

DÁIL ÉIREANN

AN COISTE UM CHUNTAIS PHOIBLÍ

COMMITTEE OF PUBLIC ACCOUNTS

Déardaoin, 28 Meitheamh 2018

Thursday, 28 June 2018

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 Catherine Murphy,
Deputy David Cullinane,	Deputy Kate O'Connell.
Deputy Alan Farrell,	

DEPUTY SEAN FLEMING IN THE CHAIR.

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

Business of Committee

Chairman: Apologies have been received from Deputies Catherine Connolly and Pat Deering. The first issue on today's agenda is the minutes of the meeting from 21 June. Are the minutes agreed? Agreed. There are no items under matters arising that will not come up by way of correspondence or the work programme for now.

Deputy David Cullinane: Has the committee received any correspondence from RTÉ?

Chairman: About?

Deputy David Cullinane: Is there any correspondence at all from them?

Chairman: There is.

Deputy David Cullinane: I will raise the issue then.

Chairman: Yes. We will certainly speak about that RTÉ correspondence. I turn now to correspondence. Category A is briefing documents and opening statements. First is No. 1415A from Ms Brenda McVeigh of the Tax Appeals Commission and is a briefing note for today's meeting. We note and publish it. No. 1420A is from Niall Cody, Chairman of the Revenue Commissioners, and is a briefing note for today's meeting. We note and publish that. No. 1431A is from Mark O'Mahoney, commissioner at the Tax Appeals Commission, and is an opening statement for today's meeting. We note and publish that. No. 1434A is from Niall Cody, Chairman of the Revenue Commissioners, and is also opening statement for today's meeting. We note and publish that.

Category B is correspondence from Accounting Officers and Ministers following up on previous meetings. The first item is held over from the previous meeting. Some Deputies were not present and asked for documentation and correspondence to be held over. The first item is No. 1371B from Mr. Seán Ó Foghlú, Secretary General of the Department of Education and Skills, in response to a committee request to clarify the process and criteria for designation as a technological university, in particular stage 3 of that process in 2014 regarding the Munster technological university consortium. We note that correspondence as published.

The next item is No. 1380B from Dr. Graham Love, chief executive of the Higher Education Authority, dated 13 June and providing follow-up notes requested by the committee on the cost of the Munster technological university merger to include a table setting out the figures; the borrowings and funding of institutes of technology, any changes that may happen following the transition to technological university status and how this compares with existing universities; and the various skills mixes of the boards and governing bodies of the third level institutions. Can we note and publish that?

Deputy David Cullinane: I have a related issue on the HEA which is not on correspondence but is one which I have raised before. This is the HEA report on Waterford Institute of Technology. I received correspondence personally from the Teachers Union of Ireland, TUI, and I was in contact with some of the officials of that trade union. A number of current staff members met the author of the report, and while I do not know whether what they said would be

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considered protected disclosures, they feel vulnerable in the sense that drafts of the report have been given to individuals within the institute of technology. It might be easy for individuals and management to discover who exactly said what to the author of the report. Given that there is a delay in the publication of the report, they feel a bit let down as well as apprehensive and nervous at having been left hanging. It would be appropriate for the committee to write to the HEA outlining that. I asked the TUI to write directly to this committee and, if it has not done so, that is a matter for it. It has written directly to me, however, and I can send on a copy of the letter.

Chairman: We would be happy to forward that document setting out those concerns.

Deputy David Cullinane: They are genuine concerns. More than 50 people were involved, some of whom have left the organisation and some of whom still work there. Some of them are going for interviews for promotion. Given that they spoke to Mr. McLoone and provided him with information, they feel vulnerable. It is something we did not raise with Dr. Love when he was here. It was one of the concerns I did not raise with him, at least.

Chairman: We will also ask for a timeline on the report.

Deputy Catherine Murphy: Another issue we were to come back to under that heading involved Kildare and Wicklow Education and Training Board. In the past week or so, there was a television programme which outlined some of the procurement issues there. Some of those will fall under a criminal investigation. Some of the issues, however, will not. Certainly, I am picking up deep concern about the waste of public funds in a sector that is under pressure. People are being asked to pay voluntary fees while others are having meetings at the K Club. That is how people are, understandably, absorbing what is happening. We need to determine those aspects of it that have been referred to the Garda and will be investigated so that we can come back to this issue because it is not just about Kildare and Wicklow ETB but the oversight by the Department in the context of the historical connection. A previous report was done and the oversight simply was not there. We cannot leave that one, although I accept that some of it is not within our remit because it has been referred to the Garda.

Chairman: We will write directly seeking an update on that report.

Deputy Alan Kelly: There is another thing in relation to the HEA. I have just looked at the transcript of our meeting with the HEA and I have a concern about the way in which it is managing protected disclosures and how the various institutions under its remit are handling such disclosures. I flag to the committee that this is something we may wish to come back to. I am due to have a conversation with Dr. Love. In fact, I have been trying to have it for the last week but we have not been able to talk. I have a concern that there is an issue here about historical disclosures which should be interpreted as disclosures but which are, perhaps conveniently, not being. I record that I believe I may have to come back to this issue in the coming weeks.

Chairman: We will have a discussion on protected disclosures during the course of correspondence as there are one or two items there.

Deputy Alan Kelly: I know that.

Chairman: There is a big picture here on protected disclosures so we will have a chat on that in a few minutes. We will write to Dr. Love on that. We will also write to the Department regarding where we are on the Kildare and Wicklow ETB.

Next is No. 1385B which is held over from the previous meeting, is dated 15 June, and is

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from the director general of RTÉ in response to an email received from an individual querying information provided to the committee regarding the possibility of an RTÉ 2+1 channel. Ms Forbes clarifies that RTÉ 2+1 as a channel does not exist. We have a separate item of correspondence from Mark Griffin which I will put on the screen. It is No. 1421B. He is the Secretary General of the Department of Communications, Climate Action and Environment. His correspondence on the exact same issue is dated 22 June as departmental officials were here that day. He states:

I refer to the letter from the committee dated 18 June in relation to a letter from Ms Patricia Cronin, Assistant Secretary of the Department, which was discussed at the committee's meeting on 14 June. At the committee's meeting on 3 May, Ms Cronin stated that RTÉ had made an application to initiate an RTÉ 2+1 service which is with the Broadcasting Authority of Ireland for consideration. This was not correct. The factual position is that RTÉ had forwarded a draft proposal for discussion with the Department but has not submitted a formal proposal to date. Therefore, the BAI has not yet been requested by the Minister to conduct a sectoral impact of any such proposal as provided for in the Broadcasting Act 2009. I apologise to the committee for the fact that Ms Cronin's evidence to the committee was not accurate and appreciate the opportunity to correct the record.

We will happily do that. I give that as an example in the context of the next item on the same topic. The evidence presented was not accurate. People should just come in, tell us that and let us correct the record. People should not dance around or try to justify it. This is a straight correction of the record and that is the way we want to proceed.

Deputy Alan Kelly: People make mistakes. Just admit it.

Chairman: We accept that. We want to move on now to the correspondence from RTÉ on the same topic. This is No. 1413C. RTÉ spoke at the same meeting on the same issue, even though the Department made that particular statement. I had asked about this RTÉ 2+1 channel. It started off as a harmless issue, but the fact that I am not getting a straight answer says something about the people responding. Mr. Hurley was watching proceedings and took it up. I do not know who he is. He said regarding what was being said at the committee on RTÉ 2+1 that the channel did not exist and we were not being given the exact position.

Deputy Alan Kelly: Thanks, Mr. Hurley.

Chairman: Thank you, Mr. Hurley, whoever you are. I want to go to the third page of this correspondence. Mr. Hurley has been corresponding directly with RTÉ and that is what I want to deal with.

He sent a copy of the correspondence to RTÉ, which wrote directly back to Mr. Hurley and copied the committee. I want to put on record that RTÉ are dancing around this. If it would just come up like the Department and set the record straight, we could move on. However, for some reason, it is not inclined to do that. RTÉ stated it had asked for the RTÉ 2+1 to be on the Sky platform. I will now read the letter from Ms Forbes to Mr. Hurley, which the committee did not get but which Mr. Hurley sent to us.

Thank you for your email of 5 June 2018.

By way of clarification, Mr. Jennings response at the Public Accounts Committee ... [on] 3 May 2018, relate to RTÉ's submission to the BAI's five-year public funding review, which on the date in question was still under ... consideration ... This submission confirmed

RTÉ's intention to formally request permission for the creation of an RTÉ2+1 channel.

By definition, she is saying that it does not exist, as she says that they had not yet made a formal application. She is now saying, which is not fair to the committee, that when we asked a straight question about RTÉ, the response given related to an RTÉ 2 submission to the Broadcasting Authority of Ireland, BAI's, five-year public funding review. There was no such reference at the meeting. She cannot now state that the reference to RTÉ related to some document that it had sent to the BAI as part of a five-year review. She is actually giving Mr. Hurley the run-around. There was no reference to that and I cannot accept the validity of the assertion that what was said here related to the submission to the BAI five-year public funding review by RTÉ. I am not buying that. I think we have agreed to write back to RTÉ and ask if it could please look at what the Department did, correct the record and let us move on, and not drag things into it that we know were not part of the discussion at the meeting. I hope that will be conveyed to RTÉ. They are only putting trips on us and on themselves and they are doing themselves no good by dancing around in circles.

Deputy David Cullinane: I have a separate issue with RTÉ.

Chairman: It is appropriate to raise that now. Item No. 1428, from Deputy Cullinane dated 26 June 2018 requests that the committee write to RTÉ to request a copy of the Eversheds Sutherland report, which we note and publish. Will the Deputy speak on that?

Deputy David Cullinane: This was a very good report. I have not seen the report itself but I have seen the media coverage and RTÉ responded to it. It states there are issues with bogus self-employment and confirms that about one quarter of RTÉ staff are on these contracts. Wor- ryingly for RTÉ, although it is good news for the staff, it states there may be issues in respect of back pay and a cost to RTÉ in implementing the report's recommendations, which it should do. This is something that we might return to because indirectly that would be a cost to the taxpayer. The committee should certainly write and get a copy of the report as it came directly from a hearing of the Committee of Public Accounts. It is good that there has been a response. There is an independent report and it confirms there are issues. There are also wider issues for other media outlets. If we could, we should write to the sectoral committee, which I think is the employment affairs and social protection committee, to ask it to examine the wider issues associated with bogus self-employment in semi-State bodies, as it might not be something pec- uliar to RTÉ.

Chairman: That is a very good suggestion.

Deputy Catherine Murphy: My recollection of that meeting with RTÉ was that there were many questions that we would have like to have answered on that very specific topic. How- ever the report that was being prepared was referred to constantly and, as a consequence, it is unfinished business. We have no choice but to return to it to close off that topic and get a full understanding as to whether people genuinely have the option to change from self-employment to direct employment. It gives us an understanding for other sectors, as the Deputy noted.

Chairman: We will contact RTÉ and ask for a copy of that report immediately because we are doing our periodic report. Next Tuesday, we will have a short private meeting to consider a draft report, which will have a chapter on RTÉ and it would be good to have it before then. I suspect we will want to include reference to this in our periodic report, which we hope to clear next week before publication.

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Deputy David Cullinane: I do not think that we can rule out returning to it. Once we have a copy of the report, we may or may not return to it, depending on its contents. Let us get a copy of it first.

Chairman: Let us get a copy of it. Writing to the sectoral committee is a possibility but I ask the Deputy to hold off on that until next week. We might include a recommendation that the sectoral committee examine that in our report. We will deal with the issue next week and we will be able to move on immediately after that.

I now return to correspondence. Item No. 1384 is from Dr. Graham Love, which was held over from the last meeting. It provides information on what constitutes a part-time and a full-time student and whether the HEA is satisfied that UCC adheres to the requirements in respect of declaration of numbers of part-time and full-time students. We note and publish that. Deputies are free to pick up this issue as they wish.

The next item is No. 1385 held over from the last meeting from Dee Forbes, RTÉ, which we have dealt with. I am asking Ms Forbes to help the committee dispose of the topic.

The next item is No. 1387 from Seán Ó Foghlú, Secretary General of the Department of Education and Skills, providing information requested by the committee regarding protected disclosure to Cork Institute of Technology. I want to link the next item of correspondence to this, namely, No. 1397 from Robert Watt, Secretary General of the Department of Public Expenditure and Reform, dated 18 June, providing information -----

Deputy Marc MacSharry: Regarding the letter that the Chairman just had on screen, who was it from? When did it come in?

Chairman: It is correspondence No. 1387 B, from Seán Ó Foghlú dated 12 June. It provides information to the committee regarding the protected disclosure to Cork Institute of Technology. The committee had raised concerns about how the terms of reference were set. I have not studied that particular letter myself.

Deputy Marc MacSharry: I do not recall coming across that.

Deputy Alan Kelly: I have never seen that letter. Considering what I said in my previous statement here, I have never seen this.

Chairman: Okay.

Deputy Catherine Murphy: I cannot find it either.

Deputy Marc MacSharry: Can we have that printed and come back to it?

Deputy Alan Kelly: That is a good idea.

Chairman: We will print that. There is so much there, we may have missed it.

The next item is No. 1397. I want to deal with this broad issue. It is from Robert Watt about protected disclosures. This committee has people coming to us with protected disclosures. The committee probably needs to take a bit of time to consider how we deal with these. We have had them from justice, education, and third level institutions. They are coming from a variety of sources. Rather than deal with each one on an *ad hoc* basis, telling one person to go here and another to go there, we, as a committee need to get a briefing on how we will handle all these in

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a consistent manner. The final paragraph of his circular to us, Robert Watts states:

the Protected Disclosure Act is subject to statutory review, which is almost complete and will be published shortly. This will review the operation of the Act since its commencement in July 2014 and has included a public consultation process in which 25 submissions were received ... A report will be made by the Minister to each House of the Oireachtas by early July on the findings of the review and conclusions drawn from those findings.

According to the Secretary General, there will be a report on how the Act is operating in the next week or so. We know there are serious deficiencies and inconsistencies all over the place in public bodies. We have a group of protected disclosures before us and we might set aside an hour to deal with them together rather than dealing with each one. That is only a suggestion but I want to be sure that we are dealing with them properly.

I do not want to be accused of dealing with one in one way and another in a different way. I am not trying to rule anything out; I just want to be comprehensive in what I am doing.

Deputy David Cullinane: There are two issues. There are protected disclosures that the committee receives and, because of the nature of the committee, protected disclosures that we receive as individual members. It would be worthwhile and useful having a session at which we would be briefed on the process and how we could protect ourselves.

Chairman: Other Members of the Oireachtas could come too. I call Deputy Marc MacSharry who will be followed by Deputy Catherine Murphy.

Deputy Marc MacSharry: A briefing to apply a level of consistency in approach is fine, but there are problems with all of them. We are not going to have a set formula that will work for all because the inconsistencies are so diverse. It would be great to have a briefing, but we cannot be trenchant in defining in advance an approach to each one.

Chairman: It would be to give us some background information to help us, not on how to deal with each one. We could do with being briefed on the legislation and the statutory review.

Deputy Catherine Murphy: There is a statutory review. Do we know the timeframe involved? No two cases will be the same, but there will be a trend. We will see things that are not working or which may need some amendments.

Chairman: It will be early July. The last sentence in the last paragraph of the letter from Mr. Robert Watt states it “will be made by the Minister to each House of the Oireachtas by early July 2018”.

Deputy Catherine Murphy: How does a statutory review take place and we only find out about it by accident?

Chairman: I am reading the legislation-----

Deputy Alan Kelly: That is my question.

Chairman: The legislation provided for a statutory review. We know what happened. It was printed somewhere-----

Deputy Alan Kelly: And we were forgotten about.

Chairman: There was an advertisement in a newspaper-----

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Deputy Catherine Murphy: It is a box ticking exercise.

Chairman: Yes. Some 25 submissions were received. The issues centre on what happens to people in their employment after they make submissions. The process can go on for a long time.

Deputy Catherine Murphy: Did we receive any correspondence directly from the Department of Public Expenditure and Reform seeking our input, given that we are recipients of protected disclosures?

Chairman: We did not. We also need to ask Mr. Watt how the process was carried out-----

Deputy Marc MacSharry: When did it start?

Chairman: -----who was notified and what the procedure was. I am guessing that line Departments were probably aware of it. I was not aware that the report was coming within a week or two until I read the letter.

Deputy Alan Kelly: I am concerned. This a box ticking exercise. As Deputy David Cullinane said, there is a difference between the protected disclosures legislation, the process by which Departments are dealing with them and the process by which we, as individuals, receive them. I will have no issue with sitting down with them once this is done, but I have two concerns. Learning how well it is working and about its failings is one thing, but time is a big issue. Many protected disclosures are current and if we do not act on or deal with them, I am afraid that they will be lost. Some genuine issues will not be addressed promptly. I have no problem with sitting down to engage in a review and a discussion, but I find it unusual that the committee was not contacted. I am concerned about holding it up to look at these issues in the meantime. The letter refers to early July, but it could be the end of July or September because we will not be back until then, if we do come back.

Chairman: I ask the secretariat to have a note for us on this issue at the next meeting, or as soon as possible, because we will not be here for too many more weeks.

Deputy Alan Kelly: Two more.

Chairman: It might not be comprehensive, but we need the three or four in front of us. In the meantime, we can find out about it because it is a public process. We will come back next week for definite to the issue of protected disclosures and discuss how we will handle it from there. I understand we do not want to leave things in abeyance for a long period.

The next item is No. 1400B, also from Mr. Robert Watt, responding to a request from the committee on the specific questions raised by it in respect of the national lottery and unclaimed prizes. Deputy Jonathan O'Brien was keen to raise this topic. Will we hold it over or note the correspondence? We will publish it. The Deputy can come back to it the next day, if he so wants.

Deputy Marc MacSharry: Does the Comptroller and Auditor General audit the company?

Mr. Seamus McCarthy: No, we audit the regulator but not the franchise holder.

Deputy Marc MacSharry: Is the Comptroller and Auditor General told anything about unclaimed prizes?

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Mr. Seamus McCarthy: I certainly do not have any information on it, but I can look at information the regulator has, particularly where it relates to any collection or transfer of moneys from the franchise company to the fund.

Deputy Marc MacSharry: I know that this correspondence is going to be published and noted, but when Deputy Jonathan O'Brien is back, or if he is here later, we might get his view on the matter. The position on unclaimed prizes does not feel right.

Chairman: I have looked at the letter again and propose that we write to the regulator which comes within the remit of the committee, while the operator does not. The letter from the Department of Public Expenditure and Reform reads:

Expired unclaimed prizes are transferred on a regular basis from the Prizes Bank Account to Premier Lotteries Ireland DAC General Bank Account where they are used for the purposes set out in Clause 6.9.2 of the Licence [agreement]. When expired unclaimed prizes are transferred from the Prizes Bank Account to Premier Lotteries Ireland DAC General Bank Account, there is a corresponding journal to release the transfer amount from the Prize Liability balance. The amount of that journal is then accounted for in accordance with the use to which it is put under Clause 6.9.2 of the [agreement]... as a special, additional or top-up prize, as an offset against the costs of incremental marketing or in accordance with [the] basis approved by the Regulator.

We will write to the regulator to ask what mechanisms are in place to implement clause 6.9.2 of the licence agreement and what is covered in the letter. That is our line. It is incumbent on the regulator to be on top of this issue as part of the agreement. As the regulator comes within our remit, we will send a letter straightaway to ask for the full procedures as to how he ensures full compliance with the licence agreement as mentioned in the letter. It is like pulling teeth, but we are not finished yet. Deputy Jonathan O'Brien can come back to the issue. I expect to receive a response from the regulator.

The next item is No. 1404B from Ms Oonagh McPhillips, acting Secretary General in the Department of Justice and Equality, in response to a request for information on the restructuring of the Department. The information will feed into our third periodic report. We will note and publish the correspondence.

The following three items are from the Health Service Executive-----

Deputy Alan Kelly: I have a concern about the manner in which this is happening following the report of the independent review group on the Department of Justice and Equality, the Toland report, and the length of time it is taking. We have thrashed out the issues involved in detail. I ask the committee to express a concern about the length of time it is taking to come to conclusions on the implementation of the report. It is deeply concerning based on-----

Chairman: Is the the report of the independent review group on the Department of Justice and Equality the Toland report?

Deputy Alan Kelly: Yes, based on what is written in the letter. I ask the committee to express concern considering the evidence given here. I also want to flag, as part of the review of the Department of Justice and Reform and its handling of the matters in question, that we will have to focus in on the Irish Prison Service. Specifically, I would like to see what progress is being made by the Department of Justice and Equality on restructuring, review and implementation. There are two issues. The first is the overall implementation, the timelines and the speed

at which this happening, based on the evidence that was given here today. Dare I say it, I went into the justice committee as well. The second issue is how much progress is being made on implementation of review and change, specifically in the area of the prison service.

Chairman: We will do that directly. We will also consider all the responses as part of periodic report, but that is in the autumn. There are three items from the Health Service Executive. Correspondence No. 1406 from Mr. Ray Mitchell is a copy of the contract for the Cervical-Check provider. One relates to the master contract for MedLab Pathology Limited, while the other relates to a copy of the main contract with Quest Diagnostics Incorporated and it includes a copy of the contract, the signature on the contract and the extensions which were issued in each case. In the case of Quest Diagnostics, an extension was issued on 15 June 2017 and on 19 December 2017. In the case of MedLab Pathology Limited, there was an extension granted on 15 June 2017, on 18 December 2017 and on 9 January 2018, confirming extension of the contract. Some of those had already been put in the public domain. It is by way of reference. We asked for a copy of the contracts. People are free to deal with those issues. Correspondence Nos. 1412 and 1417 both deal with the topic, which I just referred to. We will note and publish them.

Correspondence No. 1407 is from Mr. John McCarthy, the Secretary General at the Department of Housing, Planning and Local Government, providing a response about CCTV and the role of local authorities. It appears local authorities discharge this role within the policy, legislative framework and statutory instrument as set down by the Department of Justice and Equality.

Deputy Alan Kelly: I would say you would have sympathy with me on this view. I am as confused now as I was beforehand. For a bit of background, a number of years ago, when I was Minister for Environment, Community and Local Government, a community group in your county came to me about putting in CCTV. Everyone believes in CCTV on motorways.

Chairman: Dunmore-Durrow.

Deputy Alan Kelly: They are very good people. They set a precedent and did it very well. In fairness, the superintendent there played a blinder in everything. We have an issue now where funding has been given - it came under community grants when I was there - to put up CCTV around the country in a number of locations. As a result of success and pressure, in fairness, this Government has given a substantial amount of funding for this to be replicated by groups all over the country. Very little of it has been drawn down, I understand.

Communities are looking to local authorities and An Garda Síochána. As no one can take responsibility, particularly about where the data will be stored, these CCTV groups cannot conclude and put in place the CCTV. We have a situation where many areas, in particular, motorways, are not being surveyed or reviewed by CCTV cameras, even though the infrastructure is available, can be put in place and is supported by the communities and the gardaí. The local authority and An Garda Síochána cannot agree where the information will be stored, who is going to monitor it, general data protection regulation and so on. The public and the communities have no idea why this is the case. In fairness, this letter does not clarify anything. This is taxpayers' money. The fact is that crimes are being committed. CCTV will be able to help in solving some of these crimes, particularly on motorways. You and I are both in constituencies with motorways running straight through them. People are at a loss because of the difference between the two organisations. If we cannot force an answer, some protocol or some pathway by which this can be solved, this will go on forever.

Deputy Catherine Murphy: I am on a joint policing committee, probably like everyone else here. In Kildare, a protocol has been agreed and our money has been drawn down. The expectation from CCTV very often does not meet the reality. We have plenty of motorways in Kildare. I would say we have more than in any other county. There is an agreed a protocol. Maybe a suggestion is that the City and County Management Association, CCMA, would tell us which ones have and, if there is a model, it may well be that it does not have to be duplicated all over the place. There is no point in having this scheme unless it is usable. If this is an impediment, that is a way to get through the impediment. Maybe we could write to the CCMA to see where the best practice is and where it is working, and we might be able to see if that can be replicated.

Deputy Shane Cassells: I refer to a Department of Justice and Equality-led scheme and to chambers of commerce. There are two parts to this. One is that it is not working. There are only four drawdowns on this. I asked a parliamentary question about this. It is not working from a practicality point of view because many of the community groups cannot find the 40% balance that is required for the implementation of this. Previously, when this worked well, the chambers of commerce worked with local authorities in delivering the fundraising, with the Department of Justice and Equality, to accomplish the CCTV schemes across the country. Deputy Murphy talked about best practice. In my county, we retain the data and the gardaí have a live feed, but if they require any of the data, they have to go to the chief executive and put in a request for the film.

Deputy Alan Kelly: Let me clarify our suggestion. The local authority in my county has contacted me. Funding was provided but they cannot agree on issues like those I outlined because of data and all that. If we are going to the CCMA, and it is a good suggestion, we should also write to An Garda Síochána.

Chairman: The Department of Justice and Equality.

Deputy Alan Kelly: Both. Ultimately, this is a situation where in some cases they can do it while in other cases they cannot. There is no consistency. Surely, they can create a protocol that works for the whole country. If we are writing to the CCMA, we should also write to the Department of Justice and Equality and An Garda Síochána.

