

DÁIL ÉIREANN

AN COISTE UM CHUNTAIS PHOIBLÍ

COMMITTEE OF PUBLIC ACCOUNTS

Déardaoin, 11 Bealtaine 2017

Thursday, 11 May 2017

The Committee met at 9 a.m.

MEMBERS PRESENT:

Deputy Bobby Aylward,	Deputy Alan Kelly,
Deputy Peter Burke,	Deputy Marc MacSharry,
Deputy Shane Cassells,	Deputy Mary Lou McDonald,
Deputy Catherine Connolly,	Deputy Catherine Murphy,
Deputy David Cullinane,	Deputy Noel Rock.
Deputy Alan Farrell,	

DEPUTY SEÁN FLEMING IN THE CHAIR.

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

Business of Committee

Chairman: We are joined by the Comptroller and Auditor General, Mr. Seamus McCarthy, a permanent witness at the committee, who is accompanied by Mr. Peter Kinsley and Mr. Ger Enright.

Deputy Mary Lou McDonald: Before we proceed with the business of the committee, I am sure we all wish to extend our condolences to the Chairman on the loss of his mother. We convey to him our sympathy and solidarity at this time.

Chairman: I thank the Deputy. It is very much appreciated.

The first item on the agenda is the minutes of the meeting of 4 May 2017. Are they agreed to? We will come to correspondence shortly. I propose to hold onto the dossier I received from Mr. Barrett until the end. We will discuss anything related to last week's meeting when we come to it.

Deputy Catherine Connolly: I usually accept the minutes, but Caranua is mentioned in paragraph 6, under the heading of "Any Other Business". We asked specifically that the committee write to the Department of Education and Skills on the issue of rent. I would like my point to be recorded at this stage. I might come back to it.

Chairman: I am informed that we received a response this morning.

Deputy Catherine Connolly: I would like it to be recorded to ensure the accuracy of the minutes.

Chairman: It will be noted in them. The minutes, as amended, are approved. Are there matters arising from them?

Deputy David Cullinane: Last week I raised a number of issues, one of which was the level of reporting back to the committee. When we hold hearings and listen to witnesses on key issues, there is some level of reporting back. There was a discussion of issues related to third and fourth level institutions and a lot of documentation and correspondence was sought from a number of institutes and universities. Some of it has come in but most of it has not. I propose that we have some structure for it. We agreed that we would meet to examine all of the documentation received. Can it be done in a structured way to identify the key, headline issues? It is an issue on which the committee should report. There is a lot of work yet to be done and we will need to receive all of the correspondence sought. I am not sure if the Chairman or the secretariat has the given the matter any thought.

Chairman: We have held public hearings on a variety of topics, but that is only half our job. The other half is to follow through with information, recommendations and conclusions. I am advised by the secretariat that we will deal with the issues related to education on 25 May. I hope that by that date we will have assembled all of the information we require from the six third level institutions, the Department of Education and Skills and the Higher Education Authority. We can review where to take the matters from there. Some structure will be proposed in advance.

Deputy David Cullinane: Will the Chairman expand on what we will do on 25 May and what the structure will be?

Chairman: By the next meeting we will have a draft structure for discussion in order that we will have an agenda for the meeting on 25 May.

Deputy David Cullinane: Very good.

Chairman: The next item is correspondence received since the last meeting. The first items are Nos. 463A and 472A, briefing documents and an opening statement from the Department of Justice and Equality. Is it agreed that they be noted and published? Agreed.

Category B is correspondence received from Accounting Officers as a follow-through on previous meetings. No. 495B is correspondence, dated 3 May 2017, from the director of finance at the University of Limerick. It is noted and will be published. We will include it in our work programme for our meeting on 25 May. I welcome the news that the Department of Education and Skills is to launch an independent inquiry into a series of allegations of misconduct at the University of Limerick.

Deputy Mary Lou McDonald: That is very welcome news. At the hearing in question we referred to the need for a fresh inquiry. I wonder if the Department proposes to provide us with the terms of reference. It would be appropriate to do so, all things considered. The Department might also allow us the facility to offer some reflections on the terms of reference. The issue has been ongoing for some time and the inquiry will only be valuable if it is properly cast, with robust terms of reference. The Department could furnish us with the terms of reference and take feedback from us on them.

Chairman: We will ask for the draft terms of reference to be sent to us and we may have an input into them. I do not know timescale but normally they take a little time and I would be surprised if they were completed at this stage.

Nos. 460B (i) and (ii) is correspondence dated 3 May 2017 from Dr. James Browne, president of National University of Ireland Galway, providing following up issues. We said that we would deal with that again on 25 May. It was agreed last week to review all the correspondence received from the third level institutions together. As we are meeting Bord na gCon again next week, I suggest that we agree 25 May to examine the third level institution documentation.

No. 461B is correspondence dated 3 May 2017 from the Minister of State, Deputy John Horgan, in reply to a letter from the committee following the appearance of the president of Waterford Institute of Technology before the committee. Is it agreed to note and publish? Agreed.

Deputy David Cullinane: It is great to see that my constituency colleague is paying such close attention to my work and that of Teachta McDonald on the committee.

Chairman: Nos. 462B (i) to (v) is correspondence dated 3 May 2017 from Dr. Graham Love, chief executive officer of the Higher Education Authority providing follow-up information. We will deal with that on 25 May but we will note and publish all that in the meantime.

No. 464B is correspondence dated 8 May 2017 from Bord na gCon in respect of incidents outside this committee room in which there were three situations in which witnesses were intimidated or abused by visitors in the Gallery, despite the fact that Deputy Kelly, who was in the Chair, issued a warning to the visitors. The clerk to the committee also had to ask visitors

he saw surrounding a witness at the end of the meeting outside the committee room to desist. Members who request passes for visitors are responsible for their conduct. That is a long-established practice. I propose to bring this matter to the attention of the Captain of the Guard to make him aware of the incidents. While I will not suggest that we close the Visitors Gallery, we have to be careful and fair to witnesses.

Deputy David Cullinane: There was also a great deal of noise and many comments coming from people in the Visitors Gallery. I appreciate passions were high and there are many strong opinions but that can disrupt our work. It can be seen as disrespectful to witnesses, irrespective of the questions put. We put the questions fairly and robustly. It was difficult from that perspective and it is something we need to be conscious of.

Chairman: I thank the Deputy.

No. 467B is correspondence dated 8 May from Mr. Noel Waters, Secretary General of the Department of Justice and Equality regarding a request for information on receipt of a motion by the committee from Clare County Council. The note is quite a comprehensive response to issues on the cost of administration in respect of fixed charge notices. There are ongoing attempts to address the issues, which will be assisted by the commencement of Part 3 of the 2010 Act on 1 June. Is it agreed to note and publish, and forward a copy to Clare County Council? Agreed.

Nos. 468B(i) and (ii) is correspondence dated 8 May from Mr. John Barrett. I will hold this over until the end of this business.

Nos. 474B(i) to (vi) is correspondence dated 9 May from Ms Mary Higgins, chief executive officer of Caranua providing follow-up information to our meeting on 13 April. It includes a note on the Towards Healing organisation, a breakdown of the budget for travel and subsistence, a note on agency staff employed, a list of the internal and external audit reports and costs associated with each, a note on the rent to be paid for the forthcoming move of premises, a note on liaison officers and a note on the board meeting held in April 2016 at which the financial position of the organisation was discussed. There is considerable information in this. I propose we note and publish it for the moment but we will come back to it next week.

Deputy Catherine Connolly: I do not see the list of liaison officers. I may have missed it but could that be checked? There is reference to an appendix to the list. More important, I need the Chair's assistance regarding the note on rent. Based on parliamentary questions, etc., tabled by myself and other Members, the Department of Education and Skills and the OPW do not seem to know what is happening. Caranua says it has to move but I do not know why. I would like to highlight this because, presumably, the committee has made its views known to the organisation.

Chairman: We have written to the Department of Education and Skills and we are waiting for a reply.

Deputy Catherine Connolly: The problem is Caranua could sign a rent agreement, which is extraordinarily high, using public funds. I acknowledge there are serious issues but this is also a serious issue. When will we come back to it? I am concerned that this agreement will be signed. I have read the Dáil reply but I cannot make head nor tail of the cause for this move. The Department has to give permission, as far as I understand it, under section 7(7) of the legislation before Caranua enters into any contract. I raised this in the Dáil yesterday and

the Minister said he did not know what the position was and that he would get back to me. The CEO of Caranua said in this correspondence that from day one it was made known to them that they would be obliged to leave the premises. I do not know by whom. We cannot leave the Caranua accounts without coming back to this. We should send the message again that no rent agreement should be signed. It is not a good use of money and there are many buildings that could be used.

Chairman: We have communicated with the Department. We will communicate again within 24 hours and we will insist that a full and complete reply be before the committee before next Thursday and that Caranua and the Department should not proceed with any contractual arrangements in the meantime.

Deputy Catherine Connolly: To be clear, Caranua will enter into the contract and, therefore, it needs to be told this. The Minister needs to clarify whether he has given permission for this. We also need clarification from the OPW as to why Caranua has to move since the organisation is based in one of its buildings. There should be three letters.

Chairman: We will follow up with all three organisations and we will insist on a written response before next Thursday. Perhaps the Deputy might assist the secretariat by forwarding the replies to the parliamentary questions in order that the staff can know the reference point.

Deputy Catherine Connolly: Absolutely.

Chairman: Category C is correspondence from private individuals and any other correspondence.

Nos. 434C(i) and (ii) are carried over from last week. This is correspondence received from the chairman of NAMA regarding to the committee's report on Project Eagle. It is a short letter and I will read it to members. We will not have a detailed discussion on it but we have to make some response. I will read it and I will ask at the conclusion of the meeting that we will note and publish it and forward it to the commission, in regard to which the Government has agreed terms of reference during the week, together with a statement from the committee in response, which will issue later. The letter is dated 19 April and addressed to me. It reads:

Dear Chairman

Thank you for forwarding copies of the Committee's report of its examination of the sale of Project Eagle. Whilst there are a number of opinions in the report with which we strongly disagree, I do not wish to rehearse again the various arguments and counter-arguments which have been well aired at this stage. I do, however, wish to draw your attention to two material errors in the Committee's report.

First, the Committee states as its opinion that the NAMA Board was not explicitly informed of the extent of the financial loss that would be recorded in NAMA's accounts as a result of setting the Project Eagle minimum reserve price at £1.3 billion (Paragraphs C.9 and 144 of the report). I wish to point out that this was unequivocally refuted by a former member of the Board at the PAC's hearing on 17 November 2016 when Mr John Corrigan stated that "*when we decided to set the minimum price of £1.3 billion, we were conscious that there was a probability that there could be a loss of up to £180 million, that is to say, the difference between the reserve price and the carrying value of those assets in the balance sheet*".

Second, the Committee is of the opinion (Paragraphs C.26 and 208) that the Board

was not informed of the meeting held between NAMA representatives and Cerberus on 31 March 2014. This is incorrect: a number of Board members recall that they were so informed - this is clear from the testimony of Mr Oliver Ellingham and Mr Willie Soffe to the PAC on 18 October 2016.

Yours sincerely

Frank Daly

I would like to make a brief response and we will not try not to labour this for too long. It was our opinion that the board members were not explicitly informed of the extent of the financial loss.

While Mr. Corrigan may have been conscious that there could have been a loss of up to £180 million, he did not say that all board members were explicitly informed of the matter. Regarding what he said in the conclusion that the size of the loss implied that it would have been made clear to all board members, we were not provided with evidence that this statement had been made, despite several board members being present. If we accept for a moment that it was the case that they were aware of the probability of a loss of £180 million, why has NAMA argued so vehemently against the Comptroller and Auditor General's conclusion that the decision to sell the loans at a minimum price of £1.3 billion involves a significant probable loss of up to £190 million? It simply makes no sense.

NAMA's defence was that they were not informed specifically of the extent of the financial loss of setting the price at £1.3 billion, which actually would have reflected a loss of £173 million. We refer to the loss in our financial statement. Mr. Daly is now saying that the board was made aware of a probable loss of up to £180 million. Why, in God's name, did they spend several months attacking the Comptroller and Auditor General for suggesting that there was a probable loss of up to £190 million? His defence against the Committee of public Accounts is to say that the Comptroller and Auditor General was right. That is essentially it.

I want to move on to the second matter, which is even more puzzling. As regards the chairman of NAMA's point about not informing the board about the meeting with Cerberus, we wrote specifically to NAMA at my request on 13 December 2016 on this matter. We asked NAMA:

Please give us the details of any and all recorded responses, if available, of each of the NAMA board members when they were informed during the board meeting on 3 April regarding the meetings between the Chairman and the Chief Executive and Cerberus on the day before the bids closed. If this was not communicated to the board members provide a note for why this was the case.

That was in our letter to NAMA. On 22 December 2016, NAMA replied to the committee. The reply is on our website. It responded to the committee as follows: "As is evident from the minutes of the NAMA Board meetings, the meeting with Cerberus was not discussed at Board level as Project Eagle was not discussed at the meeting with Cerberus". Therefore, his response to the committee to say that the members were informed is 100% contradicted by NAMA's own letter to us on 22 December when it said that the matter was not discussed at board level. NAMA's response to our letter is a flat contradiction of its written evidence to this committee on 22 December 2016. We are going to issue a statement to that effect. We will send both documents to the commission for whenever it reports.

Deputy Josepha Madigan: That is all we can do.

Chairman: That is all we can do. We will send it. We are not going to re-open it. I believe it is clear and I believe we have dealt with that letter effectively. We will send that and our statement, which the secretariat will draft after the meeting, off to whoever constitutes the new commission as soon as it is established.

No. 451C is correspondence carried over from last week from Deputy David Cullinane with regard to the practice of boards to refer matters to the Standards in Public Office Commission, SIPO, rather than make formal complaints. Does the Deputy want to elaborate? The Deputy is saying that there is a difference between referring a matter to SIPO and making a formal complaint.

Deputy David Cullinane: I would like the Comptroller and Auditor General's view on this as well, because I am not sure whether his office was aware of this case. It raised a very serious issue for me in that there is the potential of some boards saying that they complied with the SIPO Act and regulations by simply referring issues on. However, unless they make a complaint, SIPO is not obliged to carry out an examination. It seems to me that this was missed for a huge amount of time. It was only SIPO itself that decided it would carry out an examination. I am not sure whether the Office of the Comptroller and Auditor General was aware of it or had been alerted to it. My issue is whether there is a difference between informing SIPO and noting issues arose and organisations actually making a complaint.

Chairman: Through the Chair. Is the Comptroller and Auditor General a member of SIPO?

Mr. Seamus McCarthy: I am a member of SIPO.

Chairman: Is he free to discuss it here? Is he wearing his Comptroller and Auditor General hat or his SIPO hat?

Mr. Seamus McCarthy: I am wearing my Comptroller and Auditor General hat here.

Chairman: Does he have any difficulty speaking on the topic from his perspective?

Mr. Seamus McCarthy: There was an investigation by the Standards in Public Office Commission into this matter and a report has been published. The origination of it was actually in the audit of the Family Support Agency for 2012. We discovered that a director of the Family Support Agency had been claiming for attendance at the meetings, but the individual was also employed by a family resource centre in Waterford and was claiming there for attendance at the same meetings. That created a difficulty. The audit found that. We brought it to the attention of the Family Support Agency. In the audit certificates for 2012 and 2013 for the Family Support Agency, I drew attention to the fact that there was a difficulty there and that the matter was being pursued by the Family Support Agency.

I cannot comment on the individual or on anything to do with the individual, but I think the point raised by the Deputy relates to the agency and the governance of the agency. The report produced by the commission on the matter does point out that the Family Support Agency reported the matter to An Garda Síochána, but An Garda Síochána reported back to say that it cannot proceed because it did not receive a complaint. Similarly, when the matter was brought to the attention of the Standards in Public Office Commission, it was reported that there had been a double claiming but it did not name the individual. Therefore, it did not constitute a complaint that the commission could act on *per se*. The commission did pursue it with the agency, got the

details and carried out an investigation subsequently. I believe it does point up the difference between reporting something to an investigatory body and making a complaint to an investigatory body. As it stands, the agency's last stated position on the matter was that it was satisfied that the moneys were appropriately paid to the individual. As auditor of that agency, I do not take the same view.

Chairman: Okay. Does the Deputy want to take it any further?

Deputy David Cullinane: As a case study, it shows that there are clear process failures. In my view, a number of different agencies did not act in the way we would expect them to. The Family Support Agency is gone as it has been subsumed into Tusla. In view of this we should write to Tusla at the very least and outline our concerns on this matter and on how there is a difference between reporting a complaint and making a complaint. The issues that the Comptroller and Auditor General raises as well, in terms of his opinion, and-----

Chairman: We will also write to the Department of Public Expenditure and Reform, which is over this from a Government point of view.

Mr. Seamus McCarthy: One of the actions we took after the audit when the issues had come to light regarded circumstances in which public servants were involved in more than two agencies. We suggested to the Department of Public Expenditure and Reform that claims for travel and subsistence should always be through the employer. If there was a basis for reclaiming those travel and subsistence expenses, we suggested that it be done agency to agency in order not to have a public servant claiming in two different places unknown to both sides. The Department issued a letter of instruction. Across the Civil Service now, that is the expectation.

Chairman: What about the public service?

Mr. Seamus McCarthy: Across the public service.

Chairman: Does that include local authorities?

Mr. Seamus McCarthy: Yes, it should.

Chairman: Okay. We will check up on that. I thank the Comptroller and Auditor General.

No. 458C is correspondence dated 2 May from Shannon Protection Alliance requesting the appearance of a report writer before the committee. We decided at last week's meeting that this is a matter more suitable to the Joint Committee on Planning, Housing, Community and Local Government, as it is about a proposed plan that it has been examining. Is it agreed to note that? Agreed. That is noted.

No. 465C, dated 28 April 2017, is from an individual who refers to Teagasc. The correspondence states that if, in his opinion, the grievance procedure had operated correctly in Teagasc there would have been no need for the matter to go to the Rights Commissioner or the Labour Court. However, the fact is that it did and both of these dismissed the person's claim. The matter is now ten years old and I understand that this individual has retired from Teagasc. I accept that he still feels aggrieved but it is not for the committee to deal with such individual cases or reopen a case that has received a hearing through all of the proper mechanisms available. I propose that we write to the individual informing him that we cannot take his case further. I ask the secretariat and the Parliamentary Legal Adviser to draft an appropriate letter. Is that agreed? Agreed.

Nos. 466C(i) and (ii) and 473C are two items of correspondence dated 8 May 2017. They are from an individual who has contacted the committee many times on a wards of court issue. She claims, with regard to losses sustained by the wards of court fund, that the State should carry these. She cites a meeting of the Committee of Public Accounts held on March 2001 where the then Secretary General of the Department of Justice, Equality and Law Reform gave evidence to that effect to the committee. She enclosed a copy of the transcript and I propose that we forward a copy of her correspondence to the Department of Justice and Equality for a response.

A response to the document was submitted by the individual on the Aon Hewitt Report of the Wards of Court Investment Scheme Spectrum Growth Fund, which was forwarded by us to the Department of Public Expenditure and Reform some months ago. The clerk has informed me that the report is expected within the next week. We will hear back on that and we will also write to the Department of Justice and Equality because the wards of court issue continues.

No. 469C is further correspondence from a firm of solicitors, dated 8 May, on a client who seeks to address the committee in connection with the Grace issue and the standard of care provided by the HSE. This item follows on from our discussion at last week's meeting. We await a response from the HSE on final questions that were submitted following last week's meeting. What do members propose we should do? The whistleblower has requested a private meeting with the committee to discuss the issues. We have already decided that Mr. Tony O'Brien will be invited back here to discuss the issues. I remember reading the letter and I think her letter dealt with public procurement issues, which fall within our remit. We will not stray into the care issue because it will be dealt with by the commission. The person referred to procurement issues that may be part of the commission's terms of reference.

Deputy David Cullinane: We should focus on the procurement issues, if the witness were to come before the committee. I originally supported having the witness before the committee and I still do. I understood that we were to get legal advice. Has that been done? What is the legal advice?

Chairman: We have requested advice but it has not been received yet.

Deputy David Cullinane: I did not request the advice. I believe she should be invited to appear before the committee and other members can express their view.

Chairman: Deputies Farrell, Catherine Murphy and McDonald are next.

Deputy Alan Farrell: I shall wait.

Deputy Catherine Murphy: We talked about what we should focus on last week.

Chairman: Yes.

Deputy Catherine Murphy: We all now understand that there is a particular piece that does not stray into the inquiry or commission. As I said last week, and still believe, it would be logical to have the whistleblower in here before the HSE.

Chairman: Deputy McDonald is next.

Deputy Mary Lou McDonald: I am a bit puzzled about the legal advice, although maybe it is no harm. A precedent for hearing directly from a whistleblower has been set. The person voluntarily came before the committee at his own request. The person to whom I refer is Ser-

geant Maurice McCabe. The session was in private because there were big concerns at the time about Sergeant McCabe's own legal protections, standing and, indeed, some of the material that we were dealing with even though at the time we had a very robust debate in terms of public session versus private session.

It would be astonishing if we refused the whistleblower access to this committee given that the person is anxious to come here, particularly given all that has happened and given the fact that the HSE and others have an open platform here, in public session, to deal with issues and answer questions but also to put forward its account of events. I am in favour of the witness presenting-----

Chairman: In private session.

Deputy Mary Lou McDonald: -----in accordance with her request.

Deputy Josepha Madigan: I agree with having the whistleblower here in private session but I would like to hear the legal advice.

Chairman: I understand the legal advice is that we are not to stray into areas being covered by the commission.

Deputy Josepha Madigan: Yes.

Chairman: I want to make it very clear that we are bringing in Mr. Tony O'Brien to deal with the issue as well. It would be very unbalanced of us to hear from the agency but not the person who raised the original issues, once the meeting is in private session. I want to make the following very clear. There are procurement issues and various issues of a financial nature that are not specific in the commission's terms of reference so we can operate within our remit. We will not stray into matters that will be examined by the commission.

Deputy Catherine Connolly: I agree that the witness should come in here. I expressed my concern about the meeting fitting with precedent and it was clarified that there was precedent. We did not decide that the meeting would be in private or public. The option was left open.

Chairman: The requestor has asked for the meeting to be in private.

Deputy Catherine Connolly: That is fine. We did not know that and I thank the Chairman for clarifying the matter.

In terms of the health executive, we receive many documents. The HSE was to publish a report and it was imminent.

Chairman: The Deloitte report.

Deputy Catherine Connolly: Has the report being published?

Chairman: No.

Deputy Catherine Connolly: Why not?

Chairman: Not only that. What surprised me, and I think it will surprise a lot of people-----

Deputy Catherine Connolly: Yes.

Chairman: -----and we have dealt with the Grace case at length here but we all turned on

the radio a fortnight ago only to hear that the matter had been dealt with in the High Court and a settlement had been issued.

Deputy Catherine Connolly: That is right.

Chairman: There was a figure for costs that the agency had incurred but had not been paid by the HSE, which was being examined by Deloitte but it still has not completed a report. The preliminary findings of that report were accepted by the HSE. Included in the award, I think, was €600,000 in respect of unpaid care services. That matter has been agreed. All along while we talked here the matter was trundling away on the civil side of the courts. The matter was before the courts when it was before us. I was not aware of it at the time but we did not conflict with any of the issues.

Deputy Catherine Connolly: That is the aspect I wanted to mention, following on from the procurement issues and the report.

Chairman: The report has still not been issued.

Deputy Catherine Connolly: It still has not been issued. When was the last time that we received correspondence from the health board? We outlined that there were three pieces. The first one was the report and then there were two other matters.

Chairman: Yes.

Deputy Catherine Connolly: Then we heard about a settlement.

Chairman: Yes.

Deputy Catherine Connolly: When was the last time that Mr. O'Brien came back in here to clarify matters for us? He claimed that the report was imminent.

Chairman: We think it was on a certain date but I shall ask for the debate to be displayed on the screen.

Deputy Catherine Connolly: Yes.

Chairman: I am not sure but we will come back to the matter.

Deputy Josepha Madigan: I have a question on the precedent set for whistleblowers giving evidence or testimony in private session. Other than Sergeant McCabe, have there been other whistleblowers? If so, can we have the details? This is the first term that some members have been on this committee. I would like, if at all possible, to see the transcript of that evidence. Is a transcript available when a meeting is held in private session?

Chairman: No. That is the essence of private session.

Deputy Josepha Madigan: Yes.

Chairman: We discuss the matter.

Deputy Josepha Madigan: Do members of the committee have access to the transcript?

Chairman: No. The whistleblower legislation is quite new.

Deputy Josepha Madigan: Yes.

Chairman: So there are not many established cases.

In terms of discussions in private session, I do not think matters were discussed in private session for the Angela Kerins case. Private debates are recorded but they are not transcribed.

Deputy Josepha Madigan: Was Sergeant McCabe the only whistleblower to give evidence?

Chairman: Yes, as I recall. It is relatively new legislation.

Deputy Josepha Madigan: Has there been no one else?

Chairman: In terms of today's matter, this is only the second whistleblower that I am aware of who has formally requested to meet us in private session.

Deputy Josepha Madigan: Yes.

Chairman: Interestingly, the first one led to a commission of investigation and this whistleblower has ultimately led to a commission. There are strong parallels.

Deputy Josepha Madigan: I would like to have seen how the private session was conducted in terms of dealing with the whistleblower.

Chairman: There will be no written record of the meeting.

Deputy Alan Farrell: For what purpose are private sessions recorded?

Chairman: The machine records them but they are not transcribed. They are in the bowels of the building.

Deputy Alan Farrell: But they can be transcribed. If they are not available to the courts-----

Chairman: They are deemed private documents in the Oireachtas.

Deputy Alan Kelly: Are they available to members?

Chairman: No, they are not provided.

Deputy Alan Farrell: Why are private sessions recorded?

Chairman: I am going to be open.

Deputy Alan Kelly: There is a difference between being provided and available.

Deputy Mary Lou McDonald: My understanding is that they can be available to members.

Chairman: I can give my own personal experience. An issue arose previously a couple of years ago in terms of something that I was meant to have said and it was not transcribed. I went over to somewhere in Kildare House and put on headphones. I was able to listen to the tape recording of what was actually said but there was never a transcript produced. That was a one-off, following a request by a member who wanted to hear what the member had said but it is not generally available.

Deputy Josepha Madigan: The Digital Audio Recording, DAR, system in the courts allows one to listen back to evidence that was given. It is very important when whistleblowers

are coming in that the meeting is conducted properly, particularly when we are in private session. I would find it very useful, as a member of this committee, to have access to Sergeant McCabe's evidence, for example, and to hear how that meeting was conducted, in terms of questioning and so forth, if at all possible.

Chairman: I would expect that there is a minute of that meeting but not a full transcript because-----

Deputy Josepha Madigan: I am requesting that. I would like to have access to that.

Chairman: To the transcript?

Deputy Josepha Madigan: Yes.

Chairman: There is no transcript. It was never done.

Deputy Josepha Madigan: Whatever is-----

Chairman: We will get it checked out. As I understand it, there is no transcript but we will see if it can be done. That is not a commitment that it will be done, however. We will inquire about that. We have agreed to invite the whistleblower in, to meet in private session to discuss the relevant matters and not to stray into the areas that are being investigated by the commission. The legal advice will be that we should not stray into any areas that the commission is examining. We do not have that legal advice yet but the committee members have decided to invite the witness to appear before us. In advance of that meeting, we will be advised, if necessary, by the legal staff of the particular areas that are under the remit of the commission into which we cannot stray. The meeting will proceed on that basis.

Deputy Josepha Madigan: The Chairman must see how it would be useful to members, given that there is a precedent for this, in terms of how it is conducted-----

Chairman: There has to be a minute. If the Committee of Public Accounts had a meeting in private session, minutes would have been produced-----

Deputy Josepha Madigan: I would appreciate a copy of same.

Chairman: I will have that circulated to members. The meeting has to happen before Mr. Tony O'Brien comes in.

Deputy Catherine Connolly: Was the follow-up information we requested sent by Mr. O'Brien?

Chairman: Yes. Members can see the letter of 5 April on the screen now. We will circulate copies of that again to refresh everyone's memory and will come back to it again. The letter is 20 pages long so we are not going to go through it now. I will ask the clerk to the committee to email it to everyone again.

Deputy Catherine Connolly: I am specifically asking about the report. Can we ask where the report is?

Chairman: The Deloitte report?

Deputy Catherine Connolly: Yes.

Chairman: We will write again this morning to ask for that. It was stated in court that the Deloitte report was not completed. We will ask if it has been completed since then. We were told we would get a copy of it once it was completed. We will ask the HSE if it has been completed and, if so, to forward a copy to us.

The next item is correspondence No. 470C, (i) to (iv), from Deputy Thomas Broughan, enclosing copies of figures provided by the group Promoting Awareness Responsibility and Care on the Roads, PARC, in relation to drink-driving offences. I propose that we send these figures to the Department for a response. Is that agreed? Agreed. I thank Deputy Broughan for the work done in that regard.

The next item is correspondence No. 471C (i) and (ii) from an individual which is dated 9 May relating to Howth Harbour, the management of which is the responsibility of the Department of Agriculture, Food and the Marine. We also received another item of correspondence from the same individual last week and, as agreed, the clerk contacted the individual and clarified that the matter is being examined by the Ombudsman. The individual told the clerk that although he was thankful that the previous Committee of Public Accounts took an interest in this matter, he feels that raising matters with the committee did not help in terms of how he has been treated by the relevant authorities. I propose that we let the Ombudsman conclude his investigation and write to the individual to say that if there are matters outside of that investigation which this committee should examine, to itemise these for our consideration. We will write back to him on that basis.

