

DÁIL ÉIREANN

AN COISTE UM CHUNTAIS PHOIBLÍ

COMMITTEE OF PUBLIC ACCOUNTS

Déardaoin, 18 Deireadh Fómhair 2018

Thursday, 18 October 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 Catherine Connolly,	Deputy Jonathan O'Brien,
Deputy David Cullinane,	Deputy Kate O'Connell.

DEPUTY SEAN FLEMING IN THE CHAIR.

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

Business of Committee

Chairman: We are joined today by the Comptroller and Auditor General, Mr. Seamus McCarthy, who is a permanent witness to the committee. He is joined by Ms Josephine Mooney, deputy director of audit. Apologies have been received from Deputy Pat Deering. We will hold over the minutes until the next meeting and matters arising.

The next item on the agenda is correspondence received since the last meeting. There are three categories of correspondence. The first category, category A, deals with the opening statements and briefing documents from today's meeting. No. 1648 A and No. 1660 comprise correspondence received from Mr. Robert Watt, Secretary General, Department of Public Expenditure and Reform, dated 15 October and 17 October 2018, providing briefing information and an opening statement for today's meeting. We will note and publish that. Is that agreed? Agreed.

No. 1655 A is correspondence received from Dr. Graham Love, CEO of the Higher Education Authority, dated 16 October, providing an opening statement for today's meeting. We will note and publish that and deal with it in the afternoon. No. 1656 A is correspondence received from Mr. Seán Ó Foghlú, Secretary General, Department of Education and Skills, dated 16 October 2018, providing an opening statement for today's meeting. We will note and publish that and deal with it in the afternoon.

Deputy David Cullinane: The Chairman says we will publish the correspondence from Dr. Love. A couple of people who are looking for a copy of that. Are we now free to give that?

Chairman: Yes. We have agreed to publish it. We have not come to it but we will in a moment. It is in the correspondence list. I do not think that was the one list. We will deal with it in a moment.

The next category is B - correspondence from Accounting Officers and-or Ministers and follow-up to Committee of Public Accounts meetings and other items for publishing. A number of items were held over from last week's meeting. We will continue to hold them over until we get an opportunity to read them. When we have read them all in detail, we will be able to move through them very quickly when the time comes. I am holding over all the items of correspondence previously held over. I read it out on a second occasion the last time so I will move on to the newer items of correspondence.

No. 1620 B is correspondence received from Mr. Derek Moran, Secretary General, Department of Finance, dated 8 October 2018, providing the following information requested by the committee: additional information relating to cash holdings in NAMA, the impact of negative interest rates, and an update relating to the case before the courts regarding the IBRC liquidation. In respect of the special liquidation of IBRC, the Department is defending the proceedings and confirms that a comprehensive defence to these proceedings will be filed within two weeks. We want to verify that this happens when the time comes. The other item concerned negative interest rates. The Department did not specifically deal with it. It spoke about early access to dividends but the point is covered. We will note and publish that.

No. 1622 B is correspondence received from Mr Ciarán Breen, director of the State Claims Agency, dated 9 October 2018, providing information requested by the committee regarding

Thalidomide litigation and the number of outstanding cases. We can note and publish this. We should also note that at the meeting of 12 July 2018, correspondence from the Irish Thalidomide Association was considered and there may have been a suggestion that Mr Breen's evidence was not accurate. In his letter, Mr. Breen states that his evidence was accurate. If further clarification is required, we will be able to deal with it when we engage with the State Claims Agency at our meeting on 8 November. I note that in the letter he sent to us, he did not receive a copy of the letter we received from the Irish Thalidomide Association and, essentially, was replying in the dark, so we want to send it on to the agency.

I am informed that due to the wonderful data protection legislation and so on because that correspondence was marked "Private and Confidential", we need to get permission from the Irish Thalidomide Association to forward it to the State Claims Agency. I presume that was their assumption when they sent it to us but it seems we must verify that consent. That letter was dated 12 July. We need to get it to the State Claims Agency as urgently as possible if they give consent and if they do not, we can do no more about it. I expect that they will but I make the point that we must follow the process.

The next correspondence is No. 1630 from Ms Mary Lawlor, NAMA, dated 10 October 2018, providing the information requested by the committee at a previous meeting. One was a breakdown of the 8,000 units directly funded by NAMA categorised according to occupancy status, social-affordable and private housing developments. That relates to 8,113 houses. We asked for a note on the sale of houses to Cerberus that were then sold back to the Housing Agency. They have given a comprehensive reply saying that it was done on market valuations; there is a note on the meeting between NAMA and officials from the Department of Housing, Planning and Local Government held in May 2018 in relation to the development of a new housing project, which we note; and a note on the 7,000 units offered to local authorities including a breakdown by local authority and the reasons given for taking up the units available. That is a matter that has been ventilated on many occasions.

Two items in the letter are of particular interest. The most important question we asked related to note 5. We asked for the €24 billion sale of underlying asset with a geographic breakdown of where the purchasers were located, namely what country they are from. They said they were not in a position to answer and would reply in due course. We must mark that as "Urgent" and follow it up. The next item we must follow up is one of the primary items for which we wrote to NAMA, namely Project Nantes. Was it an off-market loan sale? NAMA says:

The loan sale was one constituent part of the board-approved higher refinancing target which was set for the debtor connection.

Having set the target, NAMA did not specify how it was to be achieved. Therefore, provided Avestus met or exceeded the board approved target, it was free to adopt a variety of monetisation strategies, including the sale of the secured properties and/or a refinancing of the loans.

We asked why was there no publicity following the loan sale, from either Avestus or Clairvue-Nantes.

The refinancing target and exit strategy agreed with Avestus was a confidential arrangement between the debtor and NAMA.

We asked whether NAMA could confirm the portfolio was sold for €26.6 million, with a

par value of €352 million. This was one of the fundamental questions asked at that meeting. The response is:

NAMA confirms that the residual portfolio was sold for €26.6 million, with a par value of €352 million. The cash realised by the loan sale was only one constituent part of the overall cash amount received from the acquired Avestus loan and security realisations. The total amount of cash received by NAMA from the overall debtors' acquired loans was a multiple of the residual loan sale.

NAMA has not given the answer to the question we asked, full stop. We must go back. The main issue is that we asked about that specifically and are none the wiser about the par value of the €352 million and the total realisation that was achieved on that. More worrying, we asked for a note on review of section 172 declaration, which relates to there being no conflict of interest between the people involved, in respect of Project Nantes. The letter states: "NAMA is undertaking a legal review and will revert to the Committee in due course." We found it extraordinary that it had never done a detailed examination on that. It is something that the Comptroller and Auditor General highlighted in the past. All those items must be sent back to NAMA. There may be further correspondence on this but we want all those items to be followed up. The last ones to which we did not get a reply are very significant. Some are on their way but we need comprehensive replies. NAMA is nearly approaching the end of its work and we, as the Committee of Public Accounts, want to do our job by ensuring all those questions as answered and followed up.

No. 1631 B is from Mr. Michael Nolan, CEO, Transport Infrastructure Ireland, TII, dated 10 October 2018 providing information requested by the committee in respect of excess toll payments. We will note and publish this.

No. 1633 B is from Mr. Mick Long, director of corporate services, Office of Public Works, dated 11 October 2018 providing information requested by the committee for our meeting last week. We discussed this at the meeting of 11 October and we are formally noting it today.

No. 1634 is from Mr. Aidan O'Driscoll, Secretary General, Department of Justice and Equality, dated 10 October 2018 providing the note requested by the committee regarding implementation of change in the Irish Prison Service, which we will note and publish this. Much of that might be relevant to the justice committee.

No. 1635 B is also from Mr Aidan O'Driscoll, Secretary General, Department of Justice and Equality, dated 10 October 2018 in relation to the site acquisition for three new Garda stations in Clonmel, County Tipperary, Sligo and Cork, which we note and publish.

No.1636 B is from Mr. Derek Moran, Secretary General, Department of Finance, dated 11 October 2018 providing the review requested by the Committee on the resourcing of the Tax Appeals Commission. There has been some progress on that and the Minister referred to it in his budget speech. It is out there and there has been an agreement in relation to resourcing of that organisation. We note and publish that.

No.1637 B from Ms Ann-Marie Walsh, Office of Public Works, dated 11 October 2018 providing the managing valuer's report on five historic cases on foot of a preceding submission to the Department of Public Expenditure and Reform. We discussed this at the meeting of 10 October and we are formally noting it today. We are only noting it and have not agreed to publish this yet. We may well do so but cannot give parliamentary privilege to something which

we have not taken a few minutes to look at. I have no objection in principle but there is quite a lot in it and we can agree to publish it the next day, if members wish. However, as Chairman, I must glance through it and other members have not read it in case there is an issue about which we should be concerned.

Deputy Marc MacSharry: Will it be dealt with in the next correspondence?

Chairman: We will hold it over for discussion at the next meeting. We have noted it, we did have some discussion on it, but the question we must deal with next week is whether we give parliamentary privilege to publishing the full document.

No. 1638 B from Mr. Martin Bourke, assistant secretary, Office of Public Works, comprising a property services agreement regarding accommodation for the Department of Health at Miesian Plaza in Baggot Street, Dublin. We discussed this at the meeting last week and we are formally noting it today.

No. 1640 B is from Mr. Timothy Owens, chief executive, Cork ETB, who is replying to our further request for information regarding their employment policies and whether they have a policy preventing people with whom they have reached a legal settlement. Mr. Owens says that there is no general policy and that the matter being referred to was discussed at a meeting of the Committee of Public Accounts in July 2015. I will ask the clerk to the committee to circulate this to members, indicating the relevant pages. We can give the committee a report on what was said at the previous meeting. We do not want to rehash the same matter.

Deputy Marc MacSharry: I know that but we are not bound by anything they thought.

Chairman: Oh God, no.

Deputy Marc MacSharry: On that basis, for me, this is a contradictory letter. It is not a policy, yet it is a policy in exceptional circumstances. He has offered that he would outline those exceptional circumstances and I, for one, would like to know what they are.

Chairman: I think that was provided to the previous committee. We will dig it out and circulate it to the members and return to it at the next meeting.

Deputy Marc MacSharry: The big issue is whether it is policy.

Chairman: There was one exception.

Deputy Marc MacSharry: It says that it is not the policy but there are exceptions. It is the usual attitude of when it suits us, we will do it, and when it does not, we will not. That is a bad precedent.

Chairman: Exactly. There is no general policy but that they can specifically do things that they do not do generally.

Deputy Marc MacSharry: If he wrote and said "Dear Miss Falsey, I have plenipotentiary status, good luck" it would not say much that is different from what is said.

Chairman: The Deputy is correct but what I want to do for now is to circulate the more detailed response that he gave to the previous committee. It is on the record, and we will circulate it to members during the week and return to it. If we are unhappy with his response, we will take it from there. Let us just read the detailed response that he gave to the previous committee.

Some of it might answer some of the questions, or some might not, but we need to go through it. We will hold this correspondence over and deal completely with it next week.

The next item is No. 1641B from Ms Martina Bulman, private secretary to the Secretary General of the Department of Education and Skills, providing an update requested by the committee on the publication of the Comptroller and Auditor General's report on the University of Limerick, UL, and Institute of Technology Sligo . It is expected to be published in the coming weeks. We will note and publish the correspondence.

Deputy David Cullinane: Can we get an update now on what Comptroller and Auditor General reports have either been sent to the Minister or are still in the process of being sent to the Minister in respect of different institutes? Also, what are those reports are about, roughly? That would be helpful for us for today's meeting so that we do not deal with issues to which we are going to come back? Are there two separate reports, one for Sligo IT and one for UL, or is it a joint report?

Mr. Seamus McCarthy: It is a joint report.

Deputy David Cullinane: Has that gone to the Minister?

Mr. Seamus McCarthy: It has been with the Minister since the end of August.

Deputy David Cullinane: The Waterford IT report is near completion.

Mr. Seamus McCarthy: It is very close to completion.

Deputy David Cullinane: I know what the Waterford IT report is about but is the UL and Sligo IT report to do with issues raised by whistleblowers?

Mr. Seamus McCarthy: Not directly. It has to do with remuneration matters-----

Deputy David Cullinane: We dealt with that in the past.

Mr. Seamus McCarthy: -----in both institutions.

Chairman: We agreed that we will publish that letter from the Department of Education and Skills.

