for all of this around the neck of Ann's family, that they were negligent in not intervening and not bringing this situation to an end. That is the impression I have from the statement and from Mr. O'Brien's comments so far.

Mr. Tony O'Brien: Those are the Deputy's words and not mine.

Deputy Mary Lou McDonald: I am responding to Mr. O'Brien's words, and I am looking at them in black and white in front of me. At the point at which Ann turned 18 she became an adult, albeit a very vulnerable one. The health board was aware that there were issues with the foster home, which was then not a foster home. Why is it that Mr. O'Brien insists it was for her family to intervene and ensure her safety? Will he answer this for me?

Mr. Tony O'Brien: I will ask Mr. Healy to answer it for the Deputy.

Mr. Pat Healy: From the interviews that were held with her family, and from the investigation and the records that are there, what is clear is the following. Ann was attending a special school and living at home, and when she came to graduate she had an assessment, as might happen, and moved part-time into a voluntary service, living at home part-time. This was not

unusual at the time, not only in the south east but elsewhere. She was moving into adult-type services. The family had developed a good relationship with this mother - with this woman - and they maintained that relationship for 18 years. They were wedded to it and they felt very strongly about it. That comes across from those who undertook interviews and so on. The issue here is that in 1992 - or in 1998, as she became an adult - that was the level of development of the service at the time. In 2011, as the Garda was investigating matters, it contacted the local service, and there was engagement by An Garda Síochána and health service personnel over a period. Ann had moved into a five-day service at this stage, and to remove the requirement with regard to weekends, or anything of that nature, a seven-day service was offered.

Deputy Mary Lou McDonald: Hold on a second. All of that is in the documentation.

Mr. Pat Healy: I do not think all of it is.

Deputy Mary Lou McDonald: I hope Mr. Healy is not deliberately missing my essential point, because his contention is that it fell to the family to make the call in respect of Ann's removal, albeit on a part-time basis, from this home. I am challenging Mr. Healy on that.

Mr. Pat Healy: If I could say, Deputy-----

Deputy Mary Lou McDonald: I am challenging Mr. Healy on that because I actually do not accept it.

Mr. Pat Healy: I do not think that is the totality of what we are saying. I think it is one of the challenges. Having looked at the matter and seen the reports, I can say it is one of the issues that was a challenge. Absolutely, there was-----

Deputy Mary Lou McDonald: I am sorry, Mr. Healy, but I am going to stop you right there. Not alone does Mr. O'Brien's initial statement emphasise the private nature of the arrangement in respect of Ann, but it goes on to reiterate that the family had confirmed that they had no concerns regarding the foster family or the level of care. Mr. Healy has already told Deputy Deasy that in his engagement with the family he was not fully frank about the concerns, perhaps, that had arisen, and the possibility of horrific sexual abuse-----

Mr. Pat Healy: To be clear on that, if I could, what happened was that at this point in time in the local services, as has emerged now from the investigations in the context of the commencement of the Conal Devine investigation, the Garda, having been contacted by Conal Devine as chairman, initiated its own investigations-----

Deputy John Deasy: That is dreadful.

Deputy Mary Lou McDonald: Do you know what I think you are doing, Mr. Healy? I think - if you do not mind - you are spoofing me.

Mr. Pat Healy: Not-----

Deputy Mary Lou McDonald: Let me tell you: I think you are spoofing. You are trying to bring us on a merry dance in respect of detail in reports that we cannot even see. Here is my proposition for the HSE and its predecessor organisation. I am putting it to it that it was its legal responsibility to ensure the safety of Ann. It carried that responsibility irrespective of the views of the family or the relationship between the family and the foster providers. What Mr. Healy is attempting to do is say the onus lay with Ann's family. I believe that is wrong. He is doing that deliberately to cover his tracks.

Mr. Pat Healy: If I could-----

Deputy Mary Lou McDonald: With whom did and does legal responsibility and onus rest in respect of the care and safety when a person with a severe intellectual disability who requires the care of the State turns 18? Where does it rest, Mr. O'Brien?

Mr. Pat Healy: There is-----

Deputy Mary Lou McDonald: I would like Mr. O'Brien to answer, please.

Mr. Pat Healy: In relation to children's services-----

Deputy Mary Lou McDonald: With whom does the responsibility rest?

Mr. Pat Healy: In relation to children's services, there is a clear responsibility in the Child Care Act, which provides statutory capacity to act in situations like this. There is no such provision for adult services. It is referenced in the recommendations of the Devine report and so on. The national safeguarding policy is a really strong effort to try to bring about for adults an appropriate safeguarding policy that had not existed before. The Devine report is not the first report but it was an important report that made that recommendation. That is the effort in having a national policy like that, to bring-----

Deputy Mary Lou McDonald: As I see it, the onus and legal responsibility rested with the HSE. That is my understanding. I refer the delegates to the letter of apology. It is signed by Ms Colley. One of the matters for which there is an apology is an absence of the necessary protocols and arrangements to support the placement in foster families of vulnerable children and adults with a disability. The HSE concedes, correctly, that that is its job. The attempts in respect of Ann, based on the controversy that has arisen over her ongoing placement and the discovery made, to make the family culpable are really unfair. They are dishonourable and inaccurate. I would like the delegation to correct the record.

Mr. Pat Healy: It is important to say we are not saying that.

Deputy Mary Lou McDonald: Mr. O'Brien said it in his opening statement.

Mr. Pat Healy: What I was articulating in the response, including in relation to Ann's case, and what is in the statement references what actually happened. I am trying to articulate, without the published report, what the circumstances were at the time and the thinking on what was being pursued locally. That is what I am trying to do. I am not making a judgment on it but just articulating a position that is actually from the records and what we are able to identify as having happened. Of course, the commission will examine that and see whether that is appropriate.

Deputy Mary Lou McDonald: I thank Mr. Healy.

Deputy John Deasy: May I make a brief point? Mr. Healy knew there was a risk to the girl and did not tell the family about the sex abuse allegations because somebody had initiated a report. It is morally disgraceful. That is the issue. That is at the centre of all this.

Mr. Pat Healy: May I respond to that specifically? What appears to be the case and what we could see is that there was consultation between the team locally and the Garda on what could be said - that is why I mentioned the Devine report - in the context of both a Garda investigation and the Devine report. The team was advised that it should talk about serious concerns of care, which is what it did, and vouch for children in the home, or words to that effect. I am

not giving the exact wording but paraphrasing. In the context of investigations at the time, associated with the Devine report and, more important, the Garda, those concerned consulted regarding what was to be done, and that is what they did. The gardaí advised them to get the family to speak to the Garda. I know it is referenced in the report that they spoke to An Garda Síochána. Later, at the end of 2011 when a seven day placement was offered, the family made a choice. Having advised the local health service team and having discussed the matter with the gardaí the family was satisfied to continue with arrangements as they were.

Deputy Mary Lou McDonald: Therein lies the difficulty. Please, there is no need for any further expansive narrative because here we go again; the onus was left on the family to make the call. That is a derogation of your duty. Irrespective of what the family thought, there was a responsibility on the State and on the authorities to protect this woman. She is a woman at this stage. She entered the care arrangement at the age of 12 in the year when the concerns were first brought to the attention of the authorities but she was left there. The explanation offered by the witness - let us not put any blas on it - is that she was left there because that was the decision of her family. That simply does not stack up.

I am also alarmed at the fact - not least because the witnesses are before this committee - that they are not in a position to give us chapter and verse on precisely what amount of State money found its way into this particular institution. This is information that should be made available to the committee. It is information that ought to be in the public domain. We have a scenario where State moneys are, at least in part, funding this place yet the HSE's oversight duties and so on - as were conceded in the letter of apology - were simply not fulfilled, not least in the case of Ann.

Mr. Tony O'Brien: For clarification-----

Deputy Mary Lou McDonald: Would Mr. O'Brien accept that it was not the responsibility of Ann's family to intervene in this matter and that ultimately the HSE and Mr. O'Brien's predecessor had the authority and the obligation to do that?

Mr. Tony O'Brien: The letter from which Deputy McDonald is quoting, signed by Ms Aileen Colley - and the committee cannot see this because the name has been redacted for obvious reasons - is a specific letter relating to Grace who is not being cared for in-----

Deputy Mary Lou McDonald: Then what letter did Ann get?

Mr. Tony O'Brien: In respect of Ann the Deputy will see the letter that I issued yesterday is attached to the submission. It is the final attachment to the opening statement. It is a one-page letter.

Deputy Mary Lou McDonald: Yes. What is Mr. O'Brien's point? Is it his contention that in Ann's case there was not an absence of necessary protocols and arrangements to support her placement?

Mr. Tony O'Brien: No, my contention is merely to ensure the Deputy is aware that the letter from which she quotes was a specific letter in relation to Grace. Just to be-----

Deputy Mary Lou McDonald: Can we clarify that what Mr. O'Brien has conceded here he concedes in respect of all the persons concerned, including Ann?

Mr. Tony O'Brien: There are distinctions and I know this is not a pleasant distinction. I

am advised legally that for an adult who is essentially under the care of a parent - albeit that they are substantially being provided with care residentially or for most of the time - the HSE does not have the capacity to direct the ending of that arrangement. Ultimately, over a period of time, starting persuasively but ultimately probably with some degree of bluffing, that arrangement was brought to an end. However, it is not at all clear that the HSE has the legal capacity to direct-----

Deputy Mary Lou McDonald: Has Mr. O'Brien legal advice to that effect?

Mr. Tony O'Brien: Yes. Not here with me but I can get it for the committee.

Deputy Mary Lou McDonald: I would like to see that and I would query that very strongly.

Mr. Tony O'Brien: It turns on the difference between powers that exist in relation to child care in its broader sense and the powers that do not exist for care beyond that age.

Deputy Mary Lou McDonald: There is also a distinction in respect of the family concerned, and this is where the HSE has laid the emphasis, regarding a minor and regarding a person reaching the age of 18 and over. In that balance, it is very clear that Mr. O'Brien has tried to pass off Ann's case as being a flaw, a fault or a bad decision of her family. That is wrong and Mr. O'Brien is wrong to have presented it in that fashion.

Mr. Tony O'Brien: I have not reached any judgment, but let us be clear. If I came in here and gave the committee information in relation to Ann and the reason she continued beyond 2009 to 2013 without describing the role and involvement of the family, I would be misleading the committee. I have not sought to characterise the family's actions in any way.

Deputy Mary Lou McDonald: I think it is very clear from Mr. O'Brien's statement that he has laid the-----

Mr. Tony O'Brien: We will have to agree to differ on that point.

Deputy Mary Lou McDonald: We will agree to disagree but Mr. O'Brien's opening statement is on the public record. Others can, therefore, adjudicate on the matter.

Mr. Tony O'Brien: It is on the public record and it does not contain any of the sentiments or accusations that the Deputy is ascribing to it.

Deputy Mary Lou McDonald: How many formal apologies does the HSE issue in any given year?

Mr. Tony O'Brien: It would be difficult for me to tell the Deputy that number because apologies exist at many different levels. It could be issued in relation to a cancelled appointment in a hospital where there would be an apology issued. There are-----

Deputy Mary Lou McDonald: Would that have the status-----

Chairman: Mr. O'Brien, I think you know what Deputy McDonald means and to answer her with that remark is not treating the issue seriously.

Mr. Tony O'Brien: They are formal apologies. If the question is how many-----

Chairman: This is how many-----

Mr. Tony O'Brien: If I am being asked how many apologies I issue, I could get that answer.