The next item is correspondence No. 468 B, (i) and (ii), a report from Mr. John Barrett. We will not conduct an analysis of this report now but we have a substantial document in front of us today. I want to make a number of observations arising from this document, which follows last week's meeting. The first observation I will make, about which there is no dispute, is that the matters were brought to the attention of the Garda Commissioner in July 2015 and 22 months later, she still has not gotten to the bottom of them. I would argue that 22 months is long enough to have dealt with an in-house matter in An Garda Síochána. I am not satisfied that the Committee of Public Accounts was told last week that further audit work may not even be completed by the summer. This committee is not going to wait beyond two years for a follow-through on these matters. These matters were known in 2015 and were probably known to the Commissioner in 2014 when she was acting Commissioner. In 2014, repayments to the OPW had started on foot of people being aware of the situation at that stage. This is not a legacy issue. It is an issue that is current to the current Commissioner. It was brought to her notice on her watch and she has known about it for the past 22 months. The meeting last week was outstanding but was not the conclusion of this matter. We will want to see a further response sooner rather than later.

Ms Nóirín O'Sullivan has two roles. She is the Garda Commissioner and is answerable to the Minister for Justice and Equality in that respect. She is also the Accounting Officer for An Garda Síochána and is answerable to the Committee of Public Accounts for financial matters. I just want to read something into the record so that everybody is clear on the position of the Committee of Public Accounts. The 2015 annual report of the Comptroller and Auditor General refers to the responsibilities of Accounting Officers. It states:

In accordance with section 22 of the Exchequer and Audit Departments Act 1886, the Accounting Officer is required to prepare the appropriation account. By law, the account must be submitted to me [the Comptroller and Auditor General] by 31 March following the end of the year of the account.

The Accounting officer is also responsible for the safeguarding of public funds and property under her control, for the efficiency and economy of administration of An Garda Síochána and for the regularity and propriety of all transactions in the appropriation account.

The Department of Public Expenditure and Reform published a document which was prepared by the current General Secretary of that Department for this committee. It states:

In their Accounting Officer role, which is personal and cannot be delegated, they are responsible for the stewardship of public funds and are required to give evidence on how they discharged this responsibility to the PAC.

It goes on:

The fact that the duties of the Accounting Officer are vested in the most senior official in the organisation, who is personally answerable to the PAC, gives an important focus to managerial accountability for regularity, propriety and value for money in the operations of the Department.. The Accounting Officer cannot be acquainted with the detail of every transaction in the [organisation]. He/she ensures that proper mechanisms are in place to provide appropriate assurance about the regularity, propriety and efficiency of the [organisation's] operations. These mechanisms are robust internal control systems; sound internal audit and Audit Committee arrangements; and effective risk management

The Department of Public Expenditure document elaborates further on the role of the Accounting Officer.

Ms. Nóirín O'Sullivan is the Accounting Officer to this committee. She is not here solely as Garda Commissioner but has a dual role. The Accounting Officer's responsibilities are also set out in the Comptroller and Auditor General Act 1993. I will not go through that now. The statutory responsibilities of Accounting Officers *vis-à-vis* the appropriation accounts are very clear. The accounts, which are submitted to the Comptroller and Auditor General, must be accompanied by a statement of internal financial control. In addition, the Accounting Officer is responsible for safeguarding assets, the financial implications of policy, economy and efficiency, evaluation of effectiveness, internal audit, sanctions and grant procedures. Those duties are personal to the Accounting Officer. Our discussions here are in relation to the Accounting Officer.

I will invite members to comment on this presently. As I have said already, these matters were brought to the attention of the Garda Commissioner in July 2015 but 22 months later, we still have not got to the bottom of it all. This committee - I am sure the members will agree with me on this - is not waiting any longer because 22 months is long enough for her to have gotten to the bottom of this. The promise of another internal report, possibly after July 2017, is not the issue. There is enough information in the interim report that was concluded in September 2016.

I want to move on to one other point about which I am personally concerned. It might seem like a small point to some but it is significant, in my view. We all know about the meeting held in July 2015. Several months later, in 29 March 2016, the deputy commissioner requested an internal audit report on the Garda College in Templemore. That is mentioned on page 10 of the report that we saw last week. In September 2016 the interim audit report was presented to the head of the internal audit unit. That was the first draft. The reason I am referring to it is the correspondence received from Mr. Barrett refers to the fact that the head of the internal audit unit did very well to have the matter referred to in the statement of accounting policies

and principles signed by the Accounting Officer on the 2015 accounts. That was all agreed to in the first few days of September. The Comptroller and Auditor General signed his audit report on 5 September 2016 on the 2015 accounts. As a result of the internal audit, these matters were coming to a head. The Comptroller and Auditor General insisted on there being some reference to them. When I look at the statement of accounting policies and principles on page 318 of the 2015 appropriation accounts, signed by Nóirín O'Sullivan, Accounting Officer of An Garda Síochána, on 31 March 2016, the last paragraph reads as follows:

Audit of the Garda College

A number of issues associated with the provision of ancillary services in the Garda College, Templemore, have been identified which are not in compliance with current public standard corporate governance procedures. A draft internal audit report has made a number of recommendations to ensure compliance with the public financial procedures which will be incorporated into any action plan to address these issues.

As Chairman of the Committee of Public Accounts, that paragraph could only have been drafted and agreed to in the first week of September 2016. The Accounting Officer, Nóirín O'Sullivan, signed the document to include that paragraph later than 31 March. That is the one signed document she has presented here before today. Essentially, for items agreed to in September 2016, she backdated her signature by over five months. I do not find it satisfactory that an Accounting Officer presented the appropriation accounts and the statement of accounting policies and principles to deal with matters to be dealt with in September 2016 and signed and dated them 31 March 2016. I find it unacceptable; it is not accurate or appropriate. I have to question the honesty of people who sign documents and have them backdated by over five months.

I will be requesting her to come and answer that specific question, the reason being that she would probably have prepared a draft – I am now trying to help her – as there is a requirement to produce the accounts for the Comptroller and Auditor General by 31 March, but it would have been far more honest if she had re-dated them in September, the day before the Comptroller and Auditor General issued his report. I am not going to place any responsibility on the Comptroller and Auditor General who published the document. His audit report of 5 September is clear. This is the document signed by Nóirín O'Sullivan as Accounting Officer. I will ask the Comptroller and Auditor General to respond. It might seem to be a small matter.

Deputy Alan Kelly: It is not small at all. It is very serious.

Chairman: The Garda was examining an issue and someone backdated a signature by five months to give the impression that something was signed on 31 March 2016, but it was not actually dealt with until September 2016.

Deputy Alan Kelly: Well done.

Chairman: On the face of it, Nóirín O'Sullivan needs to account to the Committee of Public Accounts as Accounting Officer for this and other issues dealt with in the Barrett report. Is what I have said accurate?

Mr. Seamus McCarthy: I would like to make one correction to what the Chairman said. The obligation is to present the appropriation account. This, *per se*, is on page 7 and effectively the statement of moneys provided and the outturn which is compared with that of the previous year. The practice we have adopted over the years is that we require the account to be presented

to us. Our audit process is a process of verification of what has been presented. If we find at any stage that there is a figure in the appropriation account which is incorrect, we will ask the Accounting Officer personally to re-sign the new appropriation account with a current date. However, in the course of an audit we may find that the explanations of variances are inadequate or the disclosures insufficient.

In that situation we go back to the Department – in this case An Garda Síochána – and say it needs to make this adjustment, that it is not explaining it properly or that a figure in a note needs to be amended. We do not require the Accounting Officer to re-sign in that situation. Similarly, if there are changes in the statement of internal financial control, we will say to the Department that it must put in something extra because there is a breach of controls not noted in the account and that it is appropriate to bring it to the attention of the committee by disclosing it in the statement of internal financial control. We have not insisted on the Accounting Officer re-signing. Physically, the Accounting Officer did not re-sign and backdate it. It would have been noted by the executive director of finance.

Chairman: The Comptroller and Auditor General is saying Nóirín O’Sullivan signed the document on 31 March, the one presented to us, on which we rely, but that a paragraph was added to it five months later.

Mr. Seamus McCarthy: That is right - at our request.

Chairman: Yes, at the request of the Comptroller and Auditor General. However, the onus is on the Accounting Officer of every Department who has responsibility for the statement of accounting policies and principles. The Comptroller and Auditor General signs his audit report, while the Accounting Officer signs his or her report. The clarification is that a document was signed on 31 March 2016. We are entitled to rely on that document as having been signed on that date, as presented to us. We now find that a paragraph written five months after that date was inserted into the document and that it was physically impossible to have signed off on it on 31 March. I would have said the onus was on the Accounting Officer to re-date it because the Templemore College issue was significant. It might not have changed the financial accounts, but it was an issue of significant concern to An Garda Síochána.

Deputy Alan Farrell: I do not understand the Chairman’s point. The Comptroller and Auditor General has made the position very clear.

Chairman: What he has made very clear is this. The Accounting Officer, Nóirín O’Sullivan, signed the statement of accounting policies and practices for the previous year on 31 March 2016. Five months after she had signed it, she added a new paragraph in September 2016. The document we have signed by her at the end of March 2016 could not have been signed at the end of March 2016 because its contents were not confirmed until five months later. We have been misled. I am putting it simply. The Committee of Public Accounts-----

Deputy Alan Farrell: I am sorry, but I listened precisely to what the Comptroller and Auditor General said.

Deputy Josepha Madigan: The Comptroller and Auditor General said he had asked her to insert the paragraph.

Deputy David Cullinane: One second, Chairman-----

Chairman: I am finishing.

Deputy David Cullinane: The Chairman used the word “misled”.

Chairman: The speakers are in the following sequence.

Deputy David Cullinane: We need to hear from the Comptroller and Auditor General to know if we were misled.

Chairman: It is not for him to tell us if we were misled. When I see a statement signed by an Accounting Officer, dated 31 March 2016, I am entitled to believe, as the Deputy is, that the document and its contents were signed on 31 March 2016. It is in black and white.

Deputy Alan Farrell: That is not what the Comptroller and Auditor General said.

Chairman: The document, as printed and presented to us with those paragraphs, could not possibly have been agreed to before signing it on 31 March 2016. The document we have is something that was agreed to five months later.

Deputy Catherine Connolly: On a point of order, I do not believe this is the correct way to proceed.

Chairman: We should ask Nóirín O’Sullivan for an explanation.

Deputy Catherine Connolly: We are here to consider the issue of value for money. My opinion on confidence in the police is on record. I am here, however, in a different capacity. I am here as a member of the committee to consider the issue of value for money. Matters arose on the last occasion on which clarification is certainly needed. The Garda Commissioner needs to be given an opportunity to come here. That is the way we should deal with the matter. If we go down the route of saying “misled” and “dishonest”, we are making findings. We may well want to do it but it is not our role. Our role is to look at value for money and examine what is before us.

On the last occasion, Mr. Barrett produced a document that we received this week. We need to look at it and see the context of it. It was referred to as “minutes” but it is his personal recording. I advise caution and I say this as somebody on the record questioning the police and having a certain opinion. I am hearing a different context. We should put this down for a meeting as quickly as possible and it should not wait until July.

Chairman: Correct.

Deputy Catherine Connolly: We should put the matter where we can look at it in the context of the role we have in this committee

Chairman: Speakers have indicated in the following sequence: Deputies Connolly, Kelly, MacSharry, Madigan, Cullinane and Murphy. The clerk noted the sequence in which the hands went up.

Deputy Catherine Connolly: I was just making a point of order in that we should proceed with caution.

Chairman: Fine. We will invite in the Garda Commissioner at an early date to respond.

Deputy Mary Lou McDonald: On that point of order, I agree with the Deputy that we should not use inflammatory or judgmental language.

Chairman: Okay.

Deputy Mary Lou McDonald: There is a reason documents are dated, and it is to verify the facts as presented on that date. It is as a matter of fact misleading to present the facts in that way, not least as I understood from last week's hearing that it was very late in the day when the Comptroller and Auditor General was alerted to the facts of what was happening in Templemore. I do not say that with the view that we need an explanation-----

Chairman: We do, as early as possible.

Deputy Mary Lou McDonald: -----but dates must mean something.

Deputy Catherine Connolly: We should not wait until July and we should call a meeting, if necessary, on a different day. Due process must be gone through. Very serious issues came up after a very long day. We need to look at what Mr. Barrett produced, come back and discuss it. I urge caution and we should do that as quickly as possible in the proper context of our role in this committee, bearing in mind the delays we have seen. There was a draft of a report in 2006 and reports in 2008, 2010 and 2015. Various people, including the Comptroller and Auditor General, were not aware of the issue.

I will clarify something before finishing. Yesterday in the Dáil the Taoiseach stated the Comptroller and Auditor General was still looking at this. I understand his report has been completed and it is what we are discussing. He stated there were three inspections or analyses going on, with one of those coming from the Comptroller and Auditor General. Could we have clarification on that?

Chairman: Could that be clarified? It was stated in the Dáil by the Taoiseach.

Mr. Seamus McCarthy: We are carrying out the audit of the 2016 appropriation account. Clearly there are control matters that arise and we are examining the issue in that context. I expect I will have a report in September in that regard. That is the normal business. The appropriation account examination must be completed by September. I am not doing a special report.

Deputy Catherine Connolly: There is no investigation separate from the ordinary programme of work.

Mr. Seamus McCarthy: There is no other current investigation. If, having carried out the appropriation account audit, I judge there are matters requiring a further report, I may proceed to that at some point. As it stands, I am doing the audit of the 2016 appropriation account.

Deputy Alan Kelly: There are a few issues we must discuss before proceeding. The matters raised last week are serious not just for the Committee of Public Accounts but for the State. I have the transcript of last week's meeting and I have read it a couple of times. It is incredible to do so in conjunction with the documents that Mr. Barrett has now sent us. It is like a jigsaw but the problem is the pieces do not fit. There are contradictions all over the place. There were contradictions in the evidence last week with the Garda Commissioner and her staff and between the Department personnel and Garda Commissioner, when they basically said opposite things. The Garda Commissioner stated last week she started a process after the meeting of 27 July but was that process not begun beforehand, on 2 July by Mr. Cyril Dunne, the head of administration? Did he not commence that process before the Garda Commissioner said she commenced her process? In evidence, the Garda Commissioner said she started a process and the Department of Justice and Equality - representatives of which are coming before us in a

few minutes - was involved straight away. It is my understanding that may not be the case and it might not have been brought into the process until October. It is important that the assistant secretary who sat here last week said the Department was not aware of the issues relating to Templemore until October. If it was involved with the process from July, how was it not aware of the issues until October? How in the name of God is there a Department of justice that is not aware of these issues in the first place, given the Vote it must manage? Frankly, it is incredible.

I have another point before moving on. On 12 April I raised many of these issues in Dáil Éireann. In evidence last week, the Garda Commissioner and every witness, including those from the Department of Justice and Equality, stated they were not aware of the very specific issues I raised involving dates, times and people mentioned in the Dáil on 12 April. How is that possible? There was a motion of no confidence in the Garda Commissioner but the Department of Justice and Equality, the Garda Commissioner and all the staff were not aware these issues were raised. It is incredible.

This is incredibly serious and I agree with the previous speaker and the comments of the Chairman on the national airwaves. We must deal with this quickly. I do not believe we will deal with it in one meeting and if we need special sittings, we should have them. We should do that very soon, possibly starting the process in a fortnight. How far are we going to go with this? This goes very deep and there are layers of issues. There is a gold, silver and bronze amount of issues here. There is the matter of what happened with the Garda Commissioner over the past couple of years. There is the matter of how the internal auditor was not made aware of reports in 2006, 2008, 2010 and 2015. There are also the issues relating to Templemore. Mr. Cyril Dunne has left the organisation and Mr. Michael Howard is the external auditor. Ms Anne-Marie McMahon has certain knowledge about Templemore. Will we look into these matters by bringing in everybody who was here last week? Will former Garda Commissioners be invited in? Will we bring in the individuals who were here last week, those who have left the organisation or those who are currently in the organisation and who have critical knowledge? Assistant Garda Commissioner Twomey has been referenced numerous times. These are critical issues we need to decide now on behalf of this country so we can get to the bottom of what is going on.

Deputy Marc MacSharry: I agree with much of what has been said already and with the Chairman's sentiments on the national airwaves this morning. I was at most of last week's meeting, except for the end, but there were contradictions before that, particularly in terms of assessment of potential for criminality. The Garda Commissioner clearly stated there was no question of that but Mr. Barrett was less sure. I agree very much with Deputy Kelly in his sentiments about how deep we can go. As Deputy Connolly stated, we are here specifically to deal with value-for-money and accounting issues but we cannot fail to be cognisant of the fact that in parallel there are many other issues facing the Garda. There is a major morale issue and people are entitled to have confidence in the police force. Whereas there is no specific relationship, these accounting matters will contribute in a very serious way to undermining that even further. Whatever we do, we need to do it quickly and to do it properly we will need to go into some level of depth. That involves seeking to bring in former Garda Commissioners and people who have been involved so we can determine value for money and where money was used.

The second issue is the level of contradiction in last week's meeting. As the Chairman stated, it is not a legacy issue; it is current. To me it is a complexion and culture of delay to facilitate containment, damage limitation and cover up. This seems to be the sort of autopilot that is allowed to run in Departments and it is wrong. I do not know how we will manage this in terms of time but it needs to be our top priority given the implications. I would also like to

see Mr. Barrett, Mr. Ruane, Mr. Kelly and the Secretary General of the Department of Justice and Equality without the Commissioner in the room if possible. Whether it is appropriate to do this in private or public session I am agnostic, but I would like the ability to have an engagement with these individuals and put certain questions without, as it were, their boss sitting beside them. These are my thoughts so far.

Deputy Josepha Madigan: Serious concerns are raised not only by the evidence to the committee last week but by what we has been said today. The allegations being made against the Commissioner-----

Chairman: Against the Accounting Officer.

Deputy Josepha Madigan: I would really like to see this dealt with expeditiously. The public will want to know why this culture seems to be at play in the Garda, which Mr. Barrett has raised and Deputy MacSharry has raised, with regard to a cover-up. Many witnesses are involved, and whether we bring former Commissioners before the committee will be up to the committee. We must be mindful of Standing Order 186 and we have to look at the public finances above all. We cannot pre-empt any political attacks for political purposes. Obviously, having said that, there are serious issues here that need to be looked at and addressed. If we are going to have credibility in the Garda with regard to internal mechanisms, in my view we need to question the Commissioner further and question any other witnesses whereby we can throw light on this. We cannot have a situation where contradictory statements are being made and there is no clarity about what is happening. I would like this dealt with expeditiously with regard to all of the witnesses brought before the committee. There is also the caveat raised by Deputy Connolly regarding proceeding with caution. We must be very careful of due process in this and ensure it is done correctly.

Deputy David Cullinane: Before we proceed, and before we have more meetings and invite in more witnesses, my view is we need to be very clear as a committee about what it is we are doing. A committee established by the Commissioner is examining a number of issues. Internal audit is still doing its work; what we have received is an interim report and it must conclude its work. Mr. Kelly said this will not be done by July and that it will take some more time, but it is in process. The Comptroller and Auditor General will do his work on the appropriation accounts. It is not an actual examination, although that might come following whatever comes from his examination of these issues for the appropriation accounts.

It is very clear there was a breakdown in process, policies and procedures. We have to get under the bonnet of all of this. We have contradictory evidence. We received a huge amount of information from Mr. Barrett, which is very helpful. It is documented and contemporaneous. We do not have the same level of information, by the way, from the Garda Commissioner.

I would like to see us putting some structure to our work. First of all, we need to get all of the information we have sought. We have the incomplete audit report from 2006, which has been referenced, the 2008 report that was ignored pretty much and a 2010 report. There are documents that were over and back between the director of financial services and the Commissioner. There are documents the chief administrative officer had. There was information that should have been given to board meetings which was not given. We need minutes of those board meetings. There is a list of documentation and a range of documents we need first. Then we need to look at who we need to bring in and who are the key witnesses. There are people who were not in the room last time, for example, the chief administrative officer who, in my view, has questions to answer. Even if retired, that person needs to be in the room.

I do not want to go into all of Mr. Barrett's points, but there is a key statement in his documentation which goes to the heart of all of this. He stated:

More worryingly it appears that a coordinated effort was made to ensure that Mr Niall Kelly, Head of Internal Audit, was actively delayed, dissuaded, or precluded from becoming involved. Despite Mr Kelly's best efforts to get a copy of the 2007 report, he was denied access to it by senior Garda management. This process of exclusion essentially closed down any prospect of the matters going beyond the walls of Garda HQ and becoming a matter visible to your committee [as in the internal audit committee], the C&AG, the Public Accounts Committee and thereby into the public domain.

It is quite clear that information was withheld from the Comptroller and Auditor General's office, this committee, the Department and Garda internal audit. These are allegations that are being made and that we need to examine. They are more than allegations as there are also statements made by internal audit. The head of internal audit said himself he was frustrated he did not get the information he sought. We need to put structure to it. I say, based on my reading of it, that all of this screams cover-up and collusion. We as a committee need to take it seriously because it goes to the heart of the culture in An Garda Síochána.

My recommendation to the committee is when we come back the next time we have a report which looks at structure, we get as much information as possible and we have a list of potential witnesses, then we decide when we do it and for how long we do it, and then we look at the internal controls in place within An Garda Síochána and the failures. Essentially our job is to do all of this. I propose this as a way to advance this. What we do not want to have is a scattergun approach, whereby we end up bringing in witnesses who are in and out with a slap on the wrist and that is it. I do not think that would be useful for us. I want a Committee of Public Accounts report at the end of this.

Deputy Catherine Murphy: I agree strongly that the dates of audits and the statements are as important as the signature. We definitely need to have this dealt with much earlier. I raised this matter with the Tánaiste on 9 February on Leaders' Questions. I was looking for a copy of the draft report that had been leaked to a newspaper and there was quite an extensive article in January as to parliamentary questions. I was told by the Tánaiste at that point that the Committee of Public Accounts and the justice committee had debated this at length. I went back that same afternoon and I disputed this with the Tánaiste. I could find no record of it. I pursued her for six or eight weeks, forwards and backwards, and she corrected the record in April in the Dáil. That was during the debate on the Charlton commission, at the beginning of February. It is very important, and it was something that was quite interesting last week, that the Commissioner agreed the interim report came in draft form to her in September 2016. Last week, on the record before the committee, she said there had been no change to the draft report. The report on Templemore we debated has an interim report dated February 2017 which was published in late March or early April. The role of the Department of Justice and Equality in this is important because when something is leaked to a newspaper it screams of frustration that there was something that was required to be publicly available. There are questions to be asked when we are speaking about this with regard to the Department of Justice and Equality and what its knowledge was. Why was this, when there was no change made to it between September and February?

It did not take that long to read the report. It was quite clear that what was included in that report was very significant. Why did it take that length of time when we are talking about the frustration in bringing this into the public domain with the Garda? There is an equal question

regarding the Department of Justice and Equality bringing it into the public domain. I want to see that dealt with by the people who come in front of us as well.

Deputy Alan Farrell: I would like to state my full agreement with the remarks of Deputy Cullinane. It is a rare thing.

The issue that we face is a process issue. We need to determine what this process is going to be. More important, we need to determine what it will be from the professional end of the process in terms of investigating what precisely went on and the manner of the investigation.

I would be of the firm view that, given the work the Comptroller and Auditor General is doing with regard to 2016 and the imminent completion of that work, the Office of the Comptroller and Auditor General should go back and look at Templemore as a specific unit, as well as all of the various processes that took place there and the various transactions involved.

It is very clear from the evidence given by the Commissioner and her staff that the internal audit unit within An Garda Síochána is under-resourced. I would question how seriously it is taking the matter in terms of its presentation of information, not just to the committee but also the fullness and openness to the State and Department of Justice and Equality. The fact that it was withheld historically from the Comptroller and Auditor General speaks volumes in its own right.

Another issue comes down to the budget within An Garda Síochána to be able to get the work of the interim report done quickly. In order to do that, it occurs to me that An Garda Síochána needs to bring in expertise to complete that work and support the section which currently comprises eight personnel. I made that point last week, and I am making it again today because it is imperative that the Garda adequately deal with this issue so that we can get the interim report into the public domain in order that the Comptroller and Auditor General has an opportunity to review it at some point. I appreciate that he has, no doubt, a full list of entities to audit. It occurred to me and, I am sure, many others, that the only way we can achieve full disclosure in regard to the actions and behaviours in Templemore over a period of decades is for the competent authority of the State to go in and do it, and that competent authority is the Comptroller and Auditor General.

It was an incredibly damaging revelation for all of us when the report on issues in Templemore was published. With the greatest of respect to my colleagues, as Deputy Connolly pointed out there is no doubt that we will stray into territory which will effectively turn this committee room into some sort of courtroom. We are not qualified to do that, nor are we allowed to do that. Therefore, I am in agreement with Deputy Cullinane. We need to set a very strict set of terms of reference for ourselves on what it is that we are seeking.

It would amount to an unqualified witch-hunt if we were to start line questioning the Commissioner, the Accounting Officer and other individuals in regard to gaps in the production of information and-or receipts etc. within Templemore over a period of years. We need to consider a special report from the Comptroller and Auditor General or other competent investigative organisation, whatever that may be. It may involve an inquiry of some kind from an accounting perspective or some other mechanism.

It would be very easy for all of us to go into a committee structure and quiz the Commissioner, the Accounting Officer, the head of internal audit and all the rest. It would make great headlines, but would we actually achieve anything? The scattergun approach to which Deputy

Cullinane referred is entirely accurate. There is a question of competency. I appreciate we are all very good at what we do because otherwise we would not be here, but the truth of the matter is that there are competent individuals who are capable of getting to the bottom of the accounting practices and trying to come up with information. If that information is not available, competent individuals need to draw their own conclusions as to that.

My final remark concerns the comments of the Chairman and the Comptroller and Auditor General on the audit process and a correction or clarification – whatever one wants to call it. I would like the Comptroller and Auditor General to restate what he said earlier for the purposes of clarity. What I and the Chairman took from what he said are two totally different things. I want to make sure that we are all on the same page. I am not an auditor or an accountant, but what I heard the Comptroller and Auditor General state was that in the course of his verification of the information that was provided an error or a lack of information was identified. The Office of the Comptroller and Auditor General sought to have that clarification made. It was made and signed, and the document was changed, as is the norm in an audit process. I wanted to clarify that so we are all on the same page.

At the moment, I do not see that the Chairman is on the same page. I appreciate his professionalism-----

Chairman: We will come back to the issue. I will finish with the members.

Deputy Mary Lou McDonald: I remind the committee that the issues around the public domain and the matters of public concern were unearthed in this committee room. This is clearly not a court of law, but it clearly is the Committee of Public Accounts of the Oireachtas and is regularly cited as the most influential and powerful committee of the Oireachtas. Vested in us is the responsibility to follow the money from a value-for-money perspective and to follow the attendant processes and procedures. That is what we should do.

It falls to us to get to the bottom of these matters. For the purposes of assisting the committee, let me say that there is a very long historical hinterland to the story. As a Deputy said it goes back decades. I do not believe that we are in a position to, nor should we attempt to, examine all of that. Rather, we should look to the here and now, the duration of the stewardship of the current Commissioner, as Accounting Officer, to examine exactly the turn of events, the audit, its procedures, the quality of the audit and so on. In other words, the issues that we began to consider and examine in this committee room last week are what we should focus on.

Deputy Cullinane's point is that we need an orderly approach to this and conduct our business in a way that sheds light rather than simply heat. That point is fairly made. Any suggestion that holding the Accounting Officer, in this case the Garda Commissioner, to account amounts to a witch-hunt is very inaccurate and very dangerous from the point of view of the work that we do as a committee.

I suggest that we decide we will investigate these matters, and look to set out the parameters of our inquiries and their sequencing. We need to put the Garda Commissioner, Garda management and all others on notice that we are looking for their full co-operation and active participation in this procedure.

I want to make a final comment. Maybe this is a matter of technicality and detail for people from the auditing world. I have to say I attach very significant importance to dates on documents. I think most people would be in the same position as myself. I am shocked to hear not

that an alteration was made to a document, but that the alteration was not made explicitly clear. I do not think that is the correct way to proceed. I have no interest in a witch-hunt or anything else. We have to be determined to do our jobs and our work. I am not looking for a deferral mechanism to push this down the pipe. These issues are at play now. They are of huge public concern. They are relevant. They fall squarely within our remit. We should decide precisely how we are going to do this. I refer to the dates and so on. Maybe the Garda Commissioner and her staff do not watch Oireachtas TV, but if they happen to tune into this episode of the Committee of Public Accounts, they should be on notice that we will be looking for all of them, individually and collectively, to co-operate fully and honestly with our inquiries.

Deputy Alan Kelly: I will not repeat what has been said. I agree with everything the previous speaker said. This is no witch-hunt. We have to do a job here. This is a constitutional committee. We need to get to the bottom of what is going on here. I know we cannot go back forever. We have to concentrate on the current Accounting Officer, who happens to be the Garda Commissioner in this instance. Even more serious questions have been raised today. Specific questions have arisen regarding the evidence that was given last week. I am conscious that there is a huge amount of documentation. I have gone through the transcript of what was said at last week's meeting. I went through it twice. I am conscious that various Deputies asked for specific documents, reports and emails. For instance, we asked the Commissioner to check whether there was any email traffic during a certain time period which said that the internal auditor was to be kept at bay. We asked for documentation in relation to certain financial stuff. Anyone who goes through the transcript will see that many such requests were made. I think we need to analyse the documents we asked for before we go through the next stage of this.

I will set out my suggestion. We have some documentation from Mr. Barrett. Requests have been made for other documentation. We need that documentation as soon as possible. I suggest we should write to the Garda Commissioner and the Department of Justice and Equality, as the two main players here. The OPW is also relevant in this context because questions have been asked about the lands. The OPW probably did not know for a period of time that it owned the lands. It certainly did not know about the rent it was not actually getting. We should write to the Department, the Garda and the OPW to ask for the documents and references that were sought last week. After a gap period of a week has been allowed to enable us to analyse that information, we should start the process of looking at the issues we all know we need to get to the bottom of. I agree with what Deputy MacSharry said earlier on. I believe multiple sittings, including special sittings, will be required. This will have an effect on our diaries. If we were to bring in the gardaí and the Department in two different segments, that might be a good process. We might have to break it up like that.

I suggest that in the next few days or the next week, members of the committee who feel that certain individuals in various roles need to give evidence should write to the clerk to ask for those people to be included and to justify their inclusion by explaining why they think those people are relevant. This will be necessary so we can make sure we can bring out the fullness of what we need to bring out. I suggest that we write to the relevant parties to ensure we get the documentation we asked for, in addition to any further documentation my colleagues might wish to get, and that we begin this process the following week by bringing in witnesses as suggested by the Chair.