The next item is No. 1642B from Mr. Derek Finnegan of the parliamentary affairs division in the Department of Health, providing an update requested by the committee regarding the value for money review of public nursing homes. The letter is essentially saying that it will be next year before the review is completed. I will put the letter up on the screen in order that we can see what it says. He stated there are a number of legal issues that are almost completed and the Department hopes to have this work completed by the first quarter of 2019, so he is saying the end of March. He also says that he is still waiting for an update on the audit of empty beds in public hospitals and he will revert again when he receives that information. We need to mark down that this is only a holding reply. We will note and publish that holding reply.

The next item is No. 1643B from Mr. Paddy O'Keeffe from the Tax Appeals Commission, dated 12 October 2018 responding to information requested by the committee on bringing the 78 appeals mentioned in previous correspondence to conclusion. We will note and publish this.

Deputy David Cullinane: It is an interesting piece of correspondence. If I am reading this correctly, on page 3 there are 17 individuals who are responsible for an appeal to the value of

€711 million, which is quite extraordinary.

Chairman: That is why I specifically raised this the last day.

Deputy David Cullinane: This somewhat sits with the Comptroller and Auditor General's chapter on high net worth individuals. Is this something that we could hold over to form part of future discussions because we are going to have Revenue in so are we going to bring in the Tax Appeals Commission as well when we are dealing with that chapter?

Chairman: We would be bringing them in again. I ask members to bear with me because we touched on this the last day-----

Deputy David Cullinane: It is an extraordinary figure.

Chairman: I want to read the highlights of this into the public record so that the public will know what we are talking about. There were three cases listed in a document that we got the last time with the Tax Appeals Commission with amounts totalling €361 million that were in dispute and we asked for a note on each of the three cases. The first case has an amount of €138 million under appeal. The commission says that it is on hold for the next few months as parties are currently in discussions with a view to settling that issue. There is another case involving €119 million and the commission is saying that it is ready to be scheduled for a hearing shortly. There is a third case with a value of over €100 million which the commission says is proceeding through the appeals system. There are three cases adding up to €361 million. Before we come to our periodic report we will need an update on those three cases. We cannot have a situation of €361 million from three organisations hanging out there without the Committee of Public Accounts taking action. We deal with expenditure but we also want to make sure that taxes are collected properly and we want to make sure that is done as expeditiously as possible.

Then we asked for figures for the cases where the amount is between €10 million and €100 million and there are 14 of those. One case is proceeding with a value of €68 million. Four more are on hold as the parties are in discussions and they have a combined value of €100 million. There are six other cases scheduled for hearings with a collective value of €140 million. There is a case on hold pending a linked appeal worth €20 million, another case with determination expected to be completed by the end of this year worth €12 million and a case that has been settled for €11 million. I do not know the outcome of that as the commission just says that it was settled.

It was horrific for me to see that there are 17 cases there involving well over €700 million, only one of them has been settled since we raised it and one of them is expected to be completed this year. The letter is actually telling us that 15 of the 17, which approximately amount to the total of €700 million, will run into next year at least without even giving a suggestion of a closing date. There are 61 other cases with a value of an average of €2.5 million apiece still in the system and only a handful of those have been settled. We will want a timeline on these every second month because we will not sit here with €876 million hanging there without a date even being proffered for when it might be dealt with.

Deputy Catherine Murphy: It must also be asked how the Tax Appeals Commission got to this point and whether it is likely that there are other examples. That is the responsibility of Revenue as much as the Tax Appeals Commission because it is a sizable amount and anyone who has worked in accounts will know that if tax is not presented, then there is an ongoing dialogue with Revenue. That astonishes me but we may be losing sight of some of the cases

that in the overall context seem fairly small but in most of our experiences they amount to quite large amounts of money also. Anything that is in the region of €1 million for example is quite a large bill to be outstanding. I have not gone through this in the kind of detail I want to and I know that money was allocated in the budget in response to the inadequacy in the commission's staffing and IT systems etc. and some time will be needed for that to settle in. The timing in terms of the value we get in having the commission back in again will be important. We must allow it to get its systems in place. It will probably be the beginning of next year before we are likely to have the commission here in any kind of fruitful way but we should have the Revenue Commissioners in at the same time.

Chairman: That is fine and our job is to keep public pressure on this and to keep the Tax Appeals Commission hopping because these things can just rumble on for years. We have a duty to ensure we do that, especially now that resources have been allocated to do the job. We only highlighted the top 67 in our meeting and there are thousands more smaller cases behind in the system, but the 67 cases are where the big money is. I stress that these are estimates, not final determinations, but they are the best estimates we have at this point in time.

Deputy David Cullinane: It is fair to point out that every individual has a right to appeal their tax liabilities, including high net worth individuals, and I have no difficulty with that. Having said that, there are still 17 cases under appeal to the value of €711 million. I hear what the Chair is saying about getting a bimonthly update on whether the cases have been settled because it is essentially a dispute on the amount but I want to get under the bonnet of this to see what is the substance of it and what is the nature of these disputes. One side is obviously saying it does not believe it is liable for the amount of tax in question and Revenue is saying it is but it is a question of what type of issues lead to this scenario. The reality is, especially when this amount of money is at stake, that these are individuals who have the ability to employ tax specialists and other people who can get the type of write-downs that most individuals could not get. While it might all be legal and carried out in terms of tax avoidance there could still be consequences for the taxpayer in it and if there are loopholes there that we need to be aware of, that would also be important. I appreciate the point on staffing because it is important for the commission to do its work but I am more concerned about the number of individuals in question and the amount of money under dispute and whether this is an example of very wealthy individuals simply looking for every possibility to avoid paying their taxes. I am not saying that is the case but I am concerned about that.

Chairman: Would many of these be corporate?

Mr. Seamus McCarthy: The screen shows many of the very high-value ones are related to corporation tax. There is VAT and there is customs and excise. There is one income tax case, in respect of which there is a figure of about €19 million. There are a couple of VAT cases. Many of them are in the nature of corporate cases rather than individual cases.

Chairman: Dividend withholding tax is mentioned as well. Then there is some income tax.

Deputy David Cullinane: Whether it is corporate or individual, it still pertains to entities, small numbers of individuals and big money.

Mr. Seamus McCarthy: Income tax appears significantly more frequently in the €1 million to €10 million bracket. There are figures of over €2 million.

Deputy David Cullinane: We might need a bit more information; that is all I am saying.

Chairman: We might for a recasting of the schedules under each of the tax settings, just to save our overworked staff from having to do it. We have the document here. The relevant authorities have the information on a spreadsheet. We will ask them to break the schedule down and give us the amounts under VAT, income tax, corporation tax and dividend withholding tax. We will ask for a recasting of the schedules because they have the information. It would be very useful for us. It would simplify the matter and it make it easier for the public to understand if they got it in that way. We will write seeking a recasting of the schedule in the manner we have just requested. I call Deputy Shane Cassells.

Deputy Shane Cassells: Deputy Murphy asked how we got here. When the representatives of the Tax Appeals Commission were before the committee, we had never heard a set of witnesses willing to offer the woes of their office as much as they did. I suppose that is why the Minister for Finance determined that the matter would be subject to a whole paragraph in the budget speech. When one sees the amounts of moneys subject to appeals and the resources available, one realises this definitely needs further examination. I am glad it is being raised today. Beyond getting an appraisal and a spreadsheet of what we have today and beyond what Deputy Cullinane referred to, we are talking about a sum under appeal in the region of €750 million. How far is the Chairman going to press this? He talked about asking for deadlines. Can we ask for deadlines in terms of how the settlements are arrived at?

Chairman: We will get the information. The €750 million is in the context of approximately €60 billion collected by the Revenue Commissioners every year. Out of the €60 billion, we are talking about less than €1 billion, which is probably much less than 2%. I am not making light of it but putting it in the context of what the Revenue Commissioners do. I am putting the figure in the context of the overall figure but the organisation should have a target timeline for it. It might not meet the target but if it has no targets for dealing with it, I would be very worried.

Deputy Shane Cassells: The point the Chairman made is quite right in that while this committee examines expenditure, the scenario where tax income is being left in hiatus for a long time is equally as impactful on the resources of the State. This should be pursued.

Chairman: We will publish this. It will be followed up. We will return to it specifically when we recast the schedule. We will ask for target dates for having the matter concluded. That may not happen because every one of the people affected can go to court at the end of the process, if they like. That is not within anyone's control.

We found a lacuna in the information between the Tax Appeals Commissioner and the Revenue Commissioners. We asked the Revenue Commissioners, when its representatives were in, about cases that went to the Tax Appeals Commission and the collection rate in that regard. Neither of them completed what was sought. The Revenue Commissioners say they just get told by the Tax Appeals Commission what the figure is, and there is no match-up regarding the original Revenue Commissioners estimate. We have found another lacuna. Am I right that there was a gap?

Mr. Seamus McCarthy: There certainly has been a history of that. I expect, with the development of the systems within the Tax Appeals Commission, there should be better information and better tracking of individual cases through the system.

Chairman: We have discussed this for long enough and we know we are coming back to it. It was useful to receive the letter.

The next item is No. 1644B, from Mr. Michael Horgan of the Higher Education Authority, responding to the committee's request for a copy of Dr. Graham Love's resignation letter. Since the letter was received, the HEA sent a further email advising that Dr. Love authorised sending a copy of his resignation letter to the committee. This was circulated to members yesterday. We shall note this and it will be discussed in the afternoon.

Next is No. 1665, which we will publish. I am told it has been published. It was in some publication this morning, I am informed, so our publishing it is a bit academic.

Deputy David Cullinane: Someone got there before me.

Chairman: Someone got there in front of this committee. I was just made aware of it recently. We will publish it because it has already been made available.

No. 1645B is from Mr. Robert Watt, Secretary General of the Department of Public Expenditure and Reform, replying to information requested by the committee regarding PPP reviews. We will note and publish this and raise it with the Secretary General when he is here.

No. 1646B is from Mr. Robert Watt regarding the view of the Department of Public Expenditure and Reform on the Exchequer and Audit Department Act 1866. We will note and publish that. There is a fair response to the issues raised.

No. 1647B is from Mr. Watt and is in regard to our request for a copy of the value-for-money review of Irish public bodies that was conducted. We can raise this with him. He is saying it is up to the Local Government Management Agency to provide a copy to us. He had sight of it but was not the author or commissioner of the report. Therefore, we have written to the agency separately for the report because it commissioned it. We can note and publish the letter.

Regarding group C, one item was held over from the last day and we will continue to hold it over.

No. 1618C is from the individual who corresponded with the committee regarding the review of property transactions in the OPW. This matter was discussed at last week's meeting. We will note that. We want to check some documentation before we decide to publish it or otherwise.

Correspondence 1628C and 1629C, from Deputy Murphy, provide replies to parliamentary questions regarding Garda masts and properties. These matters were raised at last week's meeting. It is very interesting information.

Deputy Catherine Murphy: It is useful. There is no point in-----

Chairman: It is available, noted and published. It is already on the public record by way of parliamentary question. We will publish it here again.

The next item on our agenda concerns statements and accounts received since the last meeting. There are seven, the first of which relates to the National Concert Hall. There is a clear audited opinion. Attention is drawn to the recognition of an asset in respect of deferred retirement benefit funding for pensions. We discussed this often at length.

The next concerns the Office of the Pensions Ombudsman. There is a clear audited opinion.

The next concerns Transport Infrastructure Ireland. There is a clear audited opinion.

The next concerns residential institutions redress special accounts. There is no turnover. What is left in that account if there is no turnover? Did the Comptroller and Auditor General want to come back to it?

Mr. Seamus McCarthy: Effectively, it is the account out of which awards are paid to individuals. There were expenses, which are expenses of the Vote in the year. This is just literally the fund that is available to compensate individuals.

Chairman: There was nothing paid out of the fund in 2017.

Mr. Seamus McCarthy: That is correct.

Chairman: Is it expected that any will be paid out or is that all done through Caranua?

Mr. Seamus McCarthy: I think there are still a number of cases but-----

Chairman: There was none that year.

Mr. Seamus McCarthy: There was none that year.

Chairman: We should write to whoever is in charge and ask for a projection in regard to potential future claims to be paid through the account. While there might have been none in the year in question, there may be many in the system. We will write to the chief executive or Accounting Officer asking for an update.

Mr. Seamus McCarthy: There may be an indication in the Financial Statements.

Chairman: What we will do then is circulate the Financial Statements among the members of the committee. If we have any questions, we will come back to them next week. We have circulated such information on one or two occasions. It is useful.

Deputy Catherine Connolly: For clarification, there are still outstanding sums from the religious bodies. Where does that tie in with this fund?

Mr. Seamus McCarthy: There is a separate fund, the Caranua fund.

Deputy Catherine Connolly: That is a separate fund.

Mr. Seamus McCarthy: I think the funds would be taken in here, into this fund.