Chairman: Deputy McDonald has asked a question and Mr. O'Brien is about to take Mr. Healy's lead and go on with the nonsense.

Mr. Tony O'Brien: No, listen to me very carefully, please.

Chairman: I am asking you to please answer the question that Deputy McDonald has asked.

Mr. Tony O'Brien: The HSE will issue many thousands of official apologies every year. They range in severity and what they relate to, but they are all official apologies.

Deputy Mary Lou McDonald: How would Mr. O'Brien rate this particular official apology?

Mr. Tony O'Brien: The one that I have issued here?

Deputy Mary Lou McDonald: No, the one that was due to Grace, on a scale of one to ten, with one being an apology for a cancelled appointment. By the way, people generally do not get an apology for a cancelled appointment. They usually get a note telling them that the procedure has been cancelled.

Mr. Tony O'Brien: The apology in that instance would arise where a complaint is made. In relation to this apology, it is clearly a high-scale apology.

Deputy Mary Lou McDonald: A high-scale apology. How many of those are made in any given year?

Mr. Tony O'Brien: I would say very few.

Deputy Mary Lou McDonald: I would say very, very, very few. I would say it is rare. Does Mr. O'Brien agree with me?

Mr. Tony O'Brien: In the scale of the number of interactions the HSE has, yes.

Deputy Mary Lou McDonald: Who decides that a high-level official apology is due?

Mr. Tony O'Brien: In this instance, Mr. Healy made the decision.

Deputy Mary Lou McDonald: Mr. Healy made the decision that a high-level apology was due. Mr. O'Brien has given a kind of a garbled account, as I heard it, in respect of teleconferences, conversations and so on discussing the need for this high-level official apology and how it might be made.

Mr. Pat Healy: To be honest, work on it commenced on 4 March 2015. There were meetings at which this was discussed.

Deputy Mary Lou McDonald: Work commenced on 4 March 2015.

Mr. Pat Healy: There were ten interactions in all before the final piece of the jigsaw, if I can put it that way, concluding the matter happened in the last few days. This was referred to and is referenced here. However, there was a significant amount of preparatory work because the apology was part of the publication of this and all that went with it. There was, therefore, a significant amount of work. In fairness, some of that work was undertaken by the current chief officer's predecessor who was acting in the role and was actually doubling up in the role at the

time. There was a significant amount of work in preparing for that and getting all of that done.

Deputy Mary Lou McDonald: Mr. Healy conceives of this high-level official apology, which are very rare, on 4 March 2015. There are ten interactions in respect of it and some activity towards the tail end of the process in December. The apology is not made, yet a report is given to this committee that an apology was made. The committee then receives the correspondence referred to earlier from the Waterford Intellectual Disability Association, WIDA, which, I have to say, has proved to be a very honest broker in the midst of all of this. It informs us that the two HSE representatives whom Mr. Healy has cited confirmed to the association that they were never asked to apologise, that they did not apologise and that they told the HSE chief officer that no apology was given. That is in stark contradiction of what the witnesses have told us here. There are two issues. The first, which is perhaps testimony to the HSE's ineptitude, is that all of this work happens, from March, with all of these interactions, yet there is a miscommunication, according to the officials themselves. My God - that is some shambles, is it not? A high-level apology on an issue like this - these apologies are as rare as hen's teeth - that is some shambolic carry-on from the HSE.

Mr. Pat Healy: I have to-----

Deputy Mary Lou McDonald: Or - this is even more serious - if we are to take the word of Waterford Intellectual Disability Association, there was not in fact a miscommunication; there was no communication. There was no apology expected, according to this correspondence, and none was given, and furthermore, the HSE was informed of that fact. The truth is somewhere, perhaps, in between those two positions.

Mr. Pat Healy: We said already that we got it wrong. It is to our lasting regret that with the one individual to whom we intended to give a personalised apology, we got it wrong. That is absolutely correct.

Deputy Mary Lou McDonald: Mr. O'Brien said that, having reviewed the situation with those staff involved, "I am satisfied that it was the intention to offer a full and frank apology." Did he raise this particular piece of correspondence with the staff?

Mr. Tony O'Brien: Yes. We had it in front of us for the purposes of the discussion.

Deputy Mary Lou McDonald: How did they respond to this?

Mr. Tony O'Brien: I will take the Deputy through it step by step, if I may. First of all, I asked about the circumstances in which they were giving the apology and the nature of the request to them to give the apology. There is e-mail correspondence relating to ensuring that an apology was included, but there is a degree of ambiguity about that correspondence such that it could be interpreted as referring to either the letter or the conversation.

Deputy Mary Lou McDonald: Who wrote this e-mail?

Mr. Tony O'Brien: It was Aileen Colley's e-mail.

Deputy Mary Lou McDonald: I ask Ms Colley how was it so ambiguous.

Mr. Tony O'Brien: Can I finish the sequence - would that be all right? Otherwise, I will lose my train of thought. When arranging to have the meeting, they did not signal that an apology was to be given because they did not understand that they were being asked to give an apology. That is one point in the letter. I subsequently asked them how was it that the organisation

we are referring to here was able to say that these conversations took place and so on, and each of the individuals received a telephone call in which they were asked, "Were you asked to give an apology? Did you give an apology? Have you told them you did not give an apology?". They confirmed that those conversations had occurred, but that was consistent with the fact that they had not understood - or had not been effectively communicated with, whichever way we care to put it - that an apology was to form part of that meeting. They arranged and went to the meeting without having in mind the giving of an apology. They left the meeting with the individual concerned, and when I met them on Friday I asked how could it then be that when this issue was queried there was confirmation that an apology had been given. In the case of one of the people involved, the exact way it was put to me was, "When I was asked had I apologised, I said I had." I asked why the person had said this, and he said, "Because the person I was talking to became upset and I told her how sorry I was about everything." When he was asked whether he had apologised, he answered it in the context of what he had said, which was not the same as the context in which he was being asked the question. At the outset, there was a miscommunication about whether an apology was to be given in that meeting, and everything else followed from that. It is not necessary to conclude that any of these parties are lying. What the WIDA letter says is correct. That information was given to them by the two individuals. There is no question-----

Deputy Mary Lou McDonald: Okay. They said that they were not asked to apologise and that they did not apologise and, furthermore, that they told the HSE chief officer that no apologies were given.

Mr. Tony O'Brien: By the time that letter was written, that had been confirmed, which is why, on the 25th of this month, two days before the date of that letter, Ms Aileen Colley, as chief officer, met with the organisation, conveyed to them on that date the letters the Deputy has, which we discussed a little earlier, and arranged with them to meet with Grace at a later date. That meeting occurred, if I am correct, last Thursday.

Deputy Mary Lou McDonald: Can Ms Colley explain to us how her e-mail was so ambiguous?

Ms Aileen Colley: My e-mail set out the themes that were to be conveyed via the letter, around the themes of ensuring an apology was given but there were other themes in there as well. So the themes-----

Deputy Mary Lou McDonald: Did the e-mail say an apology is to be given-----

Ms Aileen Colley: The e-mail-----

Deputy Mary Lou McDonald: -----or an apology will be given?

Ms Aileen Colley: It is stating in there----

Deputy Mary Lou McDonald: How is that ambiguous?

Ms Aileen Colley: Because, as I said earlier, we set out with the agreement that there would be 47 letters and in the course of conversation with the local team-----

Deputy Mary Lou McDonald: I heard that it would be verbal.

Ms Aileen Colley: Yes.

Deputy Mary Lou McDonald: Are staff - I am struggling to find a word - that absolutely incompetent that one has to take them through things like that with baby steps? I am at a loss to understand how the ambiguity arose. Ms Colley has told me it was not in a letter and it was going to be done verbally. That is hardly an earth shattering concept to take on board for somebody that the HSE has entrusted, by the way, to deal with a very traumatic and sensitive situation, a really bad situation. For that to get miscommunicated or misunderstood is beyond the understanding of just about anybody else outside, perhaps, of the HSE. To be frank, I am worried that we are getting the truth from the Waterford Intellectual Disability Association and we are getting a kind of massaging of things from the HSE. That is what my instincts are telling me, from what we have heard from Ms Colley.

Ms Aileen Colley: If I can respond to that, I would say that everybody did set out with the best of intentions to do the right thing. We very much regret and have consulted, reviewed and shown evidence to the director general that there was no mal intent, that there was nothing sinister around this misinterpretation.

Deputy Mary Lou McDonald: I shall ask my final question. The whistleblowers have been fairly damning in their description of the HSE. They feel that they were ignored, set aside, undermined and their professional credibility called into question. That was their experience of dealing with you. How does Mr. O'Brien respond to that?

Mr. Tony O'Brien: I have an arrangement to sit down with the representatives of WIDA in which I can discuss all of these things.

In relation to this specific issue, as I say, having spoken to the staff, I do not believe there was any malice. The alternative explanation is kind of fanciful, that there would be some attempt to pretend to have given an apology in the-----

Deputy Mary Lou McDonald: Do not bring us down an alleyway.

Mr. Tony O'Brien: No, it is legitimate.

Deputy Mary Lou McDonald: Mr. O'Brien, that is nonsensical.

Mr. Tony O'Brien: No. It is legitimate because I have had to make a judgment about what happened and I am reflecting to you my judgment. One of my considerations is what is the alternative explanation, that there was some-----

Deputy Mary Lou McDonald: Tell me what the explanation for this is. What is the explanation for the whistleblowers, whose names are on record-----

Mr. Tony O'Brien: Yes.

Deputy Mary Lou McDonald: -----a social worker and a director of services from WIDA, to say, that in six years of dealing with the HSE and, indeed, the Department of Health, they were discredited-----

Mr. Tony O'Brien: Yes.

Deputy Mary Lou McDonald: They use phrases like "damaging their professional reputation". They described themselves as outraged and insulted.

Mr. Tony O'Brien: On behalf of-----

Deputy Mary Lou McDonald: They say that statements released by the HSE referred to meetings with their agency that did not take place and so on. Is Mr. O'Brien familiar with this piece of correspondence?

Mr. Tony O'Brien: I am, yes.

Deputy Mary Lou McDonald: I am sure Mr. O'Brien is not suggesting that there is any other or ulterior motive on their part than assisting their clients-----

Mr. Tony O'Brien: No.

Deputy Mary Lou McDonald: This, to their way of thinking, is the true and accurate reflection of their interactions with the HSE, and it does not read well.

Mr. Tony O'Brien: I have not questioned what they have said, at all, in our discussions today but I do have an appointment to meet with them at a later point. What I was about to say was that the alternative explanation to this not being a mistake is that, somehow or other, it was believed that it could be pretended that an apology was given in the presence of the two people who have written that letter and somehow it would not be noticed. I do not think it is a credible theory of someone setting out to mislead.

Deputy Mary Lou McDonald: Does Mr. O'Brien think the whistleblowers are due an apology from the HSE and the Department?

Mr. Tony O'Brien: I will be talking to them later on and----

Deputy Mary Lou McDonald: What is Mr. O'Brien's position as he is talking to us now?

Mr. Tony O'Brien: It is clear that the whistleblowers have done a significant service through their protected disclosure in 2009, which has led to the Devine and the Resilience Ireland reports, led to the removal of Grace from the setting that she was in and ultimately led to the removal of Ann. I am absolutely certain that they have done significant service. They have raised issues in that letter. I look forward to discussing them with them. I am not going to tokenistically----

Deputy Mary Lou McDonald: When is Mr. O'Brien meeting them?