Chairman: Fine. Okay. We are going to conclude this aspect shortly.

Deputy Peter Burke: As Deputy McDonald has said, this is a very powerful committee. My personal belief is that the power enjoyed by the members of this committee is accompanied

by a great responsibility. We have a huge responsibility to assess the evidence in a very fair manner. We have to be very careful to focus on getting to the bottom of the truth here.

I have concerns about some of the comments that have been made, especially those questioning the honesty of the Accounting Officer. That is not appropriate until we have done a stress test on the evidence of both sides of this debate. We have to do stress tests on Mr. Kelly's evidence and Mr. Barrett's evidence. I believe we are putting ourselves in a position where we are prejudging the outcome. We need to be very careful on this. I would like the Comptroller and Auditor General to set out the position in respect of the comments that have been made about the signature. Was the Commissioner and Accounting Officer asked to re-sign the document when the paragraph in question was inserted? In his view as an auditor, did she do anything wrong in that process?

Chairman: Deputy Madigan will be followed by Deputy Cullinane.

Deputy Josepha Madigan: The Comptroller and Auditor General mentioned that he will be doing the 2016 appropriation accounts in September. He also mentioned the possibility of doing a special report. If he decides to do a special report in the interim, how long would that take?

Mr. Seamus McCarthy: It would not be possible within that period, absolutely not.

Deputy David Cullinane: Would it be possible to have a short report at the next meeting - I use the word "report" loosely - setting out the documentation which has been sought? The interim internal audit report cites all of the documentation anyway. We may have additional documentation we are seeking. Maybe we could contact the clerk to make our own requests. I suggest that at the next meeting, after we have gathered all the information, we have to agree on the scope of whatever examination we are to do and on who will be called as witnesses. It would be useful if we could get a report that maps or scopes that out.

Chairman: Okay.

Deputy David Cullinane: I hope my proposal can be agreed.

Chairman: I think it is clear for next week. Thirteen documents that were requested from the Garda Commissioner are listed in the minutes of today's meeting. We will confirm with the Garda today that we want those documents by the end of next week. A full fortnight will have passed by then. If Deputies are seeking any other documentation that is not included on that list, they should contact the secretariat by the weekend. We will give people an opportunity to try to get the information back as urgently as possible. When we meet next Thursday, we will have a list of the documentation, a proposal - we will call it a plan - for how we are going to do our work and an approximate timescale. It is not going to go on for months like the NAMA inquiry. There are some net points here. We will keep it specific to what is in front of us - the financial process and all of that. We will come back next week.

Chairman: I will call the Comptroller and Auditor General after Deputy Farrell has spoken.

Deputy Alan Farrell: I want him to clarify his remark about a special investigation. I think that rather than saying he was not able to do such an investigation, he was inferring that it would take too long.

Mr. Seamus McCarthy: It could not be done between now and September.

Deputy Alan Farrell: Yes, that is fine.

Deputy Catherine Murphy: Could I ask for timelines to be included in the report as well? There were different dates when things were known.

Chairman: Yes.

Deputy Catherine Murphy: I think it would be quite useful to put them in.

Chairman: The secretariat will circulate all of that to us in advance of next week. We will try to sign off on all of that, including the work programme and the suggested dates. I will help in that process. I invite the Comptroller and Auditor General to make some concluding remarks.

Mr. Seamus McCarthy: I would like to clarify-----

Chairman: The Comptroller and Auditor General was asked about the signature and whether he had a role in it.

Mr. Seamus McCarthy: Okay. The legal obligation is for the Accounting Officer to submit the account by 31 March. The account was submitted by 31 March. There was no change to the account *per se*. That process dates back to 1866. There have been many additions to appropriation accounts since then. The statement on internal financial control has been around for approximately 20 years. It is an extremely important document, but it is not one that we completely and wholly audit. We look at it to see whether there is any information known to us in the course of the audit that would suggest there is anything wrong with the statement. My understanding is that the internal audit had started by 31 March, or at least that internal audit had been notified of the thing. We were only told about it on 31 May. When the statement on internal financial control came to us, signed by the Accounting Officer with a date of 31 March, there was no reference to the internal audit in it. We pointed out that there should be such a reference because it was so significant.

Chairman: When did you find that out?

Mr. Seamus McCarthy: It would have been raised as soon as we heard about the problems. Over the summer we engaged with them and told them we needed to know what was going on in order to complete the audit. My understanding, and something which becomes clear from Mr. Barrett's documentation, is that the interim internal audit was needed before the appropriation account was produced. We were pushing all summer to get something. Without having the report itself, but only the summary, we said to the Garda Síochána that it had to put something into the SIFC. This is, apparently, a breach of controls and this is the whole point of the SIFC. We need to ensure that the appropriation account is right and if there is any different treatment of transactions, balances or liabilities, even contingent liabilities, they need to be recognised. We are looking at the implications for the OPW appropriation account too, because there may be issues there and disclosures may be required.

It is for An Garda Síochána to sort this out and to make the changes to structures and controls, etc. We will be looking to see that An Grada Síochána is addressing the matter and if continuing adjustments to its system of control are needed in respect of the college, it should disclose them to the SIFC for 2016. We already have it and at the moment, what is in it is not sufficient for the purposes, so there will be an adjustment required-----

Deputy David Cullinane: There is a bigger issue here-----

Mr. Seamus McCarthy: May I finish? It is also apparent from the engagement last week that the fundamental controls in An Garda Síochána around the operation of the audit committee give rise to questions and their effectiveness needs to be addressed. The issues are already on the table and it is proper for the committee to inquire into them.

Chairman: Did Mr. McCarthy say the statement of accounting policies and principles for 2016 has already been presented and requires amendment? Is it correct that what he was given on 31 March for last year is not adequate and he will be looking for changes to it?

Mr. Seamus McCarthy: In light of last week's engagement we will need to engage as part of the audit. I do not, however, want to prejudge the audit and I have not given my opinion yet.

Deputy Peter Burke: Was the document re-signed? Was there any issue-----

Mr. Seamus McCarthy: It was not physically re-signed by the Accounting Officer.

Deputy Peter Burke: It was not re-signed.

Mr. Seamus McCarthy: She did not put her signature to the revised document.

Deputy Peter Burke: That is a totally different story. We need to be very careful here.

Mr. Seamus McCarthy: That is what I said previously.

Chairman: She signed the document on 31 March. Is it correct that, at the end of August or early September, a paragraph was added to the document dated 31 March?

Deputy Catherine Connolly: It was at the request of the Comptroller and Auditor General.

Mr. Seamus McCarthy: It was at our request. It was signed off by the executive director of finance. I would expect that he would be authorised by the Accounting Officer to make such changes.

Chairman: The document signed on 31 March had a paragraph added to it in September but it is still dated 31 March.

Mr. Seamus McCarthy: Yes.

Deputy Mary Lou McDonald: Was that after a request from the Comptroller and Auditor General?

Chairman: The Comptroller and Auditor General requested it.

Deputy Catherine Connolly: Besides the date, to which we will return, the issue was that the comment was not put in by the Accounting Officer herself.

Mr. Seamus McCarthy: That is correct.

Deputy Catherine Connolly: Is it usual to have to pick up on such a thing from an organisation covered by the Comptroller and Auditor General? Is it usual to have to come back to an Accounting Officer over such issues?

Mr. Seamus McCarthy: The statement on internal financial control specifically requires an

Accounting Officer to disclose any significant breaches of control and the steps being taken to address them.

Deputy Catherine Connolly: Were these things absent in this case?

Mr. Seamus McCarthy: They were not in the statement I received on 31 March.

Deputy David Cullinane: The real issue is that what was included afterwards was not in the original SIFC. When the insertion was made, was there an obligation on the Accounting Officer to re-sign it? Should there be a note to say additional information had been included?

Mr. Seamus McCarthy: Circumstances such as these have not arisen. I said that if there was a change on the face of the appropriation accounts, if the figures changed or the surrender changed, we would always insist on the Accounting Officer re-signing with the current date.

Deputy David Cullinane: In this case the figures did not change. Is the Comptroller and Auditor General saying there is no obligation on her to re-sign?

Mr. Seamus McCarthy: We did not ask her to re-sign.

Deputy Peter Burke: At the start of the meeting there was an implication that there was impropriety in the form of the Accounting Officer signing and backdating stuff. The issue of a person changing the face of a case to suit themselves was raised but we should withdraw that comment.

Chairman: What I said was very clear. I said the document in front of us, signed on 31 March 2016 by Nóirín O'Sullivan and which included the paragraph in question, did not include the reference to the auditor. That was added subsequently by the Comptroller and Auditor General. He recommended that it was a function of the Accounting Officer to add this. The paragraph was added in September, even though the document is dated in March.

Deputy Peter Burke: There was no requirement for her to re-sign.

Chairman: We will ask the Accounting Officer that.

Deputy Peter Burke: I just think a bigger issue was made out of this than actually existed.

Chairman: That is a point of view. We will ask the Accounting Officer to explain why that date is on it.

Interruptions

Deputy Alan Farrell: It is a fact, Chair.

Chairman: The date is 31 March but that paragraph was not signed off on 31 March.

Interruptions

Deputy Alan Kelly: Can we agree what we are doing next week?

Chairman: Next week we will have a detailed work programme and a plan of where we are going. We will have asked for everything to be submitted. If members have additional information they should get it to the secretariat straight away. We will have a list of both the suggested meetings and will move on promptly.

Deputy Alan Kelly: Can we correspond with the clerk on any evidence or witnesses, etc.?

Chairman: Yes. I am holding the accounting statements over. The only item we have is Bord na gCon. We only have two financial statements to be noted next week. Next today, we will try to take the opening statements and suspend.

Deputy Alan Kelly: At what time are we coming back?

Chairman: 2 p.m.

Deputy Bobby Aylward: When is Bord na gCon coming in?

Chairman: Next week. We will suspend while the witnesses take their seats. They will make opening statements and we will suspend again to return at 2 p.m.

Sitting suspended at 10.59 a.m. and resumed at 11.01 a.m.

2015 Annual Report of the Comptroller and Auditor General and Appropriations Account

Vote 24 - Justice and Equality

Chapter 6 - Procurement and Management of Contracts for Direct Provision

Mr. Noel Waters (*Secretary General, Department of Justice and Equality*) called and examined.

Chairman: We are dealing with the 2015 Appropriation Accounts for the Department of Justice and Equality, Vote 24 and Chapter 6 of the Annual Report of the Comptroller and Auditor General. From the Department of Justice and Equality, we are joined by Mr. Noel Waters, Secretary General, Ms Oonagh McPhillips, Mr. Jimmy Martin, Mr. John O’Callaghan, Mr. Seamus Clifford, Mr. Ben Ryan, Mr. Eugene Banks and Ms Bernadette Phelan. We are also joined by the Comptroller and Auditor General, Mr. Seamus McCarthy. From the Department of Public Expenditure and Reform, we are joined by Mr. John Burke.

I remind members, witnesses and those in the Public Gallery to turn off their mobile phones.

I wish to advise the witnesses that by virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to this committee. If they are directed by the committee to cease giving evidence on a particular matter and they continue to so do, they are entitled thereafter only to a qualified privilege in respect of that 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 or make charges against any person, persons or entity either by name or in such a way as to make him, her or it identifiable.

Members of the committee are reminded of the provisions of Standing Order 186 to the ef-

fect that the committee shall refrain from inquiring into the merits of a policy or policies of the Government or a Minister of the Government or the merits of the objectives of such policies. Finally, members are reminded of the long-standing ruling of the Chair to the effect that they should not comment on, criticise or make charges against a person outside the House or an official by name or in such a way as to make him or her identifiable.

Before I call the Comptroller and Auditor General, for the information of members of the public, I will immediately suspend the meeting following the opening statements because there is a joint sitting of the Houses of the Oireachtas to hear a statement from Mr. Michel Barnier. We will resume at 2 p.m. I will take the opening statements only.

Mr. Seamus McCarthy: Vote 24 - Justice and Equality is one of eight that make up the justice group of Votes. The others are the Votes for the Prison Service, An Garda Síochána, the Courts Service, the Property Registration Authority, the Irish Human Rights and Equality Commission, the Valuation Office and, beginning in 2016, the Policing Authority.

The 2015 Appropriation Account for Vote 24 - Justice and Equality recorded gross expenditure of just over €366 million in 2015 across six spending programmes, as indicated in the figure on screen. Members can see that programmes A, B, and C account for the bulk of the expenditure. Expenditure of €152 million on the programme to Maintain a Secure Ireland includes expenditure on the Irish Naturalisation and Immigration Service totalling €47 million and on asylum seekers accommodation of €57 million. The latter expenditure is the focus of the report being considered this morning, on which I will comment shortly.

Spending related to the operations of the Probation Service accounted for €35.5 million of the €51 million of spending under programme B, Work for Safer Communities.

Expenditure on legal aid services accounts for €86 million, or 69%, of the programme on Facilitating the Provision and Administration of Justice. A further €10 million was spent on the Forensic Science Laboratory and the State Pathology Service. This programme also provided for expenditure of over €10 million on commissions and inquiries, details of which are set out in note 6.3 to the account. The committee may also wish to note spending under this programme of €5.45 million in respect of the Magdalen fund, as against a funding provision for the year of €11.5 million.

Across the Vote, salaries accounted for 35% of the expenditure. At year end 2015, a total of 2,233 full-time equivalent staff were employed in the Department and the other offices funded from the Vote.

On the receipts side, appropriations-in-aid totalled just over €64 million. Over 70% of this related to a range of fees charged in respect of immigration registration, nationality and citizenship certification, and visa issuance.

I will now turn to the report before the committee. Since 2000, the State has met its obligation to provide for the material needs of asylum seekers while their applications are being processed by offering accommodation and food at what are known as direct provision centres. In addition, residents of direct provision centres are entitled to a small weekly allowance paid by the Department of Social Protection and to avail of health and education services funded by the relevant Votes.

The report before the committee this morning examines the procurement and management of contracts for direct provision centres. As of December 2015, there was a total of 35 direct

provision centres in operation - seven State-owned centres and 28 centres provided by 22 commercial suppliers. Almost 4,700 individuals were being accommodated in the centres at the year end. The Department also operates two emergency reception and orientation centres to cater for persons who already have refugee status. The total cost to the Department in 2015 of providing accommodation and related services to asylum seekers and refugees was €57 million.

The level of accommodation required is demand-led and difficult to predict. It is influenced by the number of asylum seekers, their length of stay in direct provision and, because there is no obligation to avail of direct provision, the number who opt to do so.

The report notes that in mid-2016, the average length of stay was 38 months with 450 residents, or 10% of the total, living in direct provision for more than seven years. Some 23% of residents, or 950 people, continued to reside in direct provision even though their cases had been finalised. This included 667 people or 16% who had been granted a status permitting them to remain in Ireland, and 283 or 7% who were subject to deportation orders.

Two commercial companies were contracted to provide services such as catering, cleaning and maintenance at the seven State-owned centres. We found that competitive processes had been used to procure those services.

In contrast, the Department had not used competitive processes as set out in public procurement procedures to procure the 28 commercially-owned and run centres. Instead, it seeks expressions of interest, evaluates the responses and then agrees contract terms with selected providers. The Department's view is that this equates to the negotiated procedure provided for in EU procurement rules. However, use of that procedure is only permitted in certain limited circumstances that we could not see existed in regard to direct provision. The Department stated that it discussed the matter with the Office of Government Procurement but had not identified a procurement method to replace the current procedure.

The examination also found that effective management of contracts was made more difficult because not all contract deliverables had been expressed in a way that could be quantified or measured. This increased the risk that standards of accommodation and services would not meet asylum seekers' needs or would be inconsistent between centres. In addition, contracts did not set performance measures and there was limited provision for penalties for underperformance by suppliers. The Department agreed to the report's recommendation to review the standard contract, and the Accounting Officer will be able to update the committee in that regard.

Service delivery in the centres is monitored by physical inspections of premises, information clinics for residents of centres and reviews of complaints by residents. However, the findings from this monitoring are not collated and used to assess service delivery performance. The Department committed to introduce procedures to formally record such inspection findings and complaints, which should inform discussions with centre managers and owners. Even though there was a low level of complaints by residents, information from other sources suggests that there is a significant level of dissatisfaction among residents about the quality of the accommodation, the services provided, or both. A revised complaints procedure introduced in 2015 provided for an appeal to an independent appeals officer where a person was not satisfied with how his or her complaint was dealt with. However, at the time of the examination, an independent appeals officer had yet to be appointed.

The report recommended that the Department review the complaints process to identify reasons why residents may not be raising issues. The Department noted that the revised com-

plaints procedure largely addressed this issue but undertook to examine ways to make the complaints process more open and transparent. Members may also be aware that, from early April this year, residents of direct provision can now bring a complaint to the Ombudsman, or to the Ombudsman for Children, if they are unhappy with how their original complaint was dealt with.

Mr. Noel Waters: The justice and equality Vote covers a wide remit, encompassing both the administrative divisions of the Department and a broad range of offices and agencies across the justice sector. In all, there are over 60 individual subheads across six expenditure programmes. These reflect the work of policy areas dealing with everything from crime to land registry, reform of criminal and civil law, and an increasing number of regulatory bodies and front-line services in areas such as the immigration service and Forensic Science Ireland. From 2016 onwards, the programme approach reflects the high-level goals in the Department's current strategy statement. Other structural changes since the appropriation account for 2015 relate to the establishment of the Policing Authority as a separate Vote and, following a transfer of functions, the Department has now assumed responsibility for Ordnance Survey Ireland from the Department of Communications, Climate Action and Environment.

In the briefing provided to members, I outlined that legal proceedings regarding the use of an office premises in Wolfe Tone Street, Dublin 1 by a community-based project funded by the Probation Service had concluded in late 2016. This will be fully reflected in the appropriation account for 2016 and it was previously the subject of a report by the Comptroller and Auditor General in 2012, in the 2011 report. The central issue in this case was the assurance provided by the vendor about planning permission for the premises. The Comptroller and Auditor General outlined that it was reasonable for the Department to rely on the legal advice provided about the planning permission. Following legal advice, a settlement of €1.8 million was agreed and paid by the Department during 2016. Although we are dealing with 2015 today, I mention this matter because the committee had previously inquired about it.

Turning specifically to the Comptroller and Auditor General's report on contracts for direct provision, I want to outline briefly the reason this system exists. I also want to give committee members an update on some developments in the system in recent years, in particular since the 2015 report.

Services for all protection applicants, whether living in State-provided accommodation or in commercially-provided accommodation, are delivered under the Government policy of direct provision and dispersal which dates from 2000 when the then health boards, which were responsible for homeless services, found themselves unable to cope with the dramatic increase in the number of people seeking asylum in Ireland. There are obviously many parallels with the homeless issue that exists now. By May 2000, some 1,500 applicants were being provided with accommodation and full board by the Government. Members may recall that, 12 months later, this had increased to 4,200 and by May 2005 it had grown to 7,200. From 2000 to date, some 60,000 people have been accommodated in direct provision. Equally, they have been provided with full access to the State's medical and education services. The system is not perfect by any means and we are continually seeking to improve it. The reality is that had the State not adopted the direct provision system, there simply would not have been even the most basic shelter available for this group of people who arrived and continue to arrive in our country.

At the start of this year, 4,465 persons were living in this accommodation. However, I am glad to say - this is a significant change - that, of those, 72% have been there for three years or less since the date of their application. This compares to 36% who were there for three years or less when the data was compiled for the working group on direct provision and related matters

in 2015. To put it another way, there has been a complete reversal in the length of stay figures since the working group examined the matter.

Full board accommodation in keeping with the policy of nationwide dispersal is offered to residents while their application for protection is being processed. It is important to note that not every person who seeks international protection in Ireland chooses to accept the offer of full board accommodation and many choose to live with family or friends in communities across the country, as they are entitled to do. If this system was not in place, already vulnerable people who have sought protection in the State would join the lengthy waiting lists for social housing or enter the private rental market with little hope of finding affordable and secure accommodation. This is the very situation that obtained which gave rise to the direct provision system being put in place in the first place. The offer of State-provided accommodation is a guarantee that every person who walks into the international protection office today will, tonight, have a bed, full board and access to medical care. Moreover, those people's children will have access to our first and second level education system on the same basis as anyone else.

No system is without room for improvement and our challenge is to continually enhance and develop the entire system so that the best possible set of facilities and services can be provided to those in our care. To that end, we are working to implement the recommendations of the McMahon report. Some 121 of these recommendations have been implemented, with a further 38 recommendations partially implemented or in progress. In total, 92% of the 173 recommendations are implemented, partially implemented or in progress. Recommendations that involve structural changes or improvements will be implemented as quickly as possible, having regard to fire safety, building regulation and planning issues and some others are policy matters for other Departments.

I mentioned earlier that good progress is being made in reducing the length of time applicants are in direct provision while having their claims finalised. What we believe is a further major turning point in addressing the length of time issue is the coming into force of the International Protection Act at the end of last year. This Act, with its single application procedure at its core, has ended the inefficient sequential Refugee Act 1996 application process with its inherent structural problems. It brings us into line with the processing arrangements for protection applicants in all other EU member states. In truth, that process was, by its very nature, a major underlying factor in causing significant delays in deciding cases. That, in turn, was causing major delays in moving applicants on from direct provision centres, either as recognised refugees or with other forms of permission to live in the State or as applicants which were refused and were no longer permitted to remain in the State. The clear ambition now with the new Act when it is fully embedded is that we expect cases to be dealt with in finality much sooner. Indeed, some cases have already been finalised since the beginning of the year.

Arising from the McMahon report and the programme for Government commitments in 2016, a number of physical improvements to accommodation are being implemented, for example, the introduction last January of new home cooking arrangements at the Mosney accommodation centre. Each family is now able to acquire fresh food so that they can prepare their own meals. Cooking facilities are being introduced in other centres including the State-owned centres in Killarney, Tralee, Athlone, Knockalisheen in Limerick and Kinsale Road in Cork, and in Ballyhaunis, Millstreet, St. Patrick's in Monaghan and any other centres where families are living. From 3 April last year, as the Comptroller and Auditor General noted, the remit of the Ombudsman and the Ombudsman for Children has been extended to cover those who are living in State-provided accommodation.

The Department has also co-ordinated the preparation of a comprehensive information booklet for persons who have been granted any type of leave to remain in the State. The booklet contains practical information for residents across housing, finance, health care and education as well as public transport and other related matters and has been prepared with the assistance of the National Adult Literacy Agency to ensure that it is presented in plain English. The booklet has also been translated into a number of languages. In addition, a number of NGOs have been awarded grants under the EU asylum, migration and integration fund, specifically to provide assistance to persons who have been granted protection and who are now in a position to move out of State-provided accommodation. Notwithstanding the current housing crisis, we are working with residents and the NGO community to assist people, when they get permission to remain, to find mainstream housing as soon as possible and ensure that the State-provided accommodation remains available for those in most need.

Direct provision, which has elements common to it in the reception systems in place in other EU member states, has many critics. Most criticism centres around the inordinate length of time people have remained in it while waiting for their protection claims to be finalised. As I said, we are addressing that across a number of fronts as we are the other quality of life issues. There are no cheaper alternatives to direct provision. We have explored the options in this respect; in fact, they are much more expensive, and in any event, given the critical shortage of housing in the State, they are not realistic. Nevertheless, we remain open to any workable proposals which would drive down costs while maintaining standards and fulfilling the requirements of public policy of balanced nationwide dispersal, direct provision of accommodation-related services and access to education, health, welfare and so forth on the same basis as the general community.

Chairman: I thank Mr. Waters for the opening statement. As I indicated, there is a joint sitting of the Oireachtas in the next few minutes so the meeting is now suspended and we will resume at 2 o'clock.

Sitting suspended at 11.20 a.m. and resumed at 2.08 p.m.

Business of Committee

Chairman: We are now scheduled to deal with a vote for the Department of Justice and Equality and chapter 6 in the Comptroller and Auditor General's report. Before we take that, the Comptroller and Auditor General has asked me to say that he wants to make a statement arising out of this morning's meeting.

Mr. Seamus McCarthy: I would like to correct the record regarding a significant issue that came up this morning. It has come to my attention since the earlier session that I inadvertently gave incorrect information to the committee about the revision of the statement on internal financial control for Vote 20 - An Garda Síochána. I said this morning that we raised the requirement for the revision with An Garda Síochána, and that is correct. That arose from the audit. I asked that the revision be made when I carried out my detailed review of the audit on 5 September 2016. An Garda Síochána provided us with wording for the adjustment on 13 September and at the same time gave us the internal report summary. We agreed on the wording that should be included in the statement. The Accounting Officer did sign a revised statement on internal financial control on 16 September. It was supplied to us and I reviewed it on 23 September 2016. We should have changed the date on the statement of internal financial

control, as published and also on the audit certificate. I should have picked up on this myself and I apologise for that oversight. The circumstances were exceptional and we will be reviewing our finalisation process for appropriation account audits. I am happy to answer questions in regard to it.

Chairman: I want to comment briefly before Deputy Cullinane comes in. The Comptroller and Auditor General brought this to my attention at the last moment. My statement this morning regarding the certificate of internal financial control that is in the published appropriation account was dated 31 March 2016 and that is the date on the document presented to us, signed by Nóirín O’Sullivan. I took that in good faith as presented, published and printed. Now the Comptroller and Auditor General has confirmed that it should have picked it up by themselves, and they did; the Garda Accounting Officer did agree a revised statement and did re-sign that statement on 16 September. That is the date that should have been in the documentation that was presented to us. I am in an unusual position but what I said this morning based on that date was in good faith on the basis of the dates and the signatures in front of me in the report. It was not the fault of the Accounting Officer in the Garda Síochána but I now realise that the wrong date is in the document and I regret any disturbance or upset caused as a result. I stress that this was in good faith and on the basis of the document presented to me at that time. We have clarified a matter which is helpful as a result of this morning’s debate.

Deputy David Cullinane: I fully accept that the Chairman raised these issues in good faith. I accept the unusual circumstances that prevailed that the Comptroller and Auditor General alerted us to. The difficulty is that this has made national headlines and we may need to go further than correcting the record of the Committee of Public Accounts. I am not sure if statements came from the Chairman in regard to this this morning but that needs to be clarified so that the media organisations also know, not only the ones who are listening here. All these issues are now tied into the wider matter of the Garda Commissioner and related questions and any of these attract national attention. That extra step may now be necessary.

Chairman: I will ask the Comptroller and Auditor General’s office to issue a statement on that basis to all the media, and will arrange with the Committee of Public Accounts secretariat for a statement to be made about this morning’s discussions and this correction. The Committee of Public Accounts recognises that there was wrong information before us this morning. We appreciate the Comptroller and Auditor General’s honesty and integrity in coming forward at the first opportunity to correct this morning’s record. He did so very promptly and we acknowledged that he did so at the first available opportunity. A press statement will go out from his office and our own.

Mr. Seamus McCarthy: We will do that today.

Chairman: This afternoon.

Deputy Josepha Madigan: I thank the Comptroller and Auditor General for clarifying the situation. There was some confusion earlier in regard to this. I appreciate the Chairman’s bona fides but one of the reasons I mentioned Standing Order 186 earlier, is that we try not to pre-empt political attacks without having all the facts before us. There are very serious concerns regarding some aspects of the Garda Síochána without adding further, unnecessary attack.

We need to tread carefully in this committee. I have not seen the headlines to which Deputy Cullinane referred but I accept that there probably are headlines. There is a lot of attention on this committee. I am not saying that the Chairman is trying to maximise political capital but in

future perhaps there is a way that if there are financial irregularities such as the Chairman mentioned these could be clarified with the Comptroller and Auditor General in advance. Otherwise we cause unnecessary furore and time wasting when it is not in anybody's interest to do that.

Chairman: We have dealt with this matter.

Deputy Josepha Madigan: Sorry, the last thing I wanted to say was for the Chairman to withdraw the comments. I know Deputy Burke asked him to do that earlier but I ask him to withdraw the comments.

Chairman: This is new to me. I have made it very clear to the secretariat that as soon as the meeting is over we will issue a statement from myself as Chairman, in light of the information brought to us today and we will make sure it is fully verified and checked before it goes out this afternoon based on what we have heard.

Deputy Catherine Connolly: I thank the Chair for his clarification. I did issue a cautionary word this morning in regard to this. These are the most serious issues that have arisen from the report that we discussed last week. I do not think that we should make statements, as Chairman or otherwise, or even in the media, in regard to this. There is a process under way and we should give it our full attention. We do that 99% of the time. We are here to look at value for money, the history of why it was not picked up sooner, the total mess that was made of it - which we will come back to - and our job is to get the Commissioner and the appropriate witnesses back in here as soon as possible.

The real issue which remains unchanged is that when the report of accounts was produced in March there was no caveat on it. Is that correct?

Mr. Seamus McCarthy: That is correct.

Deputy Catherine Connolly: That was the issue and that is what I said this morning. The reports were produced, they were signed off by the Accounting Officer, who happens to be the Commissioner, and there was no caveat or indication that difficulties had been discovered. On top of that, the comments in the Dáil from the Taoiseach, do not help. He referred to this as a legacy issue and he made reference to the Comptroller and Auditor General investigating, neither of which is accurate. It is difficult and we are trying to avoid that and remain neutral. We have all made statements but it is different in regard to our job here. Since his appointment the Chairman has chaired our meetings in an excellent manner. It would be well for us to learn from what has transpired today because we are heading into troubled waters and we have a serious job to do.

Deputy Alan Farrell: I was going to say something similar to Deputy Connolly's remarks. She is completely correct. I appreciate the correction and clarification and the suggestion of putting it out publicly. In the terminology I used this morning, this has highlighted how charged this subject matter is and how quickly media outlets and, indeed, ourselves will seize upon issues that are liable to cause headlines. I know the diligent manner in which members, and also including our witnesses, have approached this up to now, and it is very important to take note of such issues and how quickly the outlets pick up on them. I saw the article on the RTE website, I did not see it elsewhere but I am sure they were probably there. Deputy Cullinane's suggestion is welcome given that the media are no longer present because the issues that were of most interest to them have passed.