Chairman: I am looking at the letter closely. We wrote to the Department of Housing, Planning and Local Government because local authorities are involved. The last of this paragraph essentially says to talk to the Department of Justice and Equality, which is the appropriate Department to deal with our queries on this matter about local authorities. That is the last paragraph of that letter. One can see in a previous paragraph that this matter was decided under the SI 289 of 2006 - Garda Síochána (CCTV) Order 2006. We will write to the Department of Justice and Equality asking it to give us a report on where agreement has been reached on a local authority-by-local authority basis. We will also write to the CCMA, as you asked, and to the headquarters of An Garda Síochána, which implements it, but the Department of Justice and Equality wrote the statutory instrument. We are writing to all three. We have to close this circle. We are asking them on a local authority-by-local authority basis for a report.

Deputy Alan Kelly: Let them talk to one another before they reply, otherwise what will happen is we will get three-----

(Interruptions).

Deputy Alan Kelly: We will get three different letters. That is what will happen.

Chairman: I know, but perhaps we should tell all three that we have written to the other two. We will send each of them a copy of the letter. I know the Deputy is being facetious, and quite rightly, because the public service is not good at that. It has a silo mentality.

Deputy Shane Cassells: Facetious.

Chairman: We know that. We want a comprehensive reply signed up to by those three organisations, namely, the CCMA, the Department of Justice and Equality and An Garda Síochána. End of Take We will seek a local authority by local authority report on the operation of the CCTV scheme referenced in this letter and on who acts as the data controller, not whose responsibility it is. If local authorities have a good model, we would like a copy of the template and everyone else could use it.

Deputy Shane Cassells: If we are writing to the Department of Justice and Equality, perhaps we could ask about how successful its previous scheme was.

Chairman: Yes. That was an urban scheme.

Deputy Shane Cassells: Yes, but we accessed it-----

Deputy Alan Kelly: There is a difference between the two.

Chairman: The Garda acted as the data controller in that scheme.

Deputy Alan Kelly: Yes.

Deputy Shane Cassells: No.

Chairman: Did it not?

Deputy Shane Cassells: No. We operate the scheme in Navan, not the Garda. The Garda has a live feed from it, but the Garda is not the data controller.

Chairman: Okay. Next is No. 1407B. We have referenced this letter. We will note and publish it, then make a detailed response to follow up on it.

Deputy Catherine Murphy: Is this not No. 1408B?

Chairman: My mistake. We dealt with No. 1407B on CCTV. Next is No. 1408B from Mr. John McCarthy, providing a response on the number of statutory inspections of rented accommodation supported by the housing assistance payment, HAP, scheme. The Secretary General states that the Department is working to identify a streamlined process. I will not read the note any further. The Department is in breach of its statutory duties. A housing authority must either have inspected and been satisfied that the property meets the rental accommodation standards within 12 months prior to the HAP application or have arranged to inspect the property within eight months of HAP commencing. The Department and the local authorities under it are in breach of their statutory duties in this regard. I am not interested in what plans, processes and arrangements are to be put in place. According to the letter, the Department is targeting a 25% inspection rate, but I see nothing in the letter explaining why it can ignore the other 75%. We discussed this matter as part of our periodic report, which we will revisit next week. The func-

tion of these bodies is to implement the law, not to cherry-pick and inspect on a sample basis. I am rejecting what is in front of us as unsatisfactory. These bodies should comply with the law.

Deputy Catherine Murphy: It ties in with correspondence No. 1370B which outlined what the Department asserted had been done. As we discussed during our periodic review, this sector must be on our work schedule in its own right. I believe that is what we will recommend. According to this letter, property standards were cited as the reason for 210 exits. All of those must be in my constituency, given that I encounter this problem constantly. People make a complaint about mould on the wall in an expensive property that is being rented under the HAP scheme. Invariably, they then get a notice to quit. We are all encountering such cases. Large sums of public money are involved. That the tenant has to complain about these conditions puts him or her at risk of being excluded from the property.

Chairman: The Department also says that HAP can be provided in respect of a property that is the subject of a subsisting improvement notice. An authority can know that a property is not up to scratch and give the landlord a notice to improve it, but even before that work is done, tenants can still be moved in under HAP. A property is not accepted for HAP, however, if there is a prohibition notice or the property is subject to legal proceedings. The threshold for standards is low, even in the legislation. We will revert to this matter as part of our report. We could usefully discuss costs in the rental sector in the autumn.

Deputy Catherine Murphy: We must decide to do that.

Chairman: I have made that proposal and agree with it. It will be in our autumn work programme, but we will also refer to it in our periodic report which we will issue in the meantime. We will note and publish No. 1408B.

Next is No. 1419B from Ms Katherine Licken, Secretary General of the Department of Culture, Heritage and Gaeltacht, about whether Foras na Gaeilge considered in its business case the purchase rather than rental of a building. The attached business case states that Foras na Gaeilge believed that this purchase would not have been supported by the sponsoring Department. We will note and publish this correspondence. If members wish to pursue the matter, they are free to do so.

Next is No. 1422B from Mr. Fergal Costello of the Department of Rural and Community Development, dated 22 June, providing information on a review of the Dormant Accounts Fund's disbursement and other matters. This will feed into our periodic report. We will note and publish it.

Next is No. 1423B from Ms Maria Browne, Chief State Solicitor, dated 22 June, providing information requested by the committee. The Comptroller and Auditor General's 2011 report made a recommendation regarding planning compliance. It related to the waste of €4 million of taxpayers' money on the Probation Service's office, which we are dealing with as part of our periodic review. The Office of the Chief State Solicitor did not accept the report, stating that it was bound to follow the Law Society's guidance on planning compliance. However, it has not communicated the difficulties that this presents with the Law Society and that contributed to the loss of €4 million in respect of the building on Wolfe Tone Street. There is a thread of emails relating to the 2011 report dating back over a period. The Office of the Chief State Solicitor says that, although it followed the Law Society's standard guidance, this is now an issue. We asked the office to take the matter up with the society, but there has been no communication between the two. The office has ignored the previous recommendation. Our views on how the

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Office of the Chief State Solicitor contributed to the loss of €4 million to the Irish taxpayer will be included in our report. We will be firm on this point in our report when drawing our conclusions in the coming week or so.

Next is category C, correspondence from private individuals. No. 1342C was held over from a previous meeting, as were Nos. 1355C (i) to (vi), inclusive, and 1362C from an individual, dated 24 May and regarding wards of court. This is a major issue. Can we hold it over again?

Deputy Alan Kelly: Yes.

Deputy Marc MacSharry: It requires a morning.

Chairman: I have checked up on this. The Committee on Justice and Equality examined the matter this year and recently put together a detailed and comprehensive report. It has put weeks of extensive work into this. So much is going on that we do not know about that I only saw the report last night. The justice committee has taken the lead. Perhaps members might consider the recommendations in that report. We will not duplicate what the other committee has done. Anything we could cover in a day has been covered.

Deputy Shane Cassells: A number of us met the person involved. Deputy Ó Caoláin-----

Chairman: The Chairman of the Committee on Justice and Equality.

Deputy Shane Cassells: -----indicated that.

Chairman: We will hold this over for a week. The report will be circulated. I got a copy last night. Members might not want to read it in full, but anything we would consider has been covered in recent months. We will see what the justice committee does. It seems to have taken the lead on this.

Deputy Catherine Murphy: Are there recommendations in the report?

Chairman: Yes. We will support the justice committee in its work and will not duplicate exactly what it has done. We will hold this correspondence over. Regarding the third item of correspondence from this individual, I propose that the secretariat start working on providing the information requested, but with the exception of legal advice from the Attorney General, which is mentioned. We will revert to this matter next week, having had a look at the justice committee's report.

Next is No. 1347C from Mr. Seán O'Reardon, Office of the Garda Commissioner, providing a response requested by the committee regarding a report on the operation of GoSafe cameras. This is quite a comprehensive response that members may wish to consider. I propose that we forward a copy to the individual who wrote the report and publish the correspondence. I propose that we note and publish this correspondence. If any member wishes to raise the matter, he or she is free to do so.

Next is No. 1350C, which was also held over, relating to a submission to the committee regarding another protected disclosure. We will have a discussion on protected disclosures next week and hold this correspondence over to be part of that discussion.

Next is No. 1386C, an anonymous letter requesting the committee to make inquiries with the Department of Employment Affairs and Social Protection from an individual who has made

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a protected disclosure about alleged wrongdoing in St. Munchin's community centre in Kileely, County Limerick. We will also hold this over until our discussion on protected disclosures.

Deputy Alan Kelly: I am aware of this issue. Given the discussion we had earlier, I have no issue with holding it over. I believe that this needs to be actioned or put into a pathway where it will be dealt with one way or the other. If the Chairman wants to hold it over for a week, I will wait.

Chairman: For one week.

Deputy Alan Kelly: I believe it needs to be put in a pathway.

Chairman: We will consider anything that comes to us with the words "protected disclosure", whether it is for us or not, or if it is a copy of something.

Deputy Alan Kelly: To clarify, while I know what we are doing next week, when we receive documentation like this, we have to send it. We have to look for answers. We have to have a process because otherwise it will stay in limbo. We cannot do that. This will have to go to relevant Departments one way or the other. I know we are holding it over to next week but let us not think that because we are holding it over, it will not be-----

Chairman: That we will not deal with it. Okay.

Deputy Marc MacSharry: Did we skip mine or did the Chairman defer it for a further week?

Chairman: Which one?

Deputy Marc MacSharry: There was a letter related to the Prison Service.

Chairman: We mentioned it a minute ago.

Deputy Marc MacSharry: What did the Chairman say?

Chairman: I said that because it is a protected disclosure issue, we will hold it over for one week.

Deputy Marc MacSharry: I did not hear the Chairman say it.

Deputy Alan Kelly: I did not either but the secretariat kindly informed me.

Chairman: I must be talking too fast. I will go to the note. It is No. 1350C from an individual about the management of protected disclosures in the Prisons Service. I probably just said it too quickly.

Deputy Alan Kelly: The Chairman did and we did not hear it.

Chairman: I will slow down.

Deputy Alan Kelly: Deputy MacSharry might contribute first and then I will speak.

Deputy Marc MacSharry: Some of us have been in contact with this person.

Chairman: Myself included.

Deputy Marc MacSharry: I would be concerned and upset about the treatment of the individual. I do not know whether something has happened in the past 24 hours but I was informed in recent days that his salary has been stopped again and that does not seem consistent with the judgment under the review by Judge William Early or letters from the Prison Service to him to apologise. We should seek answers to the issues raised in the letter. We should seek an agreement on mediation if possible. It was only accepted by the Prison Service in 2017 that his September 2016 disclosure was the first disclosure. Following a freedom of information query, I saw an email that highlighted knowledge of it in February 2016.

Chairman: For the record, I received that letter and submitted a parliamentary question in the hope of getting a written answer in the next day or so about this salary being stopped in that case.

Deputy Alan Kelly: I know we are dealing with all of this stuff. This is not just a protected disclosure. There is a process here, which does not make sense, as to how the Irish Prison Service is dealing with this. It links in to what I spoke about earlier about the Toland review and the issue of how the Department of Justice and Equality updates its implementation of justice in the Prison Service. The disclosure is one thing. I have met this individual and have had much correspondence with him. The issues that he raises are one thing and need to be dealt with. I believe that there has to be mediation to deal with this. The Prison Service keeps stopping his salary even though he gets permission from his superiors to take leave. This happened multiple times.

Chairman: Several times.

Deputy Alan Kelly: He is written to or emailed - it is usually a registered letter - to tell him that he did not turn up for work and his salary has been deducted. I do not think this is happening to every other prison officer who gets leave from local line management, who are not the problem here. He obviously has issues and has raised them in a protected disclosure, the time-lines of which, as Deputy MacSharry has pointed out, have been contradicted with regard to how they have been dealt with. His situation has to be mediated so that he can continue to work or whatever else the mediation process will involve. The issues in his protected disclosure have to be dealt with comprehensively. There are issues relating to the process by which the Prison Service deals with protected disclosures. I do not think anyone, based on the information and conversations I have had with him and others, would feel comfortable in the Prison Service in making a protected disclosure in any way, shape or form. I know they would not. That is not right. It is completely wrong. There is a situation in Irish prisons where prison guards who do their job of finding drugs, mobile phones etc. feel that they get penalised because it looks bad for a prison for things to be found, the governor does not like that the statistics for these findings are getting higher, and then comes down on the prison officer. That is insane. I am telling the public that that is the reality in some cases.

There are three issues. There is the way the individual is dealt with and the need for mediation, which should be done quickly. I hope the Department of Justice and Equality is watching this. The issues in the protected disclosure are severe and serious, need to be dealt with, and correlate with other people who have had issues in the Prison Service. The third issue is the process by which the Irish Prison Service, supervised by the Department of Justice and Equality, has dealt with this, and the contradictions as outlined by Deputy MacSharry and me. That last bit is quite serious. The people watching this need to know that, as a committee, we will deal with these issues. Before we finish this term, if we do not see progress on these items, I will ask this committee for support to have the Irish Prison Service and the Department of Jus-

tice and Equality sitting here in the first meeting we have after the recess.

Deputy Catherine Murphy: Not to labour the point, but the whole point of protected disclosures is not necessarily just to look at individual disclosures but also systemic failures. People are brave enough to put themselves at risk and come forward with protected disclosures, and protected disclosures are intended to reduce that risk. We are seeing something that does not fall into that category. This is not the first time an individual has come forward about the Prison Service. I agree with what has been said. I have no difficulty with it being timetabled. I do not think it is about this one individual. A problem in dealing with that individual and individual complaint is that when some things come forward, the wider issue of it not repeating itself is the message that the Prison Service has to hear.

Chairman: We will have a session specifically about this next week. We will have to set a time.

Deputy Alan Kelly: I thank the Chairman.

Chairman: We have all been coming to the conclusion that a lot is going on here that nobody has cracked yet.

Deputy Alan Kelly: I could not agree more.

Chairman: The next item of correspondence is No. 1396C from Mr. John McKeon, Secretary General of the Department of Employment Affairs and Social Protection, providing clarification requested by the committee regarding an apparent inconsistency between an answer given at our committee and at the Joint Committee on Employment Affairs and Social Protection on 8 May. The last paragraph of his letter says the first question in our correspondence related to non-delivery of a contract service. It is about JobPath. It says the second question at the joint committee related to the operation of the payment model. They are two slightly different aspects of the same issue and he makes clear that he was answering different aspects. There is no contradiction and he is making that clear. We note that and will forward it to the person who sent it to us.

Nos. 1401C and 1402C are dated 11 May 2018 and request that the committee investigate matters relating to the censorship of a play authored by the correspondent and make inquiries about a programme broadcast on UTV. These matters do not fall within the remit of the committee and I propose that we write to the correspondent accordingly and do not circulate other items on the matter.

No. 1413C dated 21 June 2018 was received from an individual regarding the items we dealt with earlier in regard to the RTÉ 2+1 channel.

No. 1414C is from an individual requesting the committee to make inquiries regarding a landfill site at Whitestown, County Wicklow. I propose that, with the individual's permission, we forward the item to the Department of Housing, Planning and Local Government for an initial response and we can decide then how to proceed. The individual states that major remedial work was carried out. High Court proceedings were heard by Mr. Justice Humphreys. According to the correspondent, the judge excoriated various public bodies, Wicklow County Council and the Department as the job done is so bad that public moneys were wasted and a further remedial project must recommence. Much money has been expended on this matter. The topic was discussed by the committee recently and we will ask for a very detailed and comprehensive response on the matter and follow up on it when that is received.

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No. 1416C, dated 22 June 2018, relates to the dossier submitted to the committee by John Miskelly. Deputy Catherine Murphy submitted No. 1412 in respect of the same item.

No. 1426C, dated 26 June 2018, was received from Ms Susan Gilvarry, solicitor to the Cooke commission of investigation, regarding documentation received by the commission and the committee. I ask that the letter be put up on the screen because I wish to read it into the record to set the context. I will then call Deputy Cullinane. The letter is addressed to Mr. Kieran Lenihan, clerk to the Committee of Public Accounts, from Ms Susan Gilvarry, solicitor to the commission, and is dated 25 June 2018. It states:

Re: Commission of Investigation (National Asset Management Agency) Project Eagle

I refer to our conversation of last Wednesday, 20th June 2018, in relation to the statement and dossier of Mr John Miskelly. I can confirm that following a preliminary review of the statement and documents provided, the Sole Member has formed the view that some of the information provided by Mr Miskelly may be relevant to the Commission's Terms of Reference.

Accordingly, I am to inform you that the Commission has written to Mr Miskelly, to ask him to provide sworn testimony under s. 16 of the Act, in relation to the matters contained within his statement and accompanying dossier. The Sole Member has asked me to draw your attention to s. 11(3) of the Commissions of Investigation Act 2004 and the constraints imposed on witnesses before the Commission in disclosing evidence to third parties.

Mr. Justice Cooke stated that he has asked for sworn testimony and is dealing with the matter. He highlights that witnesses before the commission are restricted from disclosing evidence to third parties, including the committee. All members are aware that the Oireachtas set up this commission of investigation. We asked for it and the Oireachtas established it. The commission is up and running. Mr. Miskelly is a witness before the commission and I think the letter deals with the issue. I call Deputy Cullinane.

Deputy David Cullinane: I have no difficulty with the substance of the letter. To whom is it addressed?

Chairman: It is addressed to Mr. Kieran Lenihan, the clerk to the committee. We must decide-----

Deputy David Cullinane: Is it correspondence to the Committee of Public Accounts?

Chairman: I propose that as we now have confirmation that the document is before and being dealt with by the commission, the copy received by the secretariat be returned to the person who sent it to us and he be informed that the commission of investigation-----

Deputy David Cullinane: I am not talking about the 600-page dossier but, rather, the letter addressed to Mr. Lenihan.

Chairman: Yes.

Deputy David Cullinane: That was addressed to the Committee of Public Accounts and given to the clerk. I note that because the Chairman yesterday revealed the substance of the letter to RTÉ.

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Chairman: Last night.

Deputy David Cullinane: Last night, in advance of the committee having discussed it.

Chairman: Yes.

Deputy David Cullinane: Before the meeting, I raised with Mr. Lenihan that the correspondence should have been dealt with by the committee before the Chairman made it public. It was not addressed to the Chairman but, rather, the clerk to the committee. That does not set a good precedent. If correspondence is sent to the clerk of the committee, it is for the committee to decide how it will deal with it. I wish to put that on the record. I do not wish to be overly critical. All members were given a copy of the dossier and is a matter for each member as to what he or she does with it. We received that from Mr. Miskelly. However, this letter was sent to the committee and the Chair was wrong to put its substance into the public domain before the committee had an opportunity to discuss it.

Chairman: That is a fair point. Today's edition of the *Irish Independent* contains an extensive article on the correspondence received by the committee that we are now discussing. There have been many media inquiries on the matter. It featured on the front pages of some Sunday newspapers. It would be a bit unreal to pretend we did not receive the correspondence. I had it in my own right. I was speaking in a personal capacity rather than on behalf of the committee. As I am Chairman of the committee, it might have been reported that I was speaking on behalf of the committee but I received the letter in my own right and was giving my own view. I intend to shred the file I received. That is a personal-----

Deputy David Cullinane: With respect, I do not think the Chairman can separate himself from being Chair of the committee. All members had that letter yesterday and any of us could have given it to a media outlet but we chose not to because the committee agreed, during a private session at which we dealt with the periodic reports, that we would deal with the matter today in private or public session. As a Deputy, the Chairman is entitled to do as he wishes. However, as Chair of the committee, it was wrong to put that information into the public domain before it was discussed by the committee.

Chairman: Okay.

Deputy David Cullinane: The Chair may disagree but I wish to put on record that the letter was sent to the clerk of the committee and the Chairman cannot act independently rather than in his capacity as Chairman when dealing with correspondence sent to the committee. Other members may have a different view.

Chairman: Fine. I call Deputy Catherine Murphy.

Deputy Catherine Murphy: I echo the point made by Deputy Cullinane. The committee should not encroach on matters which are the subject of another process. This issue is being seriously scrutinised by the commission of investigation. The letter states, "the Sole Member has formed the view that some of the information provided by Mr Miskelly may be relevant to the Commission's Terms of Reference". Do we know what information that is? It might be one line of the 600-page report. It probably refers to the witness' statement. We need to know what that is in order to decide on how to proceed and whether there is anything in that very extensive correspondence that it is appropriate for the Committee of Public Accounts to investigate.

Chairman: Deputy Catherine Murphy believes it may be relevant to the commission's

terms of reference. She knows as much as I do; I have no further information in that regard. We should not second-guess Mr. Justice Cooke, who states that some of the information is relevant to his terms of reference. We have no idea whether it is a little of the information or all of it. I do not think we can ask him to explain what part of the information is relevant to him and which is not. I do not think we can question the judge on that matter. Each member received a copy of the information and that is a matter for each Deputy. The information was sent to the committee but the commission has indicated it is dealing with it to some extent and has asked for a sworn statement on the matter. I do not want the document to be put into public circulation or taken on board as a committee document. As Chair, I am clear on that. Parliamentary privilege could be claimed in regard to the allegations made. I do not wish for the Committee of Public Accounts to be used as a vehicle for people to make very serious allegations that may or may not have a basis in fact and have parliamentary legal privilege in that regard as a result of the committee taking a document on board. The Committee of Public Accounts would not be wise to allow this document to be retained by the secretariat and I propose to return it to the sender, along with the letter from the judge.

Deputy David Cullinane: Before we return the letter to the sender, the committee was to get legal advice. I am not sure whether we received it. The committee received correspondence previously that was “kept under lock and key”. That was the phrase used.

Chairman: Would it be helpful to the Deputy to go into private session to discuss this?

Deputy David Cullinane: Yes. Before we do that, the vast majority of the issues are allegations of a criminal nature that should absolutely be dealt with by the Tax Appeals Commission. I fully accept that the commission is saying it cannot allow itself to be used by somebody who is under investigation - let us be honest about it - and then give privilege to the person who is under investigation. This committee must because of what it does in this regard in order to protect its own integrity. I have no difficulty whatsoever with that. There are, however, small aspects of the matter that encroach on governance issues and compliance with the National Asset Management Agency Act 2009, for example, and it might be prudent for the committee to keep a copy of the document. I want to get clarification on whether the committee keeping a copy confers privilege on the individual. I am not sure that it does. If it does, however, then we should hand the letter back. If it does not, then we should retain it in case we need it at some point.

Chairman: Given that people are interested in the public hearings relating to Project Eagle, it must be pointed out that because some individuals were under investigation, we chose to not bring them into the committee so as not to give them any parliamentary privilege. We made the choice to not bring them in. In this instance, I would be of the same view; we have chosen not to go there.

Deputy Marc MacSharry: I have a matter for the business of the committee. Would the Chairman like to cover it now before we go into private session?

Chairman: We have yet to cover the committee’s work programme, so we can discuss it then.

Deputy Marc MacSharry: Okay,

Chairman: I propose that we go into private session for a short while.

The committee went into private session at 10.20 a.m. and resumed in public session at

10.45 a.m.

Chairman: There is one item of correspondence in respect of Cork Institute of Technology, CIT, which we mentioned previously and Deputy MacSharry wants to speak on it.

Deputy Marc MacSharry: I had to laugh when I read the first page; I do not know whether anyone else did. We took issue with the fact that people who could be the subject of a disclosure may have a hand in putting together the terms of reference for the investigation. The Secretary General has written back to state everything was okay because the Higher Education Authority, HEA, has advised that the terms of reference were set by independent legal advisers for CIT's audit committee. We established that somebody who was on that audit committee was the subject of some of the disclosure. The audit committee is retaining solicitors to do a job and gives the solicitors a brief. Its members write the brief for the solicitor. There is no way that this is above reproach. What if I were to employ a solicitor, having told him or her that I do not want to be shown anything but that he or she should go off and do the job as best he or she can? It is a laugh. If a committee brings in solicitors and tells them the committee wants them to prepare the terms of reference, they will ask the committee what the brief is, what are the terms of reference and what does the committee want them to look at? They will get the brief in advance and then they will draw up terms of reference that suit those who are paying the bill, namely, the audit committee, some of whom were the subject of the disclosure. It is a laugh. This is totally unacceptable.

Chairman: I call Deputy Kelly.

Deputy Alan Kelly: While the Chairman wants to deal with these matters in general next week, this letter is a joke. I am glad we have it. It is making the situation worse for the Department and the HEA. I do not know who is pulling whose chain here. Did the HEA consult with them? On what basis was the letter written? It is full of contradictions based on the evidence we have seen here on multiple occasions. CIT is the organisation that still keeps giving to us here in the Committee of Public Accounts. It opens up more doors for us all of the time.

There are two issues here. As Deputy MacSharry has said, if one checks how the terms of reference were set, it transpires that they set their own terms of reference. This is just a continuation of that argument that it was okay. It has just gone another layer down the ladder. We have established this is totally wrong. The whole process by which they conducted the investigation was wrong and was corrupted - I use that term in a generic way - by them setting their own terms of reference. This is going down a further layer of explanation.

Second - I revert to what I said earlier on - based on the transcript of what was said by the witness who sat right in front of us, it also contradicts how the institute manages protected disclosures. The second half of this letter is deeply concerning to me as regards how a 2012 protected disclosure was handled because there is a contradiction in what is being stated by the institute. In addition, I note we asked the individuals when did they have protected disclosures. Based on the evidence given to us, it was my understanding that there was no acknowledgement that there was a protected disclosure. The documentation provided to us here, however, relates to a debate on whether there was a 2012 protected disclosure and if it came under the Act. The HEA and the Department have a serious problem. I acknowledge we will discuss how protected disclosures are being dealt with next week but there seems to be something going on here and we need to get to the bottom of it. First, I am deeply concerned that the Department of Education and Skills is willing to buy the line, and continues to do so, that it is okay for one to set the terms of reference to investigate oneself.

Second, it is quite obvious that there are issues with CIT declaring what was or was not a protected disclosure. Now with the HEA and, potentially, the Department, this line seems to have been spun, which I believe will be contradicted in the very near future.