Mr. Tony O'Brien: I am going to keep that confidential other than to say that it is soon and it is by mutual agreement, but----

Deputy Mary Lou McDonald: Finally, as you thought about an apology from March to December, to what extent was----

Mr. Tony O'Brien: I was not thinking about it from March, to be honest, no.

Deputy Mary Lou McDonald: Your colleague Mr. Healy was. Is that correct?

Mr. Tony O'Brien: Yes.

Deputy Mary Lou McDonald: I am talking about "you" as an entity, corporately.

Mr. Tony O'Brien: Corporately, sure.

Deputy Mary Lou McDonald: In that period, to what extent did litigation or potential litigation loom large in your assessment?

Mr. Tony O'Brien: In my own assessment, I think that the issue of litigation is not relevant. Based on my reading of the reports, where harm has occurred and if anyone wishes to litigate on the basis of that, there is no effective defence that can be offered. As the Deputy knows, the HSE does not manage the process of litigation when persons take lawsuits against the HSE. While that is managed by a separate agency, as I see it there is no conceivable defence. Therefore, the issue of litigation is not one that needs to be taken significantly into account in deciding what we do or do not do.

Deputy Mary Lou McDonald: So it would not be a possible explanation for the miscommunication-----

Mr. Tony O'Brien: No.

Deputy Mary Lou McDonald: -----or the lack of apology that was supposed to be given?

Mr. Tony O'Brien: No, I do not believe so. There is no corporate interest in seeking to defend this whatsoever.

Chairman: Mr. O'Brien, you and the members have been here since 12 o'clock. I am suggesting that we take a break for half an hour. Before we suspend, I want to put two things on record for this part of the meeting. In 2009, the HSE was told about the risk to Ann and was asked to take the necessary and reasonable steps to protect her. That is a fact. She was still there in 2013. In respect of Grace, if my calculation is right from information that I have received, the foster mother would have been paid up to €70,000 in disability allowance. The HSE knew that Grace was at risk of financial abuse in 2007 and did nothing. In 2009, when she was taken into care, she had no belongings, no documents and no money. If that did not ring bells in an organisation, I just do not know what would. Those two statements are factual. Maybe we will address them later on.

Sitting suspended at 2.45 p.m. and resumed at 3.20 p.m.

Chairman: I call Deputy Dowds.

Deputy Robert Dowds: I thank the Health Service Executive, HSE, representatives, Mr. O'Brien and his team, for attending. To start with Mr. O'Brien's last comment to Deputy McDonald, essentially is he putting his hands up and saying, "We are guilty" if he says there will be no legal issues arising from this matter?

Mr. Tony O'Brien: To be absolutely clear, I have come here in an attempt to explain but not to defend so in regard to any civil claims or civil actions that might arise from what I have described as very significant failures, the HSE will not be seeking to defend such actions. The only caveat I put on that is that the HSE itself does not manage its legal defences. It is managed, by statute, by the State Claims Agency but we will be very clear that in our view there is not an adequate defence that can be put forward, so we will not be seeking to defend.

Deputy Robert Dowds: Does that arise just with the two individuals we have discussed at much length or does it arise with others as well?

Mr. Tony O'Brien: If anybody else has a stateable claim in regard to their time in this foster home, then it arises in respect of them as well.

Deputy Robert Dowds: How does Mr. O'Brien see the HSE handling this? Would that just be handed over to the State claims body?

Mr. Tony O'Brien: At the very moment that anyone initiates legal proceedings they stand in the name of the HSE but by virtue of the statutory orders that exist, we pass all of that on to the State Claims Agency and it then manages the claims, as it would in respect of any civil liability that might arise for any of the HSE services. However, it is my very clear view that there is no potential defence available and, therefore, the HSE will not seek to defend them. That is the reason I was quite happy today to write to all 47 - and the members have a copy of the letter - with an unambiguous apology because I do not see any basis for any other course of action. As I say, I have not come here to defend, merely to explain.

Deputy Robert Dowds: So it would be up to them to contact the HSE to-----

Mr. Tony O'Brien: I have also given every individual Ms Aileen Colley's contact details for any issue they wish to raise, which could be about current care needs or additional needs that arise as a result of the focus that is on this right now, which can have a particular impact on individuals. If they wish to pursue a claim, that can be discussed as well.

Deputy Robert Dowds: So, it could lead to a legal situation if they were not satisfied by the machinery offered.

Mr. Tony O'Brien: Yes, but I am certain that in terms of the current supports there would be no issue about providing supports. A range of additional supports are in place for people affected by this. If they wish to claim in a civil way on the basis that a liability arises owing to the negligence of either the South-Eastern Health Board or the HSE since its establishment then clearly they need to formally make that claim but we will not be seeking to defend if it relates to this foster home.

Deputy Robert Dowds: I have looked at the timeline of the events. During 1992-1993 there were a lot of allegations made about abuse, which led to an internal investigation by a Pat Donaghy. Arising from that, some time later - perhaps about two years afterwards - placements in that foster home were stopped, with the exception of the woman called Grace. Presumably the report by Pat Donaghy raised very serious concerns. How was it that probably the most vulnerable person was left in the home when everybody else was removed? I accept that is before Mr. O'Brien's time but does he have any sense of understanding of why that happened?

Mr. Tony O'Brien: Again, this is spelled out in very fine detail in the Devine report. What I will attempt to do is give a general characterisation rather than get into the fine detail, which would take me into difficult territory from the point of view that we have already discussed.

There were decisions at two levels - in other words, two separate sets of decisions at two separate levels - around not allowing Grace to continue but then there was a decision made at a third level which effectively countermanded those other decisions.

Deputy Robert Dowds: That was all within the then South-Eastern Health Board.

Mr. Tony O'Brien: Yes, the South-Eastern Health Board continued to exist until 31 December 2004, at which point the HSE came into being. Everything before that time in the scope of what we are talking about was within the ambit of the South-Eastern Health Board.

Deputy Robert Dowds: Are the people who made those decisions retired at this stage or out of the service or are some of them still there?

Mr. Tony O'Brien: The persons who made the key decision, namely, the one that allowed

Grace to remain, are all retired. There may be other persons who did not make that decision but who were involved in some way - perhaps, they were the people who wanted to remove her - who could still be in public service but I do not have that detail with me. I do not believe they would have a case to answer in that instance.

Deputy Robert Dowds: Moving on, can the witnesses tell me about the Waterford Intellectual Disability Association and its relationship with the HSE and with people with intellectual disabilities?

Mr. Pat Healy: I can give the Deputy an overall view on the local issues. As set out in our report, the Waterford Intellectual Disability Association is a voluntary group that emerged locally. It provides residential and day care services. It is a medium-sized organisation and, therefore, it is funded by the HSE. We have set out in the note today the funding provided over the past number of years. What we were seeking to do was, I suppose, to indicate that since 2009, since the downturn commenced, all services in health have been affected to some degree. I think there has been a general attempt to minimise the impact on disability services but they have had an impact. That is reflected here. What we are trying to indicate is that while the Waterford Intellectual Disability Association has been impacted on average with the medium and larger sized organisations they have been treated fairly from a funding point of view. In the final year, 2015, as can be seen there was an 18% increase. I think that reflects some of the additional supports that they are providing but also-----

Deputy Robert Dowds: So, they would be involved in the care of people with intellectual disabilities directly.

Mr. Pat Healy: It is important to acknowledge here that we fully take account of points that have been made. The chief officer, Ms Aileen Colley, met WIDA recently in dealing with the issue of the apology, but also in general, and we are considering that as an opportunity to begin to build the type of trust and relationship with them that will move us collectively from where we are to where we need to go. I certainly want to say here publicly that we want to do that, and the chief officer is fully committed to-----

Deputy Robert Dowds: Would Mr. Healy regard WIDA as a reputable organisation?

Mr. Pat Healy: Yes, of course.

Deputy Robert Dowds: Has he ever had any reason to believe otherwise?

Mr. Pat Healy: No. I do not deal with the organisation on a day-to-day basis - I have never managed it; that would be done locally - but absolutely, it is a very good, reputable, voluntary organisation providing services for people with intellectual disabilities locally.

Deputy Robert Dowds: Obviously, a whistleblower came from within the organisation. When did he or she approach the HSE with concerns about Grace and perhaps Ann as well?

Mr. Pat Healy: What we now know, having gone through the report and so on, is that they had been in contact for a period-----

Deputy Robert Dowds: How long a period?

Mr. Pat Healy: Well over a year, if not longer, specifically pursuing and engaging with people locally. The important thing is that the whistleblower felt that he or she was not being listened to and, notwithstanding his or her involvement in assisting Grace's removal, submitted

protected disclosures at the end of 2009 and, together with another whistleblower-----

Deputy Robert Dowds: Was that from within the HSE?

Mr. Pat Healy: It was from within the HSE. They were the individuals who first submitted the protected disclosures which gave rise to the commissioning of the Conal Devine report-----

Deputy Robert Dowds: When Mr. Healy says they were the first, does he mean they were from WIDA-----

Mr. Pat Healy: I am conscious that we do not normally identify from where specific whistleblowers come; we talk about it as the voluntary organisation in the area. They identified the protected disclosures which gave rise to the Conal Devine report. Those protected disclosures were the initial basis of the terms of reference of the report. Subsequently-----

Deputy Robert Dowds: Regarding the cases of Grace and Ann, there were three whistleblowers, or people who provided protected disclosures.

Mr. Pat Healy: The Conal Devine report and all of the information relating to it concerned Grace. It was initiated, and those involved had been ready to start their work when a further protected disclosure was received and the terms of reference were amended to take account of that, so the totality of the protected disclosures that were received at that time were incorporated into the terms of reference of the report.

Deputy Robert Dowds: There is something I find very difficult about this. Probably unlike anyone else in this room, I have actually taught non-verbal children, and the non-verbal children whom I taught did not have intellectual disabilities but they were still incredibly vulnerable because they could not speak. I am absolutely hit in the stomach by the fact that a really vulnerable woman was left in that sort of situation for 12 or 13 years after everybody else had been removed. I find it impossible to get my head around that. Arising from that, can I ask about the whistleblowers? I am closely related to a whistleblower who suffered quite a lot after whistleblowing in a totally different area of life. I am looking at the end of the letter signed by Claire Looney and Fiona O'Neill from WIDA.

It states:

However, we remain concerned that the HSE's treatment of us as whistleblowers is as despicable now as it was six years ago. The HSE's actions over the last week are the latest in a series of attempts to silence us. We are no longer willing to accept this treatment as we feel we need to send a signal to the HSE and to other people who might wish to speak up for vulnerable people being failed by our health services who cannot speak for themselves.

I will tie in with that the interview on "Claire Byrne Live" last night, in which Claire Byrne talked to a whistleblower. The whistleblower's voice was disguised and her face was not shown on the TV. Why would whistleblowers in and around the HSE be afraid to show their faces, such as in the case of the woman last night? Why did Claire Looney and Fiona O'Neill write that last paragraph in their letter?

Mr. Tony O'Brien: As I said to Deputy McDonald earlier, I have arranged to meet with the authors of the letter to discuss their concerns. As I see it, WIDA has been, is and will continue to be a very important service provider. As I said earlier, they gave significant service through the period before, during and since the time of the protected disclosure. It is important that we

rebuild that relationship.

I did not see the programme last night. One of the reasons for the disguising may well have been to protect the identity of their client, I understand that may be the case.