Deputy Catherine Connolly: Is that from the 2002 agreement?

Mr. Seamus McCarthy: From the 2002 agreement, yes.

Deputy Catherine Connolly: Is that also from the 2009 non-legal agreement?

Mr. Seamus McCarthy: If one looks back, it is somewhat confusing as to where the monies from the different funds were going.

Deputy Catherine Connolly: It is confusing. The one from 2002 was a legal one-----

Mr. Seamus McCarthy: That is correct.

Deputy Catherine Connolly: -----and there are still some funds and property outstanding.

Mr. Seamus McCarthy: Property.

Deputy Catherine Connolly: Okay.

Chairman: We are coming back to that because we have asked-----

Mr. Seamus McCarthy: The Department's brief is updating the committee on a quarterly basis in respect of it.

Chairman: At our previous meeting, we asked that a note be written to the Department. It had informed us in correspondence over the summer that a number of transactions were to be completed by the end of September and we agreed to write to it last week, or a week earlier, to ask for an update on whether this actually happened. This arose out of the correspondence we received. We will get an update on what was to be completed by the end of September and we will see if the Department met its targets, as outlined in correspondence to the committee during the summer. That matter will come back before us by way of correspondence from the Department in the very near future.

The next item is the Comptroller and Auditor General's report on Ciste Pinsean Tithe and Oireachtas. This is in Irish.

Deputy Catherine Connolly: Iontach. Rinne an Cathaoirleach go maith.

Chairman: Wonderful. It is a clear audit opinion.

The Arts Council also received a clear audit opinion but, in his report, the Comptroller and Auditor General states:

Attention is drawn to weaknesses in the controls over grant payments. The Council has made provision for payments of €196,000 due in relation to grants awarded in 2017 under an arts programme. The Council had provided funding for these grants to an outside agency, now in liquidation, but the agency had not paid over the grants to the intended beneficiaries.

Deputy David Cullinane: The Comptroller and Auditor General states that "attention is drawn to weaknesses". I wonder if it is weaknesses or failures. I am sure there are basic requirements or controls that any organisation should have in place. I do not accept that the term "weaknesses" suggests that the controls are not there. In many ways, the controls are there but they were not adhered to. If I am reading this report right, it is quite extraordinary that the Arts Council gave to a third party €196,000 that was intended for beneficiaries in grants that they never received because the company in question went bust. It is quite extraordinary to say the least. I am aware that the overall budget for the Arts Council is €67 million but we all know that there is not a huge amount of money available in any event for the beneficiaries of these grants, or the organisations that need the money and which run on very tight budgets. Is it the case that these organisations just did not get the money? Was replacement money given to them or are they left high and dry?

Mr. Seamus McCarthy: That is effectively the situation. The Arts Council is aware that commitments were given, but the grant funding did not get through the agency that had been given an advance to fund the scheme. The Arts Council is undertaking to provide replacement funding.

Deputy David Cullinane: The follow-on question would be why a third-party agency would be needed to distribute the €196,000. Surely that is why the Arts Council is there in the first instance. I do not understand why one would give €196,000 to a third party to distribute

money to grant recipients. If it is a private organisation, it would make money off the back of it. That strikes me as somewhat bizarre.

Mr. Seamus McCarthy: Okay.

Deputy Catherine Murphy: Some of the questions relating to replacement funding have already been answered. It may be that some very small entities could fold because of missing out on that kind of money. Was it one scheme or was it an entity that was doing this kind of duplicate work for the Arts Council?

Mr. Seamus McCarthy: It was actually administering a scheme. I do not have the details but I can read the section from the statement on internal financial control, which is on page 60 of the Arts Council Annual Report 2017:

The Arts Council paid one of the organisations recurrent grant funding of €225,000, funding for exhibition support of €25,000 and €170,000 to fund an arts programme administered on behalf of the Arts Council.

In March 2018, the Arts Council became aware that the organisation had not in fact paid the 2017 grants to the intended beneficiaries. The organisation went into liquidation shortly afterwards.

Following legal advice, the Arts Council has undertaken to honour all payments due. The Arts Council has estimated that a total of €196,000 is due to intended beneficiaries including some amounts in relation to previous years. The 2017 financial statements recognise a provision for the full amount due. The Arts Council has no realistic prospect of recovering these amounts from the grant funded entity, now in liquidation.

In general, the Arts Council prefunds organisations in advance of expenditure being incurred, and has the sanction of the Department of Culture Heritage and the Gaeltacht and the Department of Public Expenditure and Reform to do so. The Arts Council's control processes include advancing of funding to organisations in tranches and verification processes to obtain assurance that conditions have been met before the next tranche is advanced. However, the full amount of funding for the arts programme was advanced to this organisation in one tranche in January 2017, and before the 2016 financial statements were received. The Arts Council plans to review its controls over funding to outside organisations in particular where funding is provided in one tranche. It also plans to review its processes for assessing the financial viability of grant funded organisations.

Deputy Catherine Murphy: How many beneficiaries were involved? Are there other situations where the Arts Council repeats this kind of exercise? I can see the weakness between 2016 and 2017 where the funds were paid before they had received the accounts so they would not have known they were in trouble. That is a very obvious weakness but does the Arts Council also do this with other organisations or other exhibitions and so on?

Mr. Seamus McCarthy: What is unusual about this situation is that the grant funding was intended to be forwarded to other organisations, whereas most grant recipients would generally receive funding for their own activities and purposes. This situation was a little unusual in that it was a very niche area of the arts - I believe it was film-making - and, obviously, there was some discretion. A scheme was put in place and it was felt that these individuals were best placed to process the applications within the framework set for the scheme.

Deputy Catherine Murphy: How many were involved?

Mr. Seamus McCarthy: It is a small number, perhaps eight or ten. I am not quite sure. I do not have that level of detail.

Chairman: We will get detail. We will write to the Arts Council for a far more comprehensive note on this than that which Mr. McCarthy read from the annual report. It sounds a bit like Console where an organisation was funded and then when it went into liquidation people were left. It appears as though the situation is a mini version of that relating to Console.

Deputy Catherine Connolly: On the questions that have been asked, and there were eight to ten groups affected-----

Mr. Seamus McCarthy: That is just my recollection.

Deputy Catherine Connolly: That is okay. We should certainly write to them to get the full details. Alarm bells ring when I hear that money is prepaid. How does an administrative body go into liquidation? What has happened here in relation to this? What are the implications for a possible repeat of this? Has this already happened again? During the briefing I heard that in previous years it had not been paid over. What does that mean?

Mr. Seamus McCarthy: The funding for 2017 was €170,000 but the total loss is €196,000. This would indicate about €26,000 was related to the prior year.

Deputy Catherine Connolly: If it related to prior years, then nothing was learned. It is difficult to sit here and listen to this when arts organisations are struggling on the ground. All of this should be done with proper governance procedures, proper internal controls and proper learning from mistakes. We need details on this.

Chairman: We are going to write to the council seeking details. The message is that the council had €196,000 less to give to people who should have got funding-----

Deputy Catherine Connolly: The Arts Council is now going to make it up.

Chairman: It is going to make it up but the money will have been paid on the double.

Deputy Catherine Connolly: That is right. That means that other people or groups must be down also

Chairman: The council provided funding to the company that went bust and now it is paying out the money a second time.

Deputy Catherine Connolly: There is a lesson there. The pot is now smaller.

Chairman: The grant fund programme is down €196,000 for other people because the council had to pay on the double in respect of this one.

Deputy David Cullinane: Is the company that received the €196,000 a private interest or a public body? Is it an organisation that is funded?

Mr. Seamus McCarthy: It was a company and it is now in liquidation.

Deputy David Cullinane: I know. Was it a private company?

Mr. Seamus McCarthy: My recollection is that it would perhaps have had charitable status

for arts purposes.

Deputy David Cullinane: Right.

Chairman: What we will do is when we get the name of the company, we will get one of the officials or Mr. McCarthy's office to perform a Companies Registration Office, CRO, search to discover whether it was a company limited by share, by guarantee or whatever. We do not know. We will find out about the company. If it was a company, it will be a matter of public record. We will see where we stand in that regard. We are not revisiting the liquidation. That is not our job, but we want to know about whom or what we are talking.

Deputy Catherine Murphy: The Charities Regulator might have a role here too. If a company has charitable status, it is not supposed to make a loss.

Chairman: We will perform a search in respect of the company and the current state of the liquidation.

Mr. Seamus McCarthy: Obviously, the first port of call is probably the Arts Council. It could give us a more detailed explanation.

Chairman: We will write to the Arts Council in the first instance. When we get the name, we will take it from there. We want to deal specifically with this issue. The statement that has been read out indicates that the Arts Council is putting procedures in place, but I consider that somewhat woolly. I would like to know what it has done in terms of checking the audits of every other organisation. Given that Mr. McCarthy referred to that in the context of the council's financial statement, we will ask for evidence that it has carried through on its commitment.

Mr. Seamus McCarthy: Some Deputies may remember the funding for SIPTU, a matter we examined some years ago.

Chairman: Yes, it was a big fund.

Mr. Seamus McCarthy: One of the learning points from that was the danger of advancing funding without being specific as to purposes for use and guaranteeing that those purposes would be delivered on. The Department of Public Expenditure and Reform issued a circular stating that the exception was to be advance funding, and that exception could only be where there were adequate controls in place. Effectively, many organisations do not have working capital. They are completely dependent on grant funding and, therefore, they cannot act without being funded in advance. That is why the Arts Council has sanction to fund most of those organisations in advance. What one then needs to be doing is funding as one goes, rather than funding in a single tranche. That is a learning point.

Deputy Catherine Connolly: Is the funding based on receipts or evidence that the money has been used for the intended purpose?

Mr. Seamus McCarthy: One advances a certain amount of funding and then one gets evidence that it has been spent for the purpose. One advances another tranche and then one gets evidence rather than putting all of the funding out in one go.

Deputy Catherine Murphy: There is a similarity to the DIT library contract. Mr. McCarthy stated that the Department of Public Expenditure and Reform issued a circular.

Mr. Seamus McCarthy: There is a circular on the matter from 2013 or 2014.

Deputy Catherine Murphy: So that probably happened prior to the DIT library incident.

Mr. Seamus McCarthy: It did, but that was a procurement issue as opposed to a grant funding situation.

Chairman: I will draw a comparison in order to clarify the position. It is not unusual for a Department to advance funding to organisations to get them up and running. For example, we are all familiar with community employment schemes. They run for a year. They get funding for the first few months and then they get a payment every month and coming to the end of the scheme they must be audited and then they can be rolled over once that is done. They get funding to get them up and running but the funding for the full year is not given upfront. Funding for a month or two is given and then monthly payments are made thereafter.

Mr. Seamus McCarthy: It is standard that an organisation would profile its expenditure so that if there is more activity at certain times of the year, that is understood and it is funded accordingly.

Chairman: The last item is InterTradeIreland, which received a clear audit opinion. We note that as well.

We will proceed quickly. The next item is the work programme. Today's programme is in front of us. Next week, we will be dealing with matters relating to housing. On 8 November, we will be dealing with the State Claims Agency in the context of cervical cancer and thalidomide. I want to raise with the State Claims Agency the issue of medical negligence, which is significant. We will write to the agency in advance seeking a breakdown. It will surprise members to learn that the biggest bill facing the State is €2 billion in connection with medical negligence. Not enough attention has been paid to prevention. If we had a fraction of that money for the health service, we would not be in our current position. It is outrageous that there is so much medical negligence. I want to get a report in advance, as soon as is practicable, and we will return back to the issue on every case it has listed with a potential claim for €1 million. I will start at that amount and I will not go below it.

I want to get a breakdown similar to that which we obtained from the Tax Appeals Commission in respect of cases that are in different bands, for example, between €1 million and €5 million and how many are between €5 million and €10 million. In particular, I want to know the number of cases where the same professional is involved. We need to know if a medical professional has eight or ten medical negligence cases in the system and if he or she he is still carrying out medical procedures. The public needs to know. We cannot have people making mistakes on a regular basis, particularly with cases piling up. I do not suggest that is happening, but I do not know. I need a breakdown of the sum of the €2 billion relating to medical negligence. We will start to examine it. We will get the first schedule of figures and see where it takes us. We have a duty to put better measures in place to prevent a recurrence of cases of medical negligence. I know there are systems in place for the notification of each event but the amount is going up by €300 million every year, in addition to what has already been paid out in the past. It would be fantastic if the health service had even half of that money. This is an issue we have discussed in a global sense but we could do a useful service by getting some specific information.