Deputy Catherine Murphy: Processes are really important as they determine the outcome. We have spent an awful lot of the past year dealing with this sector. I believe it would be fair to say that we were not impressed with the oversight by either the Department of Education and Skills or the Higher Education Authority. The oversight is part of several of the problems that we discovered. They have not learned the lesson that separation is necessary in this regard. I echo the concerns that have been expressed about the process. If we do not get the process right then there is no point pursuing such a disclosure because it will be undermined right from the word go.

Chairman: What do members propose that we do?

Deputy Alan Kelly: I propose that we hold the matter over for one week. I have tried to arrange a discussion with Mr. Love for the past week regarding information I need to tell him. Unfortunately, we have been unable to find time to talk. The committee should hold off on making a decision for a week in order to allow time for more clarity. I believe that the Department, the HEA and CIT have serious questions to answer.

Deputy Marc MacSharry: With respect to the Secretary General, if this is the disclosure process that exists in all Departments and State agencies then it is quite likely that they are all contaminated. I mean that they are not above reproach. I refer to people who are, as a matter of form, involved in setting the terms of reference to investigate and in some instances to investigate themselves. I find it incredible that their only excuse is “No, sure we did not do it. It was the solicitors we brought in.”

Deputy Alan Kelly: It is absolutely abhorrent that the Department of Education and Skills would stand over this matter and then state that in mirrored circumstances, it would be okay to do the same thing.

Chairman: The point has been well made. We will have a more comprehensive discussion on this matter next week.

Deputy Marc MacSharry: Can I comment?

Chairman: I must deal with one last item of correspondence now that we have resumed in public session. Deputy Jonathan O’Brien wrote a letter to us asking that Tusla be brought before the committee. He did not give a detailed specific reason but I suggest that we add the matter to our work programme. Is that agreed? Agreed.

Deputy Marc MacSharry: Can we invite Tusla to attend on the same day as the HSE?

Chairman: No. The HSE is due here next Thursday and we will meet Tusla in the autumn.

I wish to refer to correspondence that has been received on behalf of Mr. John Miskelly. Before we went into private session I read into the record a copy of the letter received from Ms Susan Gilvarry, solicitor to the commission of investigation into Project Eagle. I confirm that the clerk to the committee received a letter from KRW Law-LLP in Belfast, in respect of its client Mr. John Miskelly. We have considered the letter of correspondence and legal advice in private session. While there are matters of corporate governance involved that are within the

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remit of this committee, the matters are also under the remit of the commission of investigation. We have decided to take no action in respect of the dossier at this stage and the clerk will return the dossier received to the law firm that sent it to us. We will state for the record that as NAMA has not been before this committee for a considerable period, we will schedule NAMA to come before the committee in September when we will review its most recent set of financial statements. We also will review the section 226 progress report on NAMA that the Comptroller and Auditor General is producing and which we hope to have before then. We can raise whatever issues we choose at that stage. Does the Comptroller and Auditor General wish to add something on the timing of the report?

Mr. Seamus McCarthy: Just that I am expecting to sign it this week.

Chairman: When will the report be available to the committee? Does it have to be sent to the Minister?

Mr. Seamus McCarthy: It will go to the Minister and then he has up to three months. We will certainly communicate to the Department-----

Chairman: Yes, we will.

Mr. Seamus McCarthy: -----that the committee is interested in seeking a meeting in the autumn.

Chairman: In any event, we are returning the dossier to the legal firm that sent it to us. We wish the commission every speed with its investigation. I believe it has indicated that it hopes to conclude by December. In the meantime, NAMA will be before us in September in the normal course of events.

I have noted that Deputy MacSharry wants to raise another matter.

Deputy Marc MacSharry: I thank the Chairman. As members will know, I have an interest in the IBRC liquidation going back over the past year. On my recommendation, as a committee, we included in our last periodic report a recommendation to establish a committee of inspection within the liquidation. We discussed that it would include, for example, representatives from the Office of the Comptroller and Auditor General.

I had also made the unorthodox suggestion that we would consider making an approach to the person who has a legal case against the Department of Finance and the Minister for Finance, for effectively the same reasons, to have increased oversight of the liquidation. There was agreement in principle by the committee to do that and I was to come back with a recommendation of what shape that might take or how we would proceed. In a personal capacity, and not on behalf of the committee, I contacted the plaintiff in that case and asked, in a personal capacity, how he envisaged such a thing would happen. He sent me some documentation that I received in the past couple of days and which I will circulate to committee members. His documentation seems to indicate to me that the Office of the Chief State Solicitor and the Department of Finance clearly listened to our deliberations and have taken the unprecedented step to contact the plaintiff with a suggestion of exploring the possibility of withdrawing the case and that they would defer to the Committee of Public Accounts. While the suggestion is very unorthodox, it is something that could save the State a lot of money. It might also enable us to ask questions and provide the level of oversight that are required.

In the past number of weeks we have had the fifth progress report on the liquidation. On

reading that report I am concerned that while probably legal in terms of accountancy law and practice, perhaps morally it was not as transparent as I would prefer, particularly from a legal fees perspective. I have been shown documentation, and I see that the matter was covered in the media last weekend, where Arthur Cox, which is one legal firm, received €23,000 in a given year. I have also been shown documentation that in one case alone, the company had billed out nearly £980,000, which is not obvious from reading the presentation.

The underlying issue is the kind of questioning and second guessing that ought to be required and is normal practice in a liquidation has not been done in this instance. Perhaps the Department and KPMG are doing the best possible job anybody could do. Given the hundreds of millions of euro that are now involved and the likelihood that the costs will grow substantially - this liquidation being the biggest in the history of the State and, perhaps, one of the biggest in European history - it requires a greater level of scrutiny.

I will circulate the documentation I have been given, which then will leave it up to members. I will pass it on. I sought the information in a personal capacity and I think it is useful. On the back of the documentation, when it arrives, we should write to the Department of Finance or the Office of the Chief State Solicitor or perhaps both and ask how we can assist. There is a basis for this case to be discontinued, which would save money for everybody. More importantly, we, as a committee, may be able to participate and provide the necessary level of scrutiny in terms of looking after taxpayers' money. At the moment, this matter reeks of autopilot. I found, having read the progress report, that while potentially it is perfectly legal in accountancy terms, it lacks the kind of transparency to which I believe the public is entitled.

Chairman: I thank the Deputy.

Deputy Catherine Murphy: Obviously, Deputy MacSharry is aware of the contents of the documentation he received but we are not. Ideally, we would have oversight and the committee of inspection should have been set up right from the word go. What would be the basis of the IBRC coming before the Committee of Public Accounts? Is the Office of the Chief State Solicitor in agreement that a committee of inspection is required? Who would make that decision?

Deputy Marc MacSharry: I have not seen correspondence between the plaintiff and the Office of the Chief State Solicitor. He has copied what are a set of terms of reference under which he feels the case could be staged, which would involve the establishment of a committee of inspection. It suggests who would be included on that, namely, representatives of the Comptroller and Auditor General, a representative of this committee and others normally associated with a committee of inspection. It is not that this committee would become the committee of inspection. We would oversee its establishment and perhaps, given the unique circumstances, a member of the committee might be appointed to it. I imagine that it would certainly have representation from the Office of the Comptroller and Auditor General because the expertise would be there. If there is no case, we can then invite representatives from KPMG, as the joint special liquidators, to come before us, together with the departmental officials who were here before and who told us that they had a great story to tell but that they could not answer questions because there was a case before the courts. We could bring them in on that basis, but a committee of inspection would operate separately to this committee.

Deputy Catherine Murphy: The worst outcome could be a case that might produce a committee of inspection as a remedy or recommendation. I do not know whether the courts have the right to do that because it has to do with the separation of powers. The worst of all worlds would be that we have the IBRC in and not get the committee of inspection, and the case would

be withdrawn. A degree of caution is required. I know what Deputy MacSharry is trying to achieve and I agree with him. However, the basis of withdrawing the case is important and it would have to be that a committee of inspection was set up.

Deputy Marc MacSharry: The terms of reference have been suggested by the plaintiff to me, which I assume are those he sent back to the Office of the Chief State Solicitor or the Department of Finance. We can rest assured that no case will be withdrawn until the committee of inspection is established.

Chairman: The Comptroller and Auditor General wants to comment on this.

Mr. Seamus McCarthy: I have not been approached and no one has discussed with me participation in a committee of inspection. I would have to be very careful and put down a marker that it may not be appropriate for me to be involved because it could compromise independence and it might leave me, as Comptroller and Auditor General, in a position of not being able to report on a matter. I have to protect that first. Certainly we will look at whatever proposal is made.

Deputy Marc MacSharry: It does not surprise me that the Comptroller and Auditor General has not heard about it because it is relatively hot off the press and it is probably in the legal domain at present. Irrespective of the plaintiff's case, I raised the matter in the Dáil yesterday and asked the Taoiseach about it but he could not answer the question. He told me that he would come back to me in writing on the current status. We made a recommendation in January. Is the Department embracing this? Is it setting up a committee of inspection? Clearly, it has done something because it seems to have made contact with the plaintiff in the case to ask whether there is a basis on which he would withdraw. I understand he indicated quite clearly that he would defer to this committee. I do not think the Department was offering a committee of inspection but, equally, I do not think this man will take back his case unless there is such a committee. It is what is needed and I agree with the Deputy Catherine Murphy 100%.

I take the point made by the Comptroller and Auditor General absolutely in terms of his office not being the right body. However, the important thing is to have a committee of inspection and a representative from this committee, as an independent voice, would be good to have on that. As an accountant, the Chairman knows that committees of investigation are pretty prescriptive about who sits on them in normal liquidation situations. I will send this stuff around and I recommend that we make contact with the Department of Finance or the Office of the Chief State Solicitor or both, whichever the secretariat feels is appropriate to ask how can we assist with this.

Chairman: The next item on the agenda is statements of accounts received since our previous meeting. Only one account has been received in the past week, which is that of IDA Ireland and to which a clear audit opinion attaches. We will note it and move on.

The next item is our work programme.

Deputy Catherine Murphy: IDA Ireland was dealing with ConnectIreland.

Chairman: Yes.

Deputy Catherine Murphy: We might need to get an update on that. I read something in one of the newspapers about it.

Chairman: We will send a letter to IDA Ireland seeking an update on where the issue relating to ConnectIreland stands.

Today we are dealing with the Tax Appeals Commission and the Revenue Commissioners. The appropriation accounts for the Vote of the Department of Health, the HSE's financial statements for 2017, which were recently issued, and matters relating to consultants' pay, are on the agenda for next Thursday's meeting. The following week, on 12 July, we have the National Treasury Management Agency before us.

I want to make two comments on the work programme. I want to put the HSE on notice that we want it to deal with the following matters next week and I want to get this information to it. One is consultants' pay, which we already have on our schedule. This arose at our meeting earlier in the year. We are all aware of the situation whereby the HSE has private investigators following certain consultants. I asked a parliamentary question on what robust measures were in place to ensure that consultants comply with their contractual obligations. The reply I received from the Minister by written answer on 14 February stated it is the responsibility of management to make sure the contracts are being enforced, and that he had asked the HSE to ensure robust measures are in place in 2018. For next week, we want to know what measures have been put in place by the management of each hospital whose job it is, according to the Minister, to ensure that consultants comply with the contract. We want to know the hospitals where the private detectives were brought in. I do not know why they needed to be brought in if the hospital managers were doing their job. We want details of this. We also want the HSE to explain whether measures are in place anywhere to ensure that consultants comply with the contract. The parliamentary question to which I received a reply on 14 February can be referred to the HSE in order that it will be aware of the topic.

I will come to the CervicalCheck issue in a moment. However, the other issue I want the HSE to deal relates to a particular point. We received a letter from a dental surgeon about the dental treatment service. The scheme is very limited and covers people with medical cards and those classified by the HSE as high risk. That high-risk group includes individuals with intellectual disabilities or sensory deficits. Recently, the dental surgeon to whom I refer sought approval to carry out work on behalf of people considered high risk. They are all patients the dental surgeon has dealt with for years. One was a blind patient, another was a deaf and dumb patient and the third was a patient in HSE residential care. It would be normal for this work to be approved. The HSE wrote back to the dental surgeon seeking written medical evidence of the patients' sensory and intellectual deficits before it would approve the dental treatment, although they had nothing to do with dental treatment. It wanted medical evidence of the disabilities. The dentist claims the disabilities had no relevance. I know the HSE needs procedures in place but the dentists cannot do their work. The HSE has asked for medical evidence for every high-risk patient. It is awful for the dentist to have to say to his blind patient, his deaf and dumb patient, and his patient with an intellectual disability in residential care that a medical report on their position is required before he can do the dental work. This seems to be creeping into HSE. I want the HSE to give us a full briefing note to explain why it is going down this road. It states in all its correspondence that it needs this information for other purposes in order to ensure that no claims that are not valid are being processed under the system. I think it has lost a bit of humanity in its approach.

That brings us to our second issue. I want the HSE to give us a detailed report next week on where the process of recruitment relating to the new director general of the organisation stands. I do not know whether the HSE or the Department of Health is here next as well. Brendan

COMMITTEE OF PUBLIC ACCOUNTS

Drumm was the first director general or chief executive officer of the HSE from 2005 to 2010. Then we had Cathal McGee from 2010 to 2012 and Tony O'Brien from 2012 to 2018. John Cunningham is currently in the role in an acting capacity. A lot of people will feel that over the period since 2005, women's health has not been adequately dealt with by the HSE. We have had the recent cervical cancer issue, breast cancer issues and maternity services issues. I might be challenged on this but I urge those who are responsible for recruitment to give strong consideration to the argument that a woman should be the new director general of the HSE. We have had excellent men but I believe a woman could bring something to the role in terms of putting patients first. I ask that it be given a high mark on the scoring of any application. People may say we are straying off track. It is my own view and I am not asking the committee to endorse it. I will make that point to the witnesses next week.

Deputy Alan Kelly: I appreciate the sentiment but it is a very strange comment.

Chairman: It is.

Deputy Alan Kelly: Ultimately, women's issues are very important to the Labour Party, as are the social agenda and the progression of women's rights and their role in our society. However, the best person has to be picked. I am sorry but his or her gender is irrelevant to me. The Chairman and I get on fierce well but the idea that we would tell those responsible to give higher marks to women candidates is not acceptable.

Chairman: I will withdraw that part but I would like the recruitment process to be broad.

Deputy Catherine Murphy: As the only female sitting here at the moment, I echo that. I am all in favour of women being promoted but I think there are many women who would get there on merit. In a recruitment process-----

Chairman: Essentially, all I am asking is that recruitment process be as broad as possible. We have had four excellent men but the process should not be narrowed to one gender as happened in the past. It is a personal view and I am not speaking on behalf of the Committee of Public Accounts when I say that.

I think we will have to allocate one hour to wrap up the CervicalCheck issue with the HSE as part of our meeting next week.

Deputy Alan Kelly: Can we do it next week?

Chairman: The HSE is here next week.

Deputy Alan Kelly: Will we allocate an hour next week?

Chairman: Yes, the first hour and we will be strict about that.

Deputy Alan Kelly: Agreed.

Chairman: The first hour of the meeting will be on CervicalCheck and I want whoever comes before us to deal with the following specific issues. Deputy MacSharry raised the first one and I do not know the answer. When Quest Diagnostics, MedLab Pathology and the Coombe laboratory compiled their reports, they went back to the HSE for sign-off. We want to know who signed off on them when they came back to the HSE. Was it somebody with a clinical or an administrative background? These laboratories were only contracted by the HSE. Somebody in the HSE had to take responsibility that the contractors did their job properly. We

need know the qualifications of the people who signed off on the reports when they came back to the HSE.

Deputy Alan Kelly: Yes, 100%. Follow the money.

Chairman: Since the cervical cancer issue blew up, the national director of the cervical screening programme, Dr. Gráinne Flannelly, has stepped aside. I have looked at her press release on a few occasions and the phrase used is “step aside”. I want to know if Dr. Flannelly is still in the employment of the HSE. If so, she should be here. She cannot say that she is taking her salary and is just doing another job next door. I want to clarify whether she is still in the employ of the HSE. If she is, she should be responsible for her tenure. If she has resigned, that is a different issue.

Deputy Alan Kelly: It was a part-time role.

Chairman: The programme manager during that period was Charles O’Hanlon. I am told he is just not available at the moment.

Deputy Alan Kelly: Just for clarity, in the context of whether Dr. Flannelly stepped aside or resigned, I am with the Chairman on this but I want to tease it out a bit. A consultant operates in the public and private spheres. The public sphere is headed by the HSE so in that sense, a consultant is contracted to the HSE, so there is a line. As a committee, can we leverage that line in order to ensure that she turns up to answer questions? Dr. Flannelly is central to all of this. The role was part time but it was overseeing the whole thing.

Chairman: We are in agreement. If she employed, part-time or-----

Deputy Alan Kelly: “Employed” might not be the right word.

Chairman: Contracted in.

Deputy Alan Kelly: Yes. On the second individual, as I understand it, he just moved into a different role so he is still employed.

Chairman: My understanding is similar.

Deputy Alan Kelly: In that scenario, why he cannot appear is beyond me.

Chairman: We want that clarified. The public is looking to the Oireachtas, although I know we have Professor Scally’s inquiry and we are going to have a commission of investigation. When the cervical cancer issue blew up, the director general of the HSE resigned, Dr. Gráinne Flannelly stepped aside and Charles O’Hanlon, who was the programme manager, has been unavailable. The three senior people are nicely off the pitch and it leaves a vacuum. If it is possible next week, we want that vacuum filled. Tony O’Brien is gone but if the others are still part of the HSE structure, we are requesting that they attend.

Deputy Alan Kelly: Agreed.

Deputy Catherine Murphy: The HSE is coming in next week and we will be looking at some of the issues that are going to cost money by virtue of how things are being done present. The Chairman is probably encountering the same issue that I am in the context of home care packages being available but not being available. I do not know if this is a matter for the Committee on Health or the Committee of Public Accounts but it certainly indicates a poor way

of spending money if very expensive hospital beds are being occupied because less expensive home care packages are not available. That has become quite a sizeable issue. It may not be universal throughout the country. I am just basing this on my own experience. The money is gone since February. With the agreement of the committee, I would like this to be discussed.

Chairman: Allied to that is the situation whereby they can pay for somebody to stay in a nursing home full-time under the fair deal scheme. Sometimes a good home-care package might be adequate but they say they have not the funds to do that although they will pay for the more expensive option of the nursing home. The lesser option might be to provide a greater service at home.

Deputy Catherine Murphy: Not only a greater service but one that would be desired by the patients.

Chairman: Yes, and their families. The last thing on the work programme is that I want to arrange to send a letter to the Department of Education and Skills. Our work went down very successfully with the HSE and it has thanked us publicly on several occasions for the section 38 and section 39 arrangements in respect of which many of their accounts were years out of date. There was a lack of proper accounting, traceability and governance. We now know from the HSE that all the organisations in those categories have their accounts in a proper manner. They do not fall under our remit but it is good that they have achieved improved accountability in respect of the funding the HSE allocates to them. I want us to do the same in the education sector. We have improved the situation with the education and training boards. In our report on the third-level sector last year, we referred to time limits for producing accounts for the universities and ITs.

There is another group in respect of which I want to write to the Department of Education and Skills. This relates to a parliamentary question I tabled and a letter I received on 28 February 2018 from the Minister following that parliamentary question which I will put in the committee's documents today. I asked the Department to provide a list of all organisations to which the Department provides funding of more than €1 million per annum where the bodies concerned receive over 50% of their funding from public sources. I did not go down to every small grant. I have a list of 20 or 30 organisations. They may or may not be under our remit. We want the Department to give us a report on when it received the last financial statements in respect of each of them. We are moving to ensure that it does the same with these funded organisations as the HSE has done in respect of section 39 organisations. It will include the ETBs and third level. The organisations include the Educational Research Centre, Grangegorman Development Agency, the National Council for Special Education, the State Examinations Commission and Léargas. Some of them might already be audited by the Comptroller and Auditor General and some might not.

Mr. Seamus McCarthy: The first two the Chair mentioned certainly are.

Chairman: I will pass that over to the secretariat. We want to bring the Department of Education and Skills funded bodies into line as we have done with the HSE.

This part of the meeting has taken a long time. As we did not have a full session on correspondence last week, we have had a double session today. We will suspend the sitting until the witnesses are seated.

Sitting suspended at 11.22 a.m. and resumed at 11.26 a.m.

2016 Annual Report of the Comptroller and Auditor General and Appropriation Accounts

Chapter 9 - Internal Controls in the Tax Appeals Commission

Vote 10 - Tax Appeals Commission

Mr. Mark O'Mahony (*Tax Appeals Commissioner and Accounting Officer*) called and examined.

Chairman: We will be meeting with the Revenue Commissioners in the afternoon. We are joined by Mr. Mark O'Mahony, commissioner and Accounting Officer, from the Tax Appeals Commission. Is this his first appearance here?

Mr. Mark O'Mahony: It is.

Chairman: He is very welcome. We are also joined by Ms Lorna Gallagher, Ms Brenda McVeigh, Mr. Brian Diskin, Mr. Paddy O'Keeffe and Mr. Ray Hogge from the Tax Appeals Commission and Ms Deirdre Donaghy from the Department of Finance. They are all welcome.

I remind members, witnesses and people in the Public Gallery to turn off their telephones completely or put them on flight mode. Putting them on silent is inadequate as it interferes with the recording system.

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 their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and they are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable. Members of the committee are reminded of the provisions in Standing Order 186 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.

While we expect witnesses to answer questions put by the committee clearly and with candour, witnesses can and should expect to be treated fairly and with respect and consideration at all times, in accordance with the witness protocol.

I ask the Comptroller and Auditor General to give his opening statement.

Mr. Seamus McCarthy: The Tax Appeals Commission was established on 21 March 2016, replacing the former Office of the Appeal Commissioners. The commission is an independent statutory body tasked with providing a modern and efficient appeals process for the hearing and adjudication of tax disputes. The 2016 appropriation account of the Tax Appeals Commission shows that the total spend by the commission in 2016 was €890,000. The amount provided

for the commission for the year was €1.5 million. As a result, almost €600,000 was liable for surrender at the year end, reflecting delays in recruiting staff and underspending on the commission's ICT system. The commission has been reliant on the Revenue Commissioners for many support services.

Chapter 9 is a short report examining progress by the commission in putting in place the necessary corporate governance arrangements and the management of overtime payments in 2016. While the commission was established formally in March 2016, we found that by September 2017 it was not yet fully compliant with its corporate governance obligations. The commission published a governance framework that outlined the proposed governance structures, including audit, assurance and compliance arrangements. It had not, however, established an audit committee, did not have in place a formal risk management system, and had no formal risk management policy or risk register. An effective risk management process should assist the Tax Appeals Commission in achieving its objectives by allowing it to identify and manage threats to delivery in a timely and effective manner. The Accounting Officer will be able to update the committee on progress in developing its governance systems. We are examining them again in the context of the 2017 appropriation account.

The commission's 2016 Vote appropriation account records overtime payments of €65,400 to one employee, which was very substantial given the scale of the Vote. Because of the additional expense involved, Department of Public Expenditure and Reform guidelines require that overtime working does not occur unless it is both authorised and unavoidable. When the 2016 payments were examined by the audit, it was found that the records kept by the commission were not sufficient to substantiate the payments. The claims for payment of overtime went back a number of years and there was no record that the claimed overtime work had been authorised by a more senior official. The commission's then head of administration was not involved in review or authorisation of the payments and only became aware of them when Revenue's payments section queried the amount of overtime being processed on behalf of the commission. Overall, the circumstances surrounding the overtime payments made in 2016 indicate a very weak control environment at the time.

Chairman: I thank Mr. McCarthy.

Mr. Mark O'Mahony: I am the Accounting Officer of the Tax Appeals Commission, TAC. I am before the committee in response to matters highlighted by the report of the Comptroller and Auditor General in relation to internal controls in the TAC in 2016. As members are probably aware, the decision to establish the TAC was made following a lengthy process of consultation, consideration and review by a number of different bodies. It was established pursuant to the Finance (Tax Appeals) Act 2015 and commenced its activities on 21 March 2016. The TAC is an independent body with its own Accounting Officer and Vote, although under the aegis of the Department of Finance.

The legislation made clear that the commission was to be a new body whose independence was enshrined in statute and which would have the power to adopt flexible and active case management procedures with a view to progressing and finalising appeals as efficiently as possible. The former right of appeal to the Circuit Court was abolished and the TAC now makes findings of fact which are binding on the parties. The only right of appeal from the TAC is to the High Court by way of a case stated on a point of law. Perhaps because of this change, the Legislature also introduced a requirement for the Appeal Commissioners to give written determinations in every case, an obligation to publish those determinations and the right to apply those determinations to appeals which raise similar issues of law.

VOTE 10 - TAX APPEALS COMMISSION

Ms Lorna Gallagher and I were appointed as Appeal Commissioners at the end of 2015, prior to the establishment of the Tax Appeals Commission, following a recruitment process conducted by the Public Appointments Service. We were then reappointed pursuant to the 2015 Act when the TAC came into being. We have been appointed for a seven-year term, which expires in 2023, and we may then be reappointed for one further term. In June 2017, Mr. Conor Kennedy was appointed as a temporary commissioner, primarily to deal with the legacy appeals received from the Revenue Commissioners in the second half of 2016. His appointment is for a two-year period, which may be extended by the Minister for Finance.