Deputy Robert Dowds: That is not the impression I got.

Mr. Tony O'Brien: However, in the period since 2009 and certainly since I became director general of the HSE, through the appointment of Leigh Gath and my own response to what happened in Áras Attracta, I have made it very clear that I welcome people within our wider services standing up and blowing the whistle, making protected disclosures, or whatever terminology we like to use. The fact that they are writing that at this point is of significant concern. That is the primary reason I intend to meet with them, in order to ensure that any damage to that relationship can be rebuilt.

Deputy Robert Dowds: It strikes me that this has a wider implication. It seems to me that for whatever reason, there was real fear in the case of these whistleblowers that there would be very negative consequences. That leads me to consider that if that kind of atmosphere is widespread in the HSE, it is a discouragement to staff who do a good job and want to do a good job - and I am sure the vast majority of people who work in the HSE fit into that category - to spill the beans if something wrong is happening. This has a corrupting effect on an organisation. What is the HSE going to do to try to address that issue? One of the things that we should have learned over the last number of years is that the best way to protect an organisation is to root out those who cause damage from within; whether that be the Catholic Church, the HSE, or dare I say it, a particular political party. There is a real need to do that and to support the people who throw light on problems. I accept that the witness cannot straight away accept upfront what a whistleblower says and that their allegations must be checked out. It strikes me that is what happened in the early 1990s in this particular case, but it was not fully followed through on. It was followed through where most people were concerned, but not in the most unfortunate case of Grace. What plan has the HSE in place to encourage people to throw light on things that are happening which should not be happening?

Mr. Tony O'Brien: In particular, in order that being identified should not be a barrier to making a disclosure, I have appointed Ms Leigh Gath as a confidential recipient who can receive disclosure at arm's length from the HSE, pursue the matter and never have to disclose the source of her information. One of the issues with the creation of the HSE is that it was set up without any description of what its culture ought to be. In our 2015-2017 corporate plan, which was approved by the Minister, we have committed ourselves, over the course of that time, to enabling four words to be the hallmarks of that culture, recognising that culture does not change instantaneously but is a long-term play. Those four words, which appear on the top of the letterhead I use to write out to people, are care, compassion, trust and learning. They are not intended as a description of the "as is" but as a description as to where we need to get to. As the person with responsibility for leading the HSE, that is a message I pursue vigorously every time I am engaged in any meeting with staff, town hall meetings and so on, as do other members of the management team and management of community health care organisations and hospital groups. We have to create a different understanding of the nature of the relationship that is required between the public health service, whatever its legal name may be, and society and the people who use or are dependent on those services.

We recognise that, right now, some people may be deterred from making protected disclosures. There is the formal protected disclosure route, which is effectively the route that was

used in this case. However, there is also the confidential recipient in the form of Leigh Gath, and a number of issues have been satisfactorily dealt with in the intervening period since December 2014 when she took up that role. Many issues have been raised that had to be pursued and brought to appropriate conclusion where Ms Gath was able to act as a strong advocate in this regard.

Deputy Robert Dowds: Does Mr. O'Brien agree the whistleblowers in this case seem to be patriots in the best sense of that word and in a way we often do not use it in Ireland, which is to mean standing up for what is best in one's community? In the early 1990s, whistleblowers seem to have made their mark, but it just was not fully carried through. It would have saved this State huge amounts of money if people had listened to whistleblowers in these matters. If we count the investigation in the early 1990s, the two most recent investigations and the examination that is now taking place of what has been done already, we are talking about four investigations. How much has all of that cost the HSE and, by extension, the State?

Mr. Tony O'Brien: I am not sure about the one in the 1990s but I understand the two reports, Devine and Resilience, have a combined cost attached to them in the order of €225,000. I do not know what the costs are for the senior counsel review that is currently being carried out or what the costs will be for the commission of investigation or inquiry.

Deputy Robert Dowds: Does the figure Mr. O'Brien gave include legal costs?

Mr. Tony O'Brien: No, that is the direct cost of the two reports.

Deputy John Deasy: What about the legal costs?

Mr. Tony O'Brien: I understand we previously gave the committee a note in regard to that but I do not have it with me today. The clerk has indicated we did provide such a note.

Deputy Robert Dowds: There is another cost in terms of the huge amount of officials' time that has been spent on this. It would be far better for the efforts of the HSE to be directed more towards what its function should be, which is looking after people's health in the broadest sense of that word. It is a great pity.

Before concluding, I take this opportunity, particularly as I am not seeking re-election, to thank the Chairman for his chairmanship over these past years. It has been an honour to serve on this committee. To describe any issues that come up here as high points would be incorrect because we are usually looking at the dirty linen of how things are done in this country. However, it was a particular honour for me, because of my close connections with the organisation in question, to be here when representatives of the Central Remedial Clinic came before the committee. I was in the rather invidious situation of having to tell somebody who appointed me to a job that he should give back some of the money he got. I thank the Chairman.

Chairman: Did he take your advice?

Deputy Robert Dowds: I think the Chairman knows the answer to that.

Deputy Gabrielle McFadden: I thank the witnesses for their time. A lot of what I would like to have said has already been said, so I will not go over a lot of it. Initially when this came up for the Committee on Public Accounts, I thought it was not the appropriate place for this type of situation but when one looks at it, the whistleblower was so desperate to get anything done this is the path the person had to come down. To me, it is mind-blowing - absolutely mind-

blowing - the amount of to-ing and fro-ing that has been done by the HSE about an apology. The whole thing about this was a cover-up and a protection of the HSE rather than protecting the people the HSE is actually paid to protect. I think the amount of time that has been wasted - HSE staff, time and money - about an apology, when all that time and money could have been invested in clients, is outrageous.

With this in mind, it is no wonder the health service struggles like it does if this is the type of carry-on that goes on in it. I think it must be very difficult for parents and families of the service users, and I am going to call them victims in this case, that they have to go through this and that they were so helpless that they could not help and protect their loved ones. They depended on the HSE to do that and it was not done. I would like to ask about the people who worked in these services. Where are they now? Were they fired? Were they ever held accountable for what happened? They should have been held accountable. In most jobs in this day and age, and for the past while, one goes through an appraisal on a regular basis. Did these staff ever have an appraisal? As politicians we have appraisals every five years, and if one does not do one's job properly one loses one's job. These people should be held accountable.

There are a few things by which I am really bothered. In the case of Ann, Mr. O'Brien said in his opening statement that in October 2013 the HSE formally demanded that the service stop being used. Why was that not done before this? Why did the HSE wait until 2013 to formally demand that this would happen? If it could do it why did it not do it before? Why did it wait? Mr. O'Brien spoke about the €225,000 in combined reports, in the two reports, rather. That money, I would suggest, would probably have provided a person-centred individual service for a client with an intellectual disability for a year at least, for at least two or three clients for one year, and this money was wasted on reports and other things.

I will ask all of my questions and the witnesses can come back in, because I am so annoyed that if I stop now I might forget. In the HSE's report to the Committee on Public Accounts in December 2015, one of the things on page 6 was the 47 clients and the way the HSE broke them down. It stated three could not be traced. That is unbelievable, that there are three clients of the HSE who cannot be traced and nobody knows where they are. Are they missing? I ask the witnesses to tell me about that, please. I would like to know how much money was spent. Deputy McDonald might have asked this question, and the HSE cannot tell how much money was spent, which to me is ridiculous. It loses clients and it does not know how much is being spent on the service.

Mr. Healy spoke about the downturn in the economy and said it had an effect on the disability services. I have to say to him that no amount of money could provide or can pay for this. This is not about money. This is about a properly run health service. It is about a properly run system. Mr. O'Brien said the HSE does not have legal authority to end an arrangement like the one in this case. It may not have a legal authority, but it certainly has a moral authority. If it knew there was something going on I think the HSE had a moral obligation to look after that person. If I worked there and if I had a child, I would not want it to be in a situation like that. I am so annoyed now that I am going to forget something.

Mr. Healy said Ann was assessed when she graduated at 18. Presumably, the assessment was by a psychologist. What kind of assessment was that and what was its purpose? Was it educational? At what stage was Ann at that time? Did alarm bells not ring for the psychologist when Ann was assessed at 18? If either of the delegates could answer those questions for me, I would appreciate it.

Mr. Pat Healy: I will start with the last question, on Ann. As was normal around that time, she was assessed at 17.5 years. The assessment was carried out by the local Brothers of Charity service. It involved psychiatry and psychology. It was an assessment as to what was the best placement and so on. She graduated, attending a voluntary provider after that and so on. In relation to-----

Deputy Gabrielle McFadden: Were any alarm bells raised by the assessment?

Mr. Pat Healy: No. That is one of the relevant points. Among the 47 that we set out, Ann's family is one of the 18 families that identified that they had a good experience. One of the challenges that arose regarding this matter was that, in their view, they actually had a good experience of working with the mother, and that had influenced them in how they dealt with the matter. There were no issues of any kind. I mentioned in the previous contribution that Ann was never in care and there were never child protection issues or anything of that nature. She went for the assessment simply because she was at the age where she was graduating, having been in a special school. I refer to day-to-day services.

I shall refer to the issue at the time in 2009 after Grace was moved out of the facility to a voluntary provider. I was trying to articulate that, for a period, the Devine report did not identify any particular case, or did not identify Ann's case. The investigation was going on. Clearly, from the report, there was information locally to the effect that she was attending the location in question, and that is when engagement with the family took place and so on. I think what happened then was that a senior manager in the area was reviewing the Devine report implementation and assessing it and, in that context, raised the issue of taking more decisive action in relation to Ann. At that point, the Devine report had been concluded and the Garda investigation was still going on. It was at that point that the foster mother was written to and instructed not to take placements any more, and the family was also written to.

Of course, in the consideration of this, one of the issues concerns how one deals with circumstances where the family of a vulnerable adult feels that individual is being looked after satisfactorily and that there is no concern, yet there may be other concerns and one must consider how to deal with that. Certainly, from 2013 onwards, the lady was in five-day residential care and then seven-day residential care. She still visits her mother. She comes out of residential care every second weekend and visits her mother. We have been advised, right up to the current time, that the mother indicates that she does not place Ann in that home anymore. She does visit.

Deputy Gabrielle McFadden: How is Ann now?

Mr. Pat Healy: Progressing well. We mentioned in the director general's opening statement that, following on a broadcast earlier in the year, a question arose. The voluntary provider she was with, reflecting on this set of circumstances being aired at the time, looked back on the situation in the past and felt particular matters might be looked at. It submitted them to the HSE and to HIQA. We have carried out an investigation of that to be sure there was not anything, and as of today that report has just concluded. We have not fully assessed it yet but the indication to us, as outlined in the director general's statement, is that there was nothing untoward in that. The extra mile was gone to carry out an investigation and so on, just to be complete in all of that. That covers the position up to date regarding Ann, and she is progressing very well at the service she is in now.

With regard to the funding side of it, as I mentioned, when one goes back on the records, one

can see it was a feature of the child care services. There are two years of records. We were not able to identify the others. However, clearly the family were being provided with the equivalent of foster care allowance up to the time that it stopped in 1995. From that time on the State was providing support to the individual through what was DPMA and is now the disability allowance, and that continued. That is the situation regarding the finances.

Deputy Gabrielle McFadden: Where does Mr. Healy think the three missing clients are?