Deputy Catherine Murphy: In addition to getting information on individual medical professionals, we should also look for information on individual hospitals as well. Certain hospitals are frequently mentioned. It is not just about the very large amount of money that would be available to the health service. We rarely hear people coming out of the Four Courts stating

that the money was any kind of compensation for what happened. There is a human cost as well and the money gives us a tracker for that.

On a different point concerning the work programme, could we put broadband on the programme? I think it is at the bottom of the list but I do not think it is slotted in. Perhaps I missed that.

Chairman: It is at the bottom of the list, but there is no date. In the next week or so, we will try to schedule work out to the early part of next year on the basis that we are all here.

Deputy Catherine Murphy: Is there any chance of dealing with broadband this year?

Chairman: We will discuss it. I am open minded as to our priorities regarding what we want to deal with. We will ask the secretariat to look at all the items that are on our schedule and to draw up a provisional draft.

Deputy Catherine Murphy: In 2017, the MANs contract was rolled over to 2030. Essentially, there was provision within the contract to do that. The information was in one of the Sunday newspapers. Another entity that was interested in tendering for that contract was BT Ireland. The contract was rolled over and, eventually, it was purchased by the State under the infrastructure fund. It would have been more valuable by virtue of the fact that it was rolled over so we probably paid substantially more. We are likely to have paid substantially more relatively recently and we need to understand why the contract was rolled over.

Chairman: And then sold back to the State.

Deputy Catherine Murphy: Yes. Originally, 78% was sold back and then the balance only recently, but it would have cost more to buy it back because it was more valuable given that it was a longer-term contract.

Deputy David Cullinane: I support Deputy Catherine Murphy's point about putting the national broadband plan on our work programme.

On the previous issue, the Chairman stated that we need to get a breakdown of the number of cases.

Chairman: Getting a breakdown by hospital is a good suggestion too.

Deputy David Cullinane: Yes, and the number of individuals who are subject to two, three or four cases, for example. If we ask for a breakdown of individuals we may not get that information.

Chairman: We do not want names.

Deputy David Cullinane: Yes, but it depends on how we ask the question. It should be on the basis of the existence of two or more cases that involve the same individual and, again, in bands. They are more likely to give it to us that way. It depends on how we ask the question.

Chairman: So we will put in bands. If a person is appearing in-----

Deputy David Cullinane: Just two or more.

Chairman: Yes.

Deputy David Cullinane: And then it is two, four, five, six or whatever.

Chairman: There is no question of us asking for names or anything of that nature. I call on Deputies MacSharry and Connolly.

Deputy Marc MacSharry: Ladies first. I think Deputy Connolly indicated first.

Deputy Catherine Connolly: I have two matters to raise. The first concerns the work programme. I see that housing assistance payment, HAP, is listed.

Chairman: That is coming up as part of housing.

Deputy Catherine Connolly: So that is not coming up separately?

Chairman: We said we would deal with housing at two meetings - one concerning construction and the other concerning housing supports, such as rental supplement. The approved housing bodies are not available next week so they will be on the second day. They cannot all attend on the first day. There will be two meetings on housing.

Deputy Catherine Connolly: HAP must certainly be considered.

Chairman: It will be at the second meeting.

Deputy Catherine Connolly: We need adequate time for it. The cost now stands at €421 million. In one year, it doubled to €300 million and the allocation in the budget is €121 million so this payment alone is practically €500 million. This is one thing we want adequate time to discuss.

I welcome the Chairman's approach to teasing out the position regarding medical negligence. Open disclosure is not operating. We cannot look at one without examining the other. I do not know how many independent reviews and assessments have been carried prior to any medical negligence case. I have intimate details of one review.

Chairman: A review by whom?

Deputy Catherine Connolly: It was an independent review by a particular hospital regarding mistakes that happened. That was just one review. We can see the cost of those independent reviews before matters ever get to court. If one leaves aside the internal reviews, one then looks at the different type of external reviews. There are reviews whereby people can be cross-examined or questioned and the reviews - with which, unfortunately, I am now familiar - whereby there is no examination but there is an independent examination involving outside consultants and nurses. There are all sorts of questions regarding whether those reviews are actually independent, not to mention the cost and value for money, before we ever get there. I am just highlighting that because I will return to this matter. I am in the process of asking questions about the actual cost. At no point do I see any of the institutions learning. I see that we are snowed under with governance and with various items of documentation but the actual learning is missing. That is how we end up with medical negligence cases and barristers making money. I see why fees are so high because at no stage in that process do I see learning happening. I see us being snowed under with all sorts of documentation but no learning taking place. This even ties into Charleton tribunal going back to individuals learning-----

Chairman: On that point, I could mention HIQA's statutory review of the maternity unit at Midland Regional Hospital Portlaoise, which found that there had been previous reviews,

reports and recommendations but that they had been shared with nobody.

Deputy Catherine Connolly: The cost.

Chairman: They were shared with nobody - even the conclusions - so there was no learning process because the report was done and put on the shelf.

Deputy Marc MacSharry: In respect of the work programme, I agree 100% with Deputy Catherine Murphy on broadband. It would be timely for us to look at that matter. I would also be interested in hearing the Comptroller and Auditor General's view of the wisdom behind renewing the contract, selling it and then buying it back. I think that is an issue. I am also interested in whether we would have a role in respect of the entire procurement section of the Department dealing with the contracts and tendering. It might be a useful exchange if people felt the time was there.

In respect of medical negligence, at previous meetings I have raised the fact that when we pay out with or without admission of liability. There is no mandatory follow-up training or monitoring, it is just a case of "On we go". This is not to impugn the members of the medical profession involved. As a matter of form and practice, there should be a mandatory process regardless of whether the person is squeaky clean and in the best possible position under the sun or is negligent. That would happen in any other walk of life. It is something we have mentioned here previously for which we should push.

Chairman: We will come back to the work programme next week to extend it. At this stage, we have completed our work so we will suspend for five minutes while the witnesses take their seats. We will conclude the session with the Department of Public Expenditure and Reform when the bells ring for voting.

Sitting suspended at 10.05 a.m. and resumed at 10.10 a.m.

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

Chapter 6 - Vote Accounting and Budget Management

Vote 11 - Minister for Public Expenditure and Reform

Vote 12 - Superannuation and Retired Allowances

2017 Annual Report of the Comptroller and Auditor General and Appropriation Accounts

Chapter 2 - Collection of Pension Contributions due to the Exchequer

Chapter 3 - Control of Funding for Voted Public Services

Chapter 5 - Vote Accounting and Budget Management

Vote 11 - Minister for Public Expenditure and Reform

Vote 12 - Superannuation and Retired Allowances

Comptroller and Auditor General Special Report 95: Financial Reporting in the Public Sector

Comptroller and Auditor General Special Report 99: Public Sector Financial Reporting for 2015

Comptroller and Auditor General Special Report 100: Public Sector Financial Reporting for 2016

Mr. Robert Watt (*Secretary General, Department of Public Expenditure and Reform*) called and examined.

Chairman: In our morning session we will be dealing with the 2016 and 2017 appropriation accounts for the Vote of the Minister for Public Expenditure and Reform; superannuation and retired allowances; and the Office of Government Procurement. We will also be dealing with the Comptroller and Auditor General's 2017 report, specifically chapter 2, collection of pension contributions due to the Exchequer; chapter 3, control of funding for voted public services; and chapter 5, vote accounting and budget management. We will also be dealing with the Comptroller and Auditor General's 2016 report, specifically chapter 6, on budget management, and his special reports 95, 99 and 100 on financial reporting in the public service for the years 2014 to 2016. We have been dealing with these reports on an ongoing basis and there is nothing particularly new in them but we have not formally discussed them with the Department. On that point, the Committee of Public Accounts, as a result of those earlier reports, decided towards the end of last year to write individually to each of the 300 or so organisations that are audited by the Comptroller and Auditor General to ask them to meet their timelines. We have brought representatives of the education sector before the committee at length. Of the 17 ETBs,

only one was meeting reasonable timelines for producing financial statements, whereas on this occasion every single one of the 17 has done so, so there has been a significant improvement in the preparation of accounts by public bodies over the past year or two with the help of the Department of Public Expenditure and Reform, the Comptroller and Auditor General and ourselves. Perhaps we will ask Mr. Watt to give a short overview at the end of his comments on the issue that while it is fine getting the accounts to the Comptroller and Auditor General and getting them audited, there is then regularly what would appear to be another delay before they are laid before the Oireachtas. I think they have to go to Ministers and so on. The next thing we will want is a mechanism to see whether that end of the process can be speeded up. It is the next chapter, but Mr. Watt understands the question I am raising.

As today's schedule is very busy, dealing with all these accounts, and there is so much to be covered, the opening statement will understandably be that little bit longer than normal. We are joined by Mr. Robert Watt, Secretary General and Accounting Officer of the Department of Public Expenditure and Reform, Mr. David Feeney, chief operations officer, Mr. John Pender of the public service pay and pensions division and Ms Helen Codd of the corporate support unit.

I remind members, witnesses and all those in the Public Gallery to turn all mobile phones to airplane mode as merely putting them on silent is not adequate and can interfere with the recording system. I advise witnesses that by virtue of section 17(2)(l) of the Defamation Act 2009, they 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 they continue to do so, they are entitled thereafter only to a qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and they are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person or entity by name or in such a way as to make him, her or it identifiable. Members of the committee are reminded of Standing Order 186, which provides that the committee shall refrain from inquiring into the merits of a policy or policies of a Government or a Minister of the Government or the merits of the objectives of such policies. 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.

We will now take the opening statement from the Comptroller and Auditor General.

Mr. Seamus McCarthy: The 2017 appropriation account for Vote 11, Office of the Minister for Public Expenditure and Reform, records gross expenditure of almost €53 million. This was an increase of €9.8 million, or 23%, on the prior year, due in large part to additional spending of €7.4 million by the Office of the Government Chief Information Officer. At the end of 2017, the Department had underspent by €2 million relative to its budget. Unspent capital funding of €685,000 was carried forward to 2018. The remaining €1.3 million was liable for surrender back to the Exchequer. The surrender at the end of 2016 was €2.5 million. I issued clear audit opinions on both the 2017 and 2016 appropriation accounts for Vote 11.

Vote 12, superannuation and retired allowances, is used to pay pensions to civil servants and prison officers. Pension payments for other public servants are charged, directly or indirectly, to other Votes, including those for education, health, An Garda Síochána and Army pensions. The gross spend on Vote 12 in 2017 amounted to €535.5 million. This represented an increase of 7% from 2016. Appropriations-in-aid, mainly comprising employee pension contributions, amounted to €202.5 million in 2017, which was up 28% from 2016. The increase was mainly due to increased employee contributions in respect of the single public service pension scheme.

The net result was a surrender at the year end of €33.5 million in respect of 2017, and of €50.8 million in respect of 2016. I issued clear audit opinions in relation to the 2017 and 2016 appropriation accounts for Vote 12.

Chapter 2 of my annual report deals with the collection of pension contributions due to the Exchequer. The Department of Public Expenditure and Reform issued a circular in December 2016 requiring certain State bodies to make employer pension contributions to the Exchequer in respect of public sector employees pensionable under the single public service pension scheme, which commenced on 1 January 2013. As of 14 September 2018, only 14 bodies had made employer contributions, totalling €4.35 million. The Department had not yet completed the work required to identify all the bodies that will be required to make contributions. Because the contributions are payable with effect from 1 January 2013, at least five years' contributions will become payable. This may impact on the cash flow of each entity concerned and on charges for the services they provide.

Members will be aware that the Constitution and legislation set out the framework underpinning the manner in which funds are appropriated for voted public services. The appropriation system in Ireland differs from that in other jurisdictions in that the passing of appropriation legislation is generally taken very late in the year, usually in December. As a result, an unexpected dissolution of Dáil Éireann later in the year could have two serious outcomes, unless agreement can be reached on the emergency passing of an Appropriation Bill. First, appropriations in the financial year would not legally be in accordance with the provisions of the Constitution. Second, spending on supply services in the following year could not proceed, creating a risk to the continuity of voted services. In my function as controller of issues of funding from the Central Fund, I want formally to draw the attention of the Oireachtas to this risk.

Vote accounting and budget management is a standard report that consolidates and summarises expenditure across all of the Votes. It highlights key variances relative to estimates and demonstrates medium to long-term trends in key Vote issues. The 2017 chapter also outlines the limited guidance provided by the current financial reporting framework regarding the accounting for capital assets in the appropriation accounts. These weaknesses are expected to be addressed in the comprehensive review of the accounting framework being undertaken in the context of developing the financial shared services model for Departments and offices.