Following its establishment, the Tax Appeals Commission took over the operations of its predecessor, the Office of the Appeal Commissioners, working with the same staff and from the same premises. When I was first appointed the office had a staff of four, including a principal officer seconded from the Department of Finance to assist with the planned establishment of the TAC. The TAC now has a staff of 14.5, including a part-time official responsible for human resources and training and our current head of office who is not a permanent staff member of the TAC but rather a principal officer on secondment from the Department of Finance. One member of staff has been absent on sick leave since August of 2017.

The staff of the TAC work in three distinct units, namely, scheduling, case management and administration. Of the 14.5 staff, 11.5 of those were appointed in 2017 or 2018. The most senior member of our permanent staff is an assistant principal. While it is clear from the foregoing that there has been a growth in our staff numbers, particularly in the past 12 months, it has taken us a long time to recruit suitable people and we are still significantly short of the necessary staffing levels.

The workload of the TAC is considerable. We assumed the existing caseload of the Office of the Appeal Commissioners and in the second half of 2016 a total of 2,731 legacy appeals were transferred to the TAC by the Revenue Commissioners. The 2015 Act furthermore provides that all appeals are now made by taxpayers directly to the TAC, whereas under the previous regime appeals were notified to the Revenue Commissioners in the first instance. This has resulted in a significant increase in the number of appeals which the TAC is required to process. In 2016, the total number of appeals received was 901 but in 2017 that figure had jumped to 1,751. The TAC is currently receiving an average of 150 appeals per month. The TAC had approximately 5,500 appeals on hand during 2017 and we believe the total amount of tax currently under appeal is in the order of €1.6 billion. By contrast, our budget, at €1.6 million, is approximately one thousandth of the amount of tax under appeal.

In addition to the appeals received, the TAC receives a significant volume of correspondence on appeals, all of which has to be logged, filed and responded to. The TAC may receive as many as 100 items of correspondence per day. In addition, the TAC is now the first point of contact for many taxpayers when they are dissatisfied with a tax issue or if they have a query in relation to same. Queries that may formerly have been made to the Revenue Commissioners are now being made to the TAC. The committee will appreciate that all of this absorbs a great deal of staff time and resources.

In addition to the appeals and correspondence workload, the TAC also has to meet all the governance requirements of a Civil Service body. With regard to governance, the TAC is akin to a small Government Department, with all necessary obligations having to be discharged alongside our primary task of hearing and determining appeals. While a Department might have several sub-offices such as a press office, corporate office, accommodation unit, a Minister's office and so on, the position in the TAC is that many staff cover several dedicated areas

of responsibility as the TAC does not have sufficient staff numbers to assign specific members of staff exclusively to specific roles.

Our recently published annual report for 2017 shows that we have made very significant progress, both in addressing our appeals workload and in meeting our governance obligations. Headline achievements during 2017 include closing 693 appeals; listing 106 appeals for hearing; conducting 89 case management conferences relating to 479 appeals; publishing 35 determinations; conducting a public consultation exercise on our procedures; producing new guidance notes for appellants; populating our case management database with quality checked data relating to thousands of individual appeals; establishing case management and scheduling units within the TAC; publishing a comprehensively revised code of governance; producing a three-year statement of strategy; and appointing internal auditors and established an audit group. We have closed a further 821 appeals to date in 2018. As of yesterday, that figure stood at 860 appeals.

We are proud of all that we have achieved with the resources available to us and Commissioner Gallagher and I take this opportunity to acknowledge the enormous commitment the staff has shown to date, the unrelenting pressure through which they have worked, the multitude of different tasks they have managed and the daily co-operation, assistance and support they continue to provide. Notwithstanding the progress made, however, we are very much aware that a great deal more needs to be done for our stakeholders, particularly appellants and the Revenue Commissioners.

On the matter of staff and resources, the Tax Appeals Commission faces a significant risk from corporate memory loss if staff choose not to continue under the current pressures they face. Also, as the TAC does not have the resources or adequate levels of delegated sanction, staff operate in the awareness that the TAC cannot, as it stands, offer them a career path. Leaving aside for a moment the issue of sanction and budgets, staffing risks are higher and more critical in a small office such as the TAC, as it does not have either the capacity to absorb the memory loss or the time and resources necessary to continuously recruit and train in new staff.

In addition to the main business of the office - being the adjudication and determination of tax appeals - there are strategic and structural issues that need to be addressed in order for the TAC to operate optimally. In this regard, we have dealings with and rely upon the Department of Finance, the Department of Public Expenditure and Reform, the Revenue Commissioners and the Office of Public Works.

The report of the Comptroller and Auditor General for 2016 correctly highlighted significant governance and related issues in the TAC. We fully accept the criticisms made in the report and we accept the recommendations of the Comptroller and Auditor General. We have implemented those recommendations to the best of our ability with the resources available to us. I believe the TAC's annual report for 2017 clearly shows that a great deal of progress has been made. We fully accept that more progress needs to be made but we cannot do more without additional resources. We have formally reported to the Minister for Finance pursuant to section 21 of the 2015 Act on the issue of additional resources, and we have met the Minister and officials from his Department to discuss this issue. We have commissioned a resource review to obtain an independent analysis of resources and the Minister has recently appointed a retired Secretary General to carry out a resource review for his Department. We hope that both these processes will be completed in the very near future and will enable the Minister for Finance and Public Expenditure and Reform to make an informed decision on our requests for additional resources for the TAC.

VOTE 10 - TAX APPEALS COMMISSION

An efficient and impartial tax appeals body is an integral part of a state's system of taxation of its citizens. To meet our statutory mandate, there are legislative amendments that could assist the TAC in operating in a more efficient and effective manner. In this regard, the TAC recently suggested certain legislative amendments for consideration by the Department of Finance.

Our statutory mandate requires us to put in place the independent, effective and efficient tax appeals system envisaged by the 2015 Act. However, this cannot be achieved without adequate resources and the level of independence needed to apply those where we identify the need. Our 2017 annual report shows how much more was achieved in circumstances where, although we remained under-resourced, our resources had improved from the very low base obtaining at the commencement of the TAC in March 2016. Appellants should not have to suffer undue delays in the hearing of their tax appeals, but we are currently unable to prevent delays in the system in circumstances where we remain so significantly under-resourced.

In order to improve the tax appeals system and deliver an independent commission that will process tax appeals in as efficient and effective a manner as envisaged, it is our duty to assess the needs of the commission, identify the assistance we require and communicate that information to the relevant Departments in the form of a request for additional resources. It is to be hoped that the relevant authorities accept that we are driven to provide the optimal service for our stakeholders and that we are best placed to assess our needs.

I am attending today to answer whatever questions the committee may have, and we will be happy to follow up with any information that we are not in a position to provide now.

Chairman: Before I call Deputy Burke, it is clear that the TAC is not even remotely staffed and resourced to the scale required by the task at hand. I have never seen anything as bad as this at the committee. Some €1.6 billion of taxpayers' money is hanging out there when it should be in the State's coffers. Most of it probably will be once the cases are settled.

According to its report, the TAC received 1,751 appeals in 2017 and settled 693 of those. Its waiting list increased by more than 1,000. That anyone would need a retired Secretary General to say that the agency needed more staff is a joke. It is obvious. I hope the Minister is listening. By not resourcing the commission enough to do its job of efficiently collecting moneys due to the taxpayer, he is letting the taxpayer down. Given the size of its office, the commission has my sympathy in trying to cope with the tsunami of appeals. It is outrageous. We will get into further detail, but those were my initial comments. Whoever set up the office had no concept of, or did not adequately anticipate, the number of appeals. It should have been obvious after six months and was totally obvious after 12. Now a former Secretary General is being brought in to consider the staffing issue. Whoever made that suggestion still does not get it. I could not let the meeting commence without saying that. We are here to support the commission.

Mr. Mark O'Mahony: I thank the Chairman.

Chairman: We are shocked by the scale of the task the commission has been given without the necessary resources to do that job properly.

Deputy Peter Burke: I thank the witnesses for attending. The establishment of an independent appeals office was well flagged and was one of the recommendations for our tax code, but the Comptroller and Auditor General's report presents a chaotic picture of what has happened since the office's establishment in March 2016, for example, a haphazard approach to internal controls. The commission is seeking extra resources, so it is surprising that €596,000

was surrendered to the Exchequer in respect of 2016.

I would like to get a picture of how the commission is managing its existing resources. The first matter that comes to my attention is that of the commission's internal controls and overtime payments of €65,400 in 2016. Does that figure reflect nine months of the year?

Mr. Mark O'Mahony: Yes.

Deputy Peter Burke: That is approximately €7,200 in overtime per month. Am I correct?

Mr. Mark O'Mahony: Yes. I apologise for interrupting the Deputy, but I am unsure as to whether he is aware that the overtime claim represented six years in total - 2010 to 2016, inclusive. It had a significant historical element. All of the moneys were paid in 2016 because that was the year in which the claim for overtime was made and processed, but the claim referred to a period long before Ms Gallagher and I were appointed.

Deputy Peter Burke: Why would it be within the commission's remit to pay those moneys if they accrued prior to the commission's establishment?

Mr. Mark O'Mahony: The claim was made to the TAC in-----

Deputy Peter Burke: For work not done in the TAC.

Mr. Mark O'Mahony: We believed that the overtime had been worked. We were told-----

Deputy Peter Burke: That was not the commissioners' duty. They were responsible for a new entity. If someone made a claim for overtime that arose in a previous structure, surely that would not be the commission's responsibility, but the responsibility of the previous structure or employment.

Mr. Mark O'Mahony: Under the legislation, we took over all of the liabilities of our predecessor, the Office of the Appeal Commissioners. From a strict legal perspective, we were still responsible.

Deputy Peter Burke: Did the commission get legal advice on that?

Mr. Mark O'Mahony: No. With the benefit of hindsight, I accept that it is something we ought to have considered, but-----

Deputy Peter Burke: It seems strange for a new office that is trying to manage a new budget to make a payment without getting legal advice. Did the commissioners see an auditor's independent verification of the overtime that was worked? Did an auditor recommend to the commission that this money be paid?

Mr. Mark O'Mahony: I am somewhat limited in what I can say in response. The position-----

Deputy Peter Burke: It is a straightforward question.

Mr. Mark O'Mahony: It is, but the matter was examined by our internal auditors. They recommended that a further investigation take place.

Deputy Peter Burke: I thought the commission did not have an internal auditor initially. When did its internal audit function commence? I thought it had been delayed.

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Mr. Mark O'Mahony: We appointed internal auditors in August 2017.

Deputy Peter Burke: The commission did not have an internal auditor in 2016.

Mr. Mark O'Mahony: No.

Deputy Peter Burke: In which case, it did not have one when the payment was made.

Mr. Mark O'Mahony: Correct.

Deputy Peter Burke: From where did the commissioners get the audit advice that recommended this payment be made?

Mr. Mark O'Mahony: I am sorry if I was unclear. I am referring to the current position. The internal auditors recommended that a further investigation be carried out. It was not possible for the TAC-----

Deputy Peter Burke: Subsequent to the payment.

Mr. Mark O'Mahony: Yes.

Deputy Peter Burke: Go back to before the payment was made. I just want to get the commissioners' thought processes in terms of how they manage the commission's current affairs. Before they made this payment, what verification methodology was presented to them to vouch for the claim's authenticity and accuracy?

Mr. Mark O'Mahony: The system in the Office of the Appeal Commissioners, which carried forward into the TAC, was a two-step process. Formerly, one Appeal Commissioner would check the overtime claim and a second would approve it. In this case, Ms Gallagher checked the claims and they then came to me for approval. The claims were made through the payroll shared service centre, PSSC, online overtime system. In practical terms, an email would have appeared in my system telling me that the following claim had been submitted for my approval. If I double-clicked it, it would tell me about the following hours of overtime worked on the following dates. It did not specify the amount of overtime that was being claimed.

Deputy Peter Burke: Over six years.

Mr. Mark O'Mahony: Yes.

Deputy Peter Burke: Why would all of that come in at the one time? It seems illogical.

Mr. Mark O'Mahony: There was a particular reason for it, but I am advised that I cannot go into it at the moment. There are certain ongoing matters that I would hazard-----

Deputy Peter Burke: Is Mr. O'Mahony satisfied with the payment?

Mr. Mark O'Mahony: I am awaiting the outcome of certain processes before I can make a final decision.

Deputy Peter Burke: Just to be clear, without legal advice or an auditor's verification, this payment was made to an employee for work that was detailed on the software system to which Mr. O'Mahony referred.

Mr. Mark O'Mahony: That is correct.

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Deputy Peter Burke: Those are very weak internal controls. Does Mr. O'Mahony agree that governing a body in such a way is unacceptable?

Mr. Mark O'Mahony: It is undoubtedly the case that there were shortcomings. The Comptroller and Auditor General has pointed those out. We were aware of them before he-----

Deputy Peter Burke: I am still not clear about how the commissioners set the tone and do their work. I would be concerned if the commission was this lax in the basic management of staff and payment of overtime.

Mr. Mark O'Mahony: We understood there was a system in place. We applied that system. It is not the case that no verification was carried out. There were checks of work diaries and emails sent. It is not the case that we simply approved this without any verification process. We did what we believed was necessary to check the claims.

Deputy Peter Burke: Did someone in the Revenue Commissioners give the TAC a recommendation to make the payment?

Mr. Mark O'Mahony: No.

Deputy Peter Burke: Would it not have been appropriate to check with them? I assume management in the Revenue Commissioners were responsible for it before the appeals commission was established.

Mr. Mark O'Mahony: I do not know. The Deputy is correct that payroll services were administered for the Office of the Appeals Commissioners by Revenue but I do not think it would have been appropriate for us to go to Revenue. The reason for establishing the TAC was to have greater independence from Revenue.

Deputy Peter Burke: Was the work was under their auspices?

Mr. Mark O'Mahony: No. It was under the auspices of the Office of the Appeals Commissioners prior to the establishment of the TAC. The staff member in question was technically an employee of the Revenue Commissioners, but she was always working for the Office of the Appeals Commissioners and it would not have been appropriate to go to Revenue..

Deputy Peter Burke: What has the TAC learned from it?

Mr. Mark O'Mahony: We learned that the governance systems we inherited required a fairly drastic overhaul. We have done everything we can in that regard and we have addressed most of the issues highlighted by the Comptroller and Auditor General. We updated our overtime policy in February 2017 and again in June 2017 to make explicit reference to circular 14/2014, which is the Department of Public Expenditure and Reform guidelines on overtime. We took a step back and created a work environment where overtime does not take place. We are managing things so that nobody has to work overtime unless it is absolutely extraordinary and unusual and there have not been any overtime claims.

Deputy Peter Burke: It is important that the office is seen to hold the highest standards because it adjudicates on the fairness of tax decisions made by the Revenue Commissioners and which have been contested by taxpayers. Assessments may be raised by Revenue where taxpayers have not kept proper books and, therefore, it is important the TAC, in leading the charge on transparency, ensures it gets the best possible advice and has the most robust structures in place before it makes payments of this nature. It is unfortunate that the office fell short in this

regard. It is important that the commission be seen to lead.

There are delays in hearing appeals. Some appeals have been in the system for a long time and one case, with €60,000 in dispute, has been in the system for six and a half years. The potential is for that taxpayer to be hit with an interest payment of €30,000, half of the assessment under adjudication. Does Mr. O'Mahony think that is fair? There is a penal interest rate and the clock is ticking while the commission is doing its work. If the appeal takes so long, there is no incentive for a taxpayer to make an appeal within the 30-day period and they will be concerned at having to bear the cost of inefficiencies in the commission.

Mr. Mark O'Mahony: I agree and the Deputy makes a fair point, though I am not familiar with the appeal in question and cannot explain the delay. Often, delays are caused by our shortage of resources-----

Deputy Peter Burke: Does Mr. O'Mahony think it is fundamentally fair that a taxpayer is left with interest charges if he or she is the subject of an adverse finding on appeal? There is an issue of fairness.

Mr. Mark O'Mahony: I would venture into the realm of policy if I were to comment on that. It is a matter for the Legislature to decide.

Deputy Peter Burke: The Legislature can decide interest rates but this is due to a delay in the TAC. If cases go on for a considerable time, it exposes the risk of additional interest charges for the taxpayer involved. It is because of the inefficiencies of the office, not the policy.

Mr. Mark O'Mahony: There are two methods of dealing with it. The Legislature could decide-----

Deputy Peter Burke: If there are resource and efficiency issues in the office, could Mr. O'Mahony not make a recommendation, given the problem is the office is taking too much time to process appeals and the taxpayer could be exposed as a result?

Mr. Mark O'Mahony: The approach we have taken is to cure the delays, rather than remedy taxpayers who have been exposed because of our inefficiencies. We have sought sufficient resources to do this.

Deputy Peter Burke: I contend that there is an unfairness in this situation.

Mr. Mark O'Mahony: I cannot comment on that.

Deputy Peter Burke: There are cases where taxpayers have waited between 16 months and 19 months from the date of the hearing to determination. Why was that?

Mr. Mark O'Mahony: There are a number of reasons. I do not want to sound like a scratched record but the first answer is lack of resources. It is not the case that my fellow commissioner, Ms Gallagher, and I have all day to sit down and consider determinations.

Deputy Peter Burke: The TAC handed back €600,000 in 2016.

Mr. Mark O'Mahony: Yes, and I will come to that point in a moment. As regards delays in determinations, we had no support until the beginning of this year for preparing determinations. When we prepare a determination we have to sit down with a file which can run to ten bankers' boxes. We have a blank computer screen in front of us, on which we start typing. It is not satis-

factory and is not an efficient use of our time. However, we have appointed case managers and we are trying to get them to start shouldering some of the more routine stuff, such as preparing summaries of the facts, printing out the relevant legislation and doing research on the case law, which we have been doing ourselves to date. It is not a clever way of doing our work. A judge does not go away to look for an Irish report but has an assistant to do it, speeding up the process.

Deputy Peter Burke: The problem I have is that it is totally and inherently unfair on the taxpayer.

Mr. Mark O'Mahony: I cannot disagree with that. We would like to get our determinations out faster and we would like to satisfy taxpayers. We both came on board because we felt it was an exciting time to be involved in the tax appeals process. We have so much ambition and we want to do it properly but it is incredibly difficult when there are so many demands on one's time. We often deal with complicated cases that require a lot of thought. We are the sole arbiters of facts and, in fairness to Revenue and the taxpayer, we need to get it right. One cannot do a slipshod job or do something that is 80% correct.

Deputy Peter Burke: Why did the commission hand back so much money in 2016?

Mr. Mark O'Mahony: We were not able to recruit the staff we wanted, though we did everything we could. We tried secondment and internship and we asked the Department of Finance if we could use its recruitment licence to get staff. We approached Revenue-----

Deputy Peter Burke: Can the commission not recruit from the private sector?

Mr. Mark O'Mahony: No.

Deputy Peter Burke: Why not?

Mr. Mark O'Mahony: We do not have the authority to do so. We have had a recruitment licence since March this year, which was hard fought for, allowing us to recruit at grades up to the standard principal officer grade.

Chairman: What exactly is a recruitment licence?

Mr. Mark O'Mahony: Previously, if we wanted to recruit staff, we had to go through the Public Appointments Service, PAS, which is under significant professional pressures of its own. In the last process in which we used the PAS, they said it would take 19 weeks, or five months, after which there would have to be a Garda vetting process and a notice period for successful candidates. It is hugely time consuming. I do not say that as a criticism of the PAS. It is a fact of the system. We simply do not have that time. The PAS and the Commission for Public Service Appointments, CPSA, both said to us that we need the power to recruit directly. We applied for, and were successful in obtaining, a recruitment licence which means that we do not have to go through the PAS if we are looking for people up to principal officer, standard grade.

Chairman: Has that improved the commission's recruitment time?

Mr. Mark O'Mahony: We do not have the sanction or budget for additional staff. Our current budget will be spent entirely on our staff bill for this year. We are crying out for a new ICT system. We have been in our new office for three weeks. We still do not have external telephone lines. We do not have chairs for-----

Chairman: Say that again for the public.

Mr. Mark O'Mahony: We do not have a working external telephone line from our office.

Chairman: What does that mean?

Mr. Mark O'Mahony: It means that we cannot phone out and people cannot phone in.

Chairman: Sorry, this is the 21st century. Go through this again. Mr. O'Mahony had my sympathy before he started but this is getting into farce territory now. It is a serious issue.

Mr. Mark O'Mahony: It is.

Chairman: Does the commission not have personnel to man it?

Mr. Mark O'Mahony: That is not a personnel issue. It is a separate issue that we are actively progressing with the Office of Public Works, OPW. Leaving aside working telephone lines, we need an IT system that works. Our temporary appeal commissioner had his PC go on fire approximately two months after he went. We need new computers. We have no money for them at the moment.

Chairman: The commission was set up by somebody. This is awful for a new public body. Mr. O'Mahony has my sympathy. In that first year, why did the commission not just recruit some agency staff through some of the big houses? If the commission had a budget of €500,000, why did it not spend it on hiring in? Is it allowed to do that?

Mr. Mark O'Mahony: No. We do not have the statutory authority.

Chairman: Will Mr. O'Mahony explain why the commission is not allowed to do that?

Mr. Mark O'Mahony: We need to be empowered by statute to do so.

Chairman: Not for employment. What about going to some of the big firms like anyone else would to employ somebody on a consultancy basis, if the commission had the budget? Why did the commission not do that?

Mr. Mark O'Mahony: I am told that we do not have the authority to do so. We do not have the statutory authority to engage specialist contractors.

Chairman: The commission's visit here is long overdue. We should have had it in last September because obviously nobody is listening to the commission, if people are talking about looking at its staff numbers at this stage. I do not say this in a pejorative sense. I am appalled at this money hanging in the system, not being dealt with efficiently. It is bad for Ireland to have such a bad system. I apologise to the Deputy for transgressing. We might have different views on that.

Deputy Peter Burke: No, I concur. What IT system is the commission looking for? What does it work with now?

Mr. Mark O'Mahony: We have a system in place that we got three years ago. The office had a staff of four people at the time. We were told that we needed a new IT system. We asked the Revenue Commissioners, under our service-level agreement, to advise us about what we needed and what was appropriate. They did so, we got it and it does not appear to have been sufficient or appropriate. We have a project manager working for us on a contract basis who has significant IT experience and he has prepared a list of what he believes is appropriate and necessary for us to have. We hoped that we would have a procurement exercise completed for that in

2017 and that we would be able to use our 2017 budget for that. We were not able to complete it on time, so that money was unspent. I have explained the delays and difficulties we have had.

Deputy Peter Burke: Who gives the commission approval for that?

Mr. Mark O'Mahony: The Office of the Government Chief Information Officer.

Deputy Peter Burke: Does the office have to give approval for all expenditure?

Mr. Mark O'Mahony: Just for IT matters.

Mr. Seamus McCarthy: It is with that office as part of the Department of Public Expenditure and Reform. Generally, the constraints are sanction requirements from the Department relating to staff numbers, ICT and so on.

Deputy Peter Burke: Is the commission under pressure with respect to other basic services?

Mr. Mark O'Mahony: We have been under severe pressure regarding accommodation. We moved to new premises on 9 June, which has eased matters, but depending on what additional resources we are or are not allocated following the outcome of the two resource reviews, there may be increased pressure on accommodation at that stage. The accommodation issue was a huge one for us. It got to the stage where, for the second half of 2017, we did not have any hearing rooms. We were going out to hotels in the area to book hearing rooms so that we could conduct hearings and case management conferences.

Deputy Peter Burke: That aspect sounds like a nightmare. It is good that we can highlight that.

I have a technical question to finish up. When a taxpayer gets a notice of assessment and has 30 days to appeal it, the taxpayer can sometimes be in the dark about the methodology of how Revenue arrived at the assessment. At later stages, it is difficult to introduce new aspects to an appeal except in limited circumstances. Could more be done for taxpayers to highlight how Revenue arrives at certain figures in the notice of assessment or at the tax liability?

Mr. Mark O'Mahony: We are aware of that as an issue. It was a common complaint in a number of submissions received in our public consultation process. We are constrained regarding what we can do in looking at Revenue conduct. We do not have the statutory jurisdiction to do that. What we can do and have actively been doing, as the Deputy will have seen in the annual report and statement, are case management conferences. They were originally envisaged as a means by which we would give directions. We have been much more flexible and creative in our approach. That is a forum where if there is, as we see it, a genuine difficulty or lack of clarity affecting a taxpayer's ability to form a view as to whether something is appealable, that is an opportunity for us to invite Revenue to clarify its position. The Deputy is right that the scope to extend one's grounds of appeal is quite prescribed by statute. The approach of the TAC has always been that we will be flexible and sympathetic to a taxpayer faced with an assessment where he or she honestly does not know how the figures have been arrived at.

Deputy Peter Burke: Revenue transferred legacy appeals to the commission. They had to write to taxpayers to advise them of this but also to give them an option to negotiate to close their outstanding tax liability. How many took that opportunity and how many were finally transferred?

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Mr. Mark O'Mahony: Some 2,731 appeals were finally transferred. We were not privy to the original negotiation process. I recall that we were informally advised by the Revenue Commissioners that 5,000 or 5,500 legacy appeals might be transferred to us. On a back of the envelope basis, one could say that maybe 50% were resolved. I do not have first-hand knowledge of that and do not want to pin down a figure.

Deputy Peter Burke: Mr. O'Mahony says that the commission currently has 14.5 staff.

Mr. Mark O'Mahony: Yes.

Deputy Peter Burke: Does he envisage that as meeting the commission's requirements? How many does it need? Does it have a work floor plan? Has it a case for an optimum plan?

Mr. Mark O'Mahony: We made a submission to the Department of Finance in February saying that, at a bare minimum, we need another ten support staff.

Deputy Peter Burke: At what level?