Mr. Pat Healy: I forgot to deal with that; apologies. It is not that there is anybody missing. We wanted it to be totally complete, and the job given to Resilience Ireland was to identify any individual who had had any contact whatever with the foster home concerned. There were a number of people whose records are on file, but they may have been very limited records, and those individuals were not traceable. They may have had contact through An Garda Síochána or the HSE. They are just references on the file; they were identified and put in as part of the investigation, but we have not been able to trace them. For completeness, and to ensure everyone was recorded who had been involved in any way with this foster home, in fairness to the investigators, they identified all of that. They provided all of that information to An Garda Síochána and, between the Garda and themselves, it was not possible to trace them. However, if anybody had any further information-----

Deputy Gabrielle McFadden: It is hard to believe that somebody who is vulnerable and needs a service would not be traceable. It is not that big a country.

Mr. Pat Healy: The investigators went through every single file. It is not that there is a person lost; it is just that there is a record that is very indeterminate-----

Deputy Gabrielle McFadden: So the records are not right.

Mr. Pat Healy: It is not that the records are not right. There is a record that someone was placed in the home. The investigators identified that to ensure that nobody who had had any contact with the home would be left out or not referenced when the events were investigated and when talking to An Garda Síochána.

Mr. Tony O'Brien: With regard to the cost of the reports, there is no doubt it is a substantial sum of money. However, the value of the reports is in the material they provide for the current ongoing Garda investigation, the value of which we have not yet seen. I would not agree at this point that the money has been wasted. Obviously, I have had the opportunity to read the reports, which the committee members have not. They are comprehensive reports and they provide a solid basis for the Garda investigation that is currently ongoing.

Deputy Gabrielle McFadden: If everybody was doing their job right and fulfilling their moral obligation, there would not be a need for reports and that money would not have been wasted. It is wasted.

Mr. Tony O'Brien: It is wasted in that sense but, given the protected disclosure that was made in 2009, I believe the person who commissioned those reports was doing the right thing. The reports are available to the Garda and to the commission of investigation or inquiry, whatever the correct term is, when it is established. The reports have a value, but clearly, if different decisions had been made way back in the 1990s, then this direction of travel would not have been necessary. There is no doubt the Deputy is right in that respect.

Deputy Gabrielle McFadden: I asked whether staff ever do appraisals. Has anybody been

held accountable for this?

Mr. Tony O'Brien: At this point, as I explained earlier, nobody has been held accountable. That process depends upon the availability of the Conal Devine report and, to a lesser extent, the Resilience report. If I were to move forward at this stage I would actually compromise the ability either of An Garda Síochána to correctly and appropriately complete its investigation or of the HSE to pursue any disciplinary issues. I know this is a really difficult point and many people find it hard to accept but if I were to publish those reports at this point, in my view, I would completely undermine the ability of An Garda Síochána to successfully complete its investigation and I would certainly undermine the ability of the HSE to take any disciplinary actions.

Deputy Gabrielle McFadden: Are any of those people still working in the HSE or have they been moved on? Are they still working with children or adults who are vulnerable? Have we learned nothing from the past?

Mr. Tony O'Brien: There are people who are referenced in those reports in many different ways who are currently employed either in the health service or in Tusla, as I said earlier.

Deputy Gabrielle McFadden: They are named in the report or the investigations and they are still working with children?

Mr. Tony O'Brien: There are some people who are named in the report who are currently employed by Tusla, yes.

Deputy Gabrielle McFadden: Are they working with children? It is a very specific question and a "Yes" or "No" will be fine

Mr. Tony O'Brien: I cannot answer that question. That would have to be answered by Tusla. All I know is that they are employed by Tusla.

Deputy Gabrielle McFadden: So we have not learned anything from the past. The headed paper refers to care, compassion and something else. What was the other thing?

Mr. Tony O'Brien: Trust and learning.

Deputy Gabrielle McFadden: I suggest that those words need to be on more than the headed paper-----

Mr. Tony O'Brien: They are. Absolutely.

Deputy Gabrielle McFadden: -----because absolutely no care or compassion has come out in this whole story or in Mr. O'Brien's replies or tone with us today. There is absolutely no care or compassion there at all from what I can gather. I thank him for his time but I do not see any care or compassion.

Deputy Paul J. Connaughton: Much of this has been covered already but I will go over one area that was raised by Deputy Deasy. When Mr. O'Brien came into the job, was there any point in him making a telephone call to some of the people that he knew were there just to have a chat and see what was going on? I do not mean from the HSE or corporate side of things but just for himself. Was there not a part of him who said, "I will ring these guys and just find out what was going on at the time"?

Mr. Tony O'Brien: No, because I cannot separate myself from my corporate role. If this comes in some cases either to criminal charges or to disciplinary charges, in statute, I have a particular function in relation to that which kicks in at a particular phase and I would have compromised that process.

Deputy Paul J. Connaughton: Mr. O'Brien will meet the whistleblowers who were badly treated, involve himself and try to address their concerns. There is no issue with that meeting going on.

Mr. Tony O'Brien: No. I have no role in relation to the disciplinary processes within the Waterford Intellectual Disability Association, not that I am imagining there is any disciplinary process to be pursued. Our relationship is such that I can talk to the whistleblowers without compromising any other functions that I have.

Deputy Paul J. Connaughton: Mr. O'Brien understands why there is such a high degree of scepticism surrounding all of this. At the heart of this, there is a real lack of accountability. At the end of the day, we are discussing the lives of two people whom I have not met and do not know. I am sure this is a very distressing time for their families, as I am sure it has been for many years and not just now. Some of my colleagues know much more about this case than I do. Considering some of what we have heard, I do not want to know any more of the finer details of it. All we are hearing today is that Mr. O'Brien can go and work on certain parts but he cannot go and work on other parts.

I spent four years as a youth worker before I became a Deputy. We were always told that the basic rule in cases where we believed a young person was in danger of self-harm or being hurt was to report the matter up the line straight away, not tomorrow. It is the job of the manager to take action and if he or she does not do it, he or she is then held accountable. I have a feeling the Health Service Executive has a different understanding of the word "accountable" from other organisations because all I am hearing today is that nobody has been held responsible for this yet.

Mr. Tony O'Brien: It would be the easiest thing in the world for me to make my life apparently easier by publishing these reports. If I did so, I would be interfering with the Garda inquiry, I would be guaranteeing that no one would ever get convicted and I would be guaranteeing that no one could ever be disciplined. I will not make my life easier in that sense by doing that just because it would be the popular thing to do. Unfortunately, some of us have particular responsibilities that place us in positions where we cannot just follow our instincts. We have to do what the law requires us to do. That is really uncomfortable for all of us.

Deputy Paul J. Connaughton: I do not think it is the populist thing to do. We are not looking to create a hero. We are trying to find the answers to all these questions. With due respect, we are not talking about something that happened in the past few years. This goes way back.

Mr. Tony O'Brien: Yes it does. Let us be clear, this goes back to a point where I certainly have no personal agenda in protecting anybody in any way from anything. What I am not going to do is give them a get out of jail free card by putting something into the public domain that everybody wants to read, that I have read and which is horrendous. If I put it out in public, one thing is sure - nobody will get convicted, nobody will get disciplined. Nobody has yet been disciplined or convicted. However, if I put the reports in the public domain now, I guarantee that nobody will ever be. I must hold the line on that; as uncomfortable as that is, that is my job. I am stepping up to the plate. I am standing here taking this criticism for not having published

this, but I will not do it if the consequence is that there will never be any accountability. I do not make any apology whatsoever for taking that position.

Deputy Paul J. Connaughton: There is a very good chance that this will be our last Committee of Public Accounts meeting. The odds of these members being around this table in this number again are probably low. Will Mr. O'Brien tell the committee what the next six to 12 months hold on this story? Will Mr. O'Brien be held accountable for his current actions, not for the actions of the past?

Mr. Tony O'Brien: At some point - I do not know whether it will be in three, six or 12 months - the Garda Síochána will clear publication of these reports. They will be published. As I understand it, the Government discussed today - but I do not know the outcome of the discussion - the setting up of the commission of inquiry or investigation that the two Ministers announced yesterday they would be recommending. As a result of exercising their rights under section 40 by end of play today, my office will have provided the Ministers with the copies of the reports we are talking about. They will be as hamstrung about their publication as I am. The report by Mr. Conor Dignam SC will be available, I suspect, by the time of the next meeting of the Committee of Public Accounts. That will inform the proposals that will have to go to the Oireachtas for the establishment of the commission of inquiry. If I get clearance to publish the reports, they will be published. Disciplinary action, hearings and all of the normal process will follow as a result of that, provided I am not prevented from doing so in respect of any individual case by a pending criminal prosecution. There are currently situations to do with things not quite as horrendous as this, but almost as bad, where we are holding off on disciplinary action, having placed people off work on protective leave, while matters are before the courts. That is exactly the course of action that will be pursued once we are in a position to publish these reports. Unfortunately that position does not yet exist. If at any point I have authority to publish the report and I do not do so, then of course I will be accountable for not having done so. I do not yet have that authority.

Deputy Paul J. Connaughton: When it happens and we have the commission of inquiry, it will then fall to Mr. O'Brien to act. Mr. O'Brien referred to the corporate culture that he is trying to build up to; has he been able to fire anybody from the HSE?

Mr. Tony O'Brien: Yes, I have.

Deputy Paul J. Connaughton: I presume for behaviour a great deal less serious than this.

Mr. Tony O'Brien: Yes, in those cases, it was much less serious than this case.

Deputy Paul J. Connaughton: People will want to see that there is accountability and that those who knew what was going on in this case will be held accountable for it.

Mr. Tony O'Brien: I have, unfortunately, had occasion to end the employment of a number of people in circumstances that were far less serious than this. In this instance the only way to get to that point is to follow the course we are on in terms of not publishing these reports until cleared to do so by An Garda Síochána.

Deputy Paul J. Connaughton: In regard to this specific area, is Mr. O'Brien concerned that something similar happened elsewhere in the country?

Mr. Tony O'Brien: Given that this happened in the mid-1990s, as the Chairman has pointed out in the very health board where we had the Kilkenny incest case, I would be concerned that

if we were to go looking back through time, we would find other issues in other parts of the country.

Deputy Paul J. Connaughton: Does that not raise a great deal of concern? In his opening statement, Mr. O'Brien mentioned a look-back at these cases. Surely this should be done on a country-wide basis, considering the people who are involved are extremely vulnerable. There has been no look-back country-wide.

Mr. Tony O'Brien: The aim of the look-back was to find people who were no longer receiving any kind of "care" in this foster setting as part of ensuring that we had a full picture in relation to this issue. We do not have similar reports that we need to pursue in respect of other areas but only a complete fool would sit here and say that there can be no concerns that similar things happened in the past in other parts of the country. We know that a lot of bad stuff happened in lots of parts of the country in many settings. We have other investigative processes in relation to them but I have no live lines of inquiry right now.

Deputy Paul J. Connaughton: Will the HSE look to do that now?

Mr. Tony O'Brien: Certainly, it is something we will consider but it is not under active consideration right now.

Deputy Paul J. Connaughton: Surely now is the time to do it.

Mr. Tony O'Brien: It is something that is under consideration.

Deputy Paul J. Connaughton: When will a decision be made on that?

Mr. Tony O'Brien: We will probably make the decision in the context of the process the Ministers will be going through in relation to the commission of inquiry.

Deputy Paul J. Connaughton: If Mr. O'Brien considered what the whistleblowers have said up to now, there may be other whistleblowers out there saying to themselves that they will not come forward if those two staff feel this way about it. Let us not forget, we are talking about vulnerable persons.