I refer to the special reports on financial reporting in the public sector. As members are aware, timely preparation and presentation of audited financial statements is a key element of public accountability and in providing effective oversight. The three special reports before the committee today reflect a strategic focus by my office to drive greater timeliness of public sector financial reporting. I will focus my opening remarks on the most recent report, special report No. 100, which deals primarily with financial statements for periods ending in 2016. For that year of account, I had responsibility for the audit of the financial statements of 287 bodies and funds with an aggregate turnover of €218 billion.

Most public bodies should be able to prepare financial statements for audit within two to three months of the end of the relevant accounting period. All Government Departments and offices produce their appropriation accounts by the end of March, as required by law. Half of the other public bodies produced their 2016 financial statements within three months of the year end. This represents a progressive improvement since the 2014 year of account. Significant progress has been made in completing audits early. My office gives priority to higher value accounts and this is reflected in the graphic provided, which shows that 97% of the turnover subject to audit had been completed by the end of September 2017. This represents two thirds

of the number of 2016 financial statements. Government Departments are generally required to present the audited financial statements of the public sector bodies for which they are responsible to the Oireachtas within three months of audit certification. Of the 2016 financial statements that had been certified and were due for presentation as of April 2018, some 80% had been presented on time. Arising from a recommendation in special report No. 95, Government Departments are now required to report in their appropriation accounts on the presentation to the Oireachtas of audited financial statements of the bodies and funds for which they are responsible. An example of this can be seen at the back of Vote 11 for 2017. This should increase the monitoring by Government Departments of the production of audited financial statements by the bodies under their aegis.

At the end of 2017, there were 13 sets of financial statements that had not yet been certified, representing a significant improvement since the end of 2015 when there were 25 sets of financial statements in arrears. All but two of the 13 arrears at the end of 2017 have now been certified. The university sector, which previously had a high incidence of arrears, has shown significant improvements in timeliness of financial reporting. The significant organisational change that the education and training board, ETB, sector underwent from July 2013 was a contributory factor to delays in the presentation of audited financial statements. However, as the Chairman has mentioned, much progress has been made in relation to the timely presentation of ETB accounts for audit, and achieving earlier completion of audits of ETBs.

Chairman: Mr. McCarthy has given us the figure for 2016 and I will not ask exactly what has happened since but has there been an improvement in 2018 versus the 2017 financial statements?

Mr. Seamus McCarthy: In the presentation?

Chairman: Yes.

Mr. Seamus McCarthy: Yes there has been an improvement.

Chairman: Give us your observations quickly. I know that you may not have the figures to hand.

Mr. Seamus McCarthy: It is still not 100%.

Chairman: Has there been an improvement from the 2016 financial statements?

Mr. Seamus McCarthy: Yes there has been with the 2017 statements.

Chairman: The 2017 statements have been an improvement again.

Mr. Seamus McCarthy: Absolutely yes.

Chairman: Those figures are currently being audited but has there been an improvement again this year?

Mr. Seamus McCarthy: Absolutely yes.

Chairman: We are getting there.

Mr. Seamus McCarthy: It has been progressive. There has been an improvement across the board every year.

Chairman: I ask Mr. Watt to make his opening statement.

Mr. Robert Watt: I thank the Chairman and the members of the committee for affording me the opportunity to make a statement. As the Comptroller and Auditor General has outlined, the agenda covers a number of chapters from various reports for 2016 and 2017; the appropriation accounts 2016 and 2017 for Votes 11 and 12; and special reports Nos. 95, 99 and 100. In the interests of time I will take the opening part of my statement as read because it basically says how brilliant the Department is and I know the committee shares that view anyway.

Chairman: Lovely.

Mr. Robert Watt: I will skip ahead to the section that specifically deals with reports which is from page 6 of the written statement.

I will give a brief overview of some items on the agenda and the first relates to chapter 6 of the Comptroller and Auditor General's report and chapter 5 of the 2017 report on Vote accounting and budget management. In respect of 2016, gross voted current expenditure amounted to €51.8 billion. This was €100 million, or 0.2%, under profile and €900 million, or 1.8%, up on the 2015 figure. Gross voted capital expenditure was €4.2 billion and this was €200 million, or 6.2%, ahead of profile and €500 million, or 12.9%, up on the 2015 figure. The higher level of capital expenditure - the outturn figure for that year - was signalled in the mid-year expenditure report and related mainly to road repairs in response to the 2016 floods which members will remember and faster than expected progress on the schools building programme, so those related to conscious Government decisions to increase spending during the year.

In respect of 2017, gross voted expenditure was €58.5 billion. This was €480 million, or 0.8%, higher than the gross expenditure allocation set out in the 2017 revised estimates volume. This increase was expected as it was accommodated within the further Revised Estimates and Supplementary Estimates agreed by the Oireachtas in December. The additional expenditure arose mainly from policy decisions relating to the provision of domestic water services.

The Revised Estimates for 2018 provided for total gross voted expenditure of €61.8 billion, a further increase of 5.5% on the 2017 outturn. On budget day last week, the Minister for Finance, Deputy Donohoe, announced additional allocations for 2018 mainly relating to health, housing, education and justice. If we take these adjustments into account, along with the provision of a 100% Christmas bonus for social welfare recipients, the revised allocation for 2018 amounts to €62.8 billion. Of this, some €56.9 billion relates to current expenditure and the balance of €5.9 billion relates to capital expenditure.

We can see the progress this year. Total gross voted expenditure at end-September is €44.9 billion. Of this, €41.6 billion relates to current expenditure. This is ahead of profile by €265 million and is up €2.5 billion or 6.3% on the same period in 2017. Capital expenditure to the end of the third quarter amounts to €3.3 billion, which is €253 million or 7.2% below profile and €756 million or 30% above the same period in 2017. This reflects the significant increase in the allocations for capital spending in 2018, a trend we have seen since 2015.

The second item on the agenda concerns Vote 11 relating to the Office of the Minister for Public Expenditure and Reform in 2016. I will address the Department's 2017 Vote as well. The Estimate for 2016 was €43.7 million, a 7.7% increase on 2015. As has been mentioned already, this was driven mainly by the need for additional resources for the Office of the Government Chief Information Officer, Structural Funds technical support and assistance for regional

assemblies and the Special EU Programmes Body. The increase was also due to the creation of new subheads for the funding of pensions of bodies under the aegis of the Department, Civil Service learning and development and support for the implementation of the Protected Disclosures Act. There has been an increase in spending above average under Vote 11 reflecting the consolidation of functions that were previously undertaken by other Departments and that are now undertaken centrally. This reflects Civil Service renewal and public sector reform in the area of information technology. The Comptroller and Auditor General mentioned the significant resources that are going to the Office of the Government Chief Information Officer. One of those projects is SharePoint, which involves the implementation of a suite of electronic systems, including electronic parliamentary questions, e-submissions and e-records. This will apply by the end of next year to 36,000 civil servants across all the Departments and bodies. In effect it is being delivered centrally by the office. It involves considerable developmental software work that previously would have been undertaken by Departments but has now been consolidated centrally. It reflects our view that it is better to have the expertise and capacity centrally based. It is more effective, in particular in respect of smaller offices and Departments that would not have well-developed information technology systems. One theme in the Vote over the years has been this consolidation. The same argument applies to learning and development. More and more learning and development is being done centrally through shared services because of the belief that we get better value for money and better quality services if we do it centrally. The audited surplus to surrender for 2016 was €2.5 million and arose for a number of reasons, as set out in the briefing supplied.

The Estimate for 2017 was €53.1 million. This increase was driven mainly by the need for additional resources for the Office of the Government Chief Information Officer and administrative pay. The increase was also due to the creation of new subheads for the Public Service Pay Commission, the Irish Government Economic and Evaluation Service and the Single Public Service Pension Scheme. The work of the Irish Government Economic and Evaluation Service involves the recruitment of economists at different levels who come to the service but who spend an initial period with our Department and are subject to a specific training programme. The paybill and training costs during the earlier period of their careers is drawn from the Vote of our Department. Then, people within the service are sent out to other Departments to do their work across the system. Again, that explains a large element of the increase in spending. The audited surplus to surrender in respect of 2017 was €1.3 million and arose for a number of reasons, as set out in the briefing supplied.

Vote 12 relates to superannuation and retired allowances. The net outturn for 2016 was €341.1 million, compared to an estimate of €391.9 million. This gives a surplus to surrender of €50.8 million. This arose mainly because of underspending on established lump sums and greater-than-expected receipts from the Single Public Service Pension Scheme. As we have debated at this committee previously, estimating the lump sums for any given year is difficult and problematic. It fluctuates significantly and thus is a challenge for us to estimate. The large variability in the Vote relates to the lump sum element. Hopefully, we will have a better handle in respect of the receipts in future.

In 2017, the net outturn was €332.9 million, compared to an estimate of €366.4 million. This gives a surplus to surrender to the Exchequer of €33.5 million, which arose for similar reasons to those I outlined for 2016.

Chapter 2 of the Comptroller and Auditor General's 2017 report deals with the collection of pension contributions due to the Exchequer. The 2012 legislation underpinning the new Single

Public Service Pension Scheme provides that certain self-financing public bodies may be required to make employer contributions for their staff members who are in the single scheme. A review and engagement with the bodies to which this is likely to apply is ongoing in my Department and will be completed by the end of this year. On foot of the review I expect that 25 to 30 mainly self-financing bodies will be deemed eligible for employer contributions. Since the Comptroller and Auditor General completed the analysis set out in this chapter, two additional bodies have remitted employer contributions. The current position is that 16 bodies are submitting employer contributions, with €5.7 million remitted to date. Any back-money or money that is owing will be remitted to the Exchequer in due course when we establish the exact position. Any bodies that did not make the full remittance in time will make good to the Exchequer in due course.

Chapter 3 of the 2017 report deals with the control of funding for voted public services. Given that the legal appropriation of funds for supply services generally occurs late in the year, the chapter highlights the potential risks to the approval of the estimates arising from a failure to enact the appropriations legislation by year end. In considering this matter, it is important to note the constitutional requirement that legislation to give effect to the financial resolutions of Dáil Éireann must be enacted within the same year. The Constitution also requires that the Appropriation Bill schedule is based on the timing of approval by the Dáil of Supplementary Estimates for the year, thus ensuring that all Estimates voted by Dáil Éireann are reflected in the relevant Appropriation Bill. Mindful of the risk, as identified, relating to the enactment of Appropriation Bill at the end of the year, officials in my Department ensure that there is clear and constant communication with the Whip's Office on the timeline for publication of the Bill. They provide all relevant briefing in a timely manner, including for the Business Committee. This is a risk we are very much aware of. It has never happened that we did not enact the Appropriation Bill, and for good reason because we would not then be in a position to spend any money from 1 January, including the salaries and so on of everyone who has to vote on the Bill. We know that when it comes to it, Dáil Éireann always finds the time. In effect, the State would fail to function because we would not be able to invoke the 80% rule.

Chairman: That is a new point and I have seen it raised recently. I take it you have a Bill on your desk ready to go, if anything happens.

Mr. Robert Watt: Yes. You may recall-----

Chairman: It could be passed by the Dáil in five minutes. Is that the case?

Mr. Robert Watt: Yes. It happened in 2010. Committee members may recall that period when an election was pending. The budget was introduced by the then Minister, Mr. Brian Lenihan. A majority in the Dáil decided to support the enactment of the Finance Bill and the Social Welfare Bill quickly to clear the decks so that the budget could be implemented in advance of the election. During that time the Appropriation Bill was taken quickly in the Houses and enacted. Supplementary Estimates were taken and the Bill was voted upon and enacted quickly. Again, there was a situation whereby if the Dáil had been dissolved before the Bill was enacted, we would not have been in a position to invoke the 80% rule for 2011.

Chairman: Can you explain the 80% rule?

Mr. Robert Watt: The Appropriation Bill for this year is one example. I hope we will pass it in the next four to six weeks. That means, before the individual Votes for 2019 are voted upon by the committee, we can invoke the 80% rule. The Comptroller and Auditor General can

sanction the Minister for Finance giving credit to the Central Bank to issue, through the supply accounts, the requisite accounts to keep the Votes funded and to keep the State in business.

Chairman: Let us suppose a particular Vote was a relatively new Vote. It happened one year when the census was coming up and the 80% rule was relevant. The CSO did not get the census up and running early in the year. There had to be an emergency Estimate.

Mr. Robert Watt: So what happens then is that we would bring-----

Chairman: Excuse me, the only reason we are saying this is that the public watching might not be aware of it. It is important that they are aware of it and it is interesting. Some people watch this closely.