Mr. Mark O'Mahony: They are generally high level. We asked for one assistant secretary, two principal officers, one assistant principal officer, one higher executive officer, one executive officer and four clerical officers. We said in February, as the situation was becoming clearer to us, that we needed more case managers. We have three case managers appointed. We are optimistic about what they will be able to achieve. We hope that they will lift much of the more routine case management work from us. We have plans to introduce a two-tier case system which is something our equivalent body in the UK has done. They have simple appeals and complex appeals and they are processed differently with more resources and effort going into the more complex or high-value appeals. We have plans to introduce that system but we need more staff to do that and in particular we need more case managers. We would like to have more case managers and we would particularly like some case managers with legal qualifications. Our existing case managers are all chartered tax advisers with at least five years-----

Deputy Peter Burke: What would the witness deem as a reasonable time to process an appeal, with reference to international figures? I know that the complexities can vary, but generally is there any best practice?

Mr. Mark O'Mahony: It is a how long is a piece of string question. That is an unhelpful answer but I do not mean it that way. They vary so hugely. What we-----

Deputy Peter Burke: There are a huge number of cases under €10,000, approximately 50%. With so many cases at that level blocking up the system, is there any working out of the legal cost of bringing them to that stage compared with the realisation of taxation at the end of the day?

Mr. Mark O'Mahony: We have always been conscious that we are a tax appeals body for everybody. We are not always dealing with multinational corporations with tax bills in the hundreds of millions. We are also the body for the small farmer from west Cork. We have the statutory power to be flexible and we exploit that to the maximum. If we have a small taxpayer with a small appeal and who has a grievance, genuine or otherwise, we are flexible. We do not apply the same standards to a small person who does not have professional representation as we do to a large body which has a solicitors' firm and a professional firm of accountants. We have a statutory power under section 949U to do a paper-based determination. That is something that-----

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Deputy Peter Burke: Does the witness believe that more can be done by the Revenue Commissioners to settle these cases of less than €10,000 before they reach his office?

Mr. Mark O'Mahony: We are not involved at the stage before they get us. What I can say is that-----

Deputy Peter Burke: The Tax Appeals Commission would have the information and would know what the differences between the two sides.

Mr. Mark O'Mahony: What I can say is that at least five or six of the 12 submissions that we received said there is a significant difficulty in engaging with Revenue prior to an appeal being issued. They said there is a want of engagement on the part of Revenue. One phrase used was that the Tax Appeals Commission is being turned into Revenue's back office.

Deputy Peter Burke: That is a significant point.

Chairman: What is the phrase again? The Tax Appeals Commission is being turned into?

Mr. Mark O'Mahony: It was being turned into Revenue's back office. To be clear, that is not a statement I made. It is what one of the submissions to us said.

Deputy Peter Burke: If 50% of the appeals are under €10,000 and tax practitioners are making submissions to suggest that more should be done at that stage to negotiate a settlement, one would wonder why Revenue is not getting through them.

Mr. Mark O'Mahony: There is one other point. The Revenue Commissioners have their own internal reviews and external reviews, and that is something that we are actively trying to make taxpayers aware of. There are a lot of cases where this is more appropriate. To put it in context, in 2016, when we got our 901 appeals, there were 13 internal and external reviews to the Revenue Commissioners. They are significantly better resourced that we are. We believe that this is an avenue which is more appropriate for some taxpayers and it is one that we are trying to educate taxpayers about and trying to encourage the use of that mechanism.

Deputy Peter Burke: The committee should write to the Minister on this. It is very important for the administration of taxation that they are resourced.

Chairman: We will have a letter to that effect by next week because it is so serious, we cannot wait for a periodic report. We can draw from experience where we have the same situation with social welfare where there is an internal review system, and that probably obviates the need for a number of these appeals to go to the independent Social Welfare Appeals Office. That is written in every letter that is sent out. People are encouraged to use this system where there is a quick review and it is dealt with promptly. We will have the Revenue Commissioners in after lunch and we will be discussing this with them.

Deputy Catherine Murphy: I add to the sympathy that has been expressed to the witnesses in terms of the working conditions in doing the job. I want to pick up on the phone issue. Is it a question of the telephone companies, the Office of Public Works, OPW, or what is the impediment? Does the office have broadband?

Mr. Mark O'Mahony: I will ask my colleague, Ms McVeigh, to deal with this.

Ms Brenda McVeigh: We did not have the best of phone systems in our previous office. We inherited it from the Revenue Commissioners and it was put into a very small office. We

also got very short notice to exit our previous office. We had to move out in a matter of two and a half to three weeks and move in to the new one. We needed to get Office of the Government Chief Information Officer, OGCIO, sanction for most of the matters. We were lucky - it is too long to go into it - to be able to get a lot of new equipment quickly to try to get going. One of the things that we did not have, however, was a new phone system. We did not anticipate everything we would need, given there are only a small number of us to deal with of these needs. It turns out that we do need OGCIO sanction to get a new phone system. We were also trying at the same time to get multiple contractors: builders, furniture people, new landlord-----

Deputy Catherine Murphy: I have very limited time and I do not mean to be rude. There is a particular type of phone system for which the witness needed sanction.

Ms Brenda McVeigh: We need more phone lines. I think we only have 15 phone lines at the moment. We have had phone people in several times but have not been able to address the problem yet and we are left, three and a half weeks into the move, where we can make calls out but people cannot make calls in.

Deputy Catherine Murphy: The office has broadband.

Ms Brenda McVeigh: We have broadband.

Deputy Catherine Murphy: When the office was specifying requirements, were meeting rooms specified as a requirement?

Ms Brenda McVeigh: Yes, as an urgent requirement.

Deputy Catherine Murphy: Did the witnesses question why this was not delivered?

Ms Brenda McVeigh: We have meeting rooms but we do not have the chairs or the table for the meeting rooms yet. I believe the tables have been delivered but the chairs have not.

Deputy Catherine Murphy: I have been a member of this committee for about a year and a half and I have never heard anything like this. This is just deplorable.

Ms Brenda McVeigh: Part of the problem is the way we were exited from our previous building.

Chairman: How could someone approach an independent statutory body and say that it must exit in two weeks? How did that situation arise? If we had people come to us, as Deputies, saying their landlord had given them two weeks to leave, we would tell him to take a jump.

Ms Brenda McVeigh: We did say that we were not leaving but the OPW insisted that we were. It has an agreement with the landlord. We do not have the agreement with the landlord for any of these buildings. It reached an agreement with the landlord that we would exit for 8 June.

Deputy Catherine Murphy: It is interesting that the OPW is under the remit of the Department of Finance

Mr. Seamus McCarthy: I believe it is the Department of Public Expenditure and Reform.

Chairman: Did the Department of Finance officials know that people were being given two and half weeks' notice to quit?

Ms Deirdre Donaghy: We were not aware of the two weeks' notice. It is, as far as I understand, and perhaps the Tax Appeals Commission, TAC, can explain more, that it would have been aware for quite a length of time that it would have been moving out of this building because it was scheduled to be refurbished in its entirety. There has been a process up to the past year of looking for alternative accommodation that would suit TAC and it has looked at alternative premises before the current one it has moved into. It is certainly that it is ongoing for that length of time. We would not have been involved with the final say with the OPW as to the date of moving.

Chairman: Did the OPW not help with the kitting out, albeit the office pays for it? That is its business. The office staff should be dealing with tax appeals, not office phones.

Ms Brenda McVeigh: We certainly felt that the office should have been prepared for us before we moved in. There was a period when we knew the building that we were in was going to be demolished. We got very sudden notice, because we had pushed back against the exit date for a while, saying that until something was ready, we could not move. We kept pushing back until eventually we were told we were moving. That was it and when we got there, the weekend we moved in, the walls were still going up. There was certainly no furniture, no walls and no IT system. There was nothing when we moved in.

Deputy Catherine Murphy: I know how disruptive moving can be. Moving an organisation is not a minor deal, and we appreciate that. It obviously takes away the witnesses' attention from the core work they should be doing.

It is difficult to return to the other matters but I will. The witness said that they used Revenue Commissioners support services. The office is independent and the witnesses have stressed their independence. Does that present a conflict, in terms of independence? What support services are involved?

Mr. Mark O'Mahony: We have a service level agreement, SLA, with Revenue. The SLA dates back as far as 2005 and has been renewed or rolled over informally on a number of occasions since then. Certainly, since Commissioner Gallagher and I were appointed, we were aware that at a minimum it might create a perception of a want of independence if we were still tied to Revenue in that regard. It has always been our intention to move away from that.

Deputy Catherine Murphy: I will try to keep my questions short and I would appreciate short answers. What is the staff complement? Is it 14.5? Is 14.5 the full staff complement?

Mr. Mark O'Mahony: That is the full staff plus commissioners, plus a temporary commissioner and we have one project manager who works for us on a drawdown basis.

Deputy Catherine Murphy: How many of those people are case managers?

Mr. Mark O'Mahony: Three.

Deputy Catherine Murphy: The commission has said that ten additional staff are needed, at a minimum, and specified the levels that they should be at. Does the figure of ten people include the three case managers?

Mr. Mark O'Mahony: No.

Ms Lorna Gallagher: No.

Deputy Catherine Murphy: That means the bare minimum of staff is 13 people. When did the commission apply for more staff?

Mr. Mark O'Mahony: We have been looking for more staff since May 2017. That particular submission was made in February of this year, Deputy.

Deputy Catherine Murphy: Has the Department responded and sanctioned the proposal?

Mr. Mark O'Mahony: We have met the Minister. We told him we were not getting our own resources reviewed because we felt perhaps our requests were not being fully appreciated as to their urgency or their necessity. We have got our own resource review and the Minister has said that he is putting in his resource review. A decision will be made at the conclusion of those processes.

Deputy Catherine Murphy: Have the commission been given a timeline?

Mr. Mark O'Mahony: No. In relation to our own resource review, we have been told that it would be finished this year but it has not happened yet. In relation to the Minister's resource review, I do not have a timeline.

Chairman: Can the official representing the Department of Finance tell us the timescale?

Ms Deirdre Donaghy: If I can possibly do, I can maybe comment back on some of the other statements that the Minister has made or the commissioner.

Chairman: In a moment, yes.

Ms Deirdre Donaghy: The timeline on the review is that it has already commenced. Ms Niamh O'Donoghue, former Secretary General of the Department of Social Protection, is undertaking the review. We are very much aware that this is an urgent requirement. She is expediting this immediately. As I say, she has already commenced. She has a schedule of meetings next week to meet with various stakeholders. She is going to deliver the review by mid-August, I believe.

Deputy Catherine Murphy: The sum of €1.6 billion is disputed. I presume all of that money is outstanding, it is unpaid and there is an argument for a refund due to the sum being outstanding. Is that tax or penalties?

Mr. Seamus McCarthy: I understand that some payments are made in relation to some cases. Where it is agreed that a certain liability is there, my understanding is that about €0.5 billion has actually been received and, if one likes, the outstanding debt, as far as Revenue is concerned, is of the order of €1.1 billion. Obviously if the determination goes in favour of the taxpayer there may actually be repayments to some taxpayers.

Deputy Catherine Murphy: How much will it cost to provide the bare minimum staff complement? Has the commission estimated the cost?

Mr. Mark O'Mahony: We currently have a budget allocation of €1.626 million. We believe that we need at least another €1 million to €1.5 million on top of that.

Deputy Catherine Murphy: The sum of €1 million or €1.5 million is small when compared with the €1.1 billion that is outstanding, and the integrity of the tax system.

Does the long delay prevent people from getting tax compliance certificates and function-

ing?

Mr. Mark O'Mahony: My understanding is that if there is a valid appeal in being it does not affect one's eligibility. I am not 100% certain about that, Deputy. I ask her for permission to come back on that.

Deputy Catherine Murphy: Yes, please.

Mr. Mark O'Mahony: My understanding is that it does not.

Deputy Catherine Murphy: Obviously the function was shifted from the Courts Service to the Tax Appeals Commission. There is a scope for a person to submit a claim to the High Court for a judicial review. Have there been judicial reviews?

Mr. Mark O'Mahony: Not of our decisions.

Deputy Catherine Murphy: We have been told about the amount of money that was returned in 2016 because of an inability to recruit staff. Did the commission return money in 2016?

Mr. Mark O'Mahony: Yes, we did. We returned about one third of our budget. I am sorry if I was unclear, Deputy. I understand Deputy Burke to have asked about the return of moneys in 2017, which was the plan for the upscaling of staff. I mean the plan to put the new ICT system in place. Those were envisaged for 2017.

Deputy Catherine Murphy: Is it correct that staff could not be recruited in 2016?

Mr. Mark O'Mahony: In 2017 and 2016.

Deputy Catherine Murphy: The commission could not recruit in 2016, it experienced the same problem in 2017 and is at full complement. That assessment does not add up for me.

Mr. Mark O'Mahony: I think the position was not entirely apparent to us in 2016. We were established in March of that year. We did not have a picture at that stage in the ramp up in the number of appeals that were going to be coming to us. We knew that inevitably, when Revenue stopped acting as a filter, there would be more. We knew there was going to be a huge volume of legacy appeals coming to us.

Deputy Catherine Murphy: I am not talking about the legacy appeals. I am talking about the amount of money that the commission returned.

Mr. Mark O'Mahony: Yes.

Deputy Catherine Murphy: The commission returned money in 2016. This committee takes a dim view of money being returned if it can be spent because it has been allocated for a particular purpose. I completely accept that it can be time consuming and difficult to recruit staff, particularly when an organisation is being established. Was the matter resolved in 2017?

Mr. Mark O'Mahony: No, it was not. It was in 2017 that we were finally able to say this is the magnitude of the task facing us and this is what we need. That is when we put in place plans saying we are going to have these three units, we are going to bring in case managers, we are going to need so many support staff and so many management staff. It was really in 2017 that we ran into the problem of having a plan for the staff we needed, trying to recruit them and-----

Deputy Catherine Murphy: How much money did the commission hand back in 2016 and 2017?

Mr. Mark O'Mahony: We surrendered €596,000 in 2016 and €528,000 in 2017.

Deputy Catherine Murphy: The Accounting Officer's statement is peppered with references to resources yet a significant amount of the commission's budget was surrendered, which is very problematic because it happened two years in a row. Will the commission surrender money in 2018?

Mr. Mark O'Mahony: No. Ms McVeigh wishes to comment.

Ms Brenda McVeigh: I cannot comment too much on 2016 but on 2017. I would say that this is a chicken and egg situation. One needs to have resources in order to spend them. One must go through all sorts of processes to recruit and procure. Those processes take time. If one does not get through a process in time then one is not going to spend the money, and that is why it is sent back.

Deputy Catherine Murphy: I appreciate that and I accept it happening in the first year. When it happens a second year it indicates something else, which is a real concern.

How many of the appeals to date have been successful? Does the commission retain data on how successful an appeal has been, what money was accrued as a consequence of the 860 cases this year? Does the commission collect such data?

Mr. Mark O'Mahony: We do not, Deputy.

Deputy Catherine Murphy: Does the commission have that data for last year?

Mr. Mark O'Mahony: We will get the data and supply it to the Deputy. I am afraid that we do not have it to hand.

Deputy Catherine Murphy: I ask the commission to supply the information to the committee.

Mr. Mark O'Mahony: Yes.

Deputy Catherine Murphy: The Accounting Officer identified some legislative changes and I ask him to be specific.

Mr. Mark O'Mahony: Yes. Commissioner Gallagher has worked on those and I ask her to answer the question, if I may, Deputy.

Deputy Catherine Murphy: Yes.

Ms Lorna Gallagher: I thank the Deputy. I ask her to allow me a moment to locate the information. We have at this stage approximately two years under our belt and we have considered the legislative aspects of the system that might be improved. There are a couple, and I can bring the Deputy through them if she allows. I do not know if she wishes me to do so.

Deputy Catherine Murphy: Can Commissioner Gallagher provide them to us?

Ms Lorna Gallagher: To my knowledge, they have been provided. I beg the Deputy's pardon, sorry.

Chairman: Provide them to this committee. The TAC might have submitted them to the Department of Finance.

Ms Lorna Gallagher: We can undertake to provide them to this committee. There would be no difficulty with that.

Deputy Catherine Murphy: Ms Gallagher could give us the headlines. For example, how many are there?

Ms Lorna Gallagher: Six. I can highlight two or three for the committee, if it believes time is a pressure. I will start with the one that has been obvious to all of us from the get go, which is the matter of cases stated. The Deputy asked whether we had been judicially reviewed, to which the answer is “No”. However, there is an appeal mechanism in the tax legislation whereby an appellant or the Revenue Commissioners, if they are so minded, may appeal us directly to the High Court to have what is effectively a point-of-law rehearing. That provision requires an Appeal Commissioner himself or herself to draft the case stated document, which is a detailed and exacting document for the benefit of the High Court judge who will hear the case. A series of questions must be set out, the determination must be clearly put forward, the points of appeal clarified and all of the exhibiting, supporting documentation included.

I believe we have asked, and will do so again, for this provision to be amended in a manner that will allow us to request the appealing parties to draft a case stated document for review by us so that we can then alter or amend as necessary. Drafting case stated documents takes many hours, consuming a great deal of our time. We will ask for that change. When our body of determinations grows, the number of appeals will inevitably grow as well. The interesting thing about the case stated legislation is that it provides a tight timeframe of three months within which an Appeal Commissioner must draft, finalise and sign the case stated. As such, if I receive a case stated application, I must prioritise that ahead of determinations that have been sitting on my shelves and awaiting my attention. If the parties could draft the case stated document for my review and my final sign-off, it would be of great assistance. This is one of the recommendations we have made.

Another recommendation that may be of interest to the committee relates to our section 949 new jurisdiction provision. This jurisdiction is helpful for taxpayers because it allows them to opt to have their appeals heard without oral hearings. They can furnish to us in writing their submissions, statements and points of view, the points of law and anything else they feel is relevant. The Commissioner will then sit down at his or her desk and draft the determination on foot of that paperwork, as per between Revenue and the taxpayer. This facility has been taken up significantly by taxpayers. However, the legislative provision as drafted does not allow us to make the final call on whether a case is determined in this way. In circumstances where we feel that a small case, for example, of under €10,000, or a non-complex case is appropriate for a section 949 new determination but the taxpayer disagrees with us, unfortunately we have to schedule a hearing and the matter will go through that process. We have asked for consideration of whether we might make that decision.

Deputy Catherine Murphy: The Commissioners might send us details on the rest of the recommendations. It might be helpful were we to take them up with the Department.

I will revert to the extraordinary overtime claim that was raised in the Comptroller and Auditor General’s report. At what grade was the person who was the subject of the claim?

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Mr. Mark O'Mahony: She had just been promoted to higher executive officer.

Deputy Catherine Murphy: Was that the level at which the overtime claim was made?

Mr. Mark O'Mahony: No. The overtime claim was made at executive officer and higher executive officer levels.

Deputy Catherine Murphy: Did the employee give any reason as to why the claim dated back such a length of time?

Mr. Mark O'Mahony: Yes. I am sorry to be unhelpful, but I am not in a position to discuss it because-----

Chairman: Mr. O'Mahony might identify the person if he goes any further.

Mr. Mark O'Mahony: Yes.

Chairman: We do not want to do that.

Deputy Catherine Murphy: What was the nature of the work involved in the claim?

Mr. Mark O'Mahony: It was administration of the Office of the Appeal Commissioners and then work in scheduling and case management within the TAC.

Deputy Catherine Murphy: Is there a cut-off point at each grade level for the making of monetary overtime claims?

Mr. Mark O'Mahony: At assistant principal level and above, claims are not permitted.

Deputy Catherine Murphy: How does the system differ now from then?

Mr. Mark O'Mahony: Overtime is actively discouraged as a matter of policy. In the event that it is necessary, it has to be approved in advance and recorded in a specified form, there has to be an explanation as to why the extraordinary circumstances exist that render it necessary, and the claim has to be submitted within four weeks.

Deputy Catherine Murphy: Given the commission's staff complement, there may well be a need for overtime. It might be discouraged, but there is a large body of work that needs to get done.

In this case, the Commissioners did not seek legal advice or require sanction from the Department of Public Expenditure and Reform. Is there any threshold beyond which sanction is required? Sanction is required for new staff. This amount would certainly pay one or two salaries.

Mr. Mark O'Mahony: I accept that. A small point I would make is that we were not aware of the monetary value of the overtime claim. The information presented to us did not include that. I do not know whether there is a threshold over which the Department has to be notified, but we have accepted that, with the benefit of hindsight, we ought to have done so, given the nature of the claim.

Deputy Catherine Murphy: I will move to another point. What aspects of the risk register are operational, what remains to be done and under what headings?

Mr. Mark O'Mahony: Ms McVeigh is the person in charge of that, so I might ask her to

respond.

Ms Brenda McVeigh: We had completed a draft risk register and started speaking to staff about identifying risks, what they needed to do to identify them, etc., but we are talking about junior and inexperienced staff who have no background in the Civil Service. We identified that we would not be able to get on top of this, given all of the other work we had to do and the fact that we have such a small complement of staff to do everything. The main focus had to be on getting the appeals moving. Through the procurement mechanism, we hired consultants to help us put a draft risk register and a risk management policy in place. We have the register and are still working on it. While I cannot say that it is populated or working, the whole ethos of risk management is there among all staff every single day. We provide governance workshops to them and talk to them about risks. No issues have arisen that cause us unwarranted concern. Staff are well aware that, because they are so inexperienced and junior, they should come to someone more senior and experienced if they have doubts or concerns about an issue. I cannot say that we have a risk register in place today, though.

Deputy Catherine Murphy: If the commission had a risk register in place, would it measure the risk of not being able to fulfil the task?

Ms Brenda McVeigh: Yes. We have run training courses for the staff. The main risk that we identified is our lack of staff and resources.

Deputy Catherine Murphy: If the commission does not have a risk register and name a risk, the commission will be required to attend a committee like this and identify it. If it is not named, it does not get addressed.

Ms Brenda McVeigh: Yes.

Deputy Catherine Murphy: Would Ms McVeigh regard that as a significant shortfall?

Ms Brenda McVeigh: Yes.

Deputy Catherine Murphy: Does the commission require outside assistance or must the register be generated internally?

Ms Brenda McVeigh: As I said, we have sought outside assistance. This is something that we would have been actioning in recent weeks had we not been doing other work. We must work incrementally - we cannot do jobs in parallel because we do not have enough staff. If we must focus on going through appeals, preparing an annual report or preparing for a meeting with this committee, the risk management process has to be moved to one side because we do not have enough staff to move forward.

Deputy Catherine Murphy: Outside of the commission's direct work, are there demands from Revenue? In what condition did the files the commission is dealing with come to it? Is that adding to the workload?

Ms Brenda McVeigh: It certainly did last year.

Mr. Mark O'Mahony: It did. We eventually received a listing of the final tranche of legacy appeals on A3 printouts. We received a soft copy - an electronic copy - of that information in November of last year. There was only one person who had the password and that person was on annual leave so we could not access that until early this year. There were issues with the accuracy of the data we received. There were appeals that had been settled. There were taxpayers

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who had died. There were appeals that had been withdrawn. So we had to carry out - I cannot overstate how time-consuming this was - a quality control exercise on the data as we manually inputted every single piece into our case management system. It was a huge task.

Deputy Catherine Murphy: On the password, if someone who is out sick has the password, it does not take much to-----

Mr. Mark O'Mahony: This was a Revenue person who had the password, not one of our staff members and we were told that one would be able to get this password when this person returned.

Deputy Catherine Murphy: The Tax Appeals Commission is provided with data that it can search in digital format, but it cannot search them because it does not have the password from an organisation that is passing on the appeals to it.

Mr. Mark O'Mahony: Yes, and to be clear we had the data in hard format as well, but obviously that limits what one can do with that data in terms of searching or grouping.

Chairman: I have a few questions just to wrap it up. Is the Tax Appeals Commission accessing the information that is on the Revenue site or is it on its own site? Under the new system taxpayers log in to the Revenue site to do PAYE or PRSI, or to submit an annual return online. They get a password but it is not on their personal computer at home; they are actually logging into the Revenue. Is the Tax Appeals Commission separate?

Mr. Mark O'Mahony: We have our own database.

Chairman: Is that separate from Revenue?

Mr. Mark O'Mahony: We have a proposal to do a limited link to the Revenue database so that some of the communications elements can be speeded up or possibly even automated, but that is just at the planning stage at this point and, like everything else, it is resource dependent.

Chairman: Mr. O'Mahony mentioned overtime restrictions. Who placed the restrictions on the overtime given that the Tax Appeals Commission's office is so busy and it cannot recruit staff? Who is saying staff cannot work overtime? Is it Mr. O'Mahony or-----

Mr. Mark O'Mahony: It was a management decision made in the middle of last year.

Chairman: Was it made by Mr. O'Mahony?

Mr. Mark O'Mahony: It was on the recommendation of our new head of administration.

Chairman: Given that the Tax Appeals Commission had the funds to pay overtime in 2016 and 2017, why did Mr. O'Mahony tell people the office would discourage overtime? There is no financial impediment to overtime. Why would he have discouraged overtime if it could have helped?

Mr. Mark O'Mahony: It is because the policy of the Department of Public Expenditure and Reform is that overtime is to be discouraged and eliminated wherever possible. I suppose-----

Chairman: Is Mr. O'Mahony being over-strict in his interpretations compared with other Departments on that one?

Ms Brenda McVeigh: I do not think so. When the TAC got new management in the mid-

part of 2017 I think the first decision we took was to stop and review everything here; see what was going on and look at work processes. I think it was a case of trying to say that even with limited resources, we could apply them better so that we did not need to do the overtime thing but we just need to prioritise the work that is there. As I said, on a review of our systems-----

Chairman: Is the Tax Appeals Commission allowing any overtime this year?