Mr. Tony O'Brien: For the past 15 months, we have had a confidential recipient in place - a very credible person in the form of Ms Leigh Gath - who has been receiving confidential disclosures about issues, let me say, that are not in this ballpark at all, where specific issues have had to be addressed and remedies brought to bear. Her door is open. Her phone number is on the HSE website. If anyone has anything they need to disclose to her then they have my personal invitation to do so, as they have done since I announced her appointment.

Deputy Paul J. Connaughton: I thank Mr. O'Brien.

Chairman: Two other members have offered. I would ask them to be brief, if they can, in dealing with their issues.

Deputy John Deasy: How long has Ms Spillane been assistant secretary for social care?

Ms Frances Spillane: I am an assistant secretary for approximately 15 years. I have had responsibility for disability since last November 12 months, and older people since a bit later than that.

Deputy John Deasy: We now have a commission of investigation. It has been announced.

Why has it come to this?

Ms Frances Spillane: There has been huge concern voiced by Ministers, and, obviously, within the Department as well, about everything that has gone on here and that was reflected in the decision by the Minister to appoint Mr. Conor Dignam SC to do the review of everything that happened in the south east.

Deputy John Deasy: The Minister of State stated last night that the reason they are going ahead with a commission of investigation is that they were not sure of the information that they were being given any longer, there was counter information and gaps in the information that the Department had been given.

Ms Frances Spillane: Everybody would agree that it has been quite confusing, particularly over the last period. Equally, within the Department, we have a huge amount of correspondence on this issue at this stage. The idea with the Mr. Conor Dignam SC review was that he would effectively quality assure the two reports that had been prepared in the south east. Part of the concern at that time was that we wanted to get information and try to establish the facts relatively quickly. In fact, a detailed submission was given to the Ministers at that time outlining the different options that would be available, including a commission of investigation.

Deputy John Deasy: The Chairman was on radio last week and somebody in RTE asked whether the committee has a remit here. The Chairman replied that we did given that we looked at the value-for-money issues surrounding the commissioning of reports, but it was probably a fair question. In reality, when it comes right down to it, the Committee of Public Accounts probably should not be dealing with this; the Department should be. Ms Spillane should have dealt with this. We should not be dealing with this today. There is a theory that if it had been dealt with better in the Department of Health, a commission of investigation probably would not have been announced. That is a reasonable point. The reason Mr. Conor Dignam SC was commissioned to conduct a desktop review was because we raised this in this committee.

When it comes to constituents who came to me, I had to fight for the most basic care for some of those who were involved and who were subjected to the most horrendous rape. We did that through what we do on a daily basis within this committee. I have to ask Ms Spillane a question. The Department of Health is absolutely pivotal in this with regard to its oversight of an organisation that has failed, and failed miserably. What was the Department doing while we were dealing with this matter? We have had Ms Spillane's boss, the Secretary General, in here. We discussed this and dealt with everything but, frankly, it led to nowhere. Ultimately, it has led to a commission of investigation because the Department of Health did not deal with this matter.

Ms Frances Spillane: Deputy, we have correspondence on this going back quite some time, in particular from late 2014 when a whistleblower approached the Ministers. We have been doing our best to respond to the concerns. We have kept the Ministers fully briefed. They have met a number of whistleblowers on this issue. It is correct that the Committee of Public Accounts hearings have drawn attention to the issue but certainly the intention in getting the independent review was to try to establish the facts because it is a difficult area when people have not read the reports, Ministers have not seen the two reports. As yet, I have not seen the two reports.

Deputy John Deasy: Ms Spillane does know some facts.

Ms Frances Spillane: Yes.

Deputy John Deasy: Was Ms Spillane aware of Ann and the fact that she was in that foster home for so long? When did Ms Spillane become aware of that?

Ms Frances Spillane: There is a reference, because we checked back on our records, to private placements from an early report to the Department from the HSE. In 2014, there is a reference to the fact that there were some private placements. Equally, the Department had checked, with the HSE, last year that there are now no placements with the foster family.

Deputy John Deasy: Did Ms Spillane check that out? Did Ms Spillane ask them about that private placement of Ann and the circumstances around it? Did Ms Spillane look into it?

Ms Frances Spillane: No, we did not. I suppose part of our difficulty here is that the Department gets, as the Deputy would be aware, a very large number of representations - over 7,000 last year.

Deputy John Deasy: Let us be clear about something. We are talking about a foster home that was a centre of sexual abuse allegations for 30 years at that point. The witness found out that there was a private placement involved here and did not query them with regard to the circumstances around it.

Ms Frances Spillane: Sorry, the Deputy's question to me was when did I know about it.

Deputy John Deasy: Yes.

Ms Frances Spillane: I must admit that it was in the interview on Sunday that I really realised-----

Deputy John Deasy: Ms Spillane learned then about this.

Ms Frances Spillane: -----but we checked our records to see-----

Deputy John Deasy: Yes.

Ms Frances Spillane: -----had we been told about it. On checking the records, we found that there was a reference to private placements. I would have to admit that I have not retained all of the detail because we have quite an amount of background papers.

Deputy John Deasy: Is Ms Spillane surprised at this? I have to ask that of the Department of Health. Mr. O'Brien has made it clear that, in his opinion, and he has repeated it four or five times now in fairness, he does not have the authority within the HSE to verbalise what he would like to or what he would like to get out there. He is frustrated. The organisation is frustrated. Has the HSE contacted the Department to try to change policy regulation in any respect to make it easier for the HSE to deal with the individuals who still might be working with children? Has Ms Spillane received any representations or calls from the HSE in that regard?

Ms Frances Spillane: Does the Deputy mean in terms of action to be taken in regard to personnel in the HSE?

Deputy John Deasy: Yes.

Ms Frances Spillane: Not that I am aware of.

Deputy John Deasy: Does Ms Spillane have a difficulty being an Assistant Secretary in the Department of Health knowing that there is, potentially, people who have made some horrendous mistakes within the system still working in agencies like Tusla, the child protection agency? Is there any uneasiness within the Department about that?

Ms Frances Spillane: There are procedures when it is established that some-----

Deputy John Deasy: I know that. Mr. O'Brien has said that a number of times.

Ms Frances Spillane: I suppose, at the moment, I feel we do not have all of the facts. That was the background to setting up the senior counsel review, that he would look at the approach and at the two reports, and that he would advise Ministers on the whole area of whether the reports could be published and, also, what the next steps should be. In terms of that report now, the area of contributing to the terms of reference for a commission of inquiry or commission of investigation is going to be very important. The Deputy will be aware that it can be quite difficult to come up with correct terms of reference for a commission of investigation. In fact, we approached Mr. Dignam last week to see if he could expedite his review. It is going to be completed now by the end of April. We hope that will be very helpful to us in preparing detailed terms of reference, which of course have to be signed off and approved by the Oireachtas.

Deputy John Deasy: As this has unfolded over the last few months and weeks, and particularly in the last week, when Ms Spillane has requested information from the HSE about the specifics, is she happy that she got the full information on every occasion? We are not, obviously. We think the information that has been dispatched to us has been selective. Is Ms Spillane happy that she and her Department have received the full information at every juncture?

Ms Frances Spillane: Certainly we have received a lot of information from the HSE. We rely completely on the HSE all the time for information on operational matters, so we are constantly in contact with it. For example, we would have been in contact with it for a briefing for Leaders' Questions on this issue. It is very difficult to say categorically that I am absolutely satisfied that we got all of the information. To the extent that we have a very good working relationship with the people in the disability unit in the HSE, they do send us prompt replies to queries all the time.

Deputy John Deasy: When Ms Spillane's boss - Mr. Breslin, I think - appeared before the committee the last time, we asked him about the draft recommendations that were sent by the HSE to the Department of Health about the selection of people who are commissioned to do reports. We are told publicly now that a panel will be set up. I asked the clerk about this, and I do not think we ever received confirmation with regard to the finalisation of those recommendations. Can Ms Spillane tell us if that has happened?

Ms Frances Spillane: The HSE would be in a better position to answer that. This is the independent review panel.

Mr. Tony O'Brien: I am not sure offhand what members have received, but the-----

Deputy John Deasy: Nothing. The HSE gave us the draft. It was going to the Department and has not seen the light of day yet.

Mr. Tony O'Brien: There has been a series of discussions about the implementation of it. Under our statute - the 2013 statute - there are two committees which are independently chaired, an audit committee and a risk committee. We have agreed that the chair of the review panel will

be accountable to the risk committee - in other words, not accountable to the executive of the HSE at all. They are currently finalising a person specification for that so that an open competition can follow for the appointment of the individual who will be chair of the panel.

Deputy John Deasy: This is a hypothetical question, but I think it is relevant. If Mr. O'Brien discovered, hypothetically, that one of his officials was dangerous - complicit in something terrible - and if he had a really serious personal concern with regard to the safety of the individuals that person was in charge of within his organisation, would he feel the same way he does today? Would he say that there was nothing he could do and that he would have to wait until the reports were published and the Garda investigation had concluded? Would he wait? Would he sit on it and say there was nothing he could do statutorily? If he found that somebody was at serious risk of doing something terrible, what would Mr. O'Brien do?

Mr. Tony O'Brien: I would do what we did in the case of Áras Attracta, which was to place a significant number of staff on protective leave in accordance with the safeguarding policy that is in place today, pending an investigation; establish that investigation; and wait for our ability to proceed with disciplinary proceedings before we did so. In the Áras Attracta case that investigation is ongoing, but it cannot be brought to conclusion until the criminal proceedings are concluded.

Deputy John Deasy: One last question-----

Mr. Tony O'Brien: That is not a hypothetical answer. That is a current answer.

Deputy John Deasy: I have one tiny last question. It goes back to Ann and those various engagements. We have now found out that, for the reasons the members of the HSE deputation have stated, even though those engagements were ongoing from 2011 to 2013, the HSE did not inform the family of the sex abuse allegations. What changed? Why did the HSE formally demand in October 2013 when it had not done so previously?

Mr. Pat Healy: I said two things. A similar question was asked. The team had been engaging locally under the senior manager. The Devine report had been completed and implementation of the report had commenced. There was some legal delay at the beginning but it was progressing at that stage. There was a review by a senior manager of the situation and how things were progressing. At that point, she decided to escalate the position and engage with the family directly. She wrote to the foster family first. She then engaged with the mother and the family. There were conversations and so on and then she wrote to her at the end of the month. By the end of October of that year matters were brought to a conclusion.

It is the challenging predicament of an adult living at home on weekends, as it was at that stage. Every second weekend she was going home to mother and staying seven days a week. How do we ensure it? Up to today, we have confirmation that the mother is clear that she receives her daughter at home and does not place her in this location. She may visit, but she does not place her there. That is the most up-to-date information we have, as of today.

Chairman: Deputy Costello is next. Please be brief.

Deputy Joe Costello: I will be brief. What we have heard today has been extremely disturbing. The members of the HSE deputation have already admitted to mishandling and to erroneous and inaccurate information - indeed, misinformation - being provided. We saw from the case of Ann that there was a gross and grave dereliction of duty in terms of the HSE's responsibility of care. There is *prima facie* evidence of that, quite clearly.