Mr. Robert Watt: A Vote may involve large amounts of expenditure, as in the case of the CSO that year with the census. The rule would be relevant if the CSO exceeded 80% of the previous year before the Vote was taken by the relevant committee. At that time, with the agreement of the Whips and so forth, the House agreed to take the Vote earlier to ensure the CSO had the legal authority to spend the money-----

Chairman: Notwithstanding that a new Government had not been formed, the Whips agreed to pass it.

Mr. Robert Watt: It was agreed by the Dáil. The CSO and the census are generally non-contentious spending so the Dáil approved the Vote, which gave the authority to spend up to the limit that was set out in the Estimate.

Chairman: It is good to clarify that.

Deputy Catherine Murphy: What do they know that we do not?

Chairman: The Comptroller and Auditor General highlighted it in his report-----

Mr. Seamus McCarthy: I flagged it.

Deputy Catherine Murphy: I know that.

Chairman: The mechanism is in place and the Appropriation Bill-----

Deputy Catherine Murphy: The same thing happens every year.

Chairman: The Appropriation Bill is passed before the end of the year but in the event of an election being called very close to the end of the year, you might be ready within an hour's notice for the Dáil to pass a motion to allow it happen if required.

Mr. Robert Watt: The reason it happened at the end of the year-----

Chairman: He stated in 2010 it did happen in practice.

Mr. Robert Watt: The reason it happens at the end of the year is because the Supplementary Estimates must be approved in order to have the Appropriation Bill reflect-----

Chairman: An accurate figure.

Mr. Robert Watt: Yes. To have the appropriated amount for the year.

Chairman: Like good boy scouts, they are always ready.

Mr. Robert Watt: Bí ullamh.

Chairman: Bí ullamh.

Mr. Robert Watt: I hope we are in regard to this matter. I refer to special reports 95, 99 and 100 of the Comptroller and Auditor General on financial statements for the years ending 2014, 2015 and 2016. The reports review the timeliness of public sector financial reporting for those years, identify bodies where delays occurred and summarise the issues brought to attention in the audit reports. The general trend in the timeliness of the financial reports for audit has been positive, as has been stated. For 2016, all appropriation accounts were produced by the required deadline of three months. For other accounts, 50% of bodies submitted their 2016 financial statements for audit within three months of the end of their accounting period, compared with 40% of bodies in 2015 and only one third of public sector bodies in 2014. There has been a significant improvement in the timeliness of presentation of audited financial statements to the Oireachtas. Over 80% of 2016 financial statements were presented on time, compared with 70% for 2015 and less than 60% for 2014. As Mr. McCarthy mentioned, we hope there will be an improvement this year. Furthermore, the number of accounts in arrears, which are accounts not certified by the end of the year following the year of account, at the end of 2017 was almost halved compared with the end of 2015.

Special Report 95 recommends that my Department consider requiring Departments to include an annexe in their appropriation accounts reporting on the presentation of audited financial statements to the Oireachtas by bodies under their aegis. I informed the committee last year that I accepted this recommendation, and it was included as a requirement for the 2017 appropriation accounts. That requirement, along with the issue being highlighted by the Comptroller and Auditor General, the committee and the Department following on from the recommendations has led to some improvement. However, as always with this type of issue, we must remain vigilant. It does not apply to Departments, which produce their accounts after quarter 1 and are audited appropriately and so forth. Rather, it relates to bodies outside of central government and that is where the issues have arisen in the past. We must be vigilant to ensure that Accounting Officers understand their responsibilities and continue to deliver. The key issue for us is to keep the pressure on and keep reminding those responsible that they have obligations relating to accounts being prepared, audited and presented in a timely fashion.

Certain issues relating to the presentation of accounts should be considered. Some accounts have to be approved by a Minister or go to the Government and we should consider whether that is necessary. That is something at which we must look because sometimes it is not an issue for the Government, which just notes the annual report and the accounts, but there may be a backlog in terms of Government business. We should seek to streamline that to ensure that the percentage gets above the 80% for which we are aiming.

I wish to highlight some key recent outputs that testify to the impact and breadth of the Department's activities some of which I have mentioned. Since we established the Irish Government Economic and Evaluation Service, which is a key part of the work of the Department, we have published over 200 papers in order to better inform Government decision making on how public money is spent. Since its launch in September 2017 the new learning and development centre, OneLearning, has had over 10,500 attendances at training courses across 44 Civil Service organisations and 23 counties. Over 500 candidates have completed the graduate development programme since 2015 and an additional 200 candidates recently commenced the

current programme. Since March 2017, almost 13,000 Civil Service managers have attended the managing people and performance training programmes. Over 2.75 million elements of data were collected from 21,000 civil servants during the 2017 employee engagement survey, the results of which were published by the Department last March. The high-speed government cloud network has been rolled out to almost 500 locations nationwide. Seventeen Departments and seven agencies are now connected to OGCIO's build to share applications platform which I mentioned and 35,000 staff have access to the platform. Over 8,200 high-quality data sets are now available via Ireland's open data portal. We are among the top administrations in Europe in terms of the availability of open data. I set out these highlights to try to put in context the amount of money spent within the Vote because sometimes we do not focus enough on the outputs. Ultimately, we provide services across the large Civil Service system, encompassing many Departments and offices.

I wish to pay tribute to the staff of the Department for their hard work and the contribution they have made to what we have achieved. Delivering on the wide remit of our mission requires our employees to have a broad range of skills and perspectives. I am personally invested in ensuring that our people are equipped with the necessary aptitude and expertise to meet the Department's objectives and to fulfil their own career potential. In this regard, I am pleased to say that earlier this year the Department won best learning and development organisation in the medium category at the Irish Institute of Training and Development's 2018 awards. I thank the Chairman and members for their time.

Chairman: I thank Mr. Watt. Speakers have indicated in the following sequence: Deputy MacSharry, Deputy Connolly, Deputy Catherine Murphy and Deputy Cullinane. We are starting with a 20-minute slot, then 15, then ten. As we are to complete our work with the Department of Public Expenditure and Reform before weekly divisions in the Dáil, I will be very strict on time. If there is time for somebody to get in on a second occasion, well and good. We will be meeting on higher education this afternoon. I call Deputy MacSharry.

Deputy Marc MacSharry: The Secretary General concluded by paying tribute to the team in the Department. Exchanges at the committee are often robust and adversarial, particularly when I am involved, but I wish to say that Mr. Watt and his team do a very good job. That is probably not stated often enough by me or the committee.

On the accounts generally, Mr. Watt alluded to the fact that it looks good that the Department returns money every year. For the benefit of those watching, is the Department budgeting incorrectly or is it particularly efficient and producing surpluses which it is able to return? The amounts of money in question are not huge, namely, €4 million, €2.5 million and approximately €1 million over the past three years.

Mr. Robert Watt: Any organisation that returns money to the Exchequer on behalf of the taxpayer is not necessarily particularly efficient. In our case, we had planned to expand a number of programmes but were not able to do so as quickly as hoped. As the Deputy is aware because we have discussed this many times, there are difficulties in recruiting the right staff and trying to meet deadlines, particularly relating to new projects, especially on the IT side. Many of the underspends relate to IT. We have ramped up the spend and that involves the recruitment of people and the use of expertise in order to deliver on the build to share programme. However, we were not able to get people on board as quickly as we had hoped, particularly in regard to the OGCIO and the learning and development shared services project which I mentioned. We may have been overly optimistic in regard to delivery of these programmes. It is a budgeting challenge rather than an indicator of particular efficiency on our part.

Deputy Marc MacSharry: When the Department is expanding a programme and decides it needs particular expertise, does it write the job specs? Is that Mr. Watt's responsibility?

Mr. Robert Watt: It depends on the job. I am not an IT specialist. Mr. Barry Lowry, who is a technologist, is head of the-----

Deputy Marc MacSharry: If the Department were recruiting for Mr. Lowry's position, would Mr. Watt write the job spec or, because he is not an IT specialist, would he get someone to assist him with it?

Mr. Robert Watt: Mr. Lowry has been with the Department for a few years. It is a role we were evolving and defining. I certainly take advice on such issues because I am not a technology expert. Some of the staff of the OGCIO are leaders in the sector and amongst the best in the country when it comes to-----

Deputy Marc MacSharry: What is the OGCIO?

Mr. Robert Watt: The Office of the Government Chief Information Officer.

Deputy Marc MacSharry: Those people would be able to-----

Mr. Robert Watt: They are the people who provide the infrastructure and shared services. They deal with the-----

Deputy Marc MacSharry: When the Department is seeking job candidates, it goes to the Public Appointments Service.

Mr. Robert Watt: Mr. Lowry was appointed through the Public Appointments Service.

Deputy Marc MacSharry: That is fine. It is a theme to which I will later return.

Mr. Robert Watt: As the Deputy is aware, there is a wider issue about capacity and the State's ability to attract people with such skills, which have a very high premium.

Deputy Marc MacSharry: Of course. There was a doubling of the budget for the chief information officer. It is that role, is it not?

Mr. Robert Watt: Yes, it is.

Deputy Marc MacSharry: In order that people will not be confused, this has nothing to do with the Government Information Service. It concerns ICT and the provision of the technical expertise we require to modernise the office.

Mr. Robert Watt: If one considers the Government services that are provided throughout the country, there is a backbone and a very sophisticated network in place. More and more services are in the cloud which Mr. Lowry and his team support. They provide the service on behalf of the entire public service. The one development that always springs to mind is the "build to share" application, the application of the common e-platforms across the Civil Service. These are massive IT transformation projects. In the past - colleagues on this side of the table will certainly recall this - we could have had 50,000 to 60,000 parliamentary questions in a year. People used to run around carrying pink folders and changes to replies to parliamentary questions would have been made on the hard copy. For instance, the administrative officer would have written a draft reply which would have been changed by the assistant principal officer and then the principal officer. It would eventually have reached the Minister. It is now all

done in an e-system, where changes can be tracked. It is done efficiently and quickly. Replies are emailed to the Minister's office and copied to me. That is one example where we use e-submissions and e-records systems. In effect, the amount of paper kept within Departments is collapsing as more and more things are being filed electronically, apart from legal documents, deeds and so forth. It will lead to significant improvement in retrieval costs. When there is an inquiry, an investigation or a review, when the retrieval of documents is always an issue and a challenge, particularly where there are manual systems, the process will be greatly facilitated when, by the end of next year, the vast majority of Departments have this e-records system. Mr. Lowry's team is involved in the roll-out of these big software and development changes.

Deputy Marc MacSharry: That is great and we are still not spending all of the money, which is even better.

Mr. Robert Watt: We are starting to see very significant changes in efficiency and one of the things it facilitates is greater mobility within the Civil Service. If someone is working as an officer in Department "X" and using these systems and moves to a new Department, he or she will have familiarity with all of these ICT suites. From day one he or she will be effective and able to deal with them.

Deputy Marc MacSharry: That is very good.

Mr. Robert Watt: At some future date - I am aware that the committee has a very busy agenda - it would be very interesting to ask the team to make a five-minute presentation on what it actually looks like.

Deputy Marc MacSharry: That is a very good idea.

Mr. Robert Watt: It really is transformative in terms of how staff are working within Departments where the applications are applied.

Chairman: Where is it actually taking place?

Mr. Robert Watt: It is being lead and rolled out from from Mr. Lowry's office. Most Departments now use the e-PQ system and the e-submissions system. We are rolling-out the e-correspondence system. It was introduced this week in our Department. The old correspondence system was based on Lotus Notes. The new system will be based on Word SharePoint which is more efficient. We could at some future date make a five or ten-minute presentation. Members might be interested in seeing how this important system works.

Deputy Marc MacSharry: Well done. To move on to one of the other matters, there is mention of a legal case which the Department won but in which it will have to pay the legal costs. I am sure the public is wondering how that arose.

Mr. Robert Watt: It concerned a challenge to the sick leave changes and changes to entitlements which we introduced a number of years ago. It was a significant reform. Previously, those on sick leave were on full pay for six months and half pay for six months. That has been changed to three months and three months. There is also a critical illness protocol, whereby those suffering from various critical illnesses are treated in a different category. On behalf of gardaí, the GRA challenged this reform. It went through various iterations of the courts' system. We ultimately won the case, but there were issues about the way in which it had been handled and so forth. We were not awarded costs and were disappointed with that outcome. I do not believe we have yet received the final adjudication on costs yet. The matter it is still

outstanding.

Deputy Marc MacSharry: The judge took the view that while the Department had won the case, it should divvy up its own costs because-----

Mr. Robert Watt: They are between €200,00 and €250,000 in total. We were not happy with the outcome, but that is the nature of it. We were happy that we had won the case as it was a very important principle that we were establishing on the nature of the sick leave scheme, but it looks as if we will have to pay our own costs. It is worth mentioning to the Deputy that the level of absenteeism within the Civil Service was a significant issue and that this change has brought about significant savings, of multiples of the cost of the legal case.