I want to reiterate one remark by Deputy Connolly about the manner in which the Chair-

man has chaired these meetings. He has been excellent and beyond reproach. I appreciate comments made by other members in this morning's session about the misunderstanding which derived from the particular publication of a document and the statement by the Comptroller and Auditor General that no date change was requested. We now know where we are and that is the most important thing.

Chairman: We do and as soon as the meeting is over, the respective statements from the Committee of Public Accounts and the Comptroller and Auditor General's office will be issued but we must wait until the meeting is finished. It will be later this afternoon and the members will all get copies.

It is good to clarify. If a problem arises, I prefer to hear about it straight up at the first opportunity.

Deputy David Cullinane: In the interest of fairness, it has to be restated that the Chairman was working from the dates with which he had been presented.

Chairman: I was working from the published documents.

Deputy David Cullinane: That has to be acknowledged as well.

Chairman: We will move on. I thank the members. I know that will generate its own news story but life is life.

2015 Annual Report of the Comptroller and Auditor General and Appropriations Account (Resumed)

Vote 24 - Justice and Equality (Resumed)

Chapter 6 - Procurement and Management of Contracts for Direct Provision (Resumed)

Chairman: The first speaker now will be Deputy Alan Farrell, followed by Deputy Cullinane.

Deputy Alan Farrell: I welcome our guests and thank them for their forbearance in this somewhat truncated appearance before the Committee of Public Accounts. I welcome the fact they have been given a clear audit opinion for 2015, with a number of highlighted items, which I would like to briefly touch upon. In one particular instance in Mr. Waters's opening statement, he said the Comptroller and Auditor General outlined that it was unreasonable for the Department to rely on the legal advice provided on the purchase of a property on Wolfe Tone Street, Dublin 1. I appreciate Mr. Waters's earlier remarks that the matter has been subject to Comptroller and Auditor General reports in the past and is now broadly settled with the exception of the planning permission issue. It is mentioned that assurances were provided by the vendor. In the due diligence, which any person would complete, did Mr. Waters seek in-house or external advice on the purchase of the property? Will he outline to the committee when the planning permission issues will be resolved or have they have been resolved in terms of the occupation

and use of the property?

On foot of the response to that question, is there any possibility of come-back on the basis of flawed advice which, effectively, have resulted in a very significant sum of money being paid by the taxpayer to resolve the matter?

Mr. Noel Waters: A very significant sum of money has been spent on this failed project on behalf of the taxpayer. As Accounting Officer for the Department, I greatly regret that. I greatly regret that public funds have been used in that manner. As I said in my statement, this has a long history. Ultimately when the Department and the Probation Service engaged on this, they relied on legal advice and the advice of the Chief State Solicitor who indicated it was in order to sign the lease on the basis the planning permission was in order. At the time, the Comptroller indicated it was in order for us, that we were entitled to rely on that advice and we did. The process by which advice is given in these cases is that the vendor or leaseholder warrants that the planning is in order which he did in that particular instance. As far as we were concerned the planning was in order. We went to refurbish the property and we spent about €1.9 million doing that. At that point, some of the local people objected as they are entitled to. They notified the Dublin City Council planning office which in turn served us with an order to say we could not proceed. The actions followed from that. Ultimately we found ourselves in a situation in which we had a property with a 25-year lease period with a break period after ten years and an annual rent in the order of €300,000 which we could not use because of what happened. My predecessor decided at that point we should cease paying the rent because the State was already subject to expenditure which was nugatory. He also decided on foot of legal advice to seek to bring the leaseholder and the planning architect to account for having made a mis-statement. That process went ahead and ultimately it led to a situation in which our legal advice was that if it had gone to a full court hearing, we would have lost. I cannot entirely give our legal strategy here. We were left with a situation in which we could risk further taxpayer money going to court or get out of it.

Deputy Alan Farrell: What was the cumulative cost of the purchase, planning, the works and the payment of rent up to the point where the Department stopped paying?

Mr. Noel Waters: It was €3.9 million in total.

Deputy Alan Farrell: Does the €3.9 million include legal costs and everything associated with Wolfe Tone Street, Dublin 1?

Mr. Noel Waters: Yes. Had we gone to the point where the lease was broken after ten years, which would be June next year, and still found ourselves in a situation where we had to walk away, the exposure to us would have been €4.7 million.

Deputy Alan Farrell: When did the Department stop paying rent?

Mr. Noel Waters: In November 2011.

Deputy Alan Farrell: The lease commenced in 2008.

Mr. Noel Waters: Yes.

Deputy Alan Farrell: Let me just go back to that issue. The legal proceedings are settled. Is that correct?

Mr. Noel Waters: It is all done.

Deputy Alan Farrell: The State is no longer in any way liable for this particular property.

Mr. Noel Waters: We are completely out of it. Our best estimate was to walk away from it. It is quite counter-intuitive. I came into this on my appointment about two and a half or three years ago. I found it incredible because we had done nothing wrong as a State organisation and the other side had clearly done something. It is a matter of legal opinion about whether or not it was a mis-statement but we found ourselves on the wrong side of this, which was completely counter-intuitive. My initial reaction was to ask if we could find an alternative use. At that point, I looked within the organisation to see if we could find some other body within the organisation that would take up the accommodation. Ultimately, it did not come to anything. We had a number of new bodies about to be established but it did not suit for one reason or another.

Deputy Alan Farrell: Did Mr. Waters discuss it with the OPW?

Mr. Noel Waters: Yes. The OPW was brought into this almost from the word go to see if any other State organisation or one of its clients could use it. At some stage last year we approached the Dublin homeless regional executive to see if it would have use for it in the context of the homelessness situation. That did not prove possible. Had another use been found for it, we would have had to go for planning permission.

Deputy Alan Farrell: That would have presented the same problems.

Mr. Noel Waters: It would have presented the same problems but it also would have led to a situation where we potentially would have to take ownership of the issue of planning whereas we had nothing to do with it in the first instance.

Deputy Alan Farrell: Forgive my ignorance - I know Wolfe Tone Street but I do not know the building. What are we talking about?

Mr. Noel Waters: It is a building with a commercial ground floor space which is quite deep and there are residential units overhead.

Deputy Alan Farrell: Is it a redbrick?

Mr. Noel Waters: It is not an old building. It is a building that was constructed in the 2000s or around that period.

Deputy Alan Farrell: I mentioned the clear audit but obviously there are some other issues, in particular with compliance with national procurement rules. My question is on the 22 supply agreements valued at almost €5 million which were entered into in the subject year. Does Mr. Waters believe if the Department and its various sections entered into compliant procurement, there would have been a saving made?

Mr. Noel Waters: I have no sense there was any loss to the State by what we did. The arrangements we entered into are allowed for and we were fully compliant in ensuring we were transparent about it. They related to a number of different areas involving specialist knowledge, urgency or security considerations. An example that is very much in the news is the commission for the location of victims' remains. There was quite a significant amount spent in respect of it. It is very specialised work, which involves people seeking a particular type of equipment or travelling abroad. It would not be readily available on the open market. The amount for the year was almost €700,000.

Deputy Alan Farrell: In terms of that specialised service, surely there was a sufficient pe-

riod of notification for the need to do this or are we talking about an instantaneous requirement to exhume or discover?

Mr. Noel Waters: That is essentially it. During the week there was a recovery which is wonderful for everybody.

Deputy Alan Farrell: Was that in France?

Mr. Noel Waters: Yes. In terms of victims' remains, people operate on the basis of information they get which can be received at very short notice which means an opportunity may present and may be gone very quickly again.

Deputy Alan Farrell: Asylum seeker accommodation in direct provision came up at the justice committee a number of years ago. With regard to the overall costs, on the basis the State-----

Chairman: There is a phone ringing.

Deputy Alan Farrell: My phone is off. I can still hear it.

Chairman: Silent is not enough; phones need to be on airplane mode. If they are on silent, messages can still come through.

Deputy Alan Farrell: There are 22 private institutions providing the service and assisting the State and there are procurement issues in respect of some of those and the Office of Government Procurement, OGP. In his opening statement, Mr. Waters contended that the Department is compliant with EU guidance on such matters but it is clearly not compliant with the OGP. Given that the OGP was, I think, established in 2014 - please correct me if I am wrong - I appreciate that there may have been rules that the Department is getting used to adhering to, but in the context of this budgetary year, 2015, and-or any other budgetary year, it has had knowledge of the Comptroller and Auditor General's assessment for some time. Has it put in place measures to comply in so far as possible with procurement rules as applied to those 22 private service providers?

Mr. Noel Waters: This is a very difficult issue as I indicated in my opening statement. We continue to work with the OGP with a view to having a completely open and transparent procurement arrangement and we have ambitions in that respect. We hope to be able to make some progress on it this year but our colleagues in the OGP have indicated to us, and we accept, that the particular model we use is such that it is very difficult to devise an open tendering competition that will deliver the service that we need. That is the nature of direct provision. It is demand-led. It can fluctuate dramatically in a matter of months and go down to very low levels. That is one aspect of it and another, which people generally do not mention in respect of direct provision, is that Government policy is also dispersive, with a balanced dispersal around the country. From the word go, the Government wanted to ensure that every community in the country got its fair share of asylum seekers balanced in accordance with the medical facilities, general practitioners, education and all the local services available. Our job at the time was to ensure we gave effect to that while at the same time dealing with a humanitarian crisis.

Deputy Alan Farrell: There has been a very significant increase in the number of asylum seekers in Europe from various crises, wars, etc., and we will likely become accustomed to it continuing to grow, albeit work is being done in parts of the world where asylum seekers originate. In terms of the remit of the Committee on Public Accounts, however, does Mr. Waters

believe in the long term that continuing to invest in private service providers gives value for taxpayers' money or should we provide such facilities directly, given that there was a 130% increase in the number of asylum seekers in 2015? Over a long period, would that net a reduction in the overall expenditure?

Mr. Noel Waters: We have looked into that, and continue to be open to that possibility. I have some knowledge of this from my time in charge of this area at the start. The Government decided then that we should have a balanced mix of options, commercial owners such as we have, hotels, hostels, guesthouses and State-acquired accommodation. We were quite successful in acquiring State accommodation at the start of the process but we ran into difficulties almost immediately once we started to move people into provincial Ireland where we had ten properties. This featured at this committee in the mid-2000s, where it was not possible for us to place asylum seekers because we ran into very serious difficulties with communities.

Deputy Alan Farrell: Given the chronic shortage of housing and consumer sentiment in respect of expenditure on tourism-related activities, presumably Mr. Waters is talking about the perfect storm whereby the Department does not have properties and cannot get hotel rooms, etc. I would have thought on that basis the projected increase in this area would result in quite extensive increases in public expenditure over years, and notwithstanding the regional approach adopted by the State it would be more advantageous to the State to put together plans for such expenditure for ten or 15 years.

Mr. Noel Waters: It is a point, and I do not dispute that, but the downside is that it would require significant capital expenditure on the part of the State. I take the Deputy's point about the numbers of people coming into Europe which impacts on Ireland, but there is no guarantee that they would be needed in ten, 15 or 20 years' time. Our colleagues in The Netherlands found themselves in that exact situation. They had acquired significant numbers of properties for the state and found five years ago that they had to offload approximately 15,000 spaces onto the market. That demonstrates the difficulties. We are committed as best we can to having an open tendering competition and we remain in close liaison with the OGP with a view to ensuring that.

Deputy Alan Farrell: In terms of a pattern of expenditure within direct provision in the State, I presume we are seeing a steady increase.

Mr. Noel Waters: I thank the Deputy for raising that point. The daily rate per person is of the order of €30. Two years ago, it was a little higher at €31 or touching €32. It varies according to the nature of the services provided in different centres. I am talking about an overall rate. It has come back a little. Conversely, in the State sector, where we have a full procurement exercise and we have gone to the market and have just completed the exercise, the rate has increased from €15 per person per day to €20 per person per day. The effect of going to an open tendering competition has been to increase the cost to the State. There are, however, other issues around ensuring that this is a completely transparent process.

Deputy Alan Farrell: There are two or three areas I would like to touch on including payroll, where overpayments unfortunately are pretty normal in Departments.

Mr. Noel Waters: Regrettably, yes.

Deputy Alan Farrell: Would Mr. Waters give us more information on the prospect of resolution of the 25 cases with capacity problems in the Magdalen fund?

Mr. Noel Waters: I might ask my colleague, Mr. Martin, to respond but before he does, we

did find ourselves in a situation where applications continued to come in, albeit at a very low level. We are considering several options, for example, that perhaps we would make the people in question wards of court so that we can make the payments because they are entitled to the money, we are anxious to pay, time is passing and we want to do whatever we can to make sure they get paid.

Deputy Alan Farrell: We are talking about cash payments here. Is there non-cash provision of services that individuals can avail of and have they been doing so?

Mr. Noel Waters: I will ask my colleague Mr. Martin to answer that.

Mr. Jimmy Martin: There are. Once a person is in the scheme, there is an upfront cash payment. There are ongoing payments in the form of a contributory pension. There is entitlement to health benefits as if the person had a medical card and certain other things. These people would be missing out on all those aspects. We hoped that the early implementation of the Assisted Decision-Making (Capacity) Act 2015 would make it easier but the latest word we have is that it probably will not start until 2018. I think we are down to 19 people. We are exploring with the homes they are in whether it would be suitable for them to be made wards of court. This would allow the payments to be made and would give them those health entitlements.

Deputy Alan Farrell: There is no-----

Mr. Jimmy Martin: There is no halfway house.

Deputy Alan Farrell: Okay. I do not need to ask that question. I know the answer. I appreciate that there is no intermediate position. Clearly, that is not satisfactory. I struggle to see how that is the Department's problem, given that the legislation was drafted by this House. I served on the committee that wrote it. At the same time, it is a very difficult position from a compassionate perspective. It is very troubling that we are talking about another year and a half, at least, before this matter is resolved. I do not know whether there is anything Mr. Martin can say to indicate any relief for these individuals.

Mr. Jimmy Martin: As I have said, we are actively exploring the various options. Up to now, we were waiting for the assisted decision-making legislation. Quite a few private individuals had their relatives made wards of court so that their cases could be processed in that way. Nearly all the 90 women are in forms of sheltered accommodation like nursing homes. We are going to approach the authorities in the nursing homes to see whether they might be willing to take on this role by making ward of court applications. I hope progress can be made in this way by the end of the year. When the assisted decision-making legislation kicks in, it will take over.

(Interruptions).

Deputy Alan Farrell: I can hear that mobile phone again. If people could switch off their phones, it might resolve the issue. I know iPads can interfere as well.

Mr. Noel Waters: I would like to pick up on what the Deputy said. We are completely seized of the humanitarian issue here.

(Interruptions).

Chairman: I am going to suspend the meeting for a minute. The staff who are recording the meeting will not be able to record it properly because of the mobile phone interference. We

do not want some of it to be missed.

Sitting suspended at 2.42 p.m. and resumed at 2.43 p.m.

Chairman: I ask Deputy Farrell to continue.

Deputy Alan Farrell: I thank the Chair. My final question to the Department relates to payroll overpayments, which is a common issue in my experience. There is clearly a discrepancy between the number of payments that have been made and the number of recovery plans, full repayments or both that have been made. Can the witnesses highlight to the committee the reason for that? Given the reduction in the number of personnel in the Department in the period in question, what is being done to minimise the overall number of incorrect payments that are being made? Could the witnesses outline briefly any particular rationale or reason for those overpayments in the first instance?

Mr. Noel Waters: I ask my colleague, Ms McPhillips, who is in charge of our corporate services, to come in on this issue.

Ms Oonagh McPhillips: There are a number of reasons that we attribute to these overpayments. The new sick leave scheme for the public service, which began in 2014, halved the amount of sick leave people can take. It was a considerable reduction. Every time somebody goes over that limit, every absence thereafter is without pay. That kicks in earlier. That is one of the elements of it. As payrolls across the Civil Service are generally processed in advance, changes cannot be made at short notice. That means we are automatically in arrears when these limits are exceeded.

Deputy Alan Farrell: I see.

Ms Oonagh McPhillips: The new shared service office - PeoplePoint - kicked in during 2014. Issues arose when this was bedding in at the same time. That gave rise to the increase in overpayments. There was a substantial reduction of 16% in overpayments during 2014. We are still working on it to get it down further. Various options are available to employees who have overpayment situations. We have to bear in mind that there are hardship cases. People have housing and mortgage issues, etc., as a result of the downturn in the economy. When the hardship option has to be applied, it is applied with sensitivity from the human resources side.

Deputy Alan Farrell: I would like to go through the figures that have been presented.

Ms Oonagh McPhillips: Yes.

Deputy Alan Farrell: Plans are in place in 105 of the 216 cases of overpayment

Ms Oonagh McPhillips: Yes.

Deputy Alan Farrell: No plans are in place in the other cases.

Ms Oonagh McPhillips: I will explain what one will find if one looks at those cases. Various options are available to people as they go through the process. After someone has made a case to PeoplePoint, the matter goes to the human resources side to check whether he or she has a serious illness, for example. Obviously, a different approach is taken if he or she has a terminal illness. Differing approaches are taken depending on the person's age and the amount of the overpayment. In the case of an employee who has 30 years of service ahead of him or her, a certain approach might be taken in the case of a small overpayment. The actual plan is

only deemed to be in place at the end of the process of putting a plan in place.

Deputy Alan Farrell: I remind Ms McPhillips that we are talking about 2015.

Ms Oonagh McPhillips: Absolutely.

Deputy Alan Farrell: This is an interpretation of 2015 with knowledge of the present day.

Ms Oonagh McPhillips: Yes.

Deputy Alan Farrell: It is still highlighting a significant number of cases that have no resolution in place. I appreciate what Ms McPhillips has just said, but I cannot imagine that statistically, there would be 100 or even five cases of terminal illness among a group of approximately 2,200 people.

Ms Oonagh McPhillips: Not at all.

Deputy Alan Farrell: I suppose the point I am making is that it might be helpful to the committee if Ms McPhillips were to provide a little more information.

Ms Oonagh McPhillips: Sure.

Deputy Alan Farrell: If I see in documentation provided by the Office of the Comptroller and Auditor General and the Department that there are 111 unresolved cases, it would be helpful if-----

Ms Oonagh McPhillips: We can break that down for the Deputy.

Deputy Alan Farrell: It would be helpful. We are not looking for personal information here.

Ms Oonagh McPhillips: I can give the Deputy an update. At the end of 2016, there were 78 employees who did not have a plan in place, but there was a process in train to put a plan in place for all of them.

Deputy Alan Farrell: Okay.

Mr. Noel Waters: We are happy to provide that information. I do not doubt that the members of the Committee of Public Accounts are meeting other Accounting Officers who are in the same situation.

Deputy Alan Farrell: Very similar.

Mr. Noel Waters: This is an issue for one of the sub-committees of the Civil Service Management Board, which comprises all Secretaries General. It is a matter of great frustration for us, as the heads of our organisations, that we are unable to get to the bottom of this to drive it down to the point where the State is not left in this situation. The work is ongoing. We are not giving up on it. It is proving particularly difficult to get to the bottom of it by reaching a point at which the numbers are what we would consider to be acceptable. I assure the Deputy that there is no lack of energy in our attempts to tackle the problem.

Deputy Alan Farrell: Okay. How many of the 216 cases were voluntarily brought to the attention of payroll? I refer to cases in which people volunteered the information they had been overpaid.

Ms Oonagh McPhillips: I cannot answer that question off the top of my head, but I think the number in question would be relatively small. It is generally a question of these cases being picked up by payroll.

Deputy Alan Farrell: I thank the witnesses.

Chairman: The next speaker is Deputy Cullinane. A number of people indicated during this morning's session that they wanted to be put down as speakers. They indicated in the following sequence: Deputy Cullinane, Deputy Kelly, Deputy Madigan, Deputy Catherine Murphy, Deputy Connolly and Deputy Cassells.

Deputy David Cullinane: I welcome Mr. Waters and his team. I have a number of questions. I would like to get clarity on the relationship between the Department of Justice and Equality and An Garda Síochána. Will Mr. Waters please talk me through the current relationship between the Department of Justice and Equality and An Garda Síochána from an accounting perspective?

Mr. Noel Waters: The Garda Commissioner is the Accounting Officer for An Garda Síochána since 2006.

Deputy David Cullinane: I understand that.

Mr. Noel Waters: I am the Accounting Officer for the Department of Justice and Equality. Everything follows on from that.

In a wider sense, if I go back a little bit, the Minister for Justice and Equality of the day is the person responsible person for delivering the resource allocation for the entire justice Vote. That includes the Garda Síochána, the Prison Service, the Courts Service, the Department itself and all the agencies of the Department. That is negotiated in the Estimates process. The Minister for Justice and Equality is responsible to Parliament. That is a key issue for the Department in supporting the Minister of the day in negotiating that budget for the Garda and all the other bodies.

The up-to-date position on oversight and accountability is that the Policing Authority was established at the beginning of last year, 1 January 2016.

The Policing Authority is an independent body and its role is to provide oversight of the provision of policing services in Ireland by the Garda Síochána. It is independent of Government and reports to the Minister on its role. When the legislation to establish a Policing Authority was being considered, the Government and the Department sought legal advice on how far it could go in giving the accountability function for the Garda Síochána to the Policing Authority. It was deemed at that time that policing was a core function of the State and in those circumstances the Minister continued to remain accountable in the sense of political accountability for the Garda Síochána to Parliament. In respect of financial accountability, the Accounting Officer is clearly delineated to the Commissioner.

Deputy David Cullinane: In order to be clear, I will outline my understanding of what Mr. Waters has said. Prior to 2005, the Accounting Officer would have been the Secretary General of the then Department of Justice, Equality and Law Reform. From 2005 onwards, the Accounting Officer would have been the Garda Commissioner.

Mr. Noel Waters: That was from 2006.

Deputy David Cullinane: That is from 2006 onwards. Would the application, management and oversight of the Garda Vote still remain in the Department?

Mr. Noel Waters: Yes.

Deputy David Cullinane: There was a discussion as to how much authority should be ceded to the policing authority but essentially-----

Mr. Noel Waters: Sorry, Deputy, the application of the Vote-----

Deputy David Cullinane: -----the application, management and oversight of the Garda Vote

Mr. Noel Waters: No, this passed entirely on to the Garda Síochána when the Commissioner became the Accounting Officer.

Deputy David Cullinane: Does the Department have any oversight in respect of how money is spent by An Garda Síochána?

Mr. Noel Waters: No.

Deputy David Cullinane: None whatsoever? From 2005 onwards?

Mr. Noel Waters: From 2006 onwards.

Deputy David Cullinane: Obviously Mr. Waters is aware of the interim audit report that was published by Mr. Niall Kelly.

Mr. Noel Waters: Yes.

Deputy David Cullinane: Is Mr. Waters aware of issues that arose at the last sitting of the Committee of Public Accounts when the Garda Commissioner and her team were present? Has he been briefed on that?

Mr. Noel Waters: I am aware of it. I did not see the entire proceedings.

Deputy David Cullinane: Was Mr O'Callaghan present on the day?

Mr. Noel Waters: Yes. Mr. O'Callaghan was there on that day.

Deputy David Cullinane: Did Mr. O'Callaghan brief Mr. Waters?

Mr. John O'Callaghan: We had discussions on foot of it.

Deputy David Cullinane: When Mr. O'Callaghan states he had discussions, did he have a sit down meeting?

Mr. Noel Waters: Yes, we did.

Deputy David Cullinane: So Mr. Waters was briefed.

Mr. Noel Waters: I want to be clear, Deputy. Not every chapter and verse of everything that happened in the course of the meeting was spoken about.

Deputy David Cullinane: Obviously not, but Mr. Water was briefed by one of his officials who was present at the meeting. Mr. Waters is obviously aware of the general discussion that

took place. Had Mr. Waters read the interim audit report?

Mr. Noel Waters: Yes.

Deputy David Cullinane: In that report, a reference was made to an incomplete report in 2006 from internal audit. Is Mr. Waters aware of that?

Mr. Noel Waters: From the interim audit report, yes.

Deputy David Cullinane: Obviously Mr. Waters was not there at the time, but is he aware of when the Department became aware of that report?

Mr. Noel Waters: No. We have checked our records in the Department to establish if we have that report. From what we have been able to establish, we do not have that report.

Deputy David Cullinane: Is Mr. Waters aware of when the Department first became aware of alleged financial irregularities in the Garda Training College in Templemore?

Mr. Noel Waters: When the audit report, which Deputy Cullinane referred to, was completed and sent to the Department in November 2016. That is when we became aware of the accounts.

Deputy David Cullinane: Is Mr. Waters telling me that was the first time the Department became aware of multiple bank accounts? Was the Department ever aware before the 2016 report was furnished that there were multiple bank accounts operating in the training college?

Mr. Noel Waters: I will ask my colleague, Mr. O'Callaghan, to come in on that because he is familiar with the detail of this. There was a process prior to 2016 involving the Garda and information would have emerged from that. It related to the issues around the Templemore Golf Club.

Deputy David Cullinane: That is what I want to get to because Mr. Waters told me a second ago that the first time the Department was made aware of the alleged irregularities which are in the internal audit was when he was presented with a copy in 2016. Obviously these alleged irregularities centre around a number of bank accounts. Mr. O'Callaghan, when was the Department made aware of the 40 plus bank accounts that were operating in the Garda Training College?

Mr. John O'Callaghan: In the context of issues that had arisen around the Templemore Golf Club, the Department became aware in 2015 that the golf club was occupying land that was under the control of the Sportsfield company.

Deputy David Cullinane: May I stop Mr. O'Callaghan? Does he understand that when I ask a question, I expect the question to be answered. I do not want a history lesson. I want a straight answer to a question that was asked. The question Mr. O'Callaghan was asked was when was the Department made aware of at least 40 bank accounts operating. What day, what month and what year was the Department made aware of that?

Mr. John O'Callaghan: In and around October 2015 we became aware of issues in respect of the financial arrangements-----

Deputy David Cullinane: About 40 bank accounts plus?

Mr. John O'Callaghan: -----about a number of bank accounts and investment accounts and

so on.

Deputy David Cullinane: When was the Department made aware of the leasing arrangement in respect of the Dromod farm?

Mr. John O'Callaghan: Issues arose in the earlier part of 2016 in respect of the golf club because there had been a move by the Sportsfield company to remove the golf club from the lands in Templemore. Representations were made to the Minister in relation to that and we sought a report from the Commissioner. Part of that report informed us that the Sportsfield company had licensed the lands to Templemore Golf Club. That was in July 2016.

Deputy David Cullinane: When was the Department made aware that money was being generated from the lease of these lands and was being put into a bank account that was supervised by the Garda Training College?

Mr. John O'Callaghan: In September 2015, the head of legal affairs in the Garda Síochána sought legal advice from the Attorney General in respect of the Sportsfield-----

Deputy David Cullinane: Was it at that point?

Mr. John O'Callaghan: Yes. He copied us, as a Department, in his request to the Attorney General for the legal advice in relation to the Sportsfield company and the golf club. Included in his request for advice were a number of documents which pointed to the financial arrangements on the leasing of the land. At that time, they were in arrears for about five-----

Deputy David Cullinane: When was the Department made aware of the presence of what was called a laundry account? Is Mr. O'Callaghan aware of this laundry account that is cited in the internal audit report?

Mr. John O'Callaghan: I am, yes. What happened is that the Commissioner decided to set up a steering committee to look at all the issues that had arisen in relation to the Sportsfield company, including issues around investment accounts and so on and invited the Department onto the committee. The Department then became aware of these issues through that.

Deputy David Cullinane: I am trying to establish when that was.

Mr. John O'Callaghan: The Department attended the first meeting of that committee in December 2015. Once the head of legal-----

Deputy David Cullinane: To clarify, it was in September 2015 that the Department was first made aware of the existence of the laundry account and, we will say, almost all the issues that were cited in the interim audit report. Would that be fair?

Mr. John O'Callaghan: Yes. As I said, we became aware of it as the head of the legal section sought advice from the Attorney General and included documentation to clarify for the Attorney General the financial arrangement relating to the leasing or licensing of the land in Templemore. In the following period, we were aware there were issues around the financial arrangements and we started to discuss these with the Garda Síochána.

Deputy David Cullinane: The witnesses would have been made aware there was essentially double charging of laundry and 38% of the money in the laundry account was used for purposes other than laundry. That is what is in the internal audit report. Was it in September 2015 that they were made aware of that as well?

Mr. John O’Callaghan: I do not recall that we were explicitly made aware of that at that point.

Deputy David Cullinane: When were the witnesses made aware of the transfer of €100,000 to the Garda boat club?

Mr. John O’Callaghan: The first time I became aware of that was when it appeared in the internal audit report. It was the draft internal audit report.

Deputy David Cullinane: Does the Comptroller and Auditor General know when the €100,000 was transferred? What year was it transferred?

Mr. Seamus McCarthy: My recollection from the internal audit report is the transfers occurred over a period of years between 2000 and 2003.

Deputy David Cullinane: One of the predecessors to Mr. Waters would have been the Accounting Officer. Does that concern him?

Mr. Noel Waters: Of course, if something has emerged that is wrong, not in accordance with proper accounting procedures and unlawful, I would be concerned.

Deputy David Cullinane: Something has occurred. The witness says he read the interim audit report. He will be aware a reference was made to the transfer of this €100,000 to the boat club. We have not established exactly where that money came from and it is possible it could have come from voted expenditure. It was in an account with a mix of different revenue streams so this happened on the watch of the Department when its Secretary General would have been the chief Accounting Officer. When the Department was made aware that this happened, what action did the Department take?

Mr. Noel Waters: Is the Deputy referring to the 2003 period?

Deputy David Cullinane: No. The Secretary General would have been the Accounting Officer in that period. We know the payments were made, as the Comptroller and Auditor General has said, between 2000 and 2003. It may have been inappropriate and it is alleged it was inappropriate. The witness was made aware of this in 2015. Is that correct?

Mr. Noel Waters: Yes.

Deputy David Cullinane: What action did the Department take when it was made aware of that in 2015?

Mr. Noel Waters: We were made aware of this in the audit report. As I understand it, this is an interim audit report.

Deputy David Cullinane: Yes.

Mr. Noel Waters: Further auditing is required.