At this point I am worried that there is no disciplinary procedure in place. The abuse has been known about for a long period and there have been a number of investigations. Now, we have to wait further before we are in a position to take any action, on the basis that any action would prejudice the existing investigations. We come then to the question of the commission of investigation that is about to be set up. That could take another couple of years. We end up in a situation, at this point at 4.30 p.m. before the general election is called, whereby no protections are in place that we are aware of in respect of people in care. The HSE representatives have indicated that they did not know what was happening to some of the people named in the reports who are still working in a care capacity. The HSE is unsure whether they were dealing with vulnerable children either.

This is my point. How many children are still under HSE care? What number are we talking about? Does the HSE deputation have any ideas, between now and when we are going to have some outturn from the various investigations, for putting in place any protocols to protect these people? This is a clear dereliction. There seems to be no line management where anyone is directly responsible despite *prima facie* evidence. How can we rest tonight and be sure that all the children in the care of the HSE are protected if it has no internal mechanism for dealing with them, as it appears, and it is going to kick everything to touch until such time as the investigations are complete?

Mr. Tony O'Brien: First, children in care are not in the care of the HSE. They are in the care of the Child and Family Agency, known as Tusla. Second-----

Deputy Joe Costello: Mr. O'Brien told us that some of these people were working with Tusla.

Mr. Tony O'Brien: Yes, but we are not Tusla and we do not have jurisdiction over children in care. We provide care to children, but that is a different matter. Mr. Healy will speak to that.

Deputy Joe Costello: Did Mr. O'Brien not indicate that some of the people named in the reports were working with Tusla?

Mr. Tony O'Brien: I have indicated that some of the people who have had some role or other in respect of this issue in the south east are currently in the employ of Tusla. Deputy Costello's question to me was how many children we had in care. We have no children in care because we do not have those functions. Regarding the issue of-----

Deputy Joe Costello: Not directly in care, but for which the HSE has a caring responsibility.

Mr. Tony O'Brien: Mr. Healy will give the Deputy that information in a second, if that is okay. Regarding Ann, it is important that I stress that the legal advice is clear. We do not have a statutory capacity to shut down a private arrangement of the type that existed in respect of the person whom we are calling "Ann". Ultimately-----

Deputy Joe Costello: No, we have been over all of that. The HSE demanded that the family cease activity.

Mr. Tony O'Brien: Yes.

Deputy Joe Costello: Then the HSE sent a formal letter to the parents, who immediately accepted what the HSE did, but it had been blaming them in the years prior to that for not lis-

tening to it.

Mr. Tony O'Brien: I am not blaming anyone. I am saying that the HSE lacks the statutory-----

Deputy Joe Costello: That is the import of that section.

Mr. Tony O'Brien: No.

Deputy Joe Costello: I do not want to go down that road again, but it is clearly the import of the section that the responsibility rested with the parents and not the HSE. It washed its hands of responsibility. It then took responsibility in October 2013.

Mr. Tony O'Brien: What happened-----

Deputy Joe Costello: Up to that time, the HSE sat on its hands and effectively blamed the parents.

Mr. Tony O'Brien: I have not blamed the parents. The Deputy may interpret it as that, but he will not find words of blame in my statement. I do not blame the parents. What I am-----

Deputy Joe Costello: Any reasonable person reading Mr. O'Brien's statement would come to that conclusion.

Mr. Tony O'Brien: What I am attempting to communicate, and I hope reasonably, is that, in law, the HSE lacks the statutory capacity to shut down a private arrangement. What is reflected over a period of time is increasing efforts of persuasion-----

Deputy Joe Costello: That was not my question. We have been over this ground before. My question is on the people who are still in the HSE's employ and in respect of whom no disciplinary action has been taken. No one has been suspended and, as far as we can gather from today, no action can be taken until such time as the inquiries are complete. This is the message that we are getting.

Mr. Pat Healy: While children in care-----

Deputy Joe Costello: The HSE's hands are tied and, therefore, vulnerable children will remain vulnerable.

Mr. Pat Healy: I will make two distinctions. Children in care are the responsibility of Tusla, the child care agency, but there are children for whom we have a responsibility. There was a time when the HSE had statutory authority for children. Obviously, we had to discharge that legislation fully. We are no longer the statutory authority. However, we have a duty of care to children and we must fully comply with children legislation, including the Child Care Act. Everyone working in our services, in particular the disability services-----

Deputy Joe Costello: I do not want to go on with this, Chairman. We are getting nowhere. There are people in the HSE's employ who have not been disciplined and are potentially still in contact with vulnerable children, yet it has no protocols in place or internal-----

Mr. Pat Healy: All services that are provided must comply fully with-----

Deputy Joe Costello: I know.

Chairman: Will Mr. Healy allow Deputy Costello to continue?

Deputy Joe Costello: We have been given a description of a dysfunctional organisation. We need to know whether the HSE is putting its own house in order so that, when there is *prima facie* evidence of vulnerable children being in danger, albeit not necessarily evidence that is raised in court, but involving whistleblowers and so on, it will take action without waiting for an investigation and show clearly that it is protecting the children who have been the subjects of the abuse that has been brought to its attention.

Mr. Pat Healy: In children services, there are full child care protocols in line with Children First that must be followed. In respect of adults, we now have, for the first time, a national safeguarding policy for adults. It is the first time in Ireland that this has been implemented. It means there is now a policy both for children and adults. There is a statutorily based one for children; the national safeguarding policy is not statutorily based but it is there and all service providers have been confirmed. That is what the national summits have been about, namely, implementing that. One of the good things that has come out of this very damaging and bad situation is this national policy for safeguarding adults. It was one of the key recommendations of the Devine report and for the first time, that has been implemented. That is a very good thing.

Deputy Joe Costello: That is in all the community care areas.

Mr. Pat Healy: Every residential centre has been written to and has to comply with this. There are now newly-appointed safeguarding teams in the nine community health care organisations, with a principal social worker in charge of them. For the first time in Ireland we have the beginnings of a structured engagement on a continual basis with-----

Deputy Joe Costello: It is also fully resourced.

Mr. Pat Healy: It is fully resourced.

Deputy Mary Lou McDonald: Are all HSE staff conversant with and trained in the open disclosures policy?

Mr. Tony O'Brien: They have all been provided with the policy and there has been wide-spread training. As to whether they are conversant with it, I have to be honest I am not happy with the level of open disclosure. Too many issues reach my desk where there has not been open disclosure since the policy was implemented. I am a strong advocate of the open disclosure policy being put on a statutory basis.

Deputy Mary Lou McDonald: Are all of the witnesses, for instance, trained in open disclosure?

Ms Aileen Colley: I have not been trained in Ireland. Obviously I have been trained in Australia and since I have been orientated, I have read the documents, but I have not undergone training as such.

Deputy Mary Lou McDonald: Had those who were dealing with the apology to Grace and her family been trained in open disclosure?

Mr. Tony O'Brien: We would probably want to check that before giving an answer that might be wrong.

Deputy Mary Lou McDonald: Could Mr. O'Brien do that, please?

COMMITTEE OF PUBLIC ACCOUNTS

Mr. Tony O'Brien: Yes.

Chairman: Just to clarify a few points before we finish, did Mr. O'Brien say that it was for 23 years that Ann was in-----

Mr. Tony O'Brien: I believe that is in the statement.

Chairman: It is 23 years, then.

Mr. Tony O'Brien: Yes. She is now 35 and she was born in 1980. It commenced when she was 12, part time. She was never there full time.

Chairman: Okay. Mr. O'Brien said the HSE lacks formal authority to intervene with a private citizen, in the case of requesting them to stop using the home.

Mr. Tony O'Brien: If they were a child, then we do-----

Chairman: I understand it, but did Mr. O'Brien ever then contact the Department of Health and explain the type of legislation that might be needed in this regard?

Mr. Pat Healy: Not particularly on this issue.

Chairman: Yes or no, Mr. Healy. Do not go wandering off.

Mr. Pat Healy: I do not believe so. I am not clear.

Chairman: He did not do it.

Mr. Pat Healy: I am not clear.

Chairman: Does the Department of Health consider, having listened to all of this, that there is need for further legislation in this area?

Ms Frances Spillane: It is something we should examine.

Chairman: I brought to your attention, Mr. O'Brien, the fact that the HSE was told locally about Ann and that the social workers asked that the necessary steps be taken to protect her. They were that concerned. This was in 2009. She was still there in 2013. Have you details of that?

Mr. Tony O'Brien: This is detailed in the Resilience report.

Chairman: That is a fact, that the HSE was asked to take the necessary steps and obviously did not, because Ann was still there in 2013. The necessary steps to protect her were highlighted.

Mr. Tony O'Brien: I can confirm, without hesitation, that concerns were raised at that time.

Chairman: What action was taken? Why did four years lapse?

Mr. Tony O'Brien: At the time, because Ann was an adult and not a child, the HSE lacked the statutory capacity to close down that arrangement and, as set out in the opening statement, pursued a process of engagement with-----

Chairman: Was the Department of Health alerted to this issue at that stage?

Mr. Pat Healy: I am not sure whether the Department was advised in 2011. The Garda was consulted. That was the key piece at the time. Legal advice was received locally at that time.

Chairman: Okay.

Mr. Pat Healy: I have gone through that previously.

Chairman: Is Mr. Healy familiar with-----

Mr. Pat Healy: The Department was not written to on this matter until 2014.

Chairman: Is Mr. Healy familiar with a type 2 payment arrangement?

Mr. Pat Healy: I cannot say I am familiar with it.

Chairman: To go back to Grace, a type 2 arrangement was entered into where her disability allowance would have been paid to the foster home, and for that the foster home would give an undertaking that she would be cared for, the money would be looked after, a special account would be opened and so on. Was that type 2 arrangement entered into by the health board or the HSE at the time?

Mr. Pat Healy: I am not familiar with the type 2. What I said earlier is that my understanding is that she had a foster allowance, which was-----

Chairman: I know what you said earlier on.

Mr. Pat Healy: I do not believe-----

Chairman: What I am pointing out to Mr. Healy is-----

Mr. Pat Healy: The Department of Social Welfare paid the disabled person's maintenance allowance.

Chairman: I ask Mr. Healy not to talk me down.

Mr. Pat Healy: Sorry.

Chairman: I will explain what I am talking to him about here. I presume the arrangement that is entered into could be classed as a legal agreement, or as an almost legal agreement, setting out how that money would be looked after. As I said earlier on, even though that agreement was in place, she entered care in 2009 with no belongings, no money and no documentation. She had nothing. If one adds it up, one will find that approximately €70,000 was paid in benefit to the foster mother. If that arrangement was there for Grace, how many more people was it there for? Regardless of whether it is a health board document or a Department of Social Protection document, there is a document that should have been signed by the foster parents, the foster home or the respite home. Can Mr. Healy find out whether the HSE has those signed documents for the others? Are they held by the Department of Social Protection? It is important to follow that up. Mr. Healy was very quick to give us the figures for two organisations funded by the HSE, but he could not give us the figures for the clients' payments when he was pursued on it. I ask him to pursue that aspect of this issue with the Departments concerned in order that we can get to the end of the payment piece. We have not got to the end of the payment piece here.

Mr. Pat Healy: I will certainly do that.

COMMITTEE OF PUBLIC ACCOUNTS

Chairman: Yes. Did the HSE in recent times make a statement saying that the Waterford Intellectual Disability Association stopped it from giving the apology? Could Mr. Healy give me some clarification on that? Was that something that was said or issued in a statement?

Mr. Pat Healy: No, there was never an inference that we were stopped. First of all-----

Chairman: By that organisation or anybody else.