Ms Brenda McVeigh: No.

Chairman: Is there a need for overtime? If some staff were able to work overtime this year, would it help the Tax Appeals Commission's situation?

Ms Brenda McVeigh: To be honest, the staff are so pressured that I do not think they would do overtime if they were asked at the moment.

Chairman: I accept there might be that issue.

There are 5,000 cases in dispute and €1.6 billion in tax in dispute. There is a general understanding among the public that €1.6 billion in tax is due. That is not the case. The witnesses are now saying that in respect of an aspect of the tax that is not in dispute, there has been a payment on account. Everyone out there assumes there is €1.6 billion due. I ask Mr. O'Mahony to clarify that figure. What is the figure if the amount paid on account is subtracted from the total tax amount of the cases in dispute?

Mr. Mark O'Mahony: I think the Comptroller and Auditor General said it was a figure of some €1.1-----

Chairman: The Comptroller and Auditor General's report is more than a year old. I am asking about the figure now.

Ms Brenda McVeigh: We do not have those figures. The money has been paid to Revenue.

Chairman: The refunds would also be paid by Revenue. The Tax Appeals Commission is a bit like the Social Welfare Appeals Office. It makes a decision and sends it back to Revenue to sort out the figure by saying, "Here's our decision; implement it." None of the money comes through its office. It is important that the public get that and it is on the public record that it is back to the Revenue. Surely the Tax Appeals Commission gets some analysis back from Revenue of all the cases the Tax Appeals Commission ever dealt with. I think the Tax Appeals Commission determined 700 cases last year. Of those 700 cases, what was the level of tax in dispute and what was ultimately the settlement. Then I presume it is up to Revenue to collect the interest. That is not the Tax Appeals Commission's area.

Ms Brenda McVeigh: Yes.

Chairman: Of the 700 cases it disposed of last year, what was the amount of tax that was in dispute and what was assessed? Was it 80%, 70% or 60%? They are the kinds of figures we expect the witnesses to have.

Mr. Mark O'Mahony: I am sorry, Chairman. We do not have that information. We will get it to the committee. In terms of the level of data we can get, again it comes down to a resource issue. We have not been collecting-----

Chairman: If the Tax Appeals Commission has sent 700 cases back to Revenue as having

been concluded, surely Revenue can get the figure from its computer. It might show, for example that out of €200 million the settlement was €150 million. Do the witnesses understand my question? This is the sort of thing we need to know. How much went in and how much came out?

Ms Lorna Gallagher: I think I may be able to assist if I may intervene. In many cases that are disposed of, they are disposed of without us necessarily knowing the outcome. For example, if a case is settled between the parties midway through a hearing or if a case is settled between the parties during the correspondence processes when we are building up a file to create a file that can then be transferred to a hearing, it usually does so on a confidential basis and we would not necessarily be apprised of the terms of settlement of such a case. We would not therefore be able to collate that type of information.

Chairman: I understand that.

Ms Lorna Gallagher: We can certainly collate information for the committee in relation to-----

Chairman: I would call that a case withdrawn.

Ms Lorna Gallagher: Yes, indeed.

Chairman: I am drawing the parallel with social welfare. If a case goes to the appeals office and it is withdrawn at local level, it is no longer in the Tax Appeals Commission's system and not one of its live cases. There is probably a percentage of cases that came to the Tax Appeals Commission but were withdrawn and did not have to proceed. We are not looking for the withdrawn cases because the commission ultimately did not have to conclude on those. However, there may be a gap in the system in respect of the 700 cases. The Tax Appeals Commission makes a decision on certain details and then it is a matter for Revenue to calculate the figures. We need an understanding of what is happening here. We do not know if the cases with a total value of €1.6 billion will translate into €2 billion, €1 billion or €500 million for the Exchequer. We need to have some yardstick. I accept that Revenue will produce the figure. It is a bit like social welfare cases. I believe there is a gap in public understanding of what is happening if we do not have the headline figures of what went in under appeal and if the case was adjudicated what the success rate was. Does Mr. O'Mahony understand my question and where I am coming from?

Mr. Mark O'Mahony: I do, absolutely.

Chairman: Does he see the simple logic that the public would like to see the headline figures because-----

Mr. Mark O'Mahony: I think that information will have to come from Revenue. We are just not privy to the data.

Chairman: We will ask the Revenue about putting a system in place this afternoon. There can be no confidence given how poorly the Tax Appeals Commission is resourced. For us to know the system is working and for the public to have confidence in the system, people need to know these kinds of things. Does the Comptroller and Auditor General wish to make an observation?

Mr. Seamus McCarthy: We will be talking in the afternoon about collection of tax debt.

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Being in control of the information around cases - the new cases that are registered, cases that are closed - I think is something that one can reasonably expect from Revenue.

Chairman: Does the Revenue know all the cases that go to the Tax Appeals Commission?

Mr. Seamus McCarthy: It has to because there will always have been an assessment, which is put on hold.

Chairman: At a Tax Appeals Commission hearing, the Revenue makes its case and the taxpayer on the other side makes his or her case. Both sides make a case and we are familiar with that. I know there is a presumption that hearings will be held public. There was a significant dispute about confidentiality when the legislation was going through. How many hearings did the Tax Appeals Commission hold last year? How many were held in public and how many were held in private?

Mr. Mark O'Mahony: I ask the Chairman to bear with me.

Chairman: I ask Mr. O'Mahony to give us a feel for what is happening. He can send the information in writing during the week. If he has it with him, that would be great.

Mr. Mark O'Mahony: I think I have the information. There were 65 hearings in 2017.

Chairman: How many were held in public and how many in private?

Mr. Mark O'Mahony: They were all private hearings.

Chairman: I thought there was a presumption that hearings were generally to be held in public.

Ms Lorna Gallagher: It is at the discretion of the taxpayer. The taxpayer can ultimately opt to have his or her case heard in private and that is what is what we have been experiencing.

Chairman: That is what the legislation ultimately said on that issue.

Ms Lorna Gallagher: Yes, that is what it provides.

Chairman: When the legislation was before the Houses, there was a major dispute about whether all hearings should be held in public. People have been given the option. Did Ms Gallagher indicate that only 10% of the 700 cases the commission dealt with last year went to hearings?

Ms Lorna Gallagher: Only a small percentage of the cases that reach us progress to a hearing. Many cases are disposed of-----

Chairman: Through correspondence.

Ms Lorna Gallagher: Yes, that is correct, through the correspondence process.

Chairman: I am pleased to hear that. I had the impression earlier that there were a large number of hearings relative to the overall number of cases, but hearings account for only 10% of cases or even less.

Mr. Mark O'Mahony: I might add that they are also resolved through case management conferences, which is a new statutory power we have to get the parties together for an informal hearing. We have found those hugely useful in terms of netting issues and clarifying issues

generally for the taxpayer rather than for Revenue. Very frequently, when the issues have been clarified between the parties there is ground for a settlement, so we have been focusing on that because it does yield results.

Chairman: Is it similar to mediation?

Mr. Mark O'Mahony: Quasi, although I am reluctant to call it mediation because that is not what the legislation states.

Ms Lorna Gallagher: It is a facility for the parties to come together and for differences to be addressed.

Chairman: I understand. It allows for the exchange of information and for issues to be addressed. Could I get the figure again for the net amount of the €1.6 billion that is in dispute? Is the net figure €1.1 billion?

Mr. Seamus McCarthy: We have later figures. I think it is of the order of €1.8 billion in dispute and €1.17 billion which is the outstanding tax liability. That is subject to confirmation by Revenue.

Chairman: We will come to that in the afternoon. In other words, it is more than a third of it. Everybody thinks €1.6 billion is due but that is not the case.

Ms Brenda McVeigh: It is important to point out that we can get a notice of appeal in any manner. It can come in on the back of an envelope. The reason we did not collect the data ourselves was agreed with Revenue and it was more for Revenue.

Chairman: We will go back to Revenue.

Ms Brenda McVeigh: A person can say they owe this amount but Revenue says they owe that.

Chairman: We ask the commission to supply more information on the cases in hand. We want an age analysis of that. How many cases have been ongoing for three months, between three and six months and between six and 12 months? It is not sufficient to simply use the heading "legacy". We want to know the timing of the legacy in terms of how many cases have been ongoing for two years, three years or four years. We need to understand the length of time some of those cases are taking. We want two sets of figures, first, the number of cases and the age analysis and, second, the value of those cases in each category.

Ms Brenda McVeigh: We do not have the value.

Chairman: We will put this to Revenue as well in the afternoon.

Mr. Mark O'Mahony: We can certainly give the committee the number of cases on hand and the age analysis.

Chairman: Revenue can provide additional information. Both bodies will have to work together.

Ms Deirdre Donaghy: I thought it was important to put on the record, in terms of the resources, the interaction that has been had with the Department over the past year to 18 months.

Chairman: Is Ms Donaghy in the Department of Public Expenditure and Reform or the

Department of Finance?

Ms Deirdre Donaghy: The Department of Finance. We have a liaison role with the Tax Appeals Commission, TAC. What is important to state is that each time the Tax Appeals Commission has come to us with resource requirements we have assisted to the best of our ability. To take 2017, for example, we secured sanction for an additional five temporary commissioners to be recruited in 2017. The commissioners had input into the selection and recruitment process and, as a result, only one candidate was selected. However, we have sanction for five and to the best of my knowledge that sanction still exists.

Chairman: How can the extra four staff be recruited?

Ms Deirdre Donaghy: Following the request for additional staff which came to the Minister in February, a large number of whom would be administrative staff, the reason we have appointed an external review is that we have a serious concern that this will cause more of a backlog and a bottleneck. We are very much aware that resources are needed. We just want to make sure that the correct resources go in. To put this in context, one can see from the increase in staffing that the commission has gone from having two commissioners and four staff in 2016 to having three commissioners and 15 support staff. That demonstrates the engagement the Department has had in improving the staff.

As of our liaison meeting on 18 January, we were still aware that additional shortlisting was going on for new case managers at assistant principal level, and that process was under way. Three weeks later, we got a request for resources that would include an assistant secretary, two further principals, an additional assistant principal and a higher executive officer. The fact that this came three weeks after a liaison meeting where none of that had been raised gave us serious cause for concern and that is why we have said we are not disputing that more resources are needed, we just want to make sure that the correct resources go in. The Minister is very conscious that a fully functioning appeals system is an essential part of the tax system. It is as much in our interest that this system works as it is in the interests of tax and taxpayers that it works. We want this to work and we want it to be appropriately resourced. The Minister is fully engaged with this. That is why we have appointed a single reviewer to go in to do the review as quickly as possible. It is someone with experience, who can essentially put the business case to the Minister with his Public Expenditure and Reform hat on, and say these are the resources that are needed to make this an effective and fully functioning body and then we will have the basis on which to resource it.

Chairman: Has the Department factored into that process the fact that if Revenue were to put in a review system, as happens in social welfare, it might prevent cases arising? We got a briefing note from a body other than the Tax Appeals Commission showing there has been an almost exponential increase in the number of cases. In 2012, the figure was 247 but this increased to 356 in 2013, 498 in 2014 and reached 667 in 2015. That is based on information received in response to parliamentary questions. In 2016, the figure was 960 and in 2017 it was 1,405. The more people know about the office, the more people will make appeals. There needs to be some way of triaging cases. Perhaps Revenue needs to step up to the plate and deal with some by having a review. Revenue might say that is the job of the commission; I do not know. The figure was 1,405 last year and will be at least 1,800 this year. Only four years ago, the figure was 500 and it will have increased to well over 2,000 next year. The number is increasing exponentially.

Ms Deirdre Donaghy: It is certainly an issue.

VOTE 10 - TAX APPEALS COMMISSION

Chairman: We do not want to give the TAC only what is required from now until Christmas. My main criticism is that, given the importance of the issue, the new system established has not been on the scale required to allow it to be up and running. It seems the approach has been one of allowing the Department to work it out in that it will provide two commissioners and four staff and then increase staffing little by little. This was all foreseeable.

Ms Deirdre Donaghy: Those were the requests we received and actioned. What happened is that an unforeseen number of legacy issues were transferred from Revenue to the TAC that we and the TAC were not expecting and we had to deal with the situation.

Chairman: Did the Revenue transfer the cases to the TAC or was it the taxpayers who transferred the cases?

Mr. Mark O'Mahony: The Revenue transferred them to us.

Chairman: Was that a new process whereby the Revenue could dump some of its old cases over to the TAC?

Ms Lorna Gallagher: Yes.

Mr. Mark O'Mahony: Yes.

Chairman: Did the TAC engage with each of those taxpayers and write to them?

Ms Lorna Gallagher: Yes, we did.

Chairman: Are they all happy to engage with the TAC or did many withdraw their cases?

Mr. Mark O'Mahony: There have been some withdrawals but a lot of them will require a hearing.

Chairman: Did that give Revenue the opportunity to clear out some of its difficult cases? We will ask Revenue officials that question after dinner.

Mr. Mark O'Mahony: I saw an interview in which the Revenue chairman, Mr. Cody, very fairly said the Tax Appeals Commission did not create the backlog, it inherited it. It was nice to see that acknowledgement from our perspective.

Ms Deirdre Donaghy: This is one of the things we think is very important in the review. There are two very distinct issues here. There is an unforeseen backlog that has been delivered to the Tax Appeals Commission and has to be addressed, and there is then also the necessity to have a fully functioning ongoing system that can deal with the new appeals coming through on a day-to-day basis. That is something we need to take into account with the resourcing. That was originally the intention with the temporary commissioners. There is an element of possibly needing shorter term staff to clear the large backlog and then we need an assessment of what is required on an ongoing basis to make sure that new appeals are coming through and are being dealt with in an effective manner.

Chairman: I know responses have been given but we will ask the commission to give us a detailed note on the topic. There is probably more information available. As the other members of the committee are not here, we would like to have that information on record. When we are reaching a view on the issue we want to be able to collate all the information.

Does the commission get a recruitment agency to do the work on its behalf or will it have to

devote existing and limited resources to the recruitment process?

Mr. Mark O'Mahony: Perhaps Ms McVeigh will deal with this question.

Ms Brenda McVeigh: That brings us back to the problem that there are only one or two members of staff to do all of this work, namely, to run the office, to recruit and to deal with all the investigations and appeals. The recruitment licence allows us to recruit if we have the money and the sanctions from the two Departments to go ahead and use it. We are out of sanctions at the moment. It will not matter if we get additional temporary commissioners because without the support team to support them, we will not be able to move forward because there is a significant processing job to be done on these appeals. It has to be addressed. It will not be addressed by a commissioner. That would be a complete loss of money. All of our Civil Service obligations have to be addressed. That needs something apart from a temporary commissioner. The only sanctions we have at the moment are for a temporary commissioner. We do not have sanctions for additional staff to run the office.

Chairman: The commission only has sanction for a temporary commissioner. Did Ms Donaghy say there was sanction given for five?

Ms Deirdre Donaghy: There was sanction for five.

Chairman: Is that different?

Ms Brenda McVeigh: That is the only sanction.

Chairman: I do not understand the witnesses saying there was sanction for five and only one came in while at the same time saying the Tax Appeals Commission has no more sanctions.

Ms Brenda McVeigh: We have no more sanctions for-----

Chairman: I do not understand this. What did I miss?

Ms Brenda McVeigh: The temporary commissioner is a ministerial appointment. The Minister has given sanction for the appointment of four more temporary commissioners.

Chairman: Why are they not being recruited now?

Ms Brenda McVeigh: It is a ministerial appointment. It has nothing to do with us.

Chairman: I am lost.

Ms Brenda McVeigh: The Minister for Finance has to-----

Chairman: I am lost in terms of who recruits.

Ms Brenda McVeigh: The Minister for Finance has to appoint temporary commissioners. We can recruit up to principal officer standard level but we cannot even do that at the moment because we do not have the sanction from the Department of Public Expenditure and Reform for the additional staff.

Chairman: The Minister is willing to appoint four extra commissioners.

Ms Deirdre Donaghy: There was sanction for five in early 2017 but only one was selected. The sanction is still there. We enquired throughout 2017 whether additional appeals commissioners were needed but the response at the time was "No." This is why our concern at the

moment is if only administrative staff are recruited there will still be a bottleneck at decision-making level. I am not prejudging the outcome of any review. The point is we need to be sure that whatever we put in will be effective in clearing the backlog and addressing issues.

Chairman: That is the Department of Finance but does the Department of Public Expenditure and Reform have a role in this?

Ms Deirdre Donaghy: In terms of the numbers of staff in the commission, the Act provides that the Minister for Finance, in consultation with the Minister for Public Expenditure and Reform, decides the staffing numbers in the commission. The Minister, Deputy Donohoe, is the Minister in both Departments.

Chairman: They are separate.

Ms Deirdre Donaghy: It is a joint role shared by the Department of Finance and the Department of Public Expenditure and Reform.

Chairman: The committee has asked the Department to send us a note. Do we need to write separately to the Department of Public Expenditure and Reform if we have a query on this?

Ms Deirdre Donaghy: I can liaise with my colleagues in the Department of Public Expenditure and Reform.

Chairman: Will Ms Donaghy try to make it comprehensive and cover the bases at the Department of Public Expenditure and Reform? That is all I am asking.

Ms Deirdre Donaghy: I will confirm afterwards with the Chairman exactly what he wants us to cover but we are more than happy to do that.

Chairman: Ms Donaghy will see the Official Report next week. Are there any final comments? I think we are finished. A division has been called in the Dáil.

Mr. Mark O'Mahony: We thank the committee for the opportunity to explain our position and to show we are taking on board what the Comptroller and Auditor General has said. We are doing our best. We have one small query about what the Chairman asked of us in terms of the age analysis but I am happy to that by way of correspondence if it is easier.

Chairman: I do not expect it today. Mr. O'Mahony will understand what I am asking. I was amused looking at the last page of the annual report which refers to the customer service charter. With regard to contact by telephone, when the commission gets a new telephone number, the witnesses should let us know.

Mr. Mark O'Mahony: We will give the Chairman a call.

Chairman: I thank our witnesses from the Tax Appeals Commission and the Department of Finance.

The witnesses withdrew.

Sitting suspended at 1.04 p.m. and resumed at 2.37 p.m.

COMMITTEE OF PUBLIC ACCOUNTS

Chapter 22 - Dormant Accounts Fund

Vote 9 - Office of the Revenue Commissioners

2016 and 2017 Revenue Accounts

Mr. Niall Cody (*Chairman, Office of the Revenue Commissioners*) called and examined.

Chairman: We are dealing with the 2016 annual report of the Comptroller and Auditor General, chapter 21, tax debt and write-outs, and chapter 22 which is entitled, Allocation of En-cashment and Film Withholding Taxes. I hope some of the experts present will explain what it means in simple English. We will also be dealing with the 2016 Appropriation Accounts, Vote 9, Office of the Revenue Commissioners, and the Revenue accounts for 2016 and 2017.

From the Office of the Revenue Commissioners we are joined by Mr. Niall Cody, chairman; Mr. Joe Howley, assistant secretary, Office of the Collector General; Ms Clare Omelia, principal officer and liaison with the Office of the Comptroller and Auditor General, and Mr. Tom Dowling, assistant principal, corporate services division. From the Department of Finance we are joined by Ms Anna Donegan. They are all most welcome.

I remind members, witnesses and those in the Visitors Gallery to switch off all mobile phones, which means switching them to airplane mode. Merely leaving them in silent mode means that they will still interfere with the recording system.

By virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the committee. However, if they are directed by the committee to cease giving evidence on a particular matter and continue to do so, they are entitled thereafter only to qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person or an entity, by name or in such a way as to make him, her or it identifiable.

Members are reminded of the provisions within Standing Order 186 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 policy or policies.

While we expect witnesses to answer questions put by the committee clearly and with candour, they can and should expect to be treated fairly and with respect and consideration at all times, in accordance with the witness protocol.

I invite the Comptroller and Auditor General to make his opening statement.

Mr. Seamus McCarthy: The account of the receipt of revenue of the State collected by the Revenue Commissioners comprehends receipts of taxes and duties remitted by Revenue to the Exchequer and receipts collected by Revenue on behalf of others. The 2017 account shows that net receipts of taxes and duties amounted to a total of €50.8 billion, an increase of €2.8 bil-

lion, or 5.8%, by comparison with the figure for 2016. Receipts related to VAT, income tax and corporation tax together accounted for over 80% of net tax receipts. Receipts collected by Revenue and remitted directly to non-Exchequer agencies and funds also increased substantially. Net receipts totalled €10.8 billion in 2016, increasing to €12.2 billion in 2017, an increase of around 13.5%. Pay related social insurance, PRSI, contributions account for the majority of this category of receipts. A significant part of the increase in that category of receipts in 2017 was in respect of the VAT mini one-stop-shop, MOSS, scheme, which implements place of supply based VAT rules for businesses engaged in electronic supply of services cross-border. Transfers to other EU member states increased from just under €400 million in 2016 to almost €1.2 billion in 2017.

Revenue's administration and operational expenses are charged to Vote 9, Revenue Commissioners, rather than the Revenue account. The 2016 appropriation accounts show that the total spent by Revenue in the year was €397 million. Taking account of appropriations-in-aid of €75 million, net expenditure under the Vote amounted to €322 million. The surrender for the year was €8.8 million.

There were three chapters in last year's report on the accounts of the public services dealing with Revenue-related issues. The committee has already examined and reported on the chapter dealing with corporation tax.

Revenue is obliged under legislation to collect tax in a timely and efficient way, including the pursuit of any tax debt outstanding. As at 31 March 2017, the total value of gross tax debt outstanding was just under €2.3 billion. The value of outstanding debt has increased since 2015, reversing the downward trend of the previous five years. Revenue has attributed the increase in recent years to an increase in the value of tax debt outstanding under appeal and, therefore, not currently available for collection. Tax debt under appeal in March 2017 accounted for 48% of the total. Our analysis also found that €661 million or 29% of the total tax debt was classified as collectable, but it was not subject to either payment agreements or enforcement proceedings. About one third was recently identified as debt. Much of the remainder was at various stages of investigation or review but some debt was not under investigation.

Revenue wrote out a total of €211 million of debt in 2016 and active pursuit of that payment ceased. It included €1.6 million in around 512,000 cases where small balances, an average of just over €3 per case, were written out automatically. The remainder was higher value debt which was written out on a case by case basis, with more senior authorisation for higher debts written out. The most frequent reasons for such debt write-outs are liquidations and businesses ceasing to trade.

Chapter 22 deals with delays in transferring certain tax receipts to the Exchequer, which resulted in the accumulation of deposits in a Revenue holding account at the Central Bank at year end. The problem arose because the receipts for the two tax heads had not been matched with the appropriate taxpayer records in a timely way. Encashment tax is a standard rate income tax deduction made by banks and stock broking firms when they make or receive certain payments. Encashment tax receipts of just under €31 million which had accumulated in the period 2012 to 2016 remained unallocated to taxpayer records at the end of 2016.

Since the start of 2015, companies which qualify for a film tax credit are required to apply film withholding tax when they make certain payments to non-resident artists from outside the European Union and remit the amounts collected to Revenue. Accumulated film withholding tax receipts of €1 million remained unallocated to taxpayer records at the end of 2016. Revenue

subsequently developed systems to ensure more timely allocation of such receipts to taxpayer records. The accumulated receipts of both taxes were allocated to customers records during 2017.

Chairman: I call on Mr. Cody to make his opening statement.

Mr. Niall Cody: I thank the Chairman for giving me this opportunity to make a short opening statement. The focus of the meeting is on chapters 21 and 22 of the 2016 report of the Comptroller and Auditor General, entitled Tax Debt and Write Outs and Allocation of Encashment and Film Withholding Taxes, respectively. The meeting is also to consider the 2016 appropriation accounts, as well as the Revenue accounts for 2016 and 2017.

I will first address the findings of the Comptroller and Auditor General in the two chapters of his 2016 report, setting out some of the background for context, as well as providing an update on progress in implementing the recommendations made.

Revenue plays a vital role in the economy by collecting taxes and duties due to the State. In 2017 we collected a net €50.76 billion in taxes and duties. This is the seventh consecutive annual increase and was €2.8 billion more than in 2016. Provisional net tax collection to 31 May 2018 was €20.48 billion, which was €1.2 billion ahead of the figure for the same period last year. Revenue's core strategy is to maintain and improve timely voluntary compliance, tackle non-compliance and prevent the occurrence of tax debt. The maintenance of high rates of timely compliance, categorised by case size, in other words, by the amount of tax at risk in the event of late or non-payment, is a key measure of our performance and closely monitored. Table 1, attached to my opening statement, sets out the rates of timely compliance each year in the period from 2013 to date.

It is clear the overwhelming majority of taxpayers want to be and are voluntarily compliant. We acknowledge and value the important role of compliant taxpayers, businesses and their agents. One of our core targets in the next three years is to reduce debt levels by increasing the rate of timely compliance for all other cases from 89% to the mid-90s range. The Comptroller and Auditor General's 2016 report explains that tax debt falls into two main categories, namely, debt that is available to collect and debt that is not available to collect. The latter mainly comprises debt that is the subject of appeal to the Tax Appeals Commission and insolvency related debt.

The Comptroller and Auditor General's report reflects €2.29 billion in total tax debt outstanding as at 31 March 2017. Of this, €1.19 billion was not available for collection, while €1.1 billion was available for collection, equating to 1.68% of gross collection. By comparison, at the end of March 2018, total tax debt was down 4% to €2.2 billion. This includes €1.24 billion not available for collection and €958 million available for collection, representing 1.35% of gross collection. The committee will be interested to hear that the amount available for collection in 31 May 2018 was down to €845 million.