Deputy David Cullinane: The witness is waiting for the complete audit report before any action is taken, if any action is to be taken at all. Is that what the witness is saying?

Mr. Noel Waters: Do others have anything further to add?

Deputy David Cullinane: Mr. Waters is the Secretary General of the Department.

Mr. Noel Waters: Absolutely.

Deputy David Cullinane: One of his predecessors was the Accounting Officer at that time. I am not asking Mr. Waters to account for that person. There is a strong possibility it was wrong and there is certainly an allegation it was wrong. These accounts would have been signed off on from 2000 to 2003 by the Department. References were made by a Mr. John Barrett, who is the executive director of human resources, that many of the accounts that were signed off were potentially compromised. If I were sitting in the witness's position, I would be looking at the possibility of compromised accounts that were signed off on, with money transferred from accounts managed by An Garda Síochána at a time when one of Mr. Waters's predecessors was an Accounting Officer. There is the potential for irregularities so I would be looking at taking some sort of action; I am wondering what sort of action did Mr. Waters take.

Mr. Noel Waters: When the interim audit report was received, it was made clear a range of measures were accompanying it to address the issues in it. That programme, as I understand it, is under way under the leadership of the chief administrative officer of An Garda Síochána. It includes external accountants and advisers to get to the bottom of the issue and put in place new measures and procedures to ensure any issues that have arisen will not reoccur. That process is under way.

Deputy David Cullinane: I will read, if I may, from the dossier we received from Mr. John Barrett. It is from a letter sent to Mr. Niall Kelly, who is head of internal audit, dated 12 October 2016. It states:

I am particularly concerned about how this matter was deliberately and systematically kept outside the purview of the statutory audit committee? How it came to pass that reports specifically prepared on the financial arrangements in the Garda college were not shared with either you or the audit committee? The open and essential question is how the annual returns made to the Department of Justice and Equality and the Department of Finance, signed off on by the Accounting Officer over all the years since the 2005 Act made no reference to millions of euro held in these unauthorised accounts

One could argue it pertained to the time prior to the 2005 Act as well. Does that concern Mr. Waters?

Mr. Noel Waters: Of course. If, following the appropriate inquiry, any of this emerges as the true position - I am not doubting anybody's *bona fides* on this - I would of course be concerned. That applies if any issues arose giving rise to a completely inappropriate management of public finances and taxpayers' money. Of course I would be concerned. As I understand it, we must establish what has happened here and that process is still under way.

Deputy David Cullinane: That is the question I put to the witness. Of course we need to establish that. We will do our work and internal audit will do its work. With respect, it has its job to do in An Garda Síochána. I am asking what the Department will do, as we need to get to the bottom of this. Is Mr. Waters not concerned there was an incomplete internal audit report from 2016 which could have done and probably attempted a look-back exercise on spending that would have covered a period when the Secretary General of the Department was the Accounting Officer?

Mr. John O'Callaghan: The report referred to by the Deputy was in 2006 I think. It was the incomplete one.

Deputy David Cullinane: Are the witnesses aware of the time period being examined by the incomplete report?

Mr. John O'Callaghan: It is safe to presume it was a period prior to-----

Deputy David Cullinane: If I was in the witness's position I would not presume anything and I would want to be clear. Have they sought clarity from the internal audit of An Garda Síochána about the period being examined in the incomplete audit from 2006?

Mr. John O'Callaghan: No, as we have seen in the report that there was an incomplete audit report done at that stage and there was a report in 2008 and so on.

Deputy David Cullinane: With respect, I know about the 2008 report, as well as the 2010 and 2015 reports. I am specifically asking about the 2006 report. We need to establish that if all the agencies were doing their job, we might have been able to get to the bottom of all this much more quickly. It took until 2016 and it was 2015 before the Department became aware of all this. There was a flag that would potentially have been raised in 2006 but there was an incomplete report. I have already asked the Comptroller and Auditor General at a previous sitting when he believes his office should have been alerted to issues. He said it should have happened in 2006, if my memory is correct.

Mr. Seamus McCarthy: That is correct.

Deputy David Cullinane: If the Comptroller and Auditor General says that, would the Department also indicate it should have been informed in 2006?

Mr. Noel Waters: If irregularities arose, we should of course have been informed at that time, in 2006.

Deputy David Cullinane: Was it informed?

Mr. Noel Waters: We have no information that would suggest that at all.

Deputy David Cullinane: When it became aware of the 2006 report, it would have been more appropriate for the Department to establish the period being examined by the 2006 report. Why was that not established? Why has the Department not asked internal audit for a breakdown on that? What was the Department doing and what was the look-back exercise seeking to achieve? What years was it covering? The witnesses read the report and know many of the issues go back an awful long time. They involve multiple bank accounts, leasing of land, money shifting from different accounts and, potentially, money that is spent inappropriately. Some of this goes to a period when Mr. Waters's predecessor was the Accounting Officer. The 2006 report was one of the first flags and I am asking why the Department did not follow up with internal audit on the period being examined by the report.

Mr. Noel Waters: It is something we can follow up with internal audit.

Deputy David Cullinane: Why has it not been done?

Mr. Noel Waters: We have been focused on trying to solve the problem as it currently exists, putting in place measures to ensure this does not happen again. That has been our immediate focus.

Deputy David Cullinane: What work has the Department done to make sure of that? I ask

Mr. Waters to illuminate us on what work the Department has done.

Mr. Noel Waters: On receipt of the interim report, we immediately went to the Tánaiste and Minister for Justice and Equality. In the period that followed, a group was set up to look at the implementation of the recommendations and we were involved in that. We reported in due course on how that was going. The final report came through in March of this year. We know that there is a whole range of issues being addressed in that. It was referred to the Policing Authority for-----

Deputy David Cullinane: Okay. I have one final question on this issue and then I want to move on-----

Chairman: The Deputy's time is up. He will get a second opportunity later. There are several speakers indicating-----

Deputy David Cullinane: I will come back in on the second round to ask some questions on direct provision but I have one final question for Mr. Waters on this issue. It is very important for us to get a sense of where people who have responsible positions in the public service sit on all these issues. While the Department is no longer the Accounting Officer, obviously there is still a relationship between it and An Garda Síochána. Given the gravity of the issues raised in the report, the strong inferences from some of the civilians in management positions that information was concealed, that reports were not given to audit committees or to the Comptroller and Auditor General and that information was not acted on or was withheld from interested parties, including the Department, I ask Mr. Waters to give us his views on all that.

Mr. Noel Waters: I would welcome the fact that somebody has come forward and raised all of these issues. I would welcome that. That is a major development as far as I am concerned. Whatever needs to be done on foot of that will be done in respect of the Department. There is one point that I need to make here. The Department is not a back seat driver of An Garda Síochána. The Department did not run Templemore training centre. It is important to note that we were not involved in the nitty-gritty details of what was going on in Templemore at that stage, no more than we were in terms of any other part of the Garda estate or apparatus. We were not involved in that.

Deputy David Cullinane: I am not going to accept that as Mr. Waters's final point because I did not suggest that the Department was a back seat driver at all-----

Mr. Noel Waters: I just wanted to make that clear, in case there was any confusion-----

Deputy David Cullinane: I am very clear about this. I established, at the beginning of my questioning, the relationship between the Department and An Garda Síochána. We established that prior to 2005 the chief Accounting Officer for the spending of money by An Garda Síochána, including by the Garda training college, was Mr. Waters's predecessor. That is the issue and my questions were framed in that context. This is not about the Department micro-managing An Garda Síochána. It is about processes and financial controls which seem to have failed. They seemed to have failed not only on the watch of the current Garda Commissioner and her predecessors, but also on the watch of the Department.

Chairman: I am sorry to interrupt but we must move on to Deputy Kelly now. The sequence for speakers is as follows: Deputies Kelly, Madigan, Catherine Murphy, Connolly, Casells and McDonald. There will be a second opportunity to pose questions if members stick to the time allocated.

Deputy David Cullinane: I ask the Chair to put my name down for a second round of questions.

Deputy Alan Kelly: I thank the witnesses for coming in today. To carry on with the car analogy, I appreciate that the Department is not a back seat driver but it is our job to make sure that the Department makes sure that the Garda Commissioner and senior Garda management are passing their NCT every year but from what we are reading, they are not.

I am going to ask a series of questions and would appreciate if the witnesses would indicate in their answers whether they are speaking on behalf of the Department or in a personal capacity, that is, on the back of departmental or personal knowledge because there is a difference. I understand that the witnesses have not been in the Department forever and they cannot know everything. That is impossible because they have only been in their current roles for a limited period. However, I ask them to distinguish between departmental knowledge and their own knowledge and to specify when they need to find out more information.

We had a very long engagement last week and a lot of questions were raised. Regarding the financial reports from 2006, 2008 and 2010, are the witnesses saying that the Department had no knowledge whatsoever of their existence? What level of knowledge did the Department have of the existence of all three reports?

Mr. Noel Waters: In respect of 2006, my information is that we had no knowledge of that report. In respect of 2008, in the course of An Garda Síochána preparing for the meeting of the committee, it found a document on file that indicated that the then Commissioner, Mr. Fachtna Murphy, spoke briefly to the then Secretary General some time in June 2008 about issues in the Garda training centre. I know that my colleague Mr. John O'Callaghan referenced this last week.

Deputy Alan Kelly: In fairness, he referenced the year but he did not know the month. I would not have expected him to know the month-----

Mr. Noel Waters: I just want to add, for complete transparency, that there were further indications in another note on the same document that a meeting was arranged in the Department in June 2008 involving the then Secretary General, Mr. Sean Aylward, the chief administrative officer of An Garda Síochána, Mr. John Leamy and the then Garda Commissioner, Mr. Fachtna Murphy and myself. I have to say, I have absolutely no recollection of that meeting. We have no documents on file in the Department on it and we have been unable to unearth any documents relating to it.

Deputy Alan Kelly: There was a meeting in June 2008 attended by those mentioned by Mr. Waters and by Mr. Waters himself-----

Mr. Noel Waters: Yes.

Deputy Alan Kelly: -----but Mr. Waters has no recollection of it at all.

Mr. Noel Waters: Absolutely zero recollection.

Deputy Alan Kelly: According to the records, the meeting was convened to discuss issues relating to financial management in Templemore. Is that correct?

Mr. Noel Waters: Issues in relation to Templemore, yes, but to be clear, I do not think it mentioned financial management but rather "issues" in Templemore. However, I cannot be

certain about that.

Deputy Alan Kelly: It was not an alarming meeting, obviously, if Mr. Waters cannot remember anything from it.

Mr. Noel Waters: I will put it this way - if the information which subsequently emerged in the audit report in recent months was raised at that meeting, I have no doubt in my own mind that I would have remembered it.

Deputy Alan Kelly: Nobody in the Department, on a day to day or month to month basis, was managing the relationship with An Garda Síochána since 2006, in terms of its financial management. No one in the Department had a co-ordination, oversight, communication or other role in terms of liaising or working with An Garda Síochána on financial management, financial requirements, the total of the Garda Vote or anything else. Is that correct?

Mr. Noel Waters: No, that is not true.

Deputy Alan Kelly: Was there not a Mr. Harris who was in charge of this whole area?

Mr. Noel Waters: Yes. Just to pick up on that-----

Deputy Alan Kelly: Was he not aware of any of this? Did anyone in the Department ever ask what was happening to the revenues that were being raised in Templemore? Did anyone ever ask these questions?

Mr. Noel Waters: Mr. Harris was what was known as the Department's professional accountant at that time. He retired in 2002. He would have been working-----

Deputy Alan Kelly: Who followed on? I am trying to establish whether there is somebody within the corporate structure of the Department who works with An Garda Síochána on managing its Vote. What if the Garda Commissioner decides, for instance, that An Garda Síochána needs a new fleet of cars? Surely there is somebody from the Department who meets Garda management regularly, asks what is needed, whether the Department can help financially and so forth.

Mr. Noel Waters: Absolutely, yes, and there are two aspects to that-----

Deputy Alan Kelly: So how in the name of God did that person not know what was going on in Templemore?

Mr. Noel Waters: I would make the assumption that he or she was not told what was going on-----

Deputy Alan Kelly: Did the person not ask any questions?

Mr. Noel Waters: What reason would he or she have had to ask questions about Templemore?

Deputy Alan Kelly: There were revenues being generated down there and land was being bought. In terms of the Garda Vote over a number of years, did no one notice that money was coming in - I think it was €37,000 per annum - in rent that was not going to the OPW but was included in the Garda Vote?

Mr. Noel Waters: The Deputy is talking about a certain level of detail there in terms of the

management of the Garda Vote and I do not think anybody in the Department was involved at that detailed level.

Deputy Alan Kelly: We have established that there is always somebody whose job it is to liaise with the Garda to manage its Vote and financial affairs. We have established that and I presume there is somebody doing it at the moment.

Mr. Noel Waters: It is the responsibility of the policing division of the Department.

Deputy Alan Kelly: It comes under Mr. O'Callaghan now. Is that right?

Mr. Noel Waters: Yes, that is correct.

Deputy Alan Kelly: How long has Mr. O'Callaghan been in the role?

Mr. John O'Callaghan: Since September 2015.

Deputy Alan Kelly: There has been somebody there all the way through. There has always been somebody in the Department to take on that role. I presume the person has other roles as well, to be fair. There were questions asked in 2008 and there was a meeting. From 2006 on, did anyone in the Department of Justice and Equality ever say anything or question anything about financial management in Templemore even though we know, for example, there were lands being purchased and there was no rent being paid? Did anyone-----

Mr. Noel Waters: We know that now.

Deputy Alan Kelly: Did the Department not know it in 2014?

Mr. Noel Waters: I do not believe we did.

Deputy Alan Kelly: Did the Department not know in 2014 that this had been going on? Was there not a repayment in 2014? Did the process of getting back some of the money, or discussions about it, commence in 2014?

Mr. Noel Waters: It may well have but I have no knowledge the Department knew anything about it.

Deputy Alan Kelly: The lack of knowledge is incredible.

Mr. Noel Waters: This would not involve the Department. The Commissioner was the Accounting Officer and the Department-----

Deputy Alan Kelly: We have established that it was somebody's job to manage the process. We see from Mr. Barrett's letter to Mr. Kelly he talks about the returns that are done every year. It was somebody's role in the Department to manage this to make sure they have the funds they need and everything is okay and working fine. This is not personal but it lacks credibility. It lacks credibility to say there was nobody in the Department who ever had any reason to question what was going on. It lacks credibility to the general public. It lacks credibility to us.

Mr. Noel Waters: It may well be the case but we had no knowledge of what was going on. That is my point.

Deputy Alan Kelly: To confirm, was it in October 2015 the Department first became aware? How did the Department become aware?

Mr. John O’Callaghan: In September 2015, the head of legal wrote to the Attorney General seeking legal advice about the lands that were occupied by the golf club. Attached-----

Chairman: Head of which legal?

Mr. John O’Callaghan: The head of Garda legal.

Chairman: Not the Department. Garda legal.

Mr. John O’Callaghan: The head of Garda legal sought legal advice on the lands the golf club was occupying in Templemore. Attached to that email were a number of documents relating to how the Sportsfield company had been financed and so forth.

Deputy Alan Kelly: What did the Department do then? Presumably the Department went berserk and asked how in the name of God this went on. Presumably Mr. O’Callaghan has documentation to show he asked a whole load of questions.

Mr. John O’Callaghan: I spoke with the CAO of the Garda on 1 October about the issues. We also wrote to the CAO on 6 October saying that serious issues were clearly arising in relation to the Sportsfield company, the golf club and the financial arrangements around it. We felt it needed to be brought to the attention of the audit committee and we also said there should be an early meeting between the Department and Garda management. We met the Garda on 5 November. In the letter they sent us at the start of October, they said they had set up this committee and they were going to invite us to nominate someone to sit on it and that was to work through and address the issues that were then known about the Garda College and the golf club. We then nominated someone to that committee.

Deputy Alan Kelly: What date was that?

Mr. John O’Callaghan: We nominated someone on 10 November.

Deputy Alan Kelly: I have read the entire transcript of the proceedings of last week’s meeting a couple of times. In evidence, the Commissioner said she acted promptly. She repeatedly said she acted promptly once she was aware in July and she immediately set up a group and the Department was on the group. She said “I also took the decision that we needed to have representatives from all the relevant sections in that group, along with the Department of Justice and Equality representatives.” Mr. O’Callaghan is now telling me the Department was not invited onto the group immediately but months later.

Mr. John O’Callaghan: I am telling the Deputy-----

Deputy Alan Kelly: I believe Mr. O’Callaghan. That is not the issue.

Mr. John O’Callaghan: The CAO invited us to nominate someone for the committee on 6 October.

Deputy Alan Kelly: When was the Department made aware of the existence of the committee?

Mr. John O’Callaghan: At that time.

Deputy Alan Kelly: On 6 October.

Mr. John O’Callaghan: Yes.

Mr. Noel Waters: To clarify, my sense is we were made aware the committee was actually functioning at that stage.

Deputy Alan Kelly: Hold on a second. We need a little bit more than Mr. Waters's sense of it. This is serious stuff here. The committee was set up immediately, according to the Garda Commissioner, which presumably was July 27 or July 28. Mr. Waters's sense of it is the committee was established and then the Department was asked to go on it by the email in October. Is that correct?

Mr. John O'Callaghan: Yes.

Deputy Alan Kelly: It would go with Mr. O'Callaghan's evidence from last week. It was consistent. Last week, Mr. O'Callaghan said it was October 2015.

Mr. John O'Callaghan: Yes. In the letter inviting us, the CAO refers to him already chairing a committee.

Mr. Noel Waters: Currently chairing the committee. That is my point.

Mr. John O'Callaghan: Currently chairing the committee.

Mr. Noel Waters: To clarify, when I said my sense of it, that is what I was referring to. That committee was already in existence.

Deputy Alan Kelly: So the Garda Commissioner set up this committee promptly, as she said last week. She said she was anxious for the Department to be on it. The committee was established. As an afterthought, months later in October, the Department was asked to go on it. The Department was not on it at the beginning, was it?

Mr. Noel Waters: No, but to characterise it as an afterthought-----

Deputy Alan Kelly: Hold on a second. A committee is set up to examine the financial management of Templemore by An Garda Síochána and the Department is not on it. This is fact according to what the witness is saying. The Department is not on it when it is set up.

Mr. Noel Waters: That is correct.

Deputy Alan Kelly: The Department is invited on it. What date is the email?

Mr. Noel Waters: Early October 2015.

Deputy Alan Kelly: I would not say the Department was foremost in their minds. Perhaps the Department was not an afterthought but it was certainly not foremost in their minds because they did not bother to ask the Department to sit on it in the first instance. We have established that now. Is that not accurate?

Mr. Noel Waters: Yes.

Deputy Alan Kelly: Mr. O'Callaghan gave very good evidence the Department was notified about this in October. I have said before that for me and the public it is incredible the Department was not aware of the issues going back further. The Commissioner, to be fair to her, on numerous occasions stated that she believes the Department was aware. She said, "To clarify, it is clear that the Department had knowledge going back to 1988, though I am not sure of the exact date." To be fair to her, I do not think she could be sure. She continued, "There

were indications, prior to the Commissioner becoming Accounting Officer, that the Department had an involvement in the structure put in place for a funding model for the Garda College.” She also makes reference to 2008 and that there was a meeting with the Secretary General. For me, given that and what we have established through the other questions, it astounds me there was not knowledge in the Department about these issues. It also astounds me there was no knowledge of this. It is, frankly, incredible there was no knowledge. When the Secretary General became aware of these issues in 2015, what did he do? I presume he acted with great haste.

Mr. Noel Waters: In 2015, the knowledge came to us in respect of issues that had emerged in Templemore. Mr. O’Callaghan, who is head of the policing division-----

Deputy Alan Kelly: I will cut to the chase. It is something I do not understand. The internal auditor was not told until March. The Department knew in October. Did one of the witnesses not ask why the internal auditor had not been notified and was not involved in it?

Mr. John O’Callaghan: We engaged with the Commissioner and her CAO. We made it clear straight away that the audit committee needed to be informed. In the letter that the CAO wrote to us he said that he had advised the audit committee at the last meeting and he had asked them to put it on their audit plan for 2016, so as far we were concerned the audit committee was seized of the issue and it had been decided that there would be an audit conducted by internal audit in 2016. It was on their work plan.

Deputy Alan Kelly: Did Mr. O’Callaghan insist that internal audit would be brought in and they did not do it?

Mr. John O’Callaghan: No, I am not saying that. I did not insist. I said that-----

Deputy Alan Kelly: Why did Mr. O’Callaghan not insist?

Mr. John O’Callaghan: Because they told us they had briefed the audit committee in September about the issues and that they had asked the audit committee to put it on their audit programme for 2016.

Deputy Alan Kelly: Does Mr. O’Callaghan think it was appropriate that the internal auditor was not sitting on the committee that the Department started in October, that was established in July?

Mr. John O’Callaghan: This is just my opinion, I think that there are issues of independence. That committee’s main purpose was to try to resolve the legal issues that had arisen in relation to the Sportsfield Company and the ownership or leasehold of the land that the golf club was on, and also to address and resolve a number of other issues that had come to the fore in relation to accounts, including investment accounts. It was a group that was addressing issues. For the sake of his independence, it was not a place for the internal auditor to be. The internal auditor’s job was to independently-----

Deputy Alan Kelly: So Mr. O’Callaghan does not believe that the internal auditor should have been on the committee even though he felt he should have been on it.

Mr. Noel Waters: Whether we believe it or not it was not our call at any rate.

Deputy Alan Kelly: I am not saying it was the Department’s call. Mr. Waters should hold on a second. I did not say it was the Department’s call. My question was very specific as to whether any concerns were voiced that the internal auditor was not on the committee or that he

had not been told or information had not been sent to the internal auditor, and that these issues had not been brought to his attention. Did the Department voice any of those concerns? It is a simple question.

Mr. Noel Waters: I do not think we had knowledge.

Mr. John O'Callaghan: Our clear understanding from what we have been told is that the audit committee had been informed, had been asked to put it on its audit programme for 2016. It was implicit in that that the internal auditor would know, given that he would be the person doing the audit in 2016.

Deputy Alan Kelly: How often did the steering group meetings take place?

Mr. John O'Callaghan: The first one that the Department's representative attended was in December 2016.

Deputy Alan Kelly: Was it every month or two months?

Mr. John O'Callaghan: I am sorry, I meant 2015. The next one was held in March 2016.

Deputy Alan Kelly: The internal auditors were not told until sometime in late March.

Mr. John O'Callaghan: It is my understanding that the internal auditor was asked to do the audit that month.

Deputy Alan Kelly: Is that not just insane? Although it is a different Vote and a different Accounting Officer, ultimately for the Vote and finances of the Garda college the buck stops with the Accounting Officer of the Garda Síochána but the layer up in terms of the parent and child rule is that the Department is responsible. Was that not incredible?

Mr. John O'Callaghan: As I say, from when we were informed in October 2016 it was our clear understanding that the audit committee had been told and the audit committee had been asked to put it on the audit process.

Mr. Noel Waters: We cannot ignore the legal position here in that the Commissioner, legally, is responsible for the Garda Vote, not the Department, so we could not superimpose our-----

Deputy Alan Kelly: Does Mr. Waters believe the Commissioner should have notified the Department of the issues in relation to Templemore before she did?

Mr. Noel Waters: That was a matter of judgment for the Commissioner.

Deputy Alan Kelly: No, I asked Mr. Waters a specific question. It is a "Yes" or "No" answer.

Mr. Noel Waters: I am reluctant to put myself in the position-----

Deputy Alan Kelly: If Mr. Waters is refusing to answer the question, that is fine, but does he believe, as the Secretary General of the Department of Justice and Equality, that the Garda Commissioner should have notified him, the Department or the Minister, whichever way he wants to take it - those entities collectively - before she did?

Mr. Noel Waters: Again, I am not putting-----

Deputy Alan Kelly: Could Mr. Waters please answer the question?

Mr. Noel Waters: I am not prepared to put myself in a situation where I am trying to recreate what-----

Deputy Alan Kelly: I am not asking Mr. Waters to recreate. It is a very simple question. Mr. Waters either believes that she should have notified him before she did or he does not.

Mr. Noel Waters: The Deputy is putting me in a situation where-----

Deputy Alan Kelly: I am not. I am entitled to ask questions and as Secretary General of the Department I expect Mr. Waters to answer them to the best of his ability. I will repeat the question one last time. Mr. Waters should consider how he answers it. Does he believe the Garda Commissioner should have notified him before she did? Does he accept that the time gap, which is considerable, is acceptable?

Mr. Noel Waters: I will put it to Deputy Kelly this way.

Deputy Alan Kelly: I will just have it minuted.

Mr. Noel Waters: If the Commissioner was of the view that some criminal activity had taken place, that some theft or fraud had occurred, I would expect that she would have told me about that.

Chairman: We are moving on.

Deputy Alan Kelly: I am just finishing up. I raised those issues in the Dáil on 12 April. In the contributions last week no witness from the Garda or the Department was aware of that contribution. That is incredible.

Mr. Noel Waters: I am not sure that is the case.

Deputy Alan Kelly: I asked the question.

Mr. Noel Waters: I think Mr. O'Callaghan indicated otherwise.

Deputy Alan Kelly: No. I asked the question. I read the transcript.

Mr. John O'Callaghan: Yes, and while this does not appear in the transcript, from what I recall I was sitting there and when Deputy Kelly asked the question I indicated that I was aware of it.

Deputy Alan Kelly: I will take Mr. O'Callaghan's word for that. To be fair, I did not see him. This is my last question and it relates to that issue. On 12 April I raised very specific questions in the Chamber, many of which were raised again last week. Since 12 April, what has Mr. Waters done about the issues that have been raised? What actions has he taken? I presume, straight after 12 April or even straight after last week the Department went into action mode and made big decisions and went to find out what the hell was going on. Could Mr. Waters list what has been done?

Mr. Noel Waters: We have to go back to the point of who has responsibility for what here. As Deputy Kelly knows, the Policing Authority was given responsibility for ensuring that the actions that were identified by the Commissioner would be followed through. That happened immediately on receipt of the audit report. We were concerned to ensure that happened. We are following up on that and we are maintaining our interest in that, and we will that continue over a period.

Deputy Alan Kelly: For the sake of clarity - I am not trying to put words in Mr. Waters's mouth - no other actions were taken. Mr. Waters notified the Policing Authority, which he had to do, but have no other actions whatsoever been taken? Now is Mr. Waters chance to list them if there are others.

Mr. Noel Waters: Does Mr. O'Callaghan want to add anything to that?

Mr. John O'Callaghan: No, because the audit report was completed.

Deputy Alan Kelly: No, I am talking about since last week or since 12 April when those issues were raised. The witnesses can pick whichever date they want, but what have they done from when they became fully aware of the issues?

Mr. John O'Callaghan: We were aware of the issues all along from the point when the audit report was published, and the audit report contains a number of recommendations which are to be implemented. The Tánaiste has referred those, under the Act, to the Policing Authority to oversee the implementation of the recommendations and to report to her on a quarterly basis on that. So that is where it sits, and outside of that there is the examination of this committee in relation to the audit report.

Deputy Alan Kelly: Does the Secretary General want to say something?

Mr. Noel Waters: No.

Deputy Alan Kelly: There is one last thing. As part of the group we have requested a lot of documentation. We have received some of it already and we will receive more in the next few days. Through this examination, if there is any documentation in the Department that the witnesses consider we need to be made aware of, will they please do so before next week's meeting? I mean anything at all.

Mr. Noel Waters: We will do it as quickly as possible.

Chairman: For the sake of clarity, the documentation is coming on foot of a formal request from the Chair. It was not a request from an individual member.

Deputy Alan Kelly: I thank the witnesses.

Deputy Josepha Madigan: I thank Mr. Waters and other officials from his Department for coming here today. He is subject to quick-fire questioning. The main focus of my questions today is on direct provision, which is the main item on the committee's agenda today. Deputy Farrell touched on some issues earlier.

I appreciate where Mr. Waters is coming from when he said the Department is not a back-seat driver. From the perspective of the Committee of Public Accounts and the public in general I will use the analogy that they do not want to see the Department as the driver of an uninsured vehicle. When one thinks of it in those terms it is quite a strong metaphor and that is the reason the Committee of Public Accounts is taking this line of questioning today, in particular bearing in mind last week.

I appreciate Mr. Waters's bona fides in this regard and the efforts the Department is making to ensure this does not happen again. Mr. O'Callaghan has already gone through the sequence events on what is happening at the moment. When will we have the report that Mr. O'Callaghan mentioned?

Mr. John O’Callaghan: What I was referring to was that the audit report and the recommendations in the audit report have been referred by the Tánaiste under the Act to the Policing Authority to oversee the implementation of the recommendations and to report to her on a quarterly basis. The authority has written to the Tánaiste since to say that given that a lot of the recommendations are due to be implemented by the Commissioner by July, the authority’s view is that a report by the end of July would be more appropriate and the Tánaiste is satisfied with that. So we expect the report to come towards the end of July or maybe early August.

Deputy Josepha Madigan: Mr. O’Callaghan’s colleague, Mr. Waters, has said that if there is mismanagement of public finances obviously the Department will take that very seriously. I appreciate all the witnesses’ bona fides in that regard. Could the Department do anything further on this matter that is not being done at present to allay the public’s concerns? As the witnesses will appreciate, we are under pressure to represent the public at large who want to have confidence in the Garda. To use the analogy again, the Department is neither the driver nor the back-seat passenger. What can we do to ensure this does not arise again?

Mr. Noel Waters: The arrival of the Policing Authority taking possession of this is very important because for the first time we have independent assessment of what is going on and reports back to the Tánaiste, which will enable us to take those forward. We need to get that process. As the Deputy knows, it is under way and we are getting the first report in July. Listening to the conversations here this morning, if this committee and the Comptroller and Auditor General were to examine this by whatever means that would be a useful exercise as well.

Deputy Josepha Madigan: We did discuss the special report, but the Comptroller and Auditor General is not in a position to do that before September anyway when he will do his appropriation account. I am not sure if that will be an option. Apart from that, could the Department be doing anything else?