Deputy Marc MacSharry: What was the percentage and what is it now?

Mr. Robert Watt: Cumulatively since 2014, we have saved €140 million to €150 million in the cost of sick leave in the Civil Service and the public service, but it is still too high and a problem. However, the cost has come down.

Deputy Marc MacSharry: What is the percentage?

Mr. Robert Watt: From memory, the percentage was around 4.4%. It is now 3.94%.

Deputy Marc MacSharry: Does it spike on a Thursday after Manchester United has played on a Wednesday night? Is there any analysis available in that regard?

Mr. Robert Watt: Yes, there has been a lot of analysis. There are people with repeat absences on a Monday. If we see a pattern, it is investigated by HR. There is always a balance to be struck with persons who are genuinely ill. Like all good employers, we want to be compassionate. Where someone is genuinely ill, he or she receives all of the support possible to help him or her to get back on his or her feet and return to work. When it come to persons, for whom there is a pattern of repeat absences because they just do not fancy working on a particular day, it is something we do not tolerate. There were times when a blind eye would have been turned to this, when HR was not sufficiently well developed to work with managers, but now we are pressing ahead with a much more interventionist and activist approach when it comes to repeat absences. It is an issue.

Deputy Marc MacSharry: About €140 million has been saved across the Civil Service.

Mr. Robert Watt: We are saving money. Within the Civil Service we have saved €24.5 million. The rate was 4.4% in 2017. It varies by Department and grade. Therefore, there is a very different picture across the system.

Deputy Marc MacSharry: It is good news.

Mr. Robert Watt: I would not say we are happy, but it is better than it was.

Chairman: Mr. Watt obviously has information which he might send to the committee in order that we can look at the analysis.

Mr. Robert Watt: As the Chairman is aware, we have a lot of data.

Chairman: Would there have been a corresponding reduction in the cost of social protection payments if persons were out on sick leave and not being paid.

Mr. Robert Watt: There is such an element.

Chairman: Did the Department incorporate it into its figure?

Mr. Robert Watt: Yes, we did.

Chairman: I thank Mr. Watt.

Mr. Robert Watt: We will send the committee a note. It will be interesting to see the trend.

Deputy Marc MacSharry: I want to move on as I am half way towards a number of issues. Is there any protected disclosure before the Department?

Mr. Robert Watt: I do not believe so.

Deputy Marc MacSharry: That is good. Will the Department check and if there is, it might let the committee know. I have some general questions to put to Mr. Watt on the matter. This is totally hypothetical, but let us say a protected disclosure is made to an individual in the Department - let us say, to Mr. Watt as Secretary General - and it concerns that individual, should that individual be compelled to hand it on to an independent person to deal with it?

Mr. Robert Watt: The guidelines are very clear. If somebody was to make an allegation against me, I would have no role, act or involvement in its investigation or review. It would be-----

Deputy Marc MacSharry: It might not involve Mr. Watt. I am sorry; I should not use him as an example. Let us say it involves me, as it is easier to put it like that. If the disclosure is made to me and 20 others are part of it. Would it be reasonable for me to have any hand, act or part in carrying out the procedure outlined in the guidelines?

Mr. Robert Watt: No. If an allegation was to be made against the Deputy, he would have no role whatsoever in-----

Deputy Marc MacSharry: Even if the disclosure was only partly against me or just implicated me.

Mr. Robert Watt: The decision would be made to have a review - I believe it is more properly called an investigation - at which point the Deputy would be informed that an allegation had been made against him. As part of the investigation the person would be given the opportunity to give his or her side of the story, depending on the nature of the disclosure made. In the actual management, conduct and operation of the investigation, if the Deputy was the subject of the complaint, he would not be involved. I know that he is aware of the guidelines which he has mentioned previously to me. We are very conscious that people in the Department have confidence, if it is a review within the Department, that we have a panel of individuals who are respected, trusted and trained, and who would do a thorough independent job when it comes to investigating any-----

Deputy Marc MacSharry: If a disclosure comes in to me and I am implicated in it, am I compelled to share it with others?

Mr. Robert Watt: If the disclosure is about the Deputy, it will be made-----

Deputy Marc MacSharry: It could be about 50 people, including me.

Mr. Robert Watt: It would be made to HR within our Department. HR then, based on the guidelines, would decide whether it warranted an investigation. As the person making the disclosure the Deputy has various choices here. He could ask for an independent review or he could go outside to an external person. Under the legislation, if he went for an internal review in order to get the protection of the legislation, it has to be reasonably believable, whereas if he goes outside the Department, the allegation has to be substantially true, which is a higher test. The system is set up in a way that provides-----

Deputy Marc MacSharry: Is it fair to say that none of the 50 people implicated would have any role in deciding what was reasonably believable?

Mr. Robert Watt: No, they cannot. If it came to a situation where - I do not know how it would arise - let us say there was an issue about Vote management in the Department and all the principal officers or all the assistant principals involved in Vote management were in some way implicated, if it were such a broad issue, that could not be reviewed within the Department because it would be just so broad that we would not be able to find somebody who-----

Deputy Marc MacSharry: What would happen then?

Mr. Robert Watt: Then we would have to go to an external review, an external investigation.

Deputy Marc MacSharry: If there was evidence of best practice not being followed, what would then happen on the one hand for the discloser and on the other hand for the organisation?

Mr. Robert Watt: If one is saying to somebody, "That's shoddy work or not as good as it should be", that would not be a protected disclosure because there should be no circumstances where somebody should not be able to put their hand up and say, "We can do better there." So it should be much more serious than that. If it was a serious allegation about misappropriation of funds, breach of ethics, or some harassment or bullying situation, if it involved lots of people within the Department, then it would have to go outside the Department. Generally we find these are situations that are confined to one individual with particular circumstances.

Deputy Marc MacSharry: If it did not go outside the Department, what recourse would the discloser have?

Mr. Robert Watt: First of all, we have to find a person who is independent on the panel, who was independent of the person, section or division within the Department, who can be seen to be genuinely independent. If it involves lots of people, then we would have an immediate practical challenge to find somebody who is seen as genuinely independent. Within the corporate service unit for example, Mr. David Feeney is not going to look at something that might happen in another part of his area. It has to be somebody who is in a different part of the Department.

Deputy Marc MacSharry: Who would the onus be on?

Mr. Robert Watt: The onus is on us as a Department to investigate the complaint.

Deputy Marc MacSharry: Or every other Department.

Mr. Robert Watt: Yes, rigorously-----

Deputy Marc MacSharry: What if it was an agency under the remit of the Department of

Public Expenditure and Reform?

Mr. Robert Watt: It would be the responsibility of the agency.

Deputy Marc MacSharry: Could the Department trump the agency by stating it is aware there has been a disclosure and it is not appropriate?

Mr. Robert Watt: It would not be brought to my attention.

Deputy Marc MacSharry: What if it was? I know this is very hypothetical, but it will assist me in something else.

Mr. Robert Watt: If it was brought to my attention, I would ask our HR people to talk to the relevant people in that agency to set out very clearly what the guidance says in respect of how to treat protected disclosures. I would not get involved.

Deputy Marc MacSharry: Is the guidance on that clear enough?

Mr. Robert Watt: I think we debated this the last time. I certainly read transcripts about a conversation. We have done a review. The legislation was enacted a few years ago and we have done a review. The Government has asked a group to look at the implementation of it. We are not suggesting, at this stage, any legislative changes, but we are looking at the guidelines because there is a question about whether they are being implemented uniformly. Do people understand what their obligations are? Do we have enough trained people? A lot of it has to do with having trained people. Through the Office of Government Procurement, we have a programme where we are actually investing to make sure people have it. When it comes to allegations that are made, it is complex and there are different stories. People have to be trained, have to be professional and diligent about it, and go through it in a professional and thorough way. When it comes to disclosures, it is that question about whether Departments or offices know exactly what their responsibilities are and if they have the people with the capacity to follow the legislation.

Deputy Marc MacSharry: That is grand. I will leave that one now.

Mr. Watt mentioned the Irish Government Economic and Evaluation Service. In recent weeks we have examined the OPW over a mistake that was made in the calculation of measurement versus the agreed amount on Miesian Plaza and it is costing the State effectively €344,000 a year for 25 years. The Secretary General, or commissioner as we would more commonly refer to him, felt that was absolutely not a matter for disciplinary action or any disciplinary process within the Department. He said the OPW would feel partly responsible but not completely responsible. The absence of tangible sanction is something that has come up in the two years I have been a member of this committee. Last week I made the comparison with such a mistake being made in the private sector. I used Jones Lang LaSalle, picking a name out of the sky. I think Mr. Watt would agree that someone might last the rest of the day but would be unlikely to last the rest the week. Has the Irish Government Economic and Evaluation Service done any papers on the need to introduce sanctions?

Mr. Robert Watt: The Irish Government Economic Evaluation Service has not done a review looking at sanctions, but we have looked at this in other papers in the Department previously. In relation to Jones Lang LaSalle or any other company, my experience is not quite as straightforward as that. People are allowed to make a few mistakes in the private sector too - these companies accept the world of uncertainty too. People are not necessarily fired. A

contract-----

Deputy Marc MacSharry: I did not suggest being fired.

Mr. Robert Watt: Generally a contract would be that someone would have a few opportunities to fail before being chucked out. It is not after the first or the second mistake. Maybe the third time someone says, "This isn't working out for you". Of course, in the private sector, like in our system, one has to give people warnings. If someone makes a mistake, the company says, "Look, that failure-----

Deputy Marc MacSharry: I am not looking for anybody's head. I asked about a disciplinary process.

Mr. Robert Watt: There is a disciplinary-----

Deputy Marc MacSharry: A verbal warning is part of a process, but-----

Mr. Robert Watt: There is within the Civil Service-----

Deputy Marc MacSharry: -----we are not even looking at a process. If a €10 million mistake over 25 years is within the bounds of acceptability, that is a bad benchmark. Would Mr. Watt agree?

Mr. Robert Watt: I do not know the details of it.

Deputy Marc MacSharry: They were all over the newspapers.

Mr. Robert Watt: I heard about the Miesian issue, but I do not know the exact details.

Deputy Marc MacSharry: We were told it was very complex. Unfortunately, I have some experience of the area and it is not complex at all. It is kind of banana maths.

Mr. Robert Watt: Mistakes happen. There was a court case recently.

Deputy Marc MacSharry: The Irish Government Economic and Evaluation Service might consider doing a paper on the need for sanction.

Mr. Robert Watt: I do not think it is an economic question. It is a question of having a very clear culture and having-----

Deputy Marc MacSharry: I do not think it is about culture; it is about individual performance. We hide behind terms like culture and systemic failure on a regular basis. In the private sector that is less likely to happen because people know there is a process that is very clearly identified that engages at a particular point in time when there is wrongdoing or poor performance. It is much more obscure in the public sector.

Mr. Robert Watt: The process is not dissimilar between the public and private sector, but there is a greater reluctance in our system to have it out with people. I do not think it is a process issue. I think it really comes down to whether there is a willingness there to have those difficult conversations.

Deputy Marc MacSharry: Willingness by whom?

Mr. Robert Watt: It has to do with the managers, leaders, heads of organisations and so on.

Deputy Marc MacSharry: As one of the supreme leaders, would Mr. Watt not think this is something that we should-----

Mr. Robert Watt: I am not going to comment on the OPW case because-----

Deputy Marc MacSharry: I was giving that as an example. The Department of Public Expenditure and Reform helps to advise government on how to save money and how to avoid repetition of mistakes.

Mr. Robert Watt: I agree. If one has somebody who is involved in discharging a function and that person makes a number of mistakes, they can no longer stay in that role because they are not able to do their job for which they are being paid.

Deputy Marc MacSharry: One of Mr. Watt's closing remarks-----

Chairman: The Deputy should ask his last question.

Deputy Marc MacSharry: I am out of time and I have a supplementary to this question. I appeal to the Chairman.

Chairman: Briefly.

Deputy Marc MacSharry: Mr. Watt was at pains to point out - I admire him for it and the proof is in the pudding with the exceptional performance of his Department - that he was totally personally committed to the appropriate expertise of his team. I am not sure others are. We established last week that none of the commissioners in the OPW has a property qualification, for example. I will leave that and go on to another-----

Mr. Robert Watt: Could I give a comment on that?