To safeguard tax receipts due to the Exchequer and in support of the compliant majority, Revenue intervenes early when tax payments and filing obligations are not met. Recognising that the more entrenched the debt becomes, the more difficult it is to resolve, our approach offers businesses and taxpayers an opportunity to deal with tax payment problems before they become unmanageable through early engagement. When viable businesses or taxpayers with temporary payment problems engage with us honestly, we work with them to reach an agreed solution. On 31 March 2017 there were 12,437 such businesses and taxpayers in phased pay-

ment arrangements in respect of €116 million in tax debt. At the end of March 2018, there were 10,833 phased payment arrangements in place, covering €99 million in tax debt.

The small minority of taxpayers who either refuse to engage with us or refuse to pay their tax are met with enforcement action. On 31 March 2017, €328 million of debt available for collection was subject to enforcement proceedings. During 2017 we referred more than 40,000 warrants to the sheriffs, while over 3,700 cases were referred for court recovery action, yielding a combined €181 million in debt collected.

In order to secure a tax debt, Revenue may place a notice of attachment on a third party. Attachment is an escalated option and normally used only where sheriff or solicitor enforcement has failed to secure payment of a debt or it is likely to be the only effective collection option. In 2017 we issued 6,440 notices of attachment, yielding €32 million for the Exchequer. During 2017 we successfully petitioned the courts to liquidate 34 defaulting companies, while 22 individuals were adjudicated bankrupt by the courts on foot of a Revenue petition and 273 personal insolvency arrangements were agreed. The Comptroller and Auditor General reported that, at the end of March 2017, €661 million in debt available for collection was not the subject of either a payment agreement or enforcement action. While €390 million of this was more recent debt, €271 million was more than one year old, had no payment agreement in place and no enforcement action initiated. The Comptroller and Auditor General recommends that Revenue conducts an annual review of such debt.

I assure the committee that entrenched debt is always the subject of regular close oversight and, as at 31 May 2018, the recovery process has been finalised in respect of €148 million, or 55%, of that older debt. Of the remaining €123 million, 93.5%, or €115 million, is under active collection involving direct engagement between Revenue and the taxpayer, while the balance of €8 million is likely to conclude in write-off as uncollectible debt due to the circumstances of the taxpayers involved. As at 31 March 2018, the comparable figures to the €661 million and the €271 million are €569 million, down 14% and €221 million, down 18%.

Turning to debt write-out, it is inevitable that business failure or individual circumstances will sometimes make collection impossible. In such circumstances, Revenue may write out the debt and suspend all collection activity. Most debt write-out is on a case-by-case basis. Debt may be the subject of partial write out, where the taxpayer is able to make some payments towards the tax due but unable to pay the debt in full. Our write-out procedures and controls facilitate closer focus by Revenue on the debt with a reasonable prospect of collection. During 2017, Revenue wrote out €147 million in tax debt. This related mainly to insolvencies and ceased trades, and represented a reduction of 30% on the write out figure of €211 million in 2016.

The report of the Comptroller and Auditor General refers to receipts of almost €31 million in encashment tax in the period 2012 to 2016 and €1 million in film withholding tax in the period 2015 to 2016 that remained unallocated to taxpayer records at the end of 2016. Unallocated receipts are transferred daily to the Exchequer. The only exception to this occurs in December each year when the transfer is suspended to facilitate the end of year balancing of the Revenue account by its accountant general. Unallocated receipts are reported in the annual revenue account on the balance sheet as an asset and under the corresponding liability.

In June 2016, Revenue introduced RevPay, an online payment facility for all major tax liabilities, including encashment tax and film withholding tax. RevPay facilitates online payment by debit or credit card, or by using a single debit authority, and the taxpayer record is updated

when the payment is made. This new facility reduces reliance on electronic funds transfer, EFT, as a payment method and over time will help to reduce the level of unallocated tax balances for all taxes. In 2017, Revenue completed a project which updated the customer record for all payments of encashment tax and film withholding tax, and there are currently no unallocated receipts of encashment tax or film withholding tax.

The report of the Comptroller and Auditor General recommends that systems should be quickly updated when new taxes are introduced, and this is in keeping with the objectives of Revenue. However, the prioritisation of IT development resources requires proportionate allocation. For example, PAYE modernisation and the introduction of real time PAYE reporting on 1 January 2019 is a priority project for Revenue this year. As such, smaller developments may not always be completed as quickly as would otherwise be the case. However, like film withholding tax and encashment tax, all required changes will be assessed and prioritised in the IT development schedule and integrated with other taxes at the earliest opportunity.

In keeping with the responsibility Revenue has to protect Exchequer funds, our resources are allocated based on risk. Our debt management framework prioritises early intervention and action to drive positive taxpayer behaviour. This gives the taxpaying public confidence that the system is fair, which, in turn, drives the very high rates of voluntary compliance. In 2017, Revenue introduced a new case segmentation and compliance tracking system, providing greater oversight, enhanced whole case management and flexibility in matching debt management resources to business needs. The new system is being implemented on a phased basis and all key elements are planned to be operational in early 2019. The system has contributed to strong compliance outcomes and will also provide enhanced online customer services, thereby supporting positive compliance behaviour.

I will be happy to answer any questions raised by the committee. In that context, I draw attention to my obligation to uphold taxpayer confidentiality, as provided for in section 851(a) of the Taxes Consolidation Act 1997 and which prevents me from commenting on the tax affairs of any individual or entity.

Deputy Shane Cassells: I thank Mr. Cody and his team for the presentation and for being here today. This morning, the Tax Appeals Commission, TAC, appeared before us, and to say that we were shocked by some of the things it said to us is putting it mildly. It said there is no external phone system, that nobody can ring out or ring in, and that the computers of directors have blown up. It reminded me of Manuel from “Fawlty Towers”. However, as the Chairman pointed out this morning, this is serious business, not just for those who are collecting tax but for the wider public and society. Every time the witness appears before us, I state that we rely on tax revenue when we debate issues in both Houses every week, such as schools, hospitals and roads. The witness knows this better than anyone; it is reflected in his remarks.

This morning, Mr. O’Mahony from the TAC said that he felt he was being stymied. He also repeated the words of another person when he said that the TAC was being used as a back office by the Revenue. Is that a fair comment? Is there any truth to it? Is it fair to say that the TAC did not create the backlog but rather inherited it from the Revenue?

Mr. Niall Cody: I have spoken about the TAC and the issue relating to appeals at this committee previously. We have also appeared before the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach, to discuss the same issue. It is useful to put the issue into context. The TAC inherited a tax appeals system that was not fit for purpose. From 2009 or 2010, my predecessor made it one of her lifetime ambitions, as chairman of the Revenue

Commissioners, to reform the tax appeal system. The previous Minister for Finance launched a consultation on tax appeals in, I believe, 2013. It was one of the few times that Revenue, as an office, actually made a submission to the Department of Finance. The TAC is independent of Revenue. The office which preceded it was also independent. We do not control the tax appeal system and we did not control it before the TAC was established. The legislation to deal with tax appeals was very limited before the Finance (Tax Appeals) Act 2015 was commenced. The TAC was then set up in 2016, and has been a major reform of the tax administration system. The TAC did not create the problem because there was a legacy system which did not have the proper system around it to provide for the listing of cases.

I pay great attention to proceedings of the Committee on Public Accounts, particularly when tax is being discussed. I watched the discussion this morning with the TAC. Some of the statements made, which Mr. O'Mahony did not make but which he reported, are based on a submission that was made to a recent consultation provided for by the TAC. I would be very wary of relying on submissions being made by what I see as vested interests. The legal framework for how the appeals system works is set out in legislation. We raise an assessment, or make a determination, or disallow a repayment. Those are formal processes that are then, by law, subject to appeal to the TAC. It is not a back office for the Revenue nor could it be. In certain cases, there are issues around whether there are grounds for appeal. Sometimes, people make appeals without having the grounds to do so, and the TAC must rule on that matter as well. I do not in any way agree that we use the TAC as a back office. However, there are a number of issues with the process, and I am willing to set out for the committee the detail around the transition to the TAC. If the committee wants us to write-----

Deputy Shane Cassells: Mr. O'Mahony referred to the transfer as well. I cannot remember what phrase he used, but he mentioned that the transfer posed challenges. What kind of review took place before the transfer from Revenue to the TAC?

Mr. Niall Cody: The Finance (Tax Appeals) Act provided for a process, which we had to engage with, in respect of each taxpayer for whom an appeal was open. We had to write to each taxpayer and ask him or her a series of questions. Some appeals were in a legacy position and the taxpayers did not realise that they were still open. They had to fill out a questionnaire, the first question on which was whether the appeal was still in existence.

The legislation also provided for an opportunity for agreement between Revenue and the taxpayer about the issue. Subsequently, some practitioners said that they had believed they were going to get an opportunity to reach settlements, but I imagine what they thought was that, if the liability was X amount, we would settle for half of it. We cannot do that, however. We are obliged to interpret and apply the law. What the legislation provided was an opportunity for engagement to see whether there could be agreement around the interpretation of the law or the quantum of the liability. A good number of cases settled at that stage and did not proceed. However, the taxpayer might have replied that he or she was interested in the appeal continuing.

The cases were transferred in three tranches, with the details set out, a spreadsheet all the cases and the notes on each. In the period between the first and final tranches, there was a Supreme Court judgment on a case, which led to the settlement of approximately 100 follower cases. It was a tax planning case that we lost. Those cases had gone over in the first tranche, but they were then withdrawn because the assessments fell.

A process would have been followed at the end of November or December. I have many details on when the cases went over. The final set would have been transferred over and sum-

marised in a final file transfer of all legacy cases-----

Deputy Shane Cassells: How many were transferred ultimately?

Mr. Niall Cody: Approximately 2,500 cases, involving 1,100 taxpayers. The difference between the two numbers is because, if there is an assessment of two years, for example, that is counted as two appeals even though there is only one taxpayer.

Regarding the commentary, and as if the legacy issues were not clear to everyone, the finance committee undertook pre-legislative scrutiny of the legislation before it was enacted. The Chairman mentioned a few points he recalled from that process. All of these figures were on the agenda. One of the reasons the Minister authorised up to five temporary appeal commissioners was the significant legacy issues. One temporary commissioner was appointed to join the two permanent commissioners. If the committee would find it useful, I can set all this out in detail. We cannot have an assessment that is then subject to appeal without us putting on an appeal stop to stop the collection. While the appeal is waiting to be heard, the money is not due. This morning, it was asked whether that interfered with someone's tax clearance certificate. If an assessment is under appeal, the person is entitled to a tax clearance certificate. The tax is not due. That is just a bit of information.

Deputy Shane Cassells: I wish to ask about something that the Chairman touched on this morning. What quantum of money is under appeal and what is the backlog? The head of the Irish Tax Institute said that it could take ten years for the backlog to be cleared. Should more be done at the Revenue stage to reach settlements before they go to appeal, given the ever-growing size of the logjam and the quantum of money involved?

Mr. Niall Cody: While a case is subject to appeal and before an appeal hearing is held, we are always open to engagement with the taxpayer. We do not stop the engagement process just because there is an appeal. The issue is that we have raised an assessment. If that is as a result of an intervention by us, for example, an audit, we will have engaged with the taxpayer and his or her agent and set out our reasons for believing there is a liability. Most of our audit settlements are reached without the raising of an assessment and the issuing of an appeal. If there is an additional liability, it is settled by agreement and, hopefully, paid. Where there is a disagreement at the end of an intervention, most appeal cases relate to an interpretation of the law whereas others relate to the quantum of the liability. For example, the best records not necessarily being kept was mentioned this morning. In such an instance, we would have assessed the liability and raised an assessment, which would then have been appealed. Those cases are less precise because, if there are not proper records, we make assumptions. However, we must have grounds to make an assessment. Before we do, there will be an engagement with the taxpayer. Assessments do not get entered lightly. Following the appeal, we are open to dealing with reasonable grounds for settling the case.

Deputy Shane Cassells: Mr. Cody has addressed a matter raised in the Comptroller and Auditor General's remarks, namely, managing debt, the amount of that debt, what is not collectable because of appeals and what is collectable. The Comptroller and Auditor General has pointed to a reversal in the trend and an increase in gross debt, more than a quarter of which is classified as collectable but has been subject to neither pay agreements nor enforcement proceedings. He also stated that €271 million, or 41% of the debt, was over one year old. Given the Comptroller and Auditor General's conclusions on the lack of payment agreements and enforcement proceedings on this collectable debt, why were they not in place in the first instance? Mr. Cody has addressed the question of the subsequent process.

Mr. Niall Cody: In any process, we work on the highest amounts of debt and engage with taxpayers. As to the figures set out by the Comptroller and Auditor General - I have since supplied the updated figure - approximately one third of the debt at any time is less than two months old and is in the process. Before we refer debt to enforcement, we go through a process. We do not refer cases to the sheriff as the first action. We engage with the taxpayer and try to arrive at a debt agreement. Of the €271 million that was not subject to an enforcement and in respect of which there was no phased agreement, 55% has been recovered in the intervening year. The equivalent figure in March 2018 was €221 million, which is €50 million less than it was at the equivalent time in 2017. Obviously, €221 million is not the same. There is always a cycle of debt. There is a table that sets out some figures. We were looking at percentages. In 2010 the debt available for collection was just under €2.5 million and in 2015 and 2016 we were back at that level. However, as a percentage of total tax it is a significant reduction. In 2010 we collected €30 billion. In 2018 we are collecting €50 billion, so it is a much smaller proportion.

Deputy Shane Cassells: Mr. Cody mentioned 2010. Since then nearly €1.8 billion in tax has been written off, which averages out to €250 million a year. In any man's language, or in layman's language, that is a significant amount of money, notwithstanding the increases in tax revenue in the eight year period. In terms of getting that average down and reducing the proportion of tax collectable that is written off, does Mr. Cody have any assessment on whether that level of write-off is acceptable as a percentage of tax collected?

Mr. Niall Cody: The majority of debt is written off as a result of companies liquidating and businesses ceasing to trade.

Deputy Shane Cassells: That was understandable in the early part of this decade but, as things have gone on, has the average remained close to €250 million?

Mr. Niall Cody: No. There was a higher figure than normal up to March 2017. I was looking at it and the biggest proportion of it related to liquidations of companies in the property development and construction area arising from the collapse of the building industry. Sometimes these liquidations take that length of time. Some of them were unfortunately cases that had gone through a whole legal process of appeal, in which Revenue won at every level of appeal. When these cases were settled the companies went into liquidation, leaving substantial debts. That is one of the reasons we would be very keen to make the appeals process much speedier. Some cases enter the appeals process partly as a strategy to ensure that those involved do not end up paying the money at all. In the last figures the amount written off had decreased to €147 million. That reflects the recovering economy, but even in a recovering economy businesses will run into difficulty through no fault of the business itself. Business failure is not all down to people engaging in sharp practice. It is an inevitable part of the business cycle. As I mentioned in my opening remarks, we are really keen to improve the timeliness of compliance in order to prevent moneys owed becoming debt. On that increase in timeliness, our large cases have a 90% compliance rate in the month following the date of payment. Compliance in medium-sized cases, which is to say cases involving a tax liability of €200,000 to €500,000, is now up to 98%. Compliance in cases involving total liabilities of less than €200,000 has increased from 81% in 2009 to 89%. I would be really interested in having a target to improve that to approximately 95% over the next three years. The Collector General will not like me giving that figure.

Deputy Shane Cassells: Looking at that timeliness of compliance and at Revenue's audit teams and tackling non-compliance, which is something we have also touched on here before, I think of every ordinary person who looks at the defaulter list when it gets published in the newspapers. People sneak a look to see whether their neighbours are on it. The 2017 annual

report shows that the yields from audits and interventions came to €500 million. Some €196 million of that came from audit and €295 million from intervention. I know the witnesses have done so before, but will they speak on the cost to Revenue of the audit process in comparison with the yields or the amounts brought in? Will they comment on the types of business audit teams would focus on? Does Revenue look at small operations at grassroots level with regard to back street operations or is the focus on larger operations?

Mr. Niall Cody: The Deputy is right. We have discussed our compliance programmes here a good few times. Over recent years we have probably become more sophisticated in that we now do fewer audits and more targeted risk-based interventions. We obviously retain the right and need to do a significant number of audits but we are increasingly targeting single issues where there are risk indicators based on third party information. I believe 2014 was the first year in which there was a comprehensive review of expenditure. We made a submission to the Minister for Public Expenditure and Reform around that comprehensive review of expenditure. In that submission we said that the return on investment from a fully-trained Revenue auditor is in the region of 10:1. In the last number of budgets and Estimates processes, the Minister has supported that case. While Deputy Michael Noonan was Minister he supported the case to Deputy Paschal Donohoe, who was Minister for Public Expenditure and Reform. The Minister is now supporting that case to himself. In the last four budgets we have been allocated additional resources but we have been given back a compliance dividend in the budget arithmetic. That is the process. We have our risk intelligence systems and carry out targeted risk-based audits. We have discussed the return on targeted risk-based audits as opposed to the random audit programme here. Approximately 70% of risk-based audits produce a yield compared to less than 30% of random audits. In random audits the average yield is much lower than in targeted audits.

Chairman: What do yields of 30% and 70% mean?

Mr. Niall Cody: In 30% of random audits we carried out there was an additional yield.

Chairman: That yield could have been big or small, could it?

Mr. Niall Cody: It could have been big or small but the vast majority were under €3,000.

Chairman: There was a yield in 70% of the targeted audits.

Mr. Niall Cody: In the targeted audits there was a yield in 70% of cases. The average yield is something like €35,000 in our targeted audit programme.

Deputy Shane Cassells: Before I finish, chapter 22 refers to the film withholding tax. Will Mr. Cody explain this for people viewing? It is very interesting. It has been in legislation since 2015. I am interested because the Comptroller and Auditor General had issues with the delay in bringing film withholding tax receipts to account. Will Mr. Cody also speak to the actual issue itself? I am interested because it points to the strength of the film industry. Will Mr. Cody outline how the tax operations work out when Tom Cruise or someone else makes a film here?

Mr. Niall Cody: The film tax support system was substantially reformed in 2015. Section 481 of the Taxes Consolidation Act 1997 moved to a credit-based system for supporting the film industry as opposed to what was there before. The total amount claimable in tax credits for films under section 481 last year was in the region of €100 million. It is by far the biggest support to the film industry, much higher than the amount given in direct grant aid.

Deputy Shane Cassells: How does it work out in practical terms? If a foreign actor is-----

Mr. Niall Cody: Section 481 provides funding for the film production company. In conjunction with the reform of section 481, a process was brought which includes a film withholding tax on income paid to foreign artists involved in the film. The film production company has to withhold an element of the fee paid to cover tax liabilities of the actor. That is the film withholding tax process here.

Chairman: Is it 20%?

Mr. Niall Cody: I will give the rate before we are finished but it is not massive.

Chairman: That is fine.

Deputy Kate O'Connell: I have a quick question. On the €250 million in write-offs as a percentage of the total take, how do we compare internationally and with other European countries? I am following on from Deputy Cassells' questions.

Mr. Niall Cody: I was looking at comparisons around the tax collection and debt management system and I have spoken here before about the tax administration series, which is a process where the Organisation for Economic Co-operation and Development, OECD, collates information on tax administrations across 48 countries. I think it is that number at this stage. When the Comptroller and Auditor General looks at what we do, he also looks at the OECD. It is interesting. I was looking at the debt management process before I came here-----

Deputy Kate O'Connell: Whether that is interesting or not is probably an opinion, I imagine. It is a heavy read.

Mr. Niall Cody: It is a fascinating read and it is available on the OECD website. It is very interesting. I have read it and I was looking at tables for collectable debt as a percentage for all the countries and the latest figure is for 2015. I hate to say this, but the lowest percentage of debt available for collection in all of the countries reported was Ireland.

Deputy Alan Farrell: Why does Mr. Cody hate to say it?

Mr. Niall Cody: I hate to say because next year it might not be. We are way below. In the context of the OECD, we are helping lead a project on debt management because of the processes we have. The figure for us is 1.5%. We are not the lowest when it comes to gross debt available for collection but we are very close to it. This also goes into the issues of write-off and the various powers that administrations have. Only I would say this, but it is very interesting reading for-----

Deputy Kate O'Connell: For an accountant.

Mr. Niall Cody: For any member of the Committee of Public Accounts, I presume.

Chairman: I will bring a copy home with me tonight.

Deputy Kate O'Connell: I will get it for Christmas. I thank Mr. Cody.

Chairman: I have a couple of questions on one or two points from Mr. Cody's opening statement. There were 40,000 warrants sent to the sheriff and 3,000 cases were referred to court for recovery action. Will Mr. Cody explain who goes where? Who goes to the sheriff and who goes to court warrant? Will he talk me through the two processes? How does the sheriff send

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a letter or land at somebody's door? What happens before that happens?

Mr. Niall Cody: Our debt management teams will look at cases and debt and at records about the business that we have in our systems. After a number of warnings and demands for payment, we then have to see what is the appropriate escalation. It will sometimes depend on the nature of the business, information the Office of the Collector General has, third-party information we have, and information from the local-----

Chairman: Will Mr. Cody explain third-party information? Does that mean information is being gathered about every company from everyone else?

Mr. Niall Cody: We gather a lot of information and we get details from financial institutions. Issues such as short-term accommodation platforms and rental income have recently been in the public domain and we also get details of Government payments and suspicious transactions reports. There were 24,000 such reports from financial institutions on something they were unsure about, such as an unusual lodgement. We have a whole bank of information in our systems and we have it linked in and matched to the individual taxpayer. That will inform our debt management team of what might be the appropriate recommendation. We will then refer a debt to the sheriff.

As a result of the sheriff engaging with the taxpayer and where there are no assets or there is no engagement, some of the cases that have gone to the sheriff may be returned because there is not an appropriate method for the sheriff to follow up. That case could then go to one of the solicitors perhaps for a judgment mortgage on a property. Cases will be escalated to the appropriate intervention and then reviewed. In some of the figures not subject to any payment arrangement or enforcement action, it can be seen that they have gone back from enforcement action because nothing can be done. We then have to think about the necessary next step and sometimes that will be moving on to write-off.

Chairman: Does attachment come into it then?

Mr. Niall Cody: Attachment comes in-----

Chairman: How many attachments were there?

Mr. Niall Cody: About 6,000-----

Deputy Alan Farrell: I have a pertinent question for Mr. Cody.

Mr. Niall Cody: There were 6,440 attachments.

Chairman: There were more of them than there were court recoveries. There were 3,700 of those.

Deputy Alan Farrell: Are we only talking about bodies corporates, companies-----

Mr. Niall Cody: No.

Deputy Alan Farrell: Is it individuals as well?

Mr. Niall Cody: I am referring to sole traders. It is business taxpayers.

Chairman: It is not PAYE people.

Deputy Alan Farrell: No, of course not.

Mr. Niall Cody: Very rarely would PAYE people have an outstanding debt like that. There is a facility to attach wages in rare circumstances.

Deputy Alan Farrell: I thank the witness.

Chairman: That is fine. Following on from this morning's conversation with the Tax Appeals Commission, will Mr. Cody update us on that and the figure that the Office of the Comptroller and Auditor General gave us? I understand the gross amount in dispute to be at €1.8 billion now, and there is also the net amount. Will Mr. Cody give us the figures?

Mr. Niall Cody: The gross amount is about €1.8 billion and the amount that is stopped, that is not collected, is about €1.2 billion.

Chairman: Right.

Mr. Niall Cody: One of things mentioned that is a bit confusing is that the Tax Appeals Commission witnesses referred to €1.6 billion being in dispute. Another €200 million, however, is in dispute at levels above the Tax Appeals Commission-----

Chairman: Meaning that it has gone to the courts?

Mr. Niall Cody: It has gone to the higher courts.

Chairman: It is in the courts. That €1.6 billion is in the Tax Appeals Commission. What is the net amount involved?

Mr. Niall Cody: It would probably be around €1 billion because it is €1.2 billion of the €1.8 billion.

Chairman: It is €1.1 billion or so. Does that figure come from people who have paid some tax? Will Mr. Cody explain why that is? I imagine everyone had assumed up to now that €1.6 billion of tax was locked into the Tax Appeals Commission, but it is essentially only €1 billion plus. It is still a massive amount of money, but will Mr. Cody explain why there is the difference between the gross and net figures?

Mr. Niall Cody: There are several reasons. Some of the tax in dispute is a claim to a repayment. The taxpayer has made a claim to a repayment and we do not think a repayment is due. If he or she is successful, however, we will owe him or her money.

Chairman: At what interest rate?

Mr. Niall Cody: It is-----

Chairman: This morning we saw that it was 10% for the interest.

Mr. Niall Cody: No, the interest rate is less than 10%. I think it is about-----

Chairman: Is it 8%?

Mr. Niall Cody: No, it is less than that.

Chairman: What would the taxpayer have to pay?

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Mr. Niall Cody: The current rates of interest are 8% and 10%. The 10% is on VAT and PAYE liabilities on behalf of their employees and 8% on income tax.

Chairman: Or corporation tax. They are high enough rates at the moment. I refer to 10%.

Mr. Niall Cody: Leaving aside tax under appeal, the issue around the interest rate is late payment. The interest rate has to be more than an authorised overdraft rate, otherwise-----

Chairman: It will be cheaper.

Mr. Niall Cody: -----we would become the bank of first resort.

Chairman: I understand that.

Mr. Niall Cody: The rate of interest on credit cards is much higher.

Chairman: Yes. It is 20% or something like that, I think.

Mr. Niall Cody: To respond to the question about the rate of interest, it was reduced in 2009 to the 8% and 10% rates.