Mr. Noel Waters: I think the auditing function has changed remarkably - completely - going back 15 or 20 years. That clearly needs to have a focus on what is happening. We also need to support the process that is under way within the Garda in terms of any support that we can offer to ensure that all the issues that are there now can be resolved as quickly as possible.

Deputy Josepha Madigan: Could such a situation arise again in the future? Have the controls been improved to the extent that the Secretary General believes we will not be in this position where we are discussing an eventuality?

Mr. Noel Waters: I would certainly hope not. I think we have all moved on immeasurably since the events that gave rise to this, but one can never rule out in any organisation that one gets a rogue situation. I think we have structures of governance, audit, oversight and supervision in place now which-----

Deputy Josepha Madigan: The oversight, and checks and balances will be key.

Mr. Noel Waters: Going back to the Policing Authority, given its public role and very public scrutiny of the Garda, the possibilities of this issue emerging again and in view of the general transparency that is in all our communities now, I would be more than surprised if we ever found ourselves in this situation again.

Deputy Josepha Madigan: While I do not want to put Mr. Waters in a position, I want to clarify some of his comments. Earlier he said that the Commissioner has legal responsibility for the Garda Vote, which I understand. He also said he would have expected her to have in-

formed him earlier where there was criminal wrong-doing. Am I correct in that?

Mr. Noel Waters: Where there is criminal wrong-doing, if there was fraud or theft, I would have expected that she would have done that if she had that knowledge. I have no doubt in my mind that had she been aware of that, she would have done that. I would see no reason as to why she would not have.

Deputy Josepha Madigan: The Commissioner will come in herself and will be able to-----

Mr. Noel Waters: As I say, I cannot say what is in her mind.

Deputy Josepha Madigan: I will move on to ask about direct provision. In his opening statement the Secretary General said that the Department now has responsibility for Ordnance Survey Ireland. It has come from the Department of Communications, Climate Action and Environment. Why is that the case?

Chairman: While on that, it is a total mystery as to why the Valuation Office and Ordnance Survey Ireland has come into the Department of Justice and Equality.

Mr. Noel Waters: They have a separate Vote. It arises from a reorganisation of roles and responsibilities. We have responsibility for the Property Registration Authority. It was agreed back in 2011 or 2012 that it would be a good idea to merge the Valuation Office and Ordnance Survey Ireland and the Property Registration Authority into one body, called Tailte Éireann. That is essentially why we have it. Given that we have the Property Registration Authority which is the bigger of the organisations and which, as the Deputy knows, is involved in anything to do with property, it was believed by Government that the other two organisations would come to us and that we would effect the merger of the three organisations. We are awaiting the legislation to be put in place to enable that to happen.

Deputy Josepha Madigan: How is that transition working out?

Mr. Noel Waters: It is working on a shadow basis at the moment, pending the legislation, but-----

Deputy Josepha Madigan: Why is it the legislation not in place?

Mr. Noel Waters: It is one of those issues. We have a huge legislative programme and actually getting to it is the issue - getting the priorities for it and getting to it.

Deputy Josepha Madigan: It would be good if that were expedited.

The Secretary General's opening statement referred to direct provision and the working group. It stated that data had been compiled for that. Did this working group make recommendations on direct provision? I was struck by something in that opening statement - I am sure Mr. Waters did not mean it in any derogatory way at all and I am not suggesting that he did. The final paragraph stated that there is no cheaper alternative to direct provision. With respect it is not just about economics; it is also about making it a more humane system. Did the working group make any recommendations in that regard?

Mr. Noel Waters: It did. This is the McMahon working group, chaired by Mr. Justice McMahon. It acknowledged, as we do, that time is a major issue in respect of direct provision and that every effort should be made to ensure that people were not left an inordinate amount of time in direct provision. That is why I referenced the fact that the International Protection Act,

which is now law, is a real game-changer when it comes to that. We expect it-----

Deputy Josepha Madigan: What benefits does that provide that the previous Act did not?

Mr. Noel Waters: Instead of having a number of discrete, separate stand-alone steps in the asylum and protection process, applicants are now required to put all their case upfront at the start. So they can apply for asylum; they can apply for what is known as subsidiary protection, which is a protection which is slightly less than asylum; or they can apply for leave to remain. All of those are concerned in one step. Hitherto the situation was that one applied for asylum; one appealed a negative decision; and one then moved on to the subsidiary protection. If one got a negative position, one appealed that; equally with leave to remain and one appealed that. Then in the middle of that-----

Deputy Josepha Madigan: It is in line with EU legislation.

Mr. Noel Waters: It is. In the middle of that one had significant judicial reviews as well.

Chairman: Syrians and others have come in and have been accommodated in recent times. Is it Syrians who come in?

Mr. Noel Waters: Syrians, yes.

Chairman: Under what category do they fall? They are not categorised as refugees? Where do they come into this equation of accommodation?

Mr. Noel Waters: There are two strands to this programme. There are people who are brought here under what is known as the relocation strand, who are brought to Ireland and are already deemed to be refugees before they arrive in Ireland.

Chairman: Okay.

Mr. Noel Waters: They are identified by our staff in camps, generally in Lebanon, and brought here. The second strand to that are people who are brought here under the rules that were established by the European governments in the wake of the crisis in 2016 where each country was given a number of people it could bring to the country. That is the second strand. We are now working our way through that with bringing people here from Greece to Ireland.

Chairman: How did they fit into this accommodation system or is it separate again?

Mr. Noel Waters: Both those strands are put into what is known EROCs.

Chairman: What is that?

Mr. Noel Waters: EROCs are emergency reception and orientation centres. That is of a different order to our direct provision centres with far more significant services available for them. The first strand is already recognised as refugees and they are brought there for orientation after leaving the camps and before they are allocated accommodation throughout the country. The second strand, which is what I am speaking about, will, in the vast majority of cases, go through the process here and will be recognised as refugees very quickly, within eight to 12 weeks.

Chairman: How many have come through that process into Ireland?

Mr. Noel Waters: At this stage it is in the order of 1,200 people.

Chairman: Where are they accommodated? We hear about Ballaghaderreen and Monasterevin.

Mr. Noel Waters: They are in Ballaghaderreen, Monasterevin, and Clonea in Waterford for initial reception. Then they are moved to housing throughout the country. The preponderance of housing is along the west coast at this stage.

Chairman: Will Mr. Waters sends us a detailed note separately on this new group that was not there in 2015? It was not a principal item for today. I apologise to Deputy Madigan.

Deputy Josepha Madigan: That is fine. As far as I recall, Mr. Waters in his opening statement acknowledged direct provision is not a perfect system, and we are all aware of this. It is difficult to know what the alternative to it is. I am very concerned about the basic tenets of entitlement for people looking for assistance from our country, such as shelter, safety, food and education. I note that some of the measures with regard to fire safety have not been done. Is that correct?

Mr. Noel Waters: No, there is no question of-----

Deputy Josepha Madigan: That is all done.

Mr. Noel Waters: Absolutely. There is no question whatsoever-----

Deputy Josepha Madigan: I am looking at the new home cooking arrangements in Mosney and I would have difficulty with it if there was no-----

Mr. Noel Waters: Absolutely.

Deputy Josepha Madigan: It has all been done.

Mr. Noel Waters: There is absolutely no question I can assure the Deputy.

Deputy Josepha Madigan: What about third level? This is a *bête noir* of mine. There is access to first and second level education but we want these people to continue, hopefully, if they are not deported, and I will speak about the deportation criteria. I know the figures have improved over the years, but 23%, which is 950 people, remained in direct provision even though their cases had been finalised. Then there are children born in direct provision. We want to make sure they are educated and can transition as smoothly as possible out of the system. What is the issue with third level? How can we address this?

Mr. Noel Waters: It is basically a matter of cost in the sense that-----

Deputy Josepha Madigan: Yes, I saw that.

Mr. Noel Waters: Ultimately, it is a matter for the Department of Education and Skills. I will put it in this context-----

Deputy Josepha Madigan: Has the Department of Justice and Equality worked with the Department of Education and Skills on it? I see that typically international fees of €10,000 would have to be paid. Education is vital and I would really like to see the Department working with the Department of Education and Skills on getting people to third level.

Mr. Noel Waters: A scheme was put in place a number of years ago. I must say it was quite limited. It was for people who had acquired leaving certificate standard and reached a certain

point in the system where they could transition to third level education. I would not overclaim on this. It is an issue in terms of ensuring people who are in the system for a long time can get the appropriate-----

Deputy Josepha Madigan: I saw that it was launched in 2015 with the Department of Education and Skills, for people who are over five years in direct provision.

Mr. Noel Waters: Yes.

Deputy Josepha Madigan: Only two applicants were approved as far as I could gather because the criteria were so strict. There were only 39 applicants anyway. I am not saying it is necessarily within Mr. Waters's remit but it is something I want to highlight because it is important.

With regard to complaints procedures and translation, a booklet is provided in basic English so it is easily comprehensible.

Mr. Noel Waters: And other languages also.

Deputy Josepha Madigan: There are other languages.

Mr. Noel Waters: Absolutely.

Deputy Josepha Madigan: Okay, I did not see that.

Mr. Noel Waters: Yes, in other relevant languages.

Deputy Josepha Madigan: So that they can understand-----

Mr. Noel Waters: Absolutely.

Deputy Josepha Madigan: -----because it is difficult enough for them when they are trying to-----

Mr. Noel Waters: There is no question of us requiring people to adopt English and nothing else and that we deal with them on that basis.

Deputy Josepha Madigan: They have somebody there if they want to make a complaint so that they can do so through their own language-----

Mr. Noel Waters: Absolutely.

Deputy Josepha Madigan: -----if they do not speak our native tongue, which is Irish but-----

Mr. Noel Waters: I have to acknowledge the role of NGO groups in supporting people in this situation in various direct provision centres.

Deputy Josepha Madigan: I see a new complaints procedure was introduced in 2015. There was supposed to be an appointment of somebody. Was that done? I know there is an ombudsman as well.

Mr. Noel Waters: That was superseded by the Ombudsman and the Ombudsman for Children taking on the role. They are now effectively-----

Deputy Josepha Madigan: Has Mr. Waters seen a notable difference in the volume of complaints since the new system has come in?

Mr. Noel Waters: It only started in early April so it is probably a little early at this stage to make an assessment on it, but we would expect that it will be taken up. Every effort has been made to make sure people are aware of it and the Ombudsman's office has been very active in ensuring this also.

Deputy Josepha Madigan: The Comptroller and Auditor General said there is a low level of complaints.

Mr. Noel Waters: Yes.

Deputy Josepha Madigan: I am not suggesting for a second people are afraid to make a complaint, but one would not want that to be a barrier, that there is a fear there that would prohibit them in any way from making a complaint for fear they might be deported or anything like that.

What are the criteria for deportation? I saw a figure of 9% or 7% and-----

Mr. Noel Waters: There are two strands-----

Deputy Josepha Madigan: -----some of them were deported after quite a number of years living here.

Mr. Noel Waters: Yes. There are two strands to deportation as practised. The first strand are people who, for example, arrive in Ireland off a flight today at Dublin Airport who do not have the appropriate documentation and who are refused leave to land and returned. This happens pretty much immediately. In some cases, depending on the flights, it may be the following day. Last year, approximately 4,000 people who attempted to enter the State were returned on this basis. Primarily the great majority of them were on the basis of fraudulent documents. Some, approximately 400 people, applied for asylum at the airport and they were allowed into the country on this basis.

The second strand are people who have been through the entire asylum process, or who have been detected living illegally here, and have no permission to remain. They had their cases assessed and judged and they were asked to leave the country.

Deputy Josepha Madigan: I note the figure that 4,075 people left the State voluntarily but there are no checks on this.

Mr. Noel Waters: No.

Deputy Josepha Madigan: It is a bit of an anomaly to be deported voluntarily. How does that actually-----

Mr. Noel Waters: The law actually requires that if a deportation order is made against a person he or she is required to leave the State voluntarily.

Deputy Josepha Madigan: It is not really voluntarily.

Mr. Noel Waters: The law requires that. If people do not abide by it they leave themselves open to the fact they will be removed by the Garda.

Deputy Josepha Madigan: Has the appeals process been expedited in any way over the years? It is easy to appeal and appeal again, and people are entitled to access to justice, but we do not want them unnecessarily delaying and then at the end being deported.

Mr. Noel Waters: This is where the new legislation, the International Protection Act, has come into play where the opportunities for people-----

Deputy Josepha Madigan: Abusing it.

Mr. Noel Waters: -----to abuse the system have been reduced to the point where they can make an appeal to the International Protection Appeals Tribunal in respect of their applications. That has been functioning since the beginning of the year.

Deputy Josepha Madigan: Have all of the sections of the Act commenced?

Mr. Noel Waters: At this stage I do believe they have.

Deputy Catherine Murphy: I want to go back to some of the issues around the report from Templemore. Mr. Waters was invited in October 2015 onto the committee or group which was going to take this further after it was identified in July.

Mr. Noel Waters: Yes.

Deputy Catherine Murphy: Mr. Waters took up that position in November. Am I correct to presume the Tánaiste would have been fully informed at that stage?

Mr. Noel Waters: In respect of the existence of the group?

Deputy Catherine Murphy: Yes.

Mr. Noel Waters: I cannot say for definite that she would necessarily have been at that point. I am just checking with colleagues. No, she was not informed at that stage.

Deputy Catherine Murphy: Last week, the Commissioner made the point that even though there was an obligation on the Commissioner to inform the Minister by virtue of the fact the Department was informed she was making a presumption that the Minister was informed, so that would not be correct?

Mr. Noel Waters: The Commissioner would not necessarily have a detailed knowledge of that. Given the volume of business we do in the Department it would not necessarily be the case that an action was happening and the Tánaiste would be aware of all aspects of the action.

Deputy Catherine Murphy: Mr. Waters would have had some understanding of the importance of the subject matter. Would it not have been of large enough importance to bring to the Tánaiste's attention?

Mr. Noel Waters: I am speaking personally; my colleagues may wish to speak on this also. The trigger for us in the Department in that respect would be if we were aware at that point that unlawful activity such as theft or fraud had taken place. Then, of course, we would have advised the Tánaiste immediately. At that point we had been assured that there was no misappropriation.

Deputy Catherine Murphy: Would Mr. Waters be aware that the Tánaiste should have been informed by the Commissioner when this came to light and that there was an obligation

on the Commissioner to do so? Would Mr. Waters not have spotted that, as a double safeguard, and brought the matter to the attention of the Tánaiste?

Mr. Noel Waters: No, I think the Deputy is referring to the section 41 issue with regard to the Commissioner.

Deputy Catherine Murphy: Yes.

Mr. Noel Waters: Whether or not the Commissioner brought that issue to the attention of the Minister by way of a section 41 letter was a matter for the Commissioner's own judgment. I cannot put myself in a situation where I could recreate what assessment the Commissioner made when she was doing that.

Deputy Catherine Murphy: I raised this issue in the Dáil through parliamentary questions in January within days of a report in *The Sunday Times* on the draft interim report. I raised the issue on the floor of the House on 9 February during Leaders' Questions with the Tánaiste who said, in a very dismissive fashion, that the report had been sent to the Joint Committee on Justice and Equality and the Committee of Public Accounts and that it had received full scrutiny. I did not challenge the Tánaiste on that but when back in my office I checked and found there was no evidence that this was the case. I e-mailed the Department of Justice and Equality and drew attention to the fact that the information I had been given was incorrect. I had written to the Committee of Public Accounts seeking this matter to be timetabled and for the report to be provided to the Committee of Public Accounts at that stage. This was in early February. I accept that this was a draft report until February because it was February when it became an interim report and ceased to be a draft. Was Mr. Waters aware of that? Somebody must have replied to me because the reply said that there was an error and it was not the Committee on Justice and Equality that dealt with this issue but that it was the Committee on Public Accounts that dealt with it. I then had to take it up with the Tánaiste because the only reference to the Committee of Public Accounts and this issue was my notification to the Committee of Public Accounts seeking the publication of this report. Is Mr. Waters aware of that dialogue?

Mr. Noel Waters: I am aware in a general way. It is my understanding that the Tánaiste spoke to the Deputy on foot of that.

Deputy Catherine Murphy: I raised it with the Tánaiste on the floor of the House. She accepted it and corrected the record of the Dáil in late March. The interim report was provided to the Department in September 2016 and I believe this was to comply with a requirement from the Comptroller and Auditor General with regard to its fulfilling the requirement for the accounts. The Department got that in September 2016 and this satisfied the Comptroller and Auditor General's requirements-----

Mr. Noel Waters: I just wish to clarify for the Deputy that it was for the Garda accounts.

Deputy Catherine Murphy: Sorry, yes, so it was. The Department, however, received it then.

Mr. Noel Waters: The draft interim report was received by us in September 2016.

Deputy Catherine Murphy: This is not a very long document and it does not take a long time to read, except when one must stop and start as it is quite a substantial amount of information for quite a short document. Between the Department of Justice and Equality and the Garda Commissioner - I do not know whose decision it was to publish this report - it took until

a month ago in late March or early April to publish the draft report. Why was there such a delay in doing that?

Mr. Noel Waters: In a moment I will ask my colleague to address this, but just to be clear, the report was not the Department's report, it was from the Garda. The question, therefore, of the Department attempting to influence the publication or content of it simply would not have arisen. It was a matter for the Garda to complete the report and to turn it from a draft report into the final interim report. We would have had no role in terms of how long that would have taken.

Deputy Catherine Murphy: Can I make the point that the Commissioner confirmed last week that the draft report did not change at all from the interim report that was published.

Mr. John O'Callaghan: If I could clarify for the Deputy. I was sent the draft audit report by the head of internal audit in An Garda Síochána in September 2016. It was sent to me to fact check and to see if there was any reference to the Department that we might want to question or query. In his letter to me the head of internal audit requested that I treat the contents of the draft report as confidential and not divulge in any way the extract of the report that had been sent to me. He said that consent was given for the disclosure of the extract of the report to our legal professional adviser. Most of this is irrelevant as I was not named in the report, but at that stage the report was in draft and it was my understanding that he had equally sent it to everybody else who was named in the report asking them to check and to make sure they were happy and to consult any advisers that they wanted to consult. The report was still in that process until it became the completed report in March 2017. It is not about the fact that the report did not change much between coming to us in September 2016 and what it finally looked like. During that period it was out with all the parties that were named in it so they could go back to the internal auditor and for him to then finalise his report on the basis of the observations he received. It was not open to the Tánaiste to publish the report. It was not her report in the first instance and it was still in process at that point.

Deputy Catherine Murphy: I actually asked the Tánaiste to ask the Garda Commissioner to publish the report. I will move on.

With regard to the negotiation of procurement procedures for the commercially owned and run direct provision centres, the Comptroller and Auditor General said in his report this morning that use of that procedure is only permitted in certain limited circumstances which we could not see existed in regard to direct provision. Why was it presumed that it would be appropriate in that particular context?

Mr. Noel Waters: Essentially because there was no other option available to us to procure accommodation and services throughout the State on the basis of Government policy. We had looked at all the other options. We started out on the basis that when people arrived into the State, they were given supplementary welfare, accommodation and apartments and that very soon we had reached a crisis situation, which is not dissimilar to what we have at the moment. More people had been encouraged to come in and we found ourselves in a situation where people who had arrived to Ireland as protection applicants were living homeless in Merrion Square and the Phoenix Park. The Government decided to introduce a system of direct provision and dispersal. It also decided that when this happened there would be a mix of accommodation options comprising commercially run centres, State-owned accommodation and what were then known as flotel. The floating hotels were not sustainable and did not become an option. We went about giving effect to that Government decision and we managed to acquire some State properties but we ran into serious difficulties with other provision. The commercial sector, ef-

fectively, took up the slack in dealing with that.

Deputy Catherine Murphy: Is that still deemed to be in breach of procurement rules?

Mr. Noel Waters: We believe, as I said in my report, that this equates to the negotiated procedure. We want, if it is feasible, to be able to get to a more open tender situation as quickly as possible. We want to do that but as I indicated earlier, the irony is that when we did that in respect of the State sector, it ended up actually costing more than in the commercial sector. However, that is no reason, as far as we are concerned, not to put this out to the market. We are engaged with the Office of Government Procurement to try to get that done. It is very difficult because it is not a question of just procuring accommodation, but also of procuring services in local communities all over the country and trying to establish a marking system that will take that into account and not favour one group of people over another. It is a serious difficulty.

Deputy Catherine Murphy: According to the Comptroller and Auditor General's report, the contracts did not set performance measures and there were limited provisions for penalties for underperformance by suppliers. Clinics were then set up as a control measure in terms of seeing what the standards were like. Very vulnerable people were asked for information which they may well have perceived, rightly or wrongly, that it would not have been to their advantage to give. Has the Department done anything about the provision of penalties for underperformance by suppliers? If so, I ask Mr. Waters to provide details.

Mr. Noel Waters: We have accepted that recommendation from the Comptroller and Auditor General and have initiated a process where, in cases of non-performance, a contractor may lose up to 10% of the entire population of the centre over a particular payment period. A centre with 300 people, for example, could end up losing €3,000 if it does not perform to the measures set down which could relate to food, the cleanliness of rooms, the provision of other services and so forth. There are clear performance measures in place which contractors are obliged to adhere to, which is a new development.

Deputy Catherine Murphy: The report goes on to say that there were significant levels of dissatisfaction among residents about the quality of accommodation and-or services provided. I read somewhere that there was an intention to set up an independent complaints mechanism. In terms of complaining, people in a dependent or vulnerable position will hold back because they perceive that it may well make their situation worse. I would have thought that the setting up of an independent complaints procedure would have been a priority. Has the Department done that at this stage? If not, what is the situation in that regard?

Mr. Noel Waters: That has been done at this stage by the appointment of the Ombudsman and the Ombudsman for Children to receive complaints on behalf of residents in direct provision centres.

Deputy Catherine Murphy: The Office of the Ombudsman is the independent appeals mechanism. Is that correct?

Mr. Noel Waters: Yes. We had considered having an internal mechanism as well but we believed that it would be much more effective-----

Deputy Catherine Murphy: I am very familiar with the Ombudsman process. People can make a complaint to the Ombudsman and if that office decides to take up the complaint, the process involved can be quite lengthy and sometimes the office does not take cases on. Was there a beefing up of the offices of the Ombudsman and the Ombudsman for Children to ensure

that there would be sufficient capacity to deal with complaints from direct provision centres?

Mr. Noel Waters: I cannot answer “Yes or “No” on that but I do know that both offices had strongly signalled to us for a long time that they wanted to take on that role. I am assuming, on that basis, that they had their own internal resources to enable them to take on the additional workload that would go with that.

Deputy Catherine Murphy: In his opening statement, Mr. Waters made reference to the fact that there were no “cheaper alternatives” to direct provision. As a country we have been criticised repeatedly about direct provision in the context of human rights. We can always do things more cheaply. However, we must look at things in the round. We must balance the cost of direct provision against meeting our human rights obligations. Where does that come into the equation?

Mr. Noel Waters: The Deputy has put her finger on it. That is the balance we are trying to strike in respect of the process that we have in place at the moment, the negotiated procedure versus ensuring that we get appropriate value for money for the taxpayer. We could put a contract out for tender and look for a facility for a few hundred people. Let us imagine that a facility exists already in Skibbereen but a bidder in Bandon comes back with a lower price who can meet all of the service level requirements. In that situation, we would be uprooting hundreds of people from their home in one town to bring them to another town. We must consider all of the trauma and issues that go with that, in terms of access to housing, health services and so forth. We do not do that and that is why we have found it so difficult to find a tendering process that meets our needs so that we can continue to act in a humanitarian way. We have no interest whatsoever in uprooting families and people from their homes just for the sake of moving them on to another town up the road.

Deputy Catherine Murphy: We all know that there is a very significant housing and homelessness crisis at the moment. In his opening statement, Mr. Waters made reference to the sizeable number of people in direct provision who should be moving on but cannot do so because housing and other services are not available to them. Is the Department dealing with that issue? Is this coming out of the Department’s Vote? Direct provision was originally intended to be short term and this is prolonging something that is already overly long. I know that the time spent in direct provision has been reduced but it is still overly long. Is the Department engaging with the Department of Housing, Planning, Community and Local Government on this issue? Is the Department of Justice and Equality picking up a cost that should be picked up by another Department?

Mr. Noel Waters: I will ask my colleague Mr. Banks to come in shortly on that particular point because he is in charge of the Reception and Integration Agency. We have found ourselves in a situation where approximately 640 people are in direct provision centres who are entitled, in law, to be in Ireland. They have the Minister’s permission to be here but they remain in direct provision because they are not in a position to access housing. Our Department is picking up the costs associated with that. Again, to go back to the humanitarian point, other European countries might force people to leave State-provided accommodation in those circumstances but we do not. We think it would be completely wrong to put people who have gone through the process and ended up being recognised as refugees or granted leave to remain, out on their ear. We do not do that to individuals or to children and families. We are meeting the costs in that regard.

I will ask my colleagues to give the committee a sense of our engagement with NGOs and

other Departments to try to expedite the process of moving people on.

Deputy Catherine Murphy: I ask that the reply be very short because I have two other questions that I am anxious to pose.

Mr. Eugene Banks: I will be as brief as possible. As people in State-provided accommodation get status, they are linked up, as far as possible, with the local authority and any local housing agency to see if they are eligible for the HAP scheme or to receive rent allowance. The managers in most of our direct provision centres will provide references if necessary. The NGO community has been given funding under the Asylum, Migration, and Integration Fund, AMIF, programme to assist people to move out of State-provided accommodation into permanent homes. All of that happens organically on the ground daily.

Deputy Catherine Murphy: These centres are dispersed around the country.

Mr. Eugene Banks: That is correct.

Deputy Catherine Murphy: Is there a cluster of people in one location or in a small number of locations who find themselves in this position?

Mr. Eugene Banks: I suspect that more people who are in State provided accommodation in the Dublin area are finding it difficult to find accommodation. People who are in other locations around the country might find it easier to get accommodation in that area.

Deputy Catherine Murphy: To go back to another point in respect of expenditure of the Magdalen fund, there was an underspend in 2014. The explanation given for that underspend was that fewer new applications were received in 2015 than was expected. A number of applications could not be processed as further investigation was necessary in order to make a determination in those cases. In some cases there is a shortage of information. I am working with one individual who is very dissatisfied that she is not being believed at this point, because there are no records that back up where she was. She spent four or five years in a Magdalen laundry but she was told that she spent six months there. She has spent her whole life in institutional care. Are there many other cases in which there is that kind of dispute about where people were and where people will not accept what they feel is not truthful? Are there cases where people who have been denied justice for their whole lives feel that the lack of records sides with the institutions rather than with the individual?

Deputy Shane Cassells took the Chair.

Mr. Noel Waters: Perhaps Mr. Martin wishes to come in on that.

Mr. Jimmy Martin: To answer the Deputy's question, no, there are not many cases like that. When we started off in this, we were concerned that while some of the institutions have good, comprehensive records, some have no records at all. In practice, we have built up a certain level of expertise within the Department. We do not rely on institutional records alone. We check out school records, social welfare records and tax records to see whether somebody was active. There are very few cases of disputes about whether a person was in an institution. If a person was in an institution with records, and the record shows that a person went in and went out, we tend to rely on those records, but we double-check that against other evidence. This would include whether the person was making social payments, which suggest he or she was working, and whether there is a record of the person in another institution - for example, he or she might have been in hospital. Therefore, it is quite rare that somebody would be concerned

about not being paid because of a lack of records. Normally the dispute centres around a person having been in an institution which that person regards as a Magdalen laundry, but which is not one covered by the scheme.

Deputy Catherine Murphy: In this particular case the institution was covered. I will take that up separately. I have written to the Department and given information about the case to the Minister. One often looks at a case and wonders if it is replicated. That is the reason I raised that matter.

Deputy Catherine Connolly: I have a number of questions for Mr. Waters. Did the Department of Justice and Equality ever give permission to any garda to open an account, not to mention 50 accounts?

Mr. Noel Waters: I may ask my colleagues who would be more familiar with the technicalities, but as I understand the process involved in opening a bank account in the formal sense, the permission of the Department of Finance or the Department of Public Expenditure and Reform is required.

Deputy Catherine Connolly: There are a lot of questions I wish to ask on direct provision and other matters, but I have a few quick questions that have arisen. I am not into demonising any organisation. We need An Garda Síochána. We had its representatives and the Department of Justice and Equality before us at the last meeting. Questions for the Department of Justice and Equality and An Garda Síochána emerged. I will ask my first question again. It seems that permission had to be given by the Minister. Will Mr. Waters clarify whether permission had to be given and whether 50 permissions were given, or 48, 42 or whatever the number of accounts was?

Mr. Noel Waters: I am advised that the consent of the Minister is required under the Garda Síochána Act 2005. To answer the Deputy's question about the numbers, I am not aware of any information in the Department which would indicate the number.

Deputy Catherine Connolly: I am sorry, I am mixed up. Is Mr. Clifford saying that permission was necessary under the Act of 2005?

Mr. Seamus Clifford: Yes, permission was necessary for any bank accounts created subsequent to the Act.

Deputy Catherine Connolly: Was permission given?

Mr. John O'Callaghan: It is not clear at this stage whether the accounts in question were opened before 2005. I am not aware of any authorisations that have been given since 2005.

Deputy Catherine Connolly: What was necessary before 2005? Did An Garda Síochána have a free hand to open as many accounts as it wished?

Mr. John O'Callaghan: It would not have had a free hand.

Deputy Catherine Connolly: What would have been the restrictions or obligations on it?

Mr. Seamus Clifford: Ultimately, sanction from the Department of Public Expenditure and Reform was required then to open a public bank account, as it is currently in respect of Departments and offices.

Deputy Catherine Connolly: It was required then as well.

Mr. Seamus Clifford: Yes.

Deputy Catherine Connolly: Therefore, is whether permission was given 48 or 50 times not a very simple question that demands a simple reply? We need clarification on how many accounts there were, because sometimes it seems to be 42, sometimes it is 48 and sometimes it is 50. I will take the easier figure of 50.

Mr. Noel Waters: We will agree to check the records which are available in the Department to establish that figure.

Deputy Catherine Connolly: Does that not go to the heart of the matter in terms of trust? A working group was set up. What has been happening? Is this not a fundamental question? How could so many accounts have been opened without permission? If permission was given, let us have proof of that.