Mr. Pat Healy: We have already apologised for the mistake we made in relation to this.

Chairman: That is another mistake within the HSE.

Mr. Pat Healy: There was never a suggestion that the organisation stopped us from doing this.

Chairman: Yes.

Mr. Pat Healy: The only interest was in trying to do it personally as opposed to by letter.

Chairman: I would like to follow up with Mr. O'Brien what Deputy Dowds said about the legal issues here and the possibility of people taking a case against the HSE and so on. Mr. O'Brien said that no legal defence is really being offered by the HSE. Have Mr. O'Brien and his colleagues in the HSE estimated how much the possibility of cases being taken and having to be settled might cost the State? Have they entered into such an examination yet?

Mr. Tony O'Brien: Not at this stage, no.

Chairman: Will the HSE do so?

Mr. Tony O'Brien: That is a discussion we would need to have with the State Claims Agency. The quantification of liabilities is a function performed by that agency.

Chairman: Okay. I would like to return to the Waterford Intellectual Disability Association and the funding. During the course of the care of Grace, did the association get special funding to take care of Grace, or was that something it had to fund out of its grant from the Department?

Mr. Pat Healy: The funding it gets is from the HSE.

Chairman: The HSE, yes.

Mr. Pat Healy: I am not sure of the detail of how much funding they got specifically for Grace. I know that she was taken into care. There may have been some additional funding. I am not sure. Ms Colley may have the details.

Chairman: No, you are not sure.

Mr. Pat Healy: I am just not sure of the detail of it. I know that what we have done since with the Resilience report-----

Chairman: No, no. Go back. Do not wander off on me again. What is happening in regard to the care of Grace is that the organisation or agency had to care for Grace out of its own funds. You presented a column of funding in order to point out to us that it was not penalised in any way for raising issues around the care of intellectually disabled people. I understand that Mr. O'Brien is going to have a discussion with it and I know he will be fair about it. I think when you look at the funding figures that you quoted in your opening statement, and factor in

the work that had to be done and the care that had to be given, you will find that its funding actually decreased over the period. I will not argue with you about the figures, but I am going to ask you to examine that table at some stage and be prepared to inform the next Committee of Public Accounts of the position.

I am just finished now. With regard to the three people who made the decision to leave Grace there - we have covered this, but let us clarify it - I understand that you cannot comment at all about that, but that you have all of the information that led them to the decision that they made. Is this correct? You were able to give us the table of the funding and everything else and other parts of the report.

Mr. Tony O'Brien: Yes. The table that is currently on the screen is not part of the report; it is something we prepared for the committee today. The information that we are currently allowed to release was contained in the submission of 10 December which had the unfortunate cover note that had the effect of misleading the committee. The report of Conal Devine and Associates has considerable detail, including interviews with the people involved, that describe the processes that led to that decision, but I cannot share that information with the committee at this stage.

Chairman: In regard to Ann, in one of your comments earlier you spoke about the rights of the foster mother and so on. You outlined those. In all of your discussions here, as I said to you earlier on, there was a failure to outline the rights of the intellectually disabled person. The emphasis on one set of rights as against another is not balanced. That is my view of what you have been saying.

Mr. Tony O'Brien: May I make an observation?

Chairman: Yes.

Mr. Tony O'Brien: In these settings, where the Committee of Public Accounts is doing what it normally does around accounts and value-for-money audits, the typical thing is that the Accounting Officer - in this case, me - would sit here and put up a robust defence of everything that has been done. I think we can agree that is the normal fare. It is not unnatural, therefore, that the committee might perceive that that is how I see my function here today. I do not see it that way. I am not in any way seeking to defend what happened to any of the individuals who suffered harm or may have suffered harm as a result of failings in regard to this foster care centre. My opening remarks were intended to convey that I believe that this is an egregious situation and that terrible things have happened. In response to questions about the issue of the release of documents and so on, in seeking to explain that I have obviously had to focus on those issues. That should not be to the exclusion of the fact that my rationale is that, ultimately, I need to preserve the potential for justice to be done - justice in the name of all of the citizens who have been disadvantaged as a result of these failings. Sometimes I am put in a position of answering questions about a specific thing which may result in my seeming to be arguing certain things, but that is not the case. The whole purpose of my statement was to be clear. I was very clear, I think, on the radio on Sunday. This is a terrible situation. I have no agenda of seeking to defend what went wrong, but I do have an obligation to create the conditions in which justice can be served. That is it.

Chairman: I accept that and I encourage you with speed along-----

Deputy John Deasy: The problem is that justice may never be done in this case.

Chairman: Well, it will be. Whoever is in the House after the election will have to pursue it. I respect the position Mr. O'Brien is taking and, as I said, I encourage him to continue with speed down that road. That brings me to the point made by Deputy McFadden. I was asked a question about our remit on the radio and Deputy Deasy quoted me. It started with the whole question of costs. It is a €13.5 billion fund of taxpayers' money that is given to the Health Service Executive, HSE, and in purchasing the services such as we are describing here or in the procurement process for that service, it is the duty of this committee to hold the HSE to account in terms of the spending of that taxpayers' money so I hold that we are well within the remit. We have strayed into the care of individuals but that is only because dealing with this and with procurement and governance has led us here. That is why we are here. I am saying that, Deputy McFadden, because there needs to be clarity around this. There are those exotic creatures outside the House who might like to describe our work differently, but I believe we are doing it well within our remit.

Deputy John Deasy: We do not know who the Chairman is talking about.

Chairman: In terms of current issues, and I will finish on this, Tusla is now the child care agency and I would have to say that if I had doubt about any employee I would have who was taking up employment elsewhere, I would be inclined to mark their cards. That is all I will say. It is a reasonable undertaking to assume that the HSE would undertake that in terms of any doubts it had because not to correct it or flag it is allowing for the same errors to be possible for the future, and we must break that culture.

Finally, since this happened, and I spoke to Ms Colley earlier on, I have received numerous phone calls from people who are currently attempting to sort out similar issues with the HSE, or with Tusla now, and some of the stories I have heard, which I am checking out and will present to the HSE or to the confidential recipient as soon as I clarify them, would not make one proud as a political figure that we preside over this type of thing in our State. I am just making that general comment because of what I have heard, but I will check it out.

As an example, in my own constituency, in terms of a particular organisation funded by the HSE, I am disappointed at the level of consultation with the parents of 11 intellectually disabled children who have now found themselves out of their homes, and we speak about the homeless here a lot, and are now being cared for in a hotel where the Health Information and Quality Authority, HIQA, standards do not apply. Regardless of how long or how short they will be there, it is simply not right that this would happen. I will speak to Ms Colley privately about this but I am shocked at the way parents are being treated with regard to that particular issue and the provision of respite for those parents who need it. The resolution there is not being found in the way Mr. O'Brien has described it today in terms of finding the resolution, dealing with it, and the most vulnerable people being catered for.

I thank the witnesses for coming today. I know it has been a long meeting but I appreciate their attendance and, at times, their frankness in terms of the replies they gave.

Deputy John Deasy: If I may make a point based on a point the Chairman just made, I am sure Ms Spillane is aware that the Director of Public Prosecutions, DPP, has looked at this. There were five files. He did not proceed. Obviously, she is also aware that many of the people involved in this are non-verbal and the likelihood of them testifying was always very slim, and that one of the alleged perpetrators is dead. The issue, and it was raised by the whistleblower on television last night, is that the Department has professional sanctions for, say, care workers but when it comes to a certain level within the health services, there are very few sanctions. One

of the concerns is that the Acts cover the period from 2006 onwards, such that if it was the case that reckless endangerment or professional negligence was involved, the Acts would not cover the period prior to that. Is Ms Spillane concerned that in the area of foster care, when it comes to the management and administration of it, the regulation is not sufficient to provide the kinds of protection that vulnerable children need in this country? Surely, one of the lessons we have got to learn from this is that people can make decisions, frankly, not care, go about their business and that there be no accountability. Is it, after all of this, a concern within the Department that that has occurred in the way it has and are there plans to change that?

Ms Frances Spillane: As has been mentioned earlier, the Department of Health no longer has responsibility for child protection: it is with the Department of Children and Youth Affairs and Tusla. There have been foster care regulations since 1996, as far as I know, as part of the modernisation of our child protection services and the investment that has been made over the years, including the setting up of a separate child care agency. I would have to check out the point the Deputy made about fitness to practise and whether the legislation applies to the period before the legislation was commenced. I would also have to confer with colleagues in the Department of Children and Youth Affairs in regard to revisions of the foster care regulations. As I worked in that area at one time I do know that it includes a lot of safeguards like visits by social workers to the homes on a regular basis.

Deputy John Deasy: That did not happen in this case, as Ms Spillane knows.

Ms Frances Spillane: No, but the new regulations provide for rigorous vetting of families. We have a very high proportion of our children in care in foster care which is regarded, in terms of the quality of care for children, as being preferable to having them in residential centres.

Chairman: I again thank the witnesses for attending. This part of the meeting is concluded.

In conclusion of the Committee of Public Accounts for this Dáil term, I thank all those witnesses that appeared before us. I also thank the secretariat, back-up services and all members of the committee, including those currently serving and those who have been members during the course of the past five years. It has been an experience where, like today, we have often had to drag the facts and, in this case, the terrible abuse, out from behind closed doors that are well guarded and place them before the public in the hope that the various Departments that are responsible in this State take account of what has been done and take the appropriate action to ensure that the likes of what we have just heard and, indeed, what we have heard in the last five years does not happen again.

Regrettably, in terms of the Committee of Public Accounts' work, when one hears the description "inquiry into accounts of a State body" it immediately rings alarm bells. In the particular case that we heard today the bells rang true. We saw how it is often the insiders that carry out the reports and sometimes, in fact a lot of the time, that is not satisfactory.

To the whistleblowers that have come before us or that have contacted the committee, I want to put on record that I believe they have been very brave individuals. We were cautioned a lot about receiving evidence from Sergeant Maurice McCabe and look at the service that he did for the State. I think that the whistleblowers in this case are to be commended. Every effort should be made to protect the organisations that support the social workers and that ensure that the whistleblowers in turn are supported and protected.

One other issue that has crossed our desk is that often the last spin of the dice is when an

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agency of the State refers the issue in hand to the Garda and then the investigation is brushed into a cul-de-sac and does not go any further. That is something that is, perhaps, done to buy time or, perhaps, to create an escape for those involved. This is something the Minister for Justice and Equality and the Garda should talk about to determine whether legislation is required to deal with the kind of instrument that might provide people with the get out of jail card they are seeking.

Reading the whistleblower legislation, one could be sucked in by it but it has been proven it now needs to be strengthened. More often than not, the whistleblower ends up as the person in the iron mask, silenced, in an office with no work. We have examples of this across various areas. The failed culture that allows this to happen needs to be rooted out. If it is not, this will continue.

I sat on this committee previously and have had the honour of chairing it for the past five years and I hope that, as we face into an election, those who are elected will have the bravery and courage to take on the job the electorate gives them and ensure, through legislation and their work on the committees of this House, they bring justice to those who deserve it, strike out to make a difference and bring about the reforms so necessary to ensure this State functions better. The divide that is emerging between the State and its people must be closed and we must have better representation.

This committee has done a fine job over the past five years and I commend committee members and staff on the work they have undertaken. I should also thank the members of the media. We will adjourn now and someone else will take up the baton after the election. Thank you.

The committee adjourned at 5.05 p.m. *sine die*.