Chairman: I ask Mr. Cody to explain the difference between the net and the gross.

Mr. Niall Cody: Sometimes it could be a repayment that we say is not due. The second thing that can happen is that the taxpayer may pay the tax in dispute to stop the interest clock running. That is one element of it. If the taxpayer is then successful, he or she will be refunded the amount.

Chairman: The interest.

Mr. Niall Cody: The final bit is-----

Chairman: Is that interest subject to tax?

Mr. Niall Cody: That interest is not subject to tax.

Chairman: It is a good return on one's money, then: owe Revenue money and one gets it back tax-free.

Mr. Niall Cody: It is one of the reasons why the rate of interest we pay is less than-----

Chairman: I understand that.

Mr. Niall Cody: There was a time-----

Chairman: I know.

Mr. Niall Cody: -----when there used to be interest repayable on preliminary tax and people used to lodge money with us and get a higher rate. That was all done away with.

Chairman: Obviously, the Tax Appeals Commission has no information on this, but we are asking Revenue, if it does not have information on, for example, the 5,000 cases in there, to see whether it can work on them. That is all I can say at this stage. Revenue has an idea of the amount of tax that was due, as far as it was concerned, and that arrived in the appeals office. Is that right? Then, when the cases come back out, Revenue must know because the cases will

come in and out. Revenue either pays or collects the tax. Mr. Cody is the person in receipt of the information. The Tax Appeals Commission has no knowledge of this. It does not handle the tax, as in what goes in and what percentage comes back out. In other words, if 700 cases were decided last year, as the Tax Appeals Commission said, Revenue knows about the 700 and knows what it was hoping to get from those 700 when they went in. How much did Revenue actually get out of those 700? We just want to see this. It is a mechanism of knowing how this operation is working. If everything that went in came back out as it was, what is the point? If there is a change, it tells us something has happened but no one seems to have any information on this. It is akin to the Social Welfare Appeals Office. In social welfare, if somebody disputes his or her allowance or an entitlement to something and goes to the appeals office, the appeals office is there to adjudicate on A and B and reject C and D and it sends the case to the Department of Employment Affairs and Social Protection to go back and work out the figure. The Social Welfare Appeals Office does not do the calculation. It sounds as if the Tax Appeals Commission is akin to that. It is up to Revenue to work out the figure, so Revenue has the information. Has Revenue done any exercise yet on what comes in and out of the appeals office?

Mr. Niall Cody: There are a couple of the things that were discussed today. The Tax Appeals Commission has issued 74 determinations. Of the 74 determinations, Revenue was successful in 58, the taxpayer was successful in 11, and the balance was split between-----

Chairman: A bit of both.

Mr. Niall Cody: -----a bit of both. They are the only determinations that have issued. What happens with the other process is that within the period between the assessment and the listing of the appeal, it may be settled. Each of those cases will then be settled by agreement and the amounts will be reduced to reflect that, so in every case that is the subject of an appeal, when a decision is made, the assessment is either confirmed and released for collection-----

Chairman: Or amended.

Mr. Niall Cody: -----or amended. Therefore, on a taxpayer record basis, the information would be there. To pull it together in a statistical report would be more complicated but we can certainly look at how a case can be tracked. However, all the records have to be amended, so the Tax Appeals Commission, TAC, would not be aware of what is paid or not because when it is determining a case, what it is determining is the actual total assessment amount. It would not know whether it had been paid or unpaid-----

Chairman: I understand.

Mr. Niall Cody: -----but we would.

Chairman: In other words, somebody has come up with the €1.6 billion figure, so Revenue has come up with the 5,000 cases adding up to €1.6 billion. The Tax Appeals Commission cannot come-----

Mr. Niall Cody: Yes, absolutely.

Chairman: Revenue has the figure of what went in and knows the cases that came back out. I accept cases will be withdrawn and perhaps Revenue can have a line in its figures detailing cases withdrawn-----

Mr. Niall Cody: Absolutely. The Comptroller and Auditor General shows in that appeals

stop figure that that tax adjusts every week, every day. We report on it on 31 March every year, but every year new cases come on and off. Absolutely, we can look at that.

Chairman: There is movement in and out, but I ask Mr. Cody at least to look into the cases that were completed in the year in order that at least somebody has an idea of what happened. We have no idea what happens, really, when a case goes to the Tax Appeals Commission and Mr. Cody is the one with the information. The Tax Appeals Commission do not have that.

Mr. Niall Cody: We will-----

Chairman: The next question is whether Revenue could consider the following system. Perhaps it might help reduce the flow of cases into appeals if Revenue had something in its notification giving people the right of a review because it is said there is not much of that. Again, in social protection, for example, if someone is not happy with the decision of a deciding officer, he or she can seek a review and it will be done by a different deciding officer. The turnaround is quick and it probably eliminates some unnecessary cases going to the Social Welfare Appeals Office. Is Mr. Cody with me?

Mr. Niall Cody: I am totally with the Chairman.

Chairman: If Revenue had a way of resolving some of the cases internally without the need to go to the Tax Appeals Commission, it might ease the burden. What does Mr. Cody say to that?

Mr. Niall Cody: We have an internal and an external review process, as was mentioned. It is all available. We publish this. It is on our website. The tax practitioners do not like it because the results of the reviews show that Revenue is predominantly successful, and the numbers are quite small. Once the assessment is issued, the review process does not apply but before an assessment is entered there is a process, and we set out how many interventions we deal with. The number of appeals went up in the 2017 process. Some of this is accounted for by the fact that previously, when people used to write to us at assessment, they used to tell us they did not understand the process. This is lost a bit because of the formal appointment of the Tax Appeals Commission. We are open to exploring this. We made a submission to the Tax Appeals Commission asking whether there are ways we can tidy up some of these smaller cases. It is important to recognise that it is really a new office. There are procedures that we would definitely be interested in exploring to see how we could do them. We are open to anything that speeds up the process because the speedier it is resolved, the sooner we can collect the amount if it is due.

Chairman: Mr. Cody gets my proposal.

I will raise a different topic. I am looking at Revenue's 2017 accounts of collection. Am I right in saying Revenue is involved in - I will I say it in layman's English - the loans for people in the fair deal scheme?

Mr. Niall Cody: We are.

Chairman: For the nursing home support scheme there is €57 million. Did Revenue advance €57 million? Then there are the nursing home support scheme receipts, with the figure of €19 million. Did Revenue collect €19 million? I ask Mr. Cody to explain the two entries because people will probably be surprised to know about this. I am looking at pages 8 and 9 of Revenue's 2017 accounts. I ask Mr. Cody to explain this system to the public. Revenue ap-

proaches these people. Is it in scenarios where people defer their payments to later years? I ask Mr. Cody to explain what has happened because I know this gets lost between the HSE and the Department of Health, but Revenue seems to handle the actual transaction.

Mr. Niall Cody: Yes. I know that two weeks ago this issue was discussed here, and the Chairman wrote to us asking for information. Yesterday-----

Chairman: Yes. We had Nursing Homes Ireland or somebody else in here-----

Mr. Niall Cody: Yes. Yesterday we sent the committee back a letter setting out-----

Chairman: We will read it tomorrow. I ask Mr. Cody to give us the gist of it.

Mr. Niall Cody: It is fairly straightforward. Somebody applies for the fair deal scheme. The HSE deals with the applications, and if people have property, they can enter into essentially a loan scheme with the HSE. We are the collection agent for the HSE once the period is finished. The legislation caps the amount of the repayment at 7.5% of the value of the property, capped at a three year maximum.

Chairman: For a house?

Mr. Niall Cody: Yes, for a house. The maximum is 22.5% of the value of the house at the time the person goes into the nursing home. Once the person dies or leaves the nursing home process, the amount of the loan repayment is fixed by the HSE and referred to us for collection. The HSE has the facility to defer the process if, perhaps, a member of the family is still living in the house. In the period from November 2010, when the first case was referred to us, until March 2018, a total of 5,327 were referred to us at a loan repayment value of €101.6 million. Of those, 3,921 have been finalised, resulting in repayments of €69.8 million. In 632 cases, involving €16.3 million, that have been referred to us the amount is not yet due because there is a year from the date of death until the amount becomes due. These are people who died or left the nursing home within the year. There are 461 cases in which the HSE has advised us it has deferred collection of €7.7 million. In these cases the people involved did not apply for referral. The cases were referred to us for collection but the people involved then went back to the HSE and they had a reason for deferral. We mark them and do not follow them up. In 313 cases, we are looking at a liability of €7.9 million, and that is the debt available in these cases. Obviously it is a sensitive area and we deal with them in a very sensible and safe way. We sent the letter to the committee yesterday.

Chairman: We will see it. I am sure we have it. We will get to read it in detail.

I have a quick issue which would have come up in the past. Is there a hotline where people report on their spouse or neighbour on these type of issues? It used to be a big thing one time. People used to ring social welfare offices. There was a report done. Perhaps Revenue had a system and it was probably a big issue. Is there much of this nowadays? Does Revenue have a line? Does this happen? If so, is there much collected through the line? I have heard it discussed on prior occasions. Is it still out there?

Mr. Niall Cody: We call them good citizen reports, and we are always open to good citizen reports. We do not operate a phone line. We say people can contact Revenue. We operate a phone line on drugs and cigarettes. On our website we have-----

Chairman: What does Mr. Cody mean by drugs and cigarettes? Is it smuggling?

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Mr. Niall Cody: Our anti-smuggling role on the illegal importation of drugs. With regard to people who have issues and who wish to make a good citizen report, on our site we have a reporting form that people can fill in and send in to us, in which----

Chairman: With their email address? I am sure they do not want that.

Mr. Niall Cody: We are quite open to receiving good citizen reports, named or anonymous. If something reports something to us, obviously we assess the veracity of it. Obviously some people might be doing it for mischievous reasons. We look at any information we receive and compare it to information we have. If anybody reports to us, we do not report to them on the outcome-----

Chairman: I understand that.

Mr. Niall Cody: -----of the investigation.

Chairman: Does Mr. Cody know how many good citizen reports Revenue receives in a year?

Mr. Niall Cody: I do not have any figures here today.

Chairman: Is it hundreds or thousands?

Mr. Niall Cody: I would say hundreds is far closer. It is not thousands. If there is no meaningful information-----

Chairman: I know.

Mr. Niall Cody: It is a question of when we turn it from somebody sending in something stating, for example, that Niall Cody is up to no good, to stating that Niall Cody drives a van that appears at a market three times a week. We assess the information. There has always been debate. We have not gone down the line of using a phone.

Chairman: That is fine. In other words, it is a minor issue from Revenue's perspective.

Are there many joint inspections between Revenue and the Department of Employment Affairs and Social Protection and-or the Garda with regard to people working while on social welfare, or not working on a job, and road tax with regard to green or red diesel? Are there many joint investigations-----

Mr. Niall Cody: We do-----

Chairman: -----where Revenue goes onto a site where it believes people are not paying tax or are not properly recorded, or where people might be claiming a payment they should not be claiming? Does Revenue do this type of work?

Mr. Niall Cody: We do a lot of this activity. We have joint investigation units that work closely with the Department of Employment Affairs and Social Protection and the Workplace Relations Commission. We do multilateral and multi-agency visits to sites, and we also do a number of them on our own. We do approximately 5,000 site visits a year. In 2017, we did 5,201 and 2,186 of these were with other agencies, either the Workplace Relations Commission or the Department of Employment Affairs and Social Protection or both. The Garda is involved in some of them, depending on where we are. We do lots of work on the construction industry. We have spoken previously before the committee about subcontractors and employees. It is an

active part of our job. Recently, I was chatting to somebody in the building industry who told me that Revenue was out on a job he was on the other day. He said he was delighted to see it. There will be times we will arrive at the front gate and somebody will go out the back. There are probably limited examples of this, but it does happen and it has always happened.

Deputy Alan Farrell: I wanted to ask about illegal sales of diesel but it has just been covered. With regard to tobacco, periodically we see good news stories, predominantly through An Garda Síochána tweeting and sending notices to the media about large-scale seizures, which are always very good to see. Customs and Excise plays a considerable role in this. In terms of small-scale tobacco sales in high street venues and markets, I want to focus on markets because I have a couple of markets in north county Dublin of very long standing. If they are not decades old they are possibly over 100 years old. They have been moved around a wee bit but they are still there and there is still quite a significant amount of illegal goods available. It is of huge concern to people in the constituency because the markets have been there for so long and it is a tradition. People do not like to break traditions just because some people are ruining it for others. It is a general observation as opposed to something specific about these locations. I know it is very common nationwide.

Mr. Niall Cody: We are very active on tobacco. There are a couple of things we try to do with regard to illicit tobacco. The big seizures are at point of importation and we seize a big container. Generally, when it involves tobacco, Revenue leads. In certain cases we are supported by the Garda, depending on who is involved. We seize significant quantities of tobacco. In 2017, it was 34.2 million cigarettes and this year to date, it was 27 million. In 2016 it was 44.5 million cigarettes and in 2015 it was 68 million. Those are mostly large consignments. We also try to disrupt the supply chain within the market. That is much more difficult because one will never catch someone with thousands of cigarettes. They might have a few sleeves of 200. We are regularly at all the markets across the country. There are challenges, as the stock of cigarettes will often be somewhere down the road and be stocked up.

Deputy Alan Farrell: How far into the supply chain does Revenue go, and with whom?

Mr. Niall Cody: The legitimate supply chain is covered by our tobacco stamps. The regular wholesale retail trade is a controlled process, subject to excise. Our investigation into the illegitimate supply chain is based on intelligence and sometimes random sampling of retail outlets. Whether it is markets or retail outlets, we will go in and see if they are holding unstamped tobacco products out for sale.

Deputy Alan Farrell: Maybe I should refine my question. Of the large scale shipments that it captures at ports, does Revenue go back to the country of source? Is it looking at the haulage firms and whatever was supposed to be in the container according to the manifest? Is it engaging with Europol, Interpol and all those agencies?

Mr. Niall Cody: All that is integrated. On the large operations, we work closely with the Garda, the joint agency task force, Her Majesty's Revenue and Customs and the PSNI. We work closely with the European Anti-Fraud Office, OLAF, which part-funds our major scanners. If we come across new methodologies of smuggling or the involvement of international crime gangs or international hauliers, we feed that intelligence to our sister agencies across Europe and further afield, where necessary.

Deputy Alan Farrell: Does Mr. Cody know or have figures to hand as to whether there is any consistency on the sources of the large product seizures in recent years? Is it all coming in

through the UK or through Holland, France or elsewhere?

Mr. Niall Cody: I do not have them to hand. One thing that happens with trends is that they change as Revenue and customs agencies are successful at countering and intelligence. Some of the things that are happening in Europe have had unexpected impacts on illegal trade. The migrant crisis and tightening of borders have had a significant disruptive effect on tobacco. The most interesting thing to happen in 2018 was the discovery of the illicit, illegal cigarette factory in County Louth in March, which we seized. We discovered 23.5 million cigarettes which were being manufactured in what one could describe as a hay shed. The Deputy may have seen some pictures of that. We found some 71 tonnes of tobacco from which 71 million cigarettes could be produced. That was a big operation, which is now before the courts. That was the first illegal cigarette plant found in the State, but also nearly the first in western Europe. It was an international operation. The cigarettes would have been due for export, as well as for domestic service.

Deputy Alan Farrell: On various forms of diesel and potential lost revenue, how many high street retailers in recent years have been apprehended selling illegal diesel, or petrol, although the latter is very hard to sell?

Mr. Niall Cody: Because of the existence of marked gas oil, green here and red in Northern Ireland, diesel gets laundered and put into the supply chain. It was a really significant problem from 2012 on because there were changes to the system of sulphur content. The diesel was indistinguishable once laundered. The Office of the Comptroller and Auditor General did a report last year on mineral oil and the work Revenue has done there. There has been a significant legislative process that culminated in the introduction of the new marker in conjunction with Her Majesty's Revenue and Customs. The level of retail traders engaged in selling illegal diesel has reduced significantly. In 2016, we closed nine and in 2017 we closed four but around the middle of the decade, multiples of those figures were closed down. The proportion of the vehicle market in diesel has increased anyway, but we have examined the additional revenue as a result of our work on fuel laundering and it has been really successful. While I would not be complacent, the levels of sludge found and reported by local authorities, which was a very serious problem four or five years ago, have gone down significantly. We are very careful about that process.

Deputy Alan Farrell: I do not think any of the dumping sites were in my constituency but they were very nearby. I recall them being in Meath or Louth or something like that.

This question relates more to process than to revenue but is it practical or feasible for such a firm to mix 10% of the capacity of whatever their forecourt tank is with an illicit product? Is it detectable? I know there are ISO standards and so on, but my question is are they really? In the past four or five years, rather than more recently, I received many complaints about suspected green diesel. About a decade ago, a former Fingal councillor's car was destroyed by green diesel. I wonder if it is prevalent. Is it as simple as watering it down to the point where it is not detectable?

Mr. Niall Cody: There are now two markers. There is the dye, green in our case and red in the North, and then the Accutrace marker, which is a detectable chemical marker. The level of detection is quite sophisticated and the State Laboratory does all of the sampling for us, if a case is for criminal prosecution. The levels will be detectable if road diesel is diluted with washed green or orange diesel. Trace elements will be detectable and the case will be subject to prosecution. The Comptroller and Auditor General made a recommendation in the chapter

on the issue - the random sampling of retailers across the board. We have done this and had no detections. This is not to say it cannot get into the supply chain by direct hauliers or direct couriers, for which we will still check. When we make interventions in businesses that have significant haulage interests, we look to make sure they are buying enough legitimately sourced goods from legitimate traders. We pay a lot of attention to this area. If members have details they wish to provide for us of retailers about whom they may have doubts, there is a good citizen report on our website.

Deputy Alan Farrell: I know.

Mr. Niall Cody: We are all good citizens.

Deputy Alan Farrell: The individual who contacts me most frequently about the matter is a regular communicator with the Revenue Commissioners. I know this for a fact because he has reams of letters to many organisations, including source suppliers and so on. I am confident that he has been on to Revenue.

Mr. Niall Cody: The good citizen report is important with regard to legitimate trade and parts of the legitimate supply chain. If a business deals with a range of customers who suddenly disappear and do not buy from it anymore, generally it will know the customers who are buying from it. We regularly meet trade groups and are told about the generality of shadow economy activity. One of the things we have said, through the hidden economy monitoring group for trade interests, is that if we are given specific details, we will follow up on each of them. It is not enough to say stuff is being sold somewhere down the road; we need hard facts. Legitimate traders generally knows what is going on in their local business community.

Deputy Alan Farrell: How many cases in the sphere of illicit diesel have Revenue taken to court? Does Mr. Cody have figures for recent years? How many cases have been successful?

Mr. Niall Cody: I have a range of figures. In 2017 we had four convictions for indictable mineral oil offences, which are serious. There were two prison sentences, one suspended prison sentence and one for community service. There was one summary conviction for mineral oil offences. Two mineral oil trader licences were revoked. For summary convictions for use of marked diesel, there were 212 fines, totalling €566,000.

Chairman: Does that relate to the use of marked diesel for road use? Is there a minimum fine?

Mr. Niall Cody: In 2017 there were 212 fines, totalling €566,000. In 2016 there were 187 fines, totalling €493,000. These cases are published in our quarterly publication on a Part 2 list of tax defaulters, the settlements of which are not covered in the newspapers. There have also been 554 compromise settlements for the use of marked oil. This occurs when Revenue has made a settlement in lieu of prosecution. A total of €641,930 in compromise settlements was paid to the Revenue Commissioners. We publish the details in our annual report and headline results every year.

Deputy Alan Farrell: I thank Mr. Cody.

Chairman: I have two last questions for Mr. Cody about the published settlements. I may have already asked this question, but it was a few years ago. It comes as a surprise to a lot of people when we read the tax settlements published in *The Sunday Business Post* and realise the money has not necessarily been paid. It is a surprise to a lot of people who assume Revenue

has collected the money. I do not expect Mr. Cody to have the details, but for the settlements published for last year, how much did Revenue actually collect? If he has the information, I will take the headline figure, but it would be a useful chart for the committee to receive. I believe 99% of the public assume that if a person's name is in the newspapers having been caught for a sum of €300,000, he or she has actually paid it. The committee has previously established that this is not necessarily the case. Revenue may just have got a judgment against the person concerned and not collected the money. Does Mr. Cody have any information available on the matter?

Mr. Niall Cody: I do. In 2017 we published 289 cases.

Chairman: What is the minimum figure due?

Mr. Niall Cody: I believe it was €35,000. There were 289 cases, in 91 cases of which there was some element of the amount unpaid. At the end of the period there was a total unpaid amount of €25.96 million

Chairman: What was the total amount due in the 289 cases?

Mr. Niall Cody: I do not have the total figure for the 289 cases, but for the 91 cases, a sum of €53 million was published, of which some €26 million was not paid.

Chairman: A sum of €53 million was published and-----

Mr. Niall Cody: Some €26 million was unpaid.

Chairman: Therefore, only half of the money was collected.

Mr. Niall Cody: In the 91 cases about half of the money was unpaid. Of the 289 cases, nearly 200 had paid in full. I do not have the exact figure readily to hand.

Chairman: Perhaps Mr. Cody might supply to the committee the total figure for last year.

Mr. Niall Cody: Yes. The legislation changed in 2012 to provide for publication. Prior to 2012 Revenue could not publish a case if a person did not pay the money. It was a situation where a case would not be published if the person concerned did not pay.

Chairman: That was a great system.

Mr. Niall Cody: That is why we changed it. Some people may not have paid the full amount. They could game the system by paying nearly the full amount.

Chairman: That is why there an understanding of the list that people had paid. Historically, if a person paid in full, it meant he or she had been caught. He or she was on the list.

Mr. Niall Cody: Yes, if he or she had paid in full. Revenue looked to have the legislation changed, especially when it came to the downturn when money was problematic. We were in a situation where a case could neither be settled, finished nor published. The legislation was changed in the Finance Act 2016. It has been changed again since. On the list for 2017, for example, we show the amount paid and the amount unpaid.

Chairman: The committee raised that point this year.

Mr. Niall Cody: The list now shows the unpaid amounts also.

Chairman: They are not published in the newspapers. Revenue has the list in its documentation.

Mr. Niall Cody: When the list is reproduced, some newspapers show it. This has happened in the last year, prior to which one could not have said a Mr. Niall Cody, for example, had not paid some of his tax, but now we actually publish the information.

Chairman: Perhaps Mr. Cody might send the figures to the committee.

From 1 January 2019 the PAYE modernisation system will be introduced. People will not receive their documentation in the post; rather, they will have to log on to their computers to find out their details such as tax credits and so on. Revenue will probably conduct a big campaign ahead of its introduction to explain it, or perhaps people might only find out about it when they have a problem and so on. Will Mr. Cody, please, explain briefly at what stage Revenue is with the project and in a nutshell what it is about?

Mr. Niall Cody: It is about moving towards the integration of an employer's payroll system with reporting pay and tax details to the Revenue Commissioners.

Chairman: On a weekly basis.

Mr. Niall Cody: As people are paid their wages. If one is paid fortnightly, as I am, Revenue's payroll system will report pay and tax and necessary details to us.

Chairman: That really puts the Revenue Commissioners on top of knowing the PAYE and USC liability of every employer very quickly.

Mr. Niall Cody: Yes.

Chairman: It will probably help a little with collection.

Mr. Niall Cody: I spoke about hoping to move to mid-1990s levels in regard to employers-----

Chairman: Yes.

Mr. Niall Cody: When we report on 31 March, one reason there is a significant amount under two years is that the P35 is filed in mid-February. Usually with the P35, there is a balancing statement - a balancing liability when things are fixed up at the end of the year. It is one of the periods in which we have a spike in tax due. After 2019, that system will be gone. We will have a real-time feed and I hope we will be collecting the right amount as it falls due. The payment dates for the employer are still based on a monthly arrangement. They are still the same, but the reporting arrangement is different. We are engaged in a significant information campaign. We are out and about with employers and holding seminars, but the key stakeholders are many of the payroll providers - software providers - and they have been actively involved in the project for the past two years, developing their systems in conjunction with us.

Chairman: Mr. Cody expects it to work smoothly enough. Is it similar to the UK system?

Mr. Niall Cody: It has similarities with the UK system, but, unlike that system, ours will be such that from the middle of next year we will be populating the employees' tax records with up-to-date information. Essentially, we will be getting rid of P60s, P45s, P35s and P30s. The information will all be available online. It is a really significant modernisation of the system

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which provides many opportunities to help people. Even when seeking mortgage approval, one will be able to give up-to-date real-time access to one's payslip.

Chairman: In other words, Mr. Cody is telling me the next P60 I receive, early next year, will be my last. I hope it will not be a P45.

Mr. Niall Cody: Yes.

Chairman: The last P60 to be issued will be an historic document.

Mr. Niall Cody: The P60 is getting its P45 which is also getting its P45.

Chairman: On that note, we will give ourselves a break - I will not call it a P45 - for the rest of the evening.

Mr. Niall Cody: I said I would give the Chairman the film withholding tax rate. It is 20%.

Chairman: I only guessed it might be.

I thank our witnesses from the Office of the Revenue Commissioners and the Department of Finance. I also thank the Comptroller and Auditor General and his staff. We will be meeting next week in private session, possibly on Tuesday or Wednesday, to deal with our own periodic report. We will send word out. This day week, 5 July, we will be meeting representatives of the Department of Health and the HSE to consider the Department's appropriation accounts for 2016, Vote 38, and the HSE's financial statement for 2017.

The witness withdrew.

The committee adjourned at 4.15 p.m. until 9 a.m. on Thursday, 5 July 2018.