Mr. Noel Waters: These are the things that we need to find out.

Deputy Catherine Connolly: At this time of the evening, as I seem to be the last Deputy, or one of the last to speak, tiredness is getting to me.

That is a fundamental question that should be answered and should certainly be answered before Mr. Waters appears before the committee again. Companies were formed. As I understand it gardaí of higher rank and lower rank were directors. Was permission given for that?

Mr. Noel Waters: I have no information which would indicate that it was given.

Deputy Catherine Connolly: Mr. Waters should have. I am sorry, we should have this information. This came up. He is fully aware of this in respect of the directors. Did they have permission to do that? The Department of Justice and Equality should be in a position to tell us.

Mr. John O'Callaghan: We have found no records in the Department.

Deputy Catherine Connolly: Did they have permission? Can gardaí form companies using public moneys?

Mr. John O'Callaghan: In the normal course of things, one would say "No", but because we have no records regarding this issue I cannot say that back in 1992 or 1993-----

Deputy Catherine Connolly: We are not talking about 1992.

Mr. John O'Callaghan: The Sportsfield Company was established in 1992 or 1993. We do not have records from that time, when it was established, to say whether the Department was involved in it.

Deputy Catherine Connolly: There are no records in the Department of Justice and Equality.

Mr. John O'Callaghan: Yes.

Deputy Catherine Connolly: Has the Department done a timeline and looked at the interim audit from its point of view and what was brought to its attention? Has it looked at that and noticed a half-completed report in 2006? What was the Department of Justice and Equal-

ity's response to that in 2006?

Mr. Noel Waters: As I said earlier on, our focus has been on supporting An Garda Síochána in getting to the bottom of the issues that have now emerged. Anything that follows on from that will be followed up on.

Deputy Catherine Connolly: I was giving out earlier about people making statements and I am reluctant to do so but I have no confidence in what I have heard today and on the last occasion. I simply do not. There was a report in 2006, that seems to be incomplete. There was a report in 2008 that went to the Commissioner, who acted, and which went back to the person in charge of Templemore, who said that the money belonged to it. That is what I read at least - that he said that this money was Templemore's, that it was not getting enough from the Government and that it could invest the money. Is Mr. Waters aware of that logic which I pointed out?

Mr. Noel Waters: I did see that part of the committee's meeting, yes.

Deputy Catherine Connolly: Was I telling a mistruth or misreading the situation when I read it out?

Mr. Noel Waters: I cannot make a judgment on that.

Deputy Catherine Connolly: I do not want judgments. It is not a court of law. What I want to know is what concerns Mr. Waters had about that and what he is doing about that.

Mr. Noel Waters: It seemed to me that if a Commissioner of An Garda Síochána directed somebody in the organisation to do something and it was not done, there are questions to be answered around that.

Deputy Catherine Connolly: I am only talking about the role of the Department of Justice and Equality now.

Mr. Noel Waters: But the Department cannot second guess that. It cannot impose itself.

Deputy Catherine Connolly: The money was coming through the Department of Justice and Equality. It was public money.

Mr. Noel Waters: No, no.

Deputy Catherine Connolly: Sorry, it was all public money that was going to Templemore.

Mr. Noel Waters: In terms of the payroll, sorry, yes. Sorry, I misunderstood what the Deputy said there.

Deputy Catherine Connolly: Okay.

Mr. Noel Waters: I beg the Deputy's pardon. I will clarify with my colleagues.

Mr. Seamus Clifford: What the Deputy is alluding to is maybe some of the funds that were the subject of the-----

Deputy Catherine Connolly: I am talking about public funds, *per capita* or however it was allocated,-----

Mr. Seamus Clifford: The capitation.

Deputy Catherine Connolly: ----- to Templemore that went into 50 accounts.

Mr. Noel Waters: That was in the Garda Vote. Those public funds, yes.

Deputy Catherine Connolly: There is no misunderstanding about this. It is public funds going in, and we have a Commissioner or somebody under the Commissioner saying that is right but they were not getting enough money from Government and they were entitled to invest this, open up accounts and do what we want with it. I read that out, did I not?

Mr. Noel Waters: Yes.

Deputy Catherine Connolly: What is the reaction of the Department of Justice and Equality to that?

Mr. Noel Waters: The information that has been disclosed in the audit report is unacceptable. There is no question about that. It is unacceptable.

The standards of financial control and accounting at the time would not for one moment withstand any scrutiny now. It was wrong.

Deputy Catherine Connolly: We are not looking at legacy issues here. This is something that went on and on. As ordinary Deputies we are here struggling, reading lots of documentation and trying to hold the system to account as best we can. The Department officials are the ones with the responsibility and the resources. Is it correct that the Department was made aware of this way back - Mr. Waters has given the timeline today - in September 2015?

Mr. Noel Waters: As soon as we were made aware of it-----

Deputy Catherine Connolly: The Department undertook a trawl.

Mr. Noel Waters: -----steps were taken to stop this immediately.

Deputy Catherine Connolly: What steps were taken?

Mr. Noel Waters: Does Mr. O'Callaghan want to fill us in on that?

Mr. John O'Callaghan: The issues that had arisen in 2015 were around the existence of these accounts, around the issues of the land that the golf club was on and the legal issues around that and the Sportsfield company. Those were the main issues that came to light at that point. The immediate focus of the steering group - the committee that was set up by the Commissioner - was to address those issues while at the same time causing an internal audit to be conducted that would get to the bottom of all the other issues and identify whether there was any fraud or irregularity. During the period that that committee was sitting and before the draft internal audit report was produced, the work that that committee was overseeing was around resolving the legal issues with the Sportsfield company, closing down the accounts, and using up or getting rid of the resources that were sitting in the investment accounts. It was aimed at addressing the issues that still existed at that point in time while awaiting the internal audit report.

Deputy Catherine Connolly: I will leave those questions until I read in detail Mr. Barrett's report, which I have only sped-read, and I will come back to the officials. I have a great difficulty in that they only looked at certain issues and alarm bells did not go off and make them say that they should look back and see.

I will move on to direct provision. Direct provision was meant to be a temporary measure

when it was brought in. In the executive summary of the report of the retired judge, Mr. Justice McMahon, asylum seekers were to be in direct provision for approximately six months. Is it correct that is what was envisaged?

Mr. Noel Waters: Yes.

Deputy Catherine Connolly: How many are in direct provision?

Mr. Noel Waters: Approximately 4,500 currently.

Deputy Catherine Connolly: One in six of those has status and remains in direct provision.

Mr. Noel Waters: A total of 640 people, yes.

Deputy Catherine Connolly: How long are they in that position?

Mr. Noel Waters: I do not have that precise figure for how long they would be there.

Deputy Catherine Connolly: Why not? It is important to know that there are that many refugees with status still in direct provision. How long have they been in-----

Mr. Noel Waters: Sorry, to clarify, they are not being retained, as it were, in direct provision by the Department or the State. They simply are not in a position to access housing.

Deputy Catherine Connolly: I understand that but it is a little disingenuous to say they have a choice whether to go into direct provision or not, which is a theme in the documentation that I have read. Am I right that asylum seekers do not have to go into direct provision? They have a choice.

Mr. Noel Waters: Yes.

Deputy Catherine Connolly: They really have no choice.

Mr. Noel Waters: Well-----

Deputy Catherine Connolly: Wait now. If they do not go in, they get no payments.

Mr. Noel Waters: No. They do get the out-of-pocket money. In terms of the choice, traditionally, approximately 50% of applicants for asylum have chosen to access the facilities of direct provision whereas the other 50% have gone and lived in community with colleagues, friends or whatever.

Deputy Catherine Connolly: That is correct. Somebody looks after them. They do not have access to funds. If somebody adopts them, as it were, and looks after them, they can stay. They are the lucky ones. Otherwise-----

Mr. Noel Waters: They do not have access to welfare payments-----

Deputy Catherine Connolly: That is right.

Mr. Noel Waters: -----but that is the matter of decision by the Government. It is a matter of policy.

Deputy Catherine Connolly: I am not arguing with Mr. Waters. I am merely trying to put

this in perspective, where we have direct provision which was supposed to be temporary.

Mr. Noel Waters: Sorry, it was not supposed to be temporary. The period we envisaged at the time was six months. Look, I put my hands up. We grossly underestimated that at the time.

Deputy Catherine Connolly: Just one second, that was 2000. It is 2017 and we still have persons in direct provision for longer than five years.

Mr. Noel Waters: Yes.

Deputy Catherine Connolly: I accept the figure has reduced. Am I correct in saying that a substantial number are still there longer than five years?

Mr. Noel Waters: Yes. The cases that cannot be addressed at the moment are in the order of 250 cases.

Deputy Catherine Connolly: Two hundred and fifty.

Mr. Noel Waters: About that. In or around that, at the moment.

Deputy Catherine Connolly: Longer than five years?

Mr. Noel Waters: Of the cases that cannot be addressed, we have made enormous inroads in ensuring getting people out of direct provision.

Deputy Catherine Connolly: How many are in there longer than five years?

Mr. Noel Waters: At this stage, in the system five years or more, as of 2 February, there are 355 people who have been granted status and 205 people who have a deportation order served against them. Two hundred and fifty one await a final decision.

Deputy Catherine Connolly: How many are longer than five years in direct provision?

Mr. Noel Waters: A total of 811, those three figures together.

Deputy Catherine Connolly: A total of 811 are there longer than five years.

Mr. Noel Waters: Yes.

Deputy Catherine Connolly: On top of that, we do not know the figure for those who are still in direct provision; we do not know what period of time they have their status.

Mr. Noel Waters: I will see if we can find that figure for the Deputy.

Deputy Catherine Connolly: That is fine. Just one second now, we have a position where the Department of Justice and Equality and, indeed, those the country has elected, have allowed a system, from 2000 up to 2017, which has been the subject of serious criticism that has forced a situation where they had to set up a review in the charge of a retired judge who came up with 173 recommendations. Those did not come from the Department. Those were forced.

Mr. Noel Waters: This was Government policy.

Deputy Catherine Connolly: That is okay.

Mr. Noel Waters: We are trying to find the figures for the Deputy.

Deputy Catherine Connolly: I will not use up my time while Mr. Waters finds the figure. He can always interrupt me to give me the figure.

Mr. Noel Waters: Sorry, I beg the Deputy's pardon.

Deputy Catherine Connolly: That is all right. Are there 35 centres?

Mr. Noel Waters: Yes, at this stage.

Deputy Catherine Connolly: Seven are owned directly.

Mr. Noel Waters: By the State, yes.

Deputy Catherine Connolly: Then we have 28 run by 22 operators.

Mr. Noel Waters: Run by private commercial operators, yes.

Deputy Catherine Connolly: In five years, €50 million per year was given out.

Mr. Noel Waters: In or around that, yes. It varies from year to year.

Deputy Catherine Connolly: Is it correct that somebody is making a huge and significant profit?

Mr. Noel Waters: Somebody is providing a service to the State. Whether they are making a huge profit, I do not believe that to be the case.

Deputy Catherine Connolly: Where would their profits be declared?

Mr. Noel Waters: That is a matter for the companies themselves. Before we engage with them, they have to be fully tax compliant and compliant with our laws. Not alone have they to be fully tax compliant in terms of their contracts, but every time a payment is issued to them, they have to be tax compliant - every month.

Deputy Catherine Connolly: Is it 28 running 22 centres or 22 running 28 centres?

Mr. Noel Waters: Can Mr. Banks help me there? Is it 28 running 22?

Mr. Eugene Banks: There are 25 non-State centres, commercial centres.

Deputy Catherine Connolly: Non-State.

Mr. Eugene Banks: Twenty-five today.

Deputy Catherine Connolly: How many entities run those 25?

Mr. Eugene Banks: Twenty-five.

Deputy Catherine Connolly: All separately?

Mr. Eugene Banks: It is very close to 25. I do not believe two centres are run by one entity.

Chairman: I thought the one in the Montague Hotel in Portlaoise was run by a company that runs one in Bray or somewhere in Wicklow. I would merely make that observation.

Mr. Eugene Banks: We do not have any centre in County Wicklow at all.

Chairman: Okay. Maybe it had one.

Mr. Eugene Banks: To the best of my knowledge, every centre is run by a different company.

Deputy Catherine Connolly: I understand that was not the case in the past.

Mr. Eugene Banks: It may not have been the case in the past----

Deputy Catherine Connolly: That is the position now.

Mr. Eugene Banks: -----but that is the case at present.

Deputy Catherine Connolly: Is Mr. Banks saying that no one company owns more than one centre?

Mr. Eugene Banks: East Coast Catering runs a reception centre in Baleskin and two centres in Dublin. Another two companies run two separate centres.

Deputy Catherine Connolly: When I first asked, you said “No”. Can Mr. Banks write to us, through the Chair, with that information?

Mr. Eugene Banks: I certainly can.

Mr. Seamus McCarthy: When we were doing the report, we compiled an annexe listing the names of commercial suppliers of accommodation and services. We drew attention to the fact that, while individual companies ran individual centres, there were connected persons and shared directorships of companies. While technically an individual company may run an individual centre, they are connected through their directorships.

Deputy Catherine Connolly: The witnesses clarified how many of the recommendations of the Mahon report had been done. Which ones have not been done, and why?

Mr. Noel Waters: The main ones which have not been done relate to the allowances paid to people in direct provision. That is a matter of Government policy.

Deputy Catherine Connolly: Can Mr. Waters give us a list of the ones that have not been done?

Mr. Noel Waters: We can provide that but the one to which I referred is the main one.

Deputy Catherine Connolly: I have gone through the list and there are a few more.

Mr. Noel Waters: I beg the Deputy’s pardon. There is another one. The other main one is the question of the right to work. Again, that is a policy matter for the Government.

Deputy Catherine Connolly: We are one country out of hundreds that accept asylum seekers and do not give them the right to work. Is that right? We did not opt into the European directive on the right to work.

Mr. Noel Waters: It is a matter of Government policy and is a little more complex than that. In other countries asylum seekers have a very limited right to work.

Deputy Catherine Connolly: In the context of 65 million people being displaced, the biggest displacement since the Second World War with thousands of people dying in the Mediter-

anean, I would have expected a slightly more human document, one which put the situation in perspective. We have rights and obligations under international law. This is not a charity. We have signed up to international documents. We put people into direct provision with huge consequences for their lives. Families share rooms, there is no independence and there is a huge impact on mental and physical health. Is that not right?

Mr. Noel Waters: We are making improvements to their quality of life. The asylum process is one avenue by which immigrants come to Ireland. Tens of thousands come to Ireland from outside the EU to live, work and study every year so it is not that our doors are closed to immigrants. Far from it.

Deputy Catherine Connolly: I do not know why Mr. Waters jumped to that point. I did not say anything like that. I am specifically talking about the people in direct provision and about how difficult it is for those families who have been in direct provision for a very long time, in restricted accommodation and with limited choices for food. I am simply saying that it is very difficult for them.

Mr. Noel Waters: Absolutely.

Deputy Catherine Connolly: There is an onus on us to reduce the period of time within which they are in these conditions.

Mr. Noel Waters: Correct.

Deputy Catherine Connolly: As a result, the Mahon review made 173 recommendations and I am asking how many have not been implemented. I am not talking about policy decisions or failures on our part but areas which are the Department's responsibility.

Mr. Noel Waters: I hesitate to call them failures.

Deputy Catherine Connolly: I take back that word. Which ones has the Department not implemented?

Mr. Noel Waters: They are a work in progress. For example, we are trying to introduce catering facilities in all centres so that people have a degree of independent living and will be in a position to cook and prepare meals for themselves and their families. That takes time.

Deputy Catherine Connolly: Listen to me, Mr. Waters. The biggest difficulty with direct provision has been the silence and lack of information around it. My experience as a councillor in Galway was of a process mired in secrecy. One way of helping would be for the Department to say which ten or 15 measures are outstanding.

Mr. Noel Waters: I have zero problems with that.

Deputy Catherine Connolly: That is great.

Mr. Noel Waters: It is not the case that direct provision operates in secrecy. It is one of the most debated issues in social policy.

Deputy Catherine Connolly: I was a local politician for 17 years and was there when the first asylum seekers came, in 2000 and 2001. It was mired in secrecy. Under freedom of information we found that millions of euro was paid one month in advance but without any details.

Mr. Noel Waters: That has changed.

Deputy Catherine Connolly: One could not canvass in local elections as one was not given access and there were all sorts of rules and regulations. There was a huge impact on people's lives and their mental health and a great number of people suffered. They had eating disorders. They want to work and do not want our charity. They want their case to be processed as quickly as possible and a decision made so that they can work. Does Mr. Waters accept that?

Mr. Noel Waters: Absolutely. That is why new legislation is in place.

Deputy Catherine Connolly: That is for another day and I will not go into that. Mr. Waters is justifying the system, which is of concern to me. He says it is a matter of policy but the policy was forced, every step of the way, because of inhuman conditions. Can he give me a list of recommendations that have not been implemented? One was a diversity champion in An Garda Síochána; another was an annual review. Have they been implemented?

Mr. Noel Waters: The Garda Síochána has appointed diversity officers for immigrant communities. I will have to come back to the Deputy on the policy review.

Deputy Shane Cassells: I will keep to direct provision. It is a very challenging issue, not just for the Department and agencies but in respect of attitudes in society. We need to have a debate on it because everybody expresses outrage when they see the body of a dead child but, when people look for the provision of services, the outcry is "not here". People are outraged by images on Facebook but when faced with the reality of helping people there is a different reaction. A debate is needed, in a committee such as this and in wider society. These debates have happened in my own county of Meath over many years, with Mosney one of the largest centres. I have many happy memories of the area as a holiday camp as a child when cousins from Dublin would come out to see the country and breathe the country air.

Deputy Mary Lou McDonald: And beat you at football.

Deputy Shane Cassells: They were happy times. I doubt if the experiences of people there today are as happy. The Department is faced with a difficult situation with the concept of the facility and the experiences of people within it. It has been the subject of much commentary nationally and locally, in the Drogheda Independent, the Meath Chronicle or LMFM. The centre looks well on a sunny day at the height of the holiday season but it is a different place in November and December. The vastness of the area on a cold day can resemble other types of camps. It has been described as a prison without the armed guards and the barbed wire.

On the issue of operators, the point has been made that it is a big business and it has also been the subject of a lot of commentary. In his opening statement, Mr. Waters said there were no cheaper alternatives to direct provision. He said that, in the open market, tenders came in with higher prices. I want to explore that. Obviously, Mosney is commercially owned. Mr. McCluskey owns it. I served on the board of Meath Tourism with him. However, in terms of the profits being generated, can Mr. Waters explain the terms used when the Department is analysing the prices paid for a facility such as Mosney at the get-go?

Mr. Noel Waters: I am sorry. I do not understand.

Deputy Shane Cassells: I am referring to the facility. The Comptroller and Auditor General referred to the procurement process. I am interested in how the Department sets the acceptable rates for entering into an agreement with a facility like Mosney.

Mr. Noel Waters: I will ask my colleague, Mr. Banks, to speak to that point. He is in charge

of the Reception and Integration Agency and is involved in this on a day-to-day basis.

Mr. Eugene Banks: The specific rate is arrived at in light of all the facilities, as described by Deputy Cassells, that are available in the particular centre. It has to take into account the provision of food, light, heat, clothing, rates, water, television licences and the entire range of facilities available in any home. All the families in Mosney effectively have their own front door, if I can use that phrase. All the services provided to that home are paid for by the State through the payments to the companies in question.

Deputy Shane Cassells: I would not use the word “home”. Mr. Banks is right about the front door. I know the place well.

Mr. Eugene Banks: I am using the phrase.

Deputy Shane Cassells: My question is about the facilities that the people are getting and the price that is being paid. Is it a fair price in the view of Mr. Banks? The report from the Department states that - because this is some years later - cooking facilities are now being provided for residents in Mosney.

Mr. Eugene Banks: I think it represents good value for money. A 2010 study on value for money was carried out. It identified that, on the basis of what was being delivered at the time, the services represented good value for money. It was very difficult from that report to identify another model that would represent the same degree of value for money in delivering the services.

Deputy Shane Cassells: Mr. Banks said the Department could not find another model. However, the Comptroller and Auditor General makes the point that, because there was no competitive procurement process, the risk of the best price and quality accommodation and services not being obtained was increased. That point was made in terms of the Department making that adjudication.

Mr. Eugene Banks: That was the adjudication in 2010 by the value for money study carried out at the time. It was the most economic method available at the time.

Mr. Noel Waters: Let us bring it up to date. We mentioned this earlier. The rates per person per day are remarkably similar to what they were five or six years ago. This year, they are a little lower than they were last year. The rate is approximately €30 per person per day. Some years ago, the rate was €32 per person per day. The rate paid in the State-owned sector, that is to say, where accommodation is provided by the State, at the moment is €20 per person per day. There is no capital cost on the contractors. It is provided directly by the State. On foot of a procurement exercise, that increased from approximately €15 to €20 per person per day. In the round, we are getting good value.

It is difficult to measure this when we do not have direct comparators. The nearest comparator we have is what is being paid, as we understand it, in respect of emergency accommodation in the Dublin area for homeless people in hotels. The most recent figures I saw suggested that something in the order of €50 million was paid last year to provide accommodation for approximately 900 families, of which 700 were in hotels and the remaining number were in different, mixed accommodation. That is the nearest equivalent. Apparently, that worked out at approximately €55,000 per family per year. Our metrics show that we pay approximately €12,000 per person per year.

Deputy Shane Cassells: Those are the cold figures. Even though what is being provided by the city council is not still acceptable, the point is that people can walk out their doors and access facilities in the city centre. People in Mosney are a long way from accessing any type of facilities for their day-to-day lives. Last year, the State paid €43.5 million to eight direct provision operators. Mosney was one of the biggest, and received €7 million. The point is that it is big business. I note the point made by Mr. Waters in terms of what was spent in Dublin as well.

Another point was touched on in terms of the low level of complaints. The Comptroller and Auditor General referred to that as well. Does Mr. Waters believe there is a problem in this regard? I know a lady in the camp in Mosney, Ms Khumalo, who is a former sportsperson of the year from Zimbabwe. She is living with her ten year old daughter, Ivana, in a small house in Mosney. She said that when she got there, she did not really care where she stayed. She simply wanted safety and that direct provision did not define who she was. She also said that it defines the Irish protection system towards asylum seekers and how it perceives the people as economic migrants, of second-class nationality and opportunists. She did not want to give out. She had positive energy towards bettering her life, rather than complaining about the direct provision system and possibly transforming and developing her life. She is beginning a course in legal studies at Drogheda Institute of Further Education. I know people in the Louth Meath Education and Training Board are dealing with the education facilities. How much is being invested in the educational facilities aspect? I know this is of interest to people in my constituency.

Mr. Noel Waters: This is one of the features of our system. The costs are picked up by the equivalent mainstream Department. The Department of Education and Skills provides them. I do not have those figures.

Deputy Shane Cassells: That would hold true in terms of facilities for children and child care being picked up by the Minister for Children and Youth Affairs, who is on our television screens at the moment. That was the subject of the Irish Refugees Council report on children in direct provision relating to decent child care facilities and so forth. What is the situation?

Mr. Noel Waters: There are, as I understand it, child care facilities at some of the centres.

Mr. Eugene Banks: That is correct. In particular, there is a child care facility in Mosney. It is provided through a combination of the centre and charitable institutions.

I wish to make another point in respect of the remoteness of Mosney. Where a centre is outside an urban area, the contractor is obliged to provide transport to meet the reasonable needs of residents.

Deputy Shane Cassells: If a person does not have much money in his pocket, there are not many places he can go in terms of accessing general free public services. It is a catch-22 as well.

Mr. Noel Waters: Absolutely, we are not for a moment suggesting that this is a Rolls Royce; far from it.

Deputy Shane Cassells: I know that. I am only teasing it out. Mosney has become a long-term centre. Has it been analysed in terms of alternatives?

That leads me onto my next point. We are all well aware of the difficulties in accessing accommodation. What is the Department's role in terms of this issue, the Rebuilding Ireland programme and the contribution of the Department to that programme? Is the Department deal-

ing with this issue as well?

Earlier, Mr. Waters indicated that the Netherlands has purchased a lot of property. Mr. Waters indicated that the Department is not keen to go down that route on the basis that if it obtained property, it would somehow be a wrong move to commit to that process.

Mr. Noel Waters: That is one of the considerations. That has actually happened. Other considerations arise as well. We tried that at the outset. We acquired several hotels throughout the country. We found that local communities were not accepting of it. Some launched judicial reviews. In one or two places, they blocked us using the facilities. We found that this was not going to be a successful outcome so we moved away from it.

Deputy Shane Cassells: Does the Department share them? Obviously, this transcends to the Department of Housing, Planning, Community and Local Government in terms of the debates with the Minister for Housing, Planning, Community and Local Government, Deputy Coveney, and the Minister of State, Deputy English. How is the Department of Justice and Equality dealing with this? Is it sharing its strategy? Is the Department making the point that it does not want to go down that route because of the fear of long-term accommodation in communities? Is that a philosophy the Department is sharing with the Minister for Housing, Planning, Community and Local Government?

Mr. Noel Waters: I would not say that we are directly sharing that with Minister or his Department. However, we have been engaged with the Department on the housing assistance payment and in ensuring people who have status and are in direct provision accommodation can move into the housing market. We are anxious to ensure-----

Deputy Shane Cassells: What is the reason for the one-in-six statistic? If the housing assistance payment is supposed to help them, what is the prohibitive factor in moving out for those who have been cleared?

Mr. Noel Waters: They simply cannot find accommodation. That is the long and the short of it. It is more difficult in the greater Dublin area, but-----

Deputy Shane Cassells: I appreciate that. It is the same in every town. There are towns in my constituency where there is one property for rent. That leads into the process of my philosophy of whether the Department should be acquiring property.

Mr. Noel Waters: There is another issue. Clearly it would require substantial public expenditure. The envelope available to the Department is limited. We also have our own priorities. For example, a big priority for us in the next couple of years, reflecting the views of Oireachtas Members, is to ensure we will have a new forensic science laboratory. It will be a very expensive project. We have to measure it against the available funding from the Government and the Department of Public Expenditure and Reform. If anyone can come up with a better model, we are quite open to considering it.

I wish to make one other point. We expect to be in a position fairly soon where people who apply for asylum will have their applications dealt with within a period of perhaps nine to 12 months. In the European model, if someone does not have status within nine months in particular cases and he or she has co-operated with the system, he or she will be given limited rights to work. Whether we would wish to do that will be a decision for the Government at some point, if we get to it, but it is important to demonstrate to the committee that our minds are not closed in examining the options.

Deputy Shane Cassells: I appreciate that. I am just trying to get a sense of the real long-term policy. On the one hand, the Department is ruling out actual integration, but, on the other, it seems to have been scared off the process of acquiring buildings for fear of threats in local communities. That is why I prefaced my remarks. As a society, are we not moving into that space? We saw what happened in Ballaghaderreen and elsewhere. Is that it? Are we moving away and saying there are no other options? On what is happening in the camp in Mosney, obviously improvements have been made, but, knowing the standard of facilities there, was it humane from the get-go?

Mr. Noel Waters: I do not wish to make a judgment on any place, but I think it has been improved.

Deputy Shane Cassells: I can tell Mr. Waters that, from memory, it was something a person might suffer for one week, but one would not live there long-term.

Mr. Noel Waters: I was there as a child also. However, it has been improved and we are working to improve all facilities. One of the key issues which was referenced in the McMahon report is that people need independence in their lives. One of the best means of ensuring independence is providing the opportunity to cook for oneself. We already have this opportunity in Mosney and are working with other centres to ensure it will be implemented as quickly as possible.

Chairman: Deputy Mary Lou McDonald is the next speaker. As it is 5p.m., she will be the last speaker.

Deputy Mary Lou McDonald: I thank the witnesses for their forbearance and will keep it as tight as possible. Therefore, I would appreciate clear, concise, non-rambling answers.

I wish to return to the issue of bank accounts and the clearance required under the 2005 Act. Will Mr. Waters tell me what the procedure is or who the go-to person is in his Department to seek that sanction?

Mr. Noel Waters: Perhaps Mr. O'Callaghan might answer that question.

Mr. John O'Callaghan: I cannot say definitively, as it has not happened in the time I have been in the division, but it is probably the policing division in the Department.

Deputy Mary Lou McDonald: I think the gentlemen and ladies are perhaps being a little disingenuous with us or else their recollections are not great. They have not been in a position to shed any light on the business of sanctioning accounts, of which there were approximately 50, some of which go back, which I accept. However, they were in receipt of the interim audit report. Which of them read it on behalf of the rest?

Mr. John O'Callaghan: I read it.

Deputy Mary Lou McDonald: Has Mr. Waters also read it?

Mr. Noel Waters: I have.

Deputy Mary Lou McDonald: They will have noticed that on page 23 it cites the 2005 legislation and the necessity to seek the consent of the Minister. It states: "In 2015 a bank account (Garda Student Sport BOI) was opened without such consent being obtained". Will the witnesses, please, explain that to me? They have read the report and I am sure they did not miss

that section of it. Whatever about other accounts, we have a specific instance in 2015. When did Mr. Waters take up his position?

Mr. Noel Waters: In October 2014.

Deputy Mary Lou McDonald: Therefore, he was in place at that stage.

Mr. Noel Waters: I have to say no papers came to my notice requesting that a bank account be opened in that period.

Deputy Mary Lou McDonald: Okay. Nonetheless, the audit report indicates that such an account was opened and that it was opened without consent.

Mr. Noel Waters: Yes.

Deputy Mary Lou McDonald: I am sure Mr. Waters was alarmed by this revelation when he read it.

Mr. Noel Waters: Yes. We were alarmed by the entire set of revelations-----

Deputy Mary Lou McDonald: So alarmed that he came to an Oireachtas committee today without having a bull's notion of what the procedure was should An Garda Síochána require sanction to open such an account.

Mr. Noel Waters: To be fair, we are here to discuss the justice Vote and the issues in our Department. My preparations were in respect of the justice Vote primarily.

Deputy Mary Lou McDonald: Mr. Waters is also aware that matters pertaining to the Garda College in Templemore and, specifically, the audit report are now the subject of widespread public commentary and unease.

Mr. Noel Waters: Yes, absolutely.

Deputy Mary Lou McDonald: Mr. Waters is also in receipt of the report which the witnesses have all read thoroughly and dutifully. They did not miss that bit. I find it incredible that, as Secretary General, Mr. Waters does not know what the procedure is for the Garda to seek clearance for the opening of bank accounts.

Mr. Noel Waters: None of them would have come to my attention. The matter would have been dealt with in the line division in the Department. It would not have ended up in the Secretary General's office, either in my time or previously. It would have been dealt with in the relevant area of the Department.

Deputy Mary Lou McDonald: Mr. Waters read the report and about all of the accounts - up to 50 - and issues in seeking sanction. For the Garda to operate without the sanction of the Department or the Minister is to breach the law. It is a very serious matter. It is not a triviality. Did none of it spark a thought process in Mr. Waters' head? Did he ask himself if it was the right way to go about it or how one would seek or secure such sanction? Did that not occur to him?

Mr. Noel Waters: Our focus on receipt of the audit report was on addressing the issues raised in it.

Deputy Mary Lou McDonald: This is one of them.

Mr. Noel Waters: It is. The audit report was immediately passed on to the Policing Authority or-----

Deputy Mary Lou McDonald: By the way, as we will be coming back to this issue, if they have not carried out an extensive and in-depth trawl of the Department's paperwork, I suggest the witnesses need to initiate one without delay. I do not accept that it as an acceptable answer from Mr. Waters that he does not know what the mechanism is by which sanction would be obtained by the Garda for the opening of bank accounts.

Mr. Noel Waters: I cannot be expected to know everything that happens in the Department.

Deputy Mary Lou McDonald: I am not asking Mr. Waters to know everything but to know his Department.

Mr. Noel Waters: This is a detail in the Department which would be a matter for the line division.

Deputy Mary Lou McDonald: That might be acceptable, except when a very big controversy erupts, as it has, and when a core component is the fact that accounts were being opened in large numbers without the sanction of the Department and the Minister. In the circumstances, Mr. Waters' plea of ignorance is absolutely shocking. I am shocked that he cannot answer these questions.

Mr. Noel Waters: All I have said to the Deputy is that these matters are dealt with in the line division of the Department.

Deputy Mary Lou McDonald: What does the witness do?

Mr. Noel Waters: I am Secretary General of the Department.

Deputy Mary Lou McDonald: Exactly. What is the purpose of the witness's function if he is not in charge? He is the Accounting Officer to this committee.

Mr. Noel Waters: Yes.

Deputy Mary Lou McDonald: Coming in and singing dumb really is not the way to approach appearances here.

Mr. Noel Waters: I am not coming in here and singing dumb. I am here to tell the committee my state of knowledge.

Deputy Mary Lou McDonald: The witness's state of knowledge is non-existent.

Mr. Noel Waters: I said that this did not come before me. No permission was sought from me.

Deputy Mary Lou McDonald: What did come before the witness was the audit report. It also went to Mr. O'Callaghan. The audit report is very clear on many things, but I am citing one instance on page 23. It cites the opening of a bank account named "Garda Student Sport" with the Bank of Ireland in 2015, and it was opened without consent. For the auditor to arrive at that conclusion, he or she presumably had to go through a process of verification. I assume, on the basis of simple reason, that part of that process must have been to check with the Department of Justice and Equality. Did he check with the Department?

Mr. John O’Callaghan: He did not check with my division, as far as I am aware.

Deputy Mary Lou McDonald: We are obviously not going to get back to this particular issue. We need clarity on this matter.

Mr. Noel Waters: We are happy to do that, of course.

Deputy Mary Lou McDonald: We need to know exactly what the procedure is, how these matters are sanctioned, who deals with it now and who dealt with it historically. I have cited one bank account. There are dozens of others, and I believe that the witnesses are going to have to go on an expedition of discovery around that.

Mr. John O’Callaghan: In the Commissioner’s evidence on the last occasion she said she had appointed an assistant commissioner to look at the audit report and see if there were any issues of either illegality or disciplinary matters arising from it, and that that investigation was ongoing.

Deputy Mary Lou McDonald: How is that relevant to that point?

Mr. John O’Callaghan: It relates to the possibility that a bank account may have been opened without permission or without seeking the sanction of the Department.

Deputy Mary Lou McDonald: I do not wish to be rude but we are tight on time. The Commissioner accepts the findings. These are not matters of contention. There is no “he said, she said, you said, I said” element to this. We accept that these are established matters of fact in this report. I would appreciate if the witness could come back with the facts on this situation.

Section 41 of the Garda Síochána Act 2005 obliges the Commissioner to inform the Minister and the Secretary General of the Department in a whole range of different categories. These are not optional. One of those is in circumstances where there is evidence that matters might bring the reputation of the force into disrepute. We can surely agree that what has transpired in Templemore is very damaging to the reputation and standing of An Garda Síochána. Is that a reasonable statement from the witness’s point of view?

Mr. Noel Waters: That, allied to other issues that have arisen, has been deeply challenging for the Garda, yes.

Deputy Mary Lou McDonald: I take that as a diplomatic “Yes”. How is it that the Commissioner did not, in accordance with her obligations under section 41, inform the Secretary General of these matters? She tells us that she came to understand the full gravity of things in July 2015. Mr. Waters was in situ at that stage-----

Deputy David Cullinane took the Chair

Deputy Mary Lou McDonald: In July 2015 Mr. Waters was in charge of the Department. The Commissioner tells us that at that point that she discovered the full, terrible vista of Templemore, and yet Mr. Waters was not informed, as per section 41 of the legislation.

Mr. Noel Waters: The triggering of a section 41 report by the Commissioner is a matter for the Commissioner. I cannot put myself in the Commissioner’s shoes and decide whether or not to formally send in a section 41 report.

Deputy Mary Lou McDonald: I want Mr. Waters to stay in his own shoes. He is the Sec-

retary General of the Department of Justice and Equality. He is therefore in charge. He carries statutory duties and obligations, as does the Commissioner. This is not a pick and mix situation, where one can decide to act or not act. The Commissioner had an obligation to inform Mr. Waters of these matters under section 41 of the legislation. Does he accept that there was such an obligation?

Mr. Noel Waters: It is a matter for the Commissioner to decide, having regard to the-----

Deputy Mary Lou McDonald: Does the witness accept that the Commissioner, as a matter of law, has a legal responsibility and obligation to inform the Secretary General and the Minister in circumstances where there is jeopardy to the reputation of An Garda Síochána?

Mr. Noel Waters: The law is as it is.

Deputy Mary Lou McDonald: The law is clear. Does the witness also accept that it is clear that the Commissioner did not exercise or abide by that obligation because she did not inform him?

Mr. Noel Waters: I cannot make that assumption.

Deputy Mary Lou McDonald: Why can the witness not make that assumption?

Mr. Noel Waters: I cannot put myself in a situation where I am substituting a view that I might have on an issue for that of the Commissioner. I cannot do that.

Deputy Mary Lou McDonald: The witness has read the audit report and has presumably followed developments in this because the audit report landed on his desk. He does not regard those issues as being of such seriousness that they would have merited his being informed under section 41 of the Act.

Mr. Noel Waters: On a point of clarification, I do not believe that the Commissioner had sight of the audit report at that point. The audit was underway in 2016, so the question of the Commissioner making a section 41 report to me in 2015 was a matter for her judgment.

Deputy Mary Lou McDonald: She was informed and briefed in July 2015. We know that. When does Mr. Waters believe that the Garda Commissioner received the audit report?

Mr. Noel Waters: I assume that she received it at the same time as everybody else received it. We got it in September 2016. Again, I stand corrected, I-----

Deputy Mary Lou McDonald: Has the witness discussed this with the Commissioner? Did he raise it with her at any stage and ask her what was going on or tell her that he was not informed and that he should have been informed?

Mr. Noel Waters: No, I have not had that discussion with the Commissioner.

Deputy Mary Lou McDonald: What conversations has the witness had with the Commissioner on these matters?

Mr. Noel Waters: I have many conversations with the Commissioner, as Deputy McDonald can imagine, because of our respective roles. I have no specific recollection of any individual conversation on this matter.

Deputy Mary Lou McDonald: The witness has no specific recollection. How often would

he be in contact with the Commissioner in any given week?

Mr. Noel Waters: On some occasions it could be multiple times in a day.

Deputy Mary Lou McDonald: There is regular contact?

Mr. Noel Waters: Yes.

Deputy Mary Lou McDonald: Yet he has no specific recollection of any reference to this.

Mr. Noel Waters: The nature and extent of the conversations we have means that we talk about many things.

Deputy Mary Lou McDonald: Has there been no discussion with the Commissioner in recent days or weeks?

Mr. Noel Waters: I was conscious of the fact that there was a process under way and I have not had a detailed conversation with the Commissioner about this.

Deputy Mary Lou McDonald: Does Mr. Waters think that his job in this committee is to protect the Commissioner or anybody else?

Mr. Noel Waters: Absolutely not. I am here to tell the facts and the truth as I know it.

Deputy Mary Lou McDonald: Was the witness being fully frank with us when he told us that he has not had a conversation with the Commissioner on these matters around Templemore?

Mr. Noel Waters: To the best of my knowledge I have not had a specific conversation with the Commissioner around Templemore. I have had conversations with the Commissioner around other issues concerning Templemore over a period of time, including around ensuring that the training college was up to capacity for the number of recruits coming in.

Deputy Mary Lou McDonald: There has been no discussion on any of the irregularities with the Commissioner? She has called them financial irregularities.

Mr. Noel Waters: To the best of my recollection I have had no detailed discussions with her.

Deputy Mary Lou McDonald: It is extraordinary.

Mr. Noel Waters: My issue here is that there is a process under way to deal with these. We need to see that process out. The Policing Authority have oversight of what is going on.

Deputy Mary Lou McDonald: The Garda Commissioner did not inform Mr. Waters as per the legislation. He has not had a conversation with her. This is extraordinary. Has he spoken to the Tánaiste directly on the matters of the audit and the irregularities in Templemore?

Mr. Noel Waters: We have had discussions. When the audit report came in, a submission went to the Tánaiste and it was discussed with her at the time.

Deputy Mary Lou McDonald: In the context of the internal audit function with An Garda Síochána, what is the relationship between the internal audit unit and the Department? Who is the go-to person for the head of internal audit or is there a bridging mechanism-----

Mr. Noel Waters: No, they are entirely separate arrangements. They are the Accounting Officer so there would not be a relationship of the nature the Deputy described.

Deputy Mary Lou McDonald: So the Department has no oversight from that point of view?

Mr. Noel Waters: None whatsoever.

Mr. John O'Callaghan: To clarify, under the 2005 Act, there is a statutory audit committee for An Garda Síochána and then the internal audit unit of An Garda Síochána works to the programme of that audit committee and is within the realm of the Garda Commissioner, the Garda Vote and so on.

Deputy Mary Lou McDonald: I have a request more so than a question because in light of the hour, we do not have the scope for it. Could the Department provide us with a briefing note on the mental health supports, including counselling, provided to individuals and families in direct provision centres? Deputy Connolly eloquently set out the circumstances in which people live and raise their families. I do not know about Mr. Waters but I would not like to live in Mosney or raise my children there, yet we are presiding over a system that allows that. This is a scandal unfolding under our very noses and it is in plain sight. As and when the unavoidable consequences of this play out, not least in the resentment of so many fine young people and children who are being forced to grow up in these circumstances, we will not be able to say that we did not know. I would like that briefing note from the Department.

Mr. Noel Waters: We are happy to provide that to the Deputy.

Acting Chairman (Deputy David Cullinane): Two more speakers indicated that they want to come back in and we have 15 to 20 minutes for both. People have been in their seats for three hours and I will offer them the choice of a break for a few minutes or we can keep going.

Mr. Noel Waters: We are happy to keep going for 15 to 20 minutes.

Acting Chairman (Deputy David Cullinane): I have a number of questions and then Teachta Connolly will come back in to finish.

Teachta McDonald raised instances of where the Minister should have been informed of issues relating to the Garda training college. She specifically raised questions about the opening of bank accounts. The final paragraph on page 20 of the internal audit report, which is up on the screen, states:

The Garda Síochána Sportsfield Company Ltd continued to operate with Garda College Management as Directors. The legal standing of the actions of these directors since 2005 is questionable. Even in the period prior to 2005 it is questionable whether Gardaí as public servants should have been acting as Directors of what was set up as a private company without being appointed by or having the expressed permission of the Minister for Justice ... no evidence was found of any Gardaí having received permission from the Minister to act as a director.

To Mr. Waters's knowledge, did the Department receive requests from any member of An Garda Síochána to become a director of these companies? If so, was permission granted?

Mr. Noel Waters: I have no knowledge if such a request was received or given.

Acting Chairman (Deputy David Cullinane): Does Mr. O’Callaghan have any knowledge?

Mr. John O’Callaghan: No, except in so far as on page 20 it is stated, “While there was evidence in some of the documentation [I presume this is documentation in An Garda Síochána] of the knowledge of Department Officials in the set up of this Company in 1992, no evidence was found ...”. I do not know whether that might have implied approval but I have no knowledge of there being approval.

Acting Chairman (Deputy David Cullinane): It says that no evidence was found of any gardaí having received permission. Is Mr. O’Callaghan indicating that it says that perhaps the Department had knowledge that the company was set up but that it did not necessarily know who were the directors? Is that a possibility?

Mr. John O’Callaghan: That is a possibility from the evidence in the audit report.

Mr. Noel Waters: But we have no evidence ourselves.

Mr. John O’Callaghan: We have found no evidence.

Mr. Noel Waters: We have no records about this.

Acting Chairman (Deputy David Cullinane): I am trying to put myself in Mr. Waters’ shoes when he read the report. There seems to be a lack of urgency on the Department’s part in how it responded to some issues. Teachta McDonald asked what action was taken when he was made aware of this and read the report about bank accounts being opened without the express permission of the Minister for Justice and Equality, and specifically the bank account in 2015. I am sure he also read the paragraph I quoted and this should have sounded alarm bells. Private companies were established for which permission needed to be given by the Minister but it was not given. What did Mr. Waters do when he became aware of that?

Mr. Noel Waters: I asked during the week - I will be truthful and frank with the committee - to establish if we have any papers relating to this matter in the Department and the initial trawl indicated that we do not have any papers in the Department.

Acting Chairman (Deputy David Cullinane): Who did Mr. Waters ask?

Mr. Noel Waters: I asked my colleague, Ms McPhillips, who is in charge of that area.

Acting Chairman (Deputy David Cullinane): What did Ms McPhillips uncover specifically? Did she uncover any documents or has she had an opportunity to do that work yet?

Ms Oonagh McPhillips: No. We checked. Back to 1992 and the late 1980s, there would have been many paper records and there is a registry with Kardex cards and so forth. We checked the registry to see whether there were any registered files that referenced this kind of matter and there are not. Audit files are not retained in that form. Audit up to the noughties was not as professionalised and detailed as it has since developed into.

Acting Chairman (Deputy David Cullinane): When Mr. Waters read the report, I imagine he would have had to ask the Minister whether she had read it. Did he have a conversation with her about the content of the report and the issues that were raised regarding information that was not given to her, as Minister, and bank accounts potentially being opened without her permission or that of her predecessor?

Mr. Noel Waters: I cannot recall at this remove specifically what conversation we had at the time the report was submitted but I know we had a conversation in respect of what we were going to do in to ensure the recommendations were implemented. On foot of that, it was agreed that the Policing Authority would be asked to have oversight of the implementation of the contents of the report.

Acting Chairman (Deputy David Cullinane): Does Mr. Waters believe it is the role of the authority to do all this examination work? Is it his view that he simply just refers issues on to the authority and that is the Department's job done?

Mr. Noel Waters: No, I do not believe so. The Policing Authority was set up specifically with an oversight role and we are obliged to ensure that it exercises that role.

Acting Chairman (Deputy David Cullinane): Mr. Waters had a discussion with Teachta McDonald about section 41 of the Garda Síochána Act and the advice the Minister received. My understanding is, because there was confusion when he was having an exchange of views with the Deputy, that the Garda Commissioner became aware of the alleged financial irregularities and the issues that arose from the audit report at a meeting with Mr. John Barrett. There is some disagreement as to whether it was a five-minute meeting or a two-hour meeting but she was certainly briefed. Following that, she was given legal advice. If she was minded at that point to follow up with the Minister, what would that process involve?

Mr. Noel Waters: In the normal course of events - and there have been a small number of these - it would involve a letter to myself that would have cited section 41 of the Garda Síochána Act. In my time as Secretary General, this provision has only been exercised in that specific format about half a dozen times or thereabouts.

Acting Chairman (Deputy David Cullinane): But it has been done a half a dozen times. The Commissioner would then write to Mr. Waters under that section to outline the seriousness or the nature of the issues and he would bring it to the attention of the Minister. Is that how it would work?

Mr. Noel Waters: Yes, and we would discuss what actions needed to be taken on foot of it, whether we needed further information from the Commissioner or whatever would be needed.

Acting Chairman (Deputy David Cullinane): That did not happen, however, because the request was not made.

Mr. Noel Waters: The Commissioner decided, in the exercise of her functions, not to make that request.

Acting Chairman (Deputy David Cullinane): She made that decision and it did not happen.

Mr. Noel Waters: Yes.

Acting Chairman (Deputy David Cullinane): A number of Deputies have spoken about the human impact that direct provision has had on many people. Mr. Waters has obviously read much of the commentary around direct provision, so I am sure he is aware that it is not all positive. There has been a litany of articles through which we hear the testimony of their experiences from many residents in these centres. Some of it has been positive but much of it has not been. What is Mr. Waters view of the operation of these reception centres? What is his

view of how they have treated people within the centres and has the Department ever carried out a human rights analysis of how people are treated within these centres?

Mr. Noel Waters: On the operation and running of the centres, there are very clear requirements set out in the contract of how people are to be treated in the centres. They are very clear requirements on the services they are required to provide and the manner in which they are to provide them. If they are not providing those services as required -----

Acting Chairman (Deputy David Cullinane): Mr. Waters was himself in RIA for some time, it was two years.

Mr. Noel Waters: I was for a couple of years.

Acting Chairman (Deputy David Cullinane): So Mr. Waters has a professional view as someone who has been involved with RIA.

Mr. Noel Waters: Yes.

Acting Chairman (Deputy David Cullinane): In Mr. Waters view, were these centres generally run well and were people treated well?

Mr. Noel Waters: In my experience, generally yes.

Acting Chairman (Deputy David Cullinane): Can I give an example? Deputy Connolly spoke about the question of how some of these centres were run and the level of curtailment of the rights of some people who were residents in these centres. In 2009, when I was a local councillor in Waterford, I received correspondence from a residents association which was set up in one of these reception centres. They asked me to come and meet them in the centre, which I did but I was refused permission to meet them on the campus because I was told that it was a private company and I had to be given permission. I was not aware of that and I asked for an alternative date but was not given one. I asked why I was being refused permission and was told because it was a private company and it did not have to give permission. I was not comfortable with that and the residents wanted the meeting on site in the place they lived. They had issues in regard to how the centre was managed. I was then asked to leave and ultimately barred from the premises. Gardaí were called although they never arrived. I have heard the description being used a few times that these centres were being run like prisons. It struck me that was how I was treated as a public representative, if that was my experience when all I wanted to do was to have a meeting with residents, how then were people living in the centre treated when we were not there? There was a view that some of these centres were being run on the lines of “out of sight, out of mind”. Given my experience as a local councillor and how I was treated, being told by a manager that I was barred simply because I was looking to meet with residents, how does that square with the idea that these centres are being run well and with people being treated well?

Mr. Noel Waters: I cannot comment on the individual circumstances of the case the Acting Chairman has raised. I take his bona fides in what he says but as far as I am concerned, subject to the law, subject to ensuring that whatever requirements around the protection of people and normal routine business are met people should be able to conduct their business in centres in a normal way.

Acting Chairman (Deputy David Cullinane): Would it surprise Mr. Waters to know that there was a local election that year, in 2009, in which the residents in that centre were entitled to vote? I asked permission to canvass the centre and I was refused. I then posted a letter to each

of the residents there with canvassing material in the letters and I was told by the management that the letters were put in the bin and that there was no political canvassing allowed. Would that surprise Mr. Waters?

Mr. Noel Waters: To the best of my knowledge there was a rule. Mr. Banks might be able to help in this.

Acting Chairman (Deputy David Cullinane): Can Mr. Banks help us on this? I did write to RIA at the time and I was very disappointed with the response.

Mr. Noel Waters: There was a rule at the time that party politics was not allowed in centres. I am not sure if that still obtains.

Mr. Eugene Banks: I do not believe it does. I am not 100% certain but I can find out and get back to Deputy Cullinane.

Acting Chairman (Deputy David Cullinane): I am trying to establish how there were rules around canvassing because I would think that was unconstitutional. I am now interested about whether or not these centres were being run unconstitutionally. People have a constitutional right to interact with elected representatives. They have the same right as anyone else to be canvassed and to receive electoral material. If the witnesses are telling me that there were circumstances in which the State allowed electoral material which was posted directly to residents in reception centres not to be handed or given over to people who lived in those centres and that was actually policy, that raises constitutional issues for the Department. Maybe Mr. Banks or Mr. Dowling can refer to what the policy was.

Mr. Noel Dowling: I was in charge of RIA at that time. There was a position regarding canvassing at the time, that political canvassing in the context of local elections would not be allowed within the centres on the basis that it was the private dwelling of, in several cases, several hundred people. We did allow -----

Acting Chairman (Deputy David Cullinane): Was that constitutionally proofed?

Mr. Noel Dowling: There was no intention of stopping people from seeing any local authority candidate. What was being restricted there was having meetings in a centre, where there could be many candidates who wanted to have meetings around the same time in a centre and the centre would become a political forum.

Acting Chairman (Deputy David Cullinane): We have private nursing homes, public nursing homes where canvassing is allowed, where it is possible to go in and hand the materials out. Are we saying that the only people in the state, in 2009, that were not allowed to be canvassed directly by candidates in a local election in which they were entitled to vote were residents in reception centres?

Mr. Noel Dowling: I am not clear what the position is in private nursing homes. What I am clear about -----

Acting Chairman (Deputy David Cullinane): I am telling Mr. Dowling that we were allowed to canvass those areas. Is Mr. Dowling saying that all local election candidates were specifically not allowed to canvass people in their own residence in 2009?

Mr. Noel Dowling: There is a question about canvassing in their own residence. Most centres have private rooms for residents and there are public areas. What we were concerned

about was -----

Acting Chairman (Deputy David Cullinane): Were we allowed to canvass in the public areas?

Mr. Noel Dowling: No, that was not allowed. The policy may well have changed in the meantime.

Acting Chairman (Deputy David Cullinane): Can Mr. Dowling find out if the policy has changed because I would put it to him that these are democratic rights of citizens. I was talking about the rights people have. People should have a right to be canvassed by people who put themselves forward in election to represent the people and represent all people. If there is a situation where people are not allowed to interact with local politicians, and I gave an example where I was not allowed to meet residents in the centre and there was nothing we could do because we were told that they were private companies.

Mr. Noel Dowling: Can I interrupt on that, there was never any restriction in terms of having canvassing material distributed to residents. If Deputy Cullinane wrote a letter directly to a resident in a centre it should have been given to them.

Acting Chairman (Deputy David Cullinane): It was not given, Mr. Dowling.

Mr. Noel Dowling: That should not have happened. The rules did not restrict in any way, for example, Deputy Cullinane putting up a notice to say that he was willing to meet with residents at some place outside the centre or having his -----

Acting Chairman (Deputy David Cullinane): Could Mr. Dowling furnish this committee with the past and current policy on this issue, please?

Mr. Noel Dowling: Okay, we can do that.

Mr. Noel Waters: If I may add, I would not for one moment stand over any suggestion that somehow we are impeding the right of people to participate in the democratic process.

Acting Chairman (Deputy David Cullinane): Mr. Waters might not stand over that but my view is that if the only category of people in the State who, for a period of time, were prevented from interacting with local politicians - and I asked if they were allowed to be canvassed in the public or private spaces of these centres, and I was told "no" - so they were prevented from having access to local election candidates, that is a denial of their rights. Mr. Waters may not agree but that is my view.

I have also given examples of where I was personally told that I was barred from one of these centres, merely because I turned up to interact with the people who lived there at their request. That might not be an issue for Mr. Waters but it is an issue for me because everyone has a right to be represented, including the people who live in those centres. I will ask Deputy Connolly to come in.

Mr. Noel Waters: I completely agree with the Acting Chairman.

Deputy Catherine Connolly: I could offer more anecdotes as I had exactly the same experience in Galway. Moreover, another politician was allowed to bring a bus to a direct provision centre. We could provide anecdotes until 10 o'clock tonight but these cases give an indication of how people in direct provision are treated. There should be complete clarity surrounding the

rights of residents of direct provision centres. That is not the case at present and the Secretary General is not in a position to state whether the example cited reflected policy. I ask the witness to clarify the policy for the committee in writing.

I have a few practical questions. On the housing assistance payment, HAP, if someone receives refugee status and cannot find a home, for example, in Galway city where we have a major housing crisis, I understand he or she will be left in limbo, as it were, as it is not possible to access entitlements without an address. Is that correct?

Mr. Noel Waters: I am not in a position to either clarify or not clarify that because we do not administer the housing assistance payment. What we do, working with non-governmental organisations, is to try to ensure, as best we can, that people can access the housing market.

Deputy Catherine Connolly: Mr. Waters is the person in charge of the Department of Justice and Equality.

Mr. Noel Waters: We do not run the housing assistance payment.

Deputy Catherine Connolly: I am fully aware of that and that the Department has enough on its plate and certainly does not need any more burdens. It also has many other issues to look into. I am familiar with the position in Galway, where there is a major housing crisis. I cannot see people in direct provision who receive refugee status getting out of direct provision any time soon. I raise a practical one and ask the Secretary General to check what the position is for me. Are people who find themselves in the circumstances I described in a double bind? If they find a house, they will receive the housing assistance payment but if they cannot get a house, they cannot get a housing assistance payment. Is it the case that in such circumstances, the person is unable to access entitlements? Can Mr. Waters revert to me on that issue?

Mr. Noel Waters: I certainly can.

Deputy Catherine Connolly: For example, do such persons have access to unemployment benefit?

Mr. Noel Waters: Once they have status in the State.

Deputy Catherine Connolly: Is that regardless of whether they are still in direct provision?

Mr. Noel Waters: I ask Mr. Banks if he can reply.

Mr. Eugene Banks: To the best of my knowledge, they are not entitled to unemployment benefit while they are still resident in State provided accommodation, but again that it a matter for the Department of Social Protection.

Deputy Catherine Connolly: I want clarity on the issue.

Mr. Eugene Banks: I will ask the question but I cannot give the Deputy clarity about actions in another Department.

Deputy Catherine Connolly: The Department must have clarity because it has residents staying in direct provision and needs to know to what they are or are not entitled. I am not blaming the Department but simply seeking clarity on the matter. It seems my understanding is correct and such persons cannot draw benefits or access the housing assistance payment. They

are, therefore, caught in a Kafkaesque scenario.

Mr. Noel Waters: If I can help, the Deputy can be sure it is not in our interests to participate in that because we clearly want to ensure that people who have status move on as quickly as possible.

Deputy Catherine Connolly: One in six of those who are in these circumstances do not move on and the onus is on the Department to find out why they are not moving on. For this reason, I ask the witnesses to provide clarity on the issue.

On another issue, access to university was raised. I understand there was a pilot project introduced in this area.

Mr. Noel Waters: Yes, there was.

Deputy Catherine Connolly: Could the witnesses provide the committee with the results of the pilot project in writing?

Mr. Noel Waters: We could.

Deputy Catherine Connolly: Good.

Mr. Noel Waters: Again, that is a matter for the Department of Education of Skills but we will check that and come back to the Deputy on it.

Deputy Catherine Connolly: I forgot to ask how many children were in direct provision.

Mr. Noel Waters: We have that figure in the paper somewhere.

Deputy Catherine Connolly: I did not see it, although I may have missed it.

Mr. Eugene Banks: It is approximately one third of the total but I will send the figure to the Deputy.

Deputy Catherine Connolly: I do not want approximate figures.

Mr. Eugene Banks: That is fine. We will give the precise figure for the latest stage that is available.

Deputy Catherine Connolly: A strong recommendation was made on a complaints procedure, an issue raised by previous speakers. Is it the case that there is no complaints procedure in place and residents of direct provision centres must take complaints straight to the Ombudsman?

Mr. Noel Waters: No.

Deputy Catherine Connolly: Does the Department have an internal complaints procedure in place?

Mr. Eugene Banks: Yes. People take the complaint first of all to the manager in the centre because typically the complaint is about something that is happening to the resident.

Deputy Catherine Connolly: I understand.

Mr. Eugene Banks: If I may finish. If they are not happy with that, they take it to the

Reception and Integration Agency and if they are not happy with that they may then take the complaint to the Ombudsman.

Deputy Catherine Connolly: In all cases, complainants exhaust the existing complaints mechanism.

Mr. Eugene Banks: Of course, they can always take the complaint directly to the Ombudsman who will take it.

Deputy Catherine Connolly: Has the Department carried out an annual review or audit of complaints and problems arising with a view to making improvements?

Mr. Noel Waters: We undertake information clinics on a regular basis within the centres.

Deputy Catherine Connolly: I have seen and read about those and the Comptroller and Auditor General commented on them when he stated the Department is not collating information from them.

Mr. Noel Waters: We are accepting that recommendation.

Deputy Catherine Connolly: When the Secretary General appears before the committee this time next year, will he will he tell us the Department is collating this information with a view to making improvements?

Mr. Noel Waters: That is our intention, yes.

Acting Chairman (Deputy David Cullinane): Does the committee agree to dispose of Vote 24 and Chapter 6 of the Appropriation Accounts and Report of 2015? Agreed. On behalf of the committee, I thank all of the witnesses from the Department of Justice and Equality, the witness from the Department of Public Expenditure and Reform and our permanent witness, the Comptroller and Auditor General, as well as his staff.

The witnesses withdrew.

The committee adjourned at 5.45 p.m. until 9 a.m. Thursday, 18 May 2017.