Deputy Marc MacSharry: Let me roll up the next question because I do not want to annoy the Chairman. Mr. Watt can certainly answer that. On property-related matters, I am interested in hearing Mr. Watt's view on the sale and acquisition of the former Harold's Cross greyhound stadium, which was the subject of a Committee of Public Accounts meeting in May last. At that time, my crude valuation was probably within a couple of million of the valuation done by Savills, the existence of which we were informed of at that meeting, yet the State paid €23 million for the site. I described that at the time as "kiting", which is paying one overdraft off with another. If it was a bailout of a State agency so be it, but we need to tell the people this rather than try to dress up as value for money the purchase of a property for €23 million which was worth only €12 million.

Mr. Robert Watt: On the professionalisation of the Civil Service, the Department of Public Expenditure and Reform was established in 2011. Since 2012, when we commenced the development of the Civil Service renewal programme, a significant focus has been on professionalisation of the Civil Service. It is a fair critique of the service that over the previous 15 or 20 years it has moved from a professional service to a generalist service. We need generalist civil servants because they have a professional capacity as administrators but alongside this we need professionals in the area of accountancy, economics, auditing, tax and actuaries. There are many staff in the Department with specialised capacity but we need to continue to build up this expertise.

On human resources, professional HR is critical. I find astounding the notion that one could run an organisation of scale that involves people without people with professional qualifica-

tions in human resources. The same applies in regard to audit, accountancy and financial and economic services. If one wants to build a bridge one employs an engineer to do it because an engineer would do the best job. This philosophy needs to be within our system. We are professionalising very significantly. Increasingly, the recruitment we do is for specific tasks and activities. Any agency, particularly agencies that are involved in delivering for citizens, for example, IT projects or buildings, must have the expertise because it is a specific function.

On the Harold's Cross site - I am aware that the Secretary General of the Department of Education and Skills will be before the committee this afternoon - it would not be acceptable for any transaction to be organised in a way to bail out another body. The valuation should be the valuation. What the Department of Education and Skills pays has to be based on a valuation that is provided by the relevant body or authority. It cannot be that one part of the State - I am sure the Secretary General will confirm this - decides to buy a site, the implication of which is to reduce the debts of another.

Deputy Marc MacSharry: From Mr. Watt's perspective, what is the relevant authority in respect of that valuation?

Mr. Robert Watt: The Valuation Office would have provided the valuation to the Department and the Department would have-----

Deputy Marc MacSharry: Could that office be asked to retro-engineer a valuation to facilitate?

Mr. Robert Watt: No. The Valuation Office would be given a mandate and remit. The valuation of a piece of land depends on its current use and prospective use based on the rezoning of the land. It is never clear-cut. If one has a field that is worth €10,000 per acre but if one has it rezoned, it becomes worth a lot more. There is a broader issue in regard to land which is arising given what we do in terms of the Land Development Agency, namely, the State buying land at development prices which are artificially inflated by the fact that we have an approach to servicing rezoning land, which artificially increases the price. There is a wider issue here which we are grappling with in the context of the Land Development Agency.

Deputy Marc MacSharry: We are in trouble if land is being inflated by one Department for the benefit of another.

Mr. Robert Watt: There are other issues involved.

Chairman: I call Deputy Catherine Connolly.

Deputy Catherine Connolly: I am glad we have gender representation correct. If the ratio is three men to one woman, it is a measure of the woman. It is a flippant remark.

Mr. Robert Watt: No, it is not a flippant remark. I am very happy to engage with the Deputy on gender within the Department.

Deputy Catherine Connolly: I disagree with my colleague, Deputy MacSharry, regarding the private sector. I have not seen any more accountability in the private sector. We could start with the banks and what they have cost the country.

Deputy Marc MacSharry: I was speaking about the public sector.

Deputy Catherine Connolly: We are still paying for it. On contingent liabilities and the

case mentioned, in respect of which the same explanation is given in the appropriation accounts for 2016 and 2017, has any progress been made? In the 2016 accounts it is stated that the Department has received a judgment in respect of the ongoing legal case and costs have been awarded. This is repeated in the 2017 accounts.

Mr. Robert Watt: As I understand it, Deputy, the Taxing Master-----

Deputy Catherine Connolly: When was the judgment given?

Mr. Robert Watt: It was given in 2015 or 2016.

Deputy Catherine Connolly: Perhaps Mr. Watt will come back to me on precisely when it was given.

Mr. Robert Watt: This matter has been in dispute and it is now with the Taxing Master.

Deputy Catherine Connolly: The judgment was given in 2015.

Mr. Robert Watt: It was given in 2015 or 2016. I will get the precise year for the Deputy.

Deputy Catherine Connolly: As I said, the same sentence is used in both accounts. A judgment had to be given at a particular time.

Mr. Robert Watt: I think-----

Deputy Catherine Connolly: No. I ask Mr. Watt to come back to me with a particular timeframe.

Mr. Robert Watt: The reason we recorded it as a contingent liability is because we want to be upfront. It is not something that has matured or that we have paid over but it is a liability that we know we will have to face at some time.

Deputy Catherine Connolly: I am glad it is included. I am not questioning that. Rather, I am questioning the use of the same sentence in both accounts and asking what progress has been made. The amount has yet to be determined.

Mr. Robert Watt: Yes.

Deputy Catherine Connolly: If Mr. Watt does not have the information to hand, I ask that he forward a note on when the judgment was given and the reason for the delay.

Mr. Robert Watt: The issue is with the Taxing Master.

Deputy Catherine Connolly: When was it taken up by the Taxing Master?

Mr. Robert Watt: I will check for the Deputy.

Deputy Catherine Connolly: Rather than run-out my time I ask that Mr. Watt come back with a note on the matter.

Mr. Robert Watt: The case went through the various levels of the courts. The final judgment was issued in February of this year.

Deputy Catherine Connolly: I do not understand. It is recorded in the 2016 accounts that the judgment had been received.

Mr. Robert Watt: That was in regard to the High Court. We then went to the Court of Appeal and we have now run out of roads.

Deputy Catherine Connolly: From my reading of the 2016 accounts, I would not realise that the case had not finished. The accounts state that the Department had received a judgment in respect of the ongoing legal case. It does not say the Department was appealing the case.

Mr. Robert Watt: At that stage, we decided that it would be transparent to admit that there is likely a liability on the Vote and that we would set it out there.

Deputy Catherine Connolly: I ask Mr. Watt to provide a note to the committee on the matter. From my reading of the 2015 and 2016 accounts, I got the impression that the judgment was finished and the only outstanding matter was the one of costs. The 2016 account references that the Department had accepted liability in another legal case and that costs were to be agreed by the State Claims Agency. There is no update in this regard in the 2017 accounts. I ask Mr. Watt to also clarify this case in the note.

Mr. Robert Watt: We paid the legal costs in that year. As we do not have a liability for subsequent years, it falls off the accounts.

Deputy Catherine Connolly: The accounts state that costs were to be agreed by the States Claims Agency. What were the costs?

Mr. Robert Watt: I think €30,000 was the cost but I cannot recall exactly in regard to what matter.

Deputy Catherine Connolly: All I can do is highlight the matter and ask for clarification on it.

Mr. Robert Watt: We will come back to the Deputy on the matter.

Deputy Catherine Connolly: I will move on to Chapter 2 of the Comptroller and Auditor General's 2017 report - collection of pension contributions due to the Exchequer - to which a paragraph is dedicated in Mr. Watt's opening statement. I understand the legislation came into force in 2013.

Mr. Robert Watt: Yes.

Deputy Catherine Connolly: A circular was then issued in 2016. The Comptroller and Auditor General's report references 14 bodies. This was updated today by Mr. Watt to 16 bodies. Again, I would have liked Mr. Watt to set out in his opening statement an explanation for the delay in this regard. On page 9 of his opening statement there are three paragraphs on the single public service pension scheme. As I said, the legislation came into force in 2013 and a circular was issued in 2016, yet we are only being told today that the number of bodies is 16 rather than the 14 mentioned in the chapter. I would like Mr. Watt to set out the reason for that delay and if many more bodies are expected to come into the scheme. What has the Department done since 2013?

Mr. Robert Watt: We identified this as an issue when we realised there were relevant authorities where employer contributions would have applied. These are bodies that are self-financing and do not necessarily receive a-----

Deputy Catherine Connolly: I understand all of that. I have read the report. I am ask-

ing Mr. Watt for an explanation for the delay from 2013 until now. Was it the Comptroller and Auditor General's chapter that spurred a response?

Mr. Robert Watt: No. It was a realisation that there were some relevant authorities that should have been making employer contributions.

Deputy Catherine Connolly: When did that realisation occur?

Mr. Robert Watt: I think in 2014 or 2015. As the Deputy will be aware, the legislation is incredibly complex. It is the most complex legislation in which the Department has ever been involved. It introduces fundamental change in the approach to pensions. We have moved away from the defined benefit system. We now have a system which involves career averaging and units being accrued. We identified that there was a gap and that there were relevant authorities that might not have been making their contributions.

Deputy Catherine Connolly: Is there a special team or group working on this issue?

Mr. Robert Watt: We would like to have a special team, but a few people are working on it.

Deputy Catherine Connolly: Is there an estimate of the number of bodies which will come under the scheme?

Mr. Robert Watt: We believe there will be somewhere between 25 and 30 bodies.

Deputy Catherine Connolly: Between 25 and 30 in total.

Mr. Robert Watt: Yes, from a total of 400 relevant authorities. These are small bodies.

Deputy Catherine Connolly: When does Mr. Watt expect this work to be completed?

Mr. Robert Watt: We will have completed the review by the end of the year.

Deputy Catherine Connolly: All of the bodies will have been identified by the end of the year. A back payment will then have to be made.

Mr. Robert Watt: We will pursue bodies for back payments which may be due.

Deputy Catherine Connolly: That will also have implications for those bodies.

Mr. Robert Watt: It may. We will have to consider what it will mean. We do not envisage it creating big financial issues for them, but if it does, we will manage the recoupment over a period of time and speak to them if it creates cashflow issues.

Deputy Catherine Connolly: Mr. Watt has referred to 200 published papers. What is the title of-----

Mr. Robert Watt: The Government Evaluation Service.

Deputy Catherine Connolly: Is the spending review the subject of one of the papers?

Mr. Robert Watt: It is. I cannot see it, but it is a certain colour.

Deputy Catherine Connolly: That is very interesting. If Mr. Watt goes to the end and looks at the recommendations-----

Mr. Robert Watt: To what paper is the Deputy referring? What is it called?

Deputy Catherine Connolly: It is the analysis of Office of Public Works spending on State rents. Mr. Watt answered Deputy Marc MacSharry by referring to what he had read in the paper about the Miesian Plaza. His Department had to give permission for that lease.

Mr. Robert Watt: In relation to-----

Deputy Catherine Connolly: Did the Department have to give permission for the lease?

Mr. Robert Watt: We were supportive of it. In effect, staff of the Department of Health in Hawkins House, a building which is no longer suitable-----

Deputy Catherine Connolly: I am sorry, but we are being kept on a tight leash today. Mr. Watt has answered my question. His Department had to give permission for the lease.

Mr. Robert Watt: We sanctioned the taking over of the building by-----

Deputy Catherine Connolly: I understood the Department of Health had to write to or contact the Department of Public Expenditure and Reform by other means to ask for permission to enter into the lease arrangement. Is that correct?

Mr. Robert Watt: Yes.

Deputy Catherine Connolly: Was it just a formality or did the Department actually look at the lease?

Mr. Robert Watt: We would have had line of sight to the overall cost of the lease, the size of the building and the number of civil servants to be housed in it. The Department had to produce a business case and set out the rationale.

Deputy Catherine Connolly: Did Mr. Watt look at the business case?

Mr. Robert Watt: Yes, colleagues in the Department would have looked at it.

Deputy Catherine Connolly: Mr. Watt has seen the report of the Comptroller and Auditor General which highlights the inadequacies of the case.

Mr. Robert Watt: I have not read the report.

Deputy Catherine Connolly: Perhaps Mr. Watt should read it. It is from the Department of Public Expenditure and Reform and refers to value for money.

Mr. Robert Watt: I will get to it. When was the report from the Comptroller and Auditor General issued? It was issued three weeks ago at the end of September.

Deputy Catherine Connolly: The factors involved have been highly publicised. I have the greatest of respect for civil servants and the public sector and I am asking questions within that framework. When we looked at this issue, it jumped out that the Department of Public Expenditure and Reform had to give permission for the lease. It seems it was a formality, but there are guidelines, or even stronger language, in circular about the making of a robust business case that looks at all of the options. It seems to the members of the committee that all of the options were not looked at, including purchase or others. Perhaps the Department of Public Expenditure and Reform should look at how it gave the thumbs up to a lease that involved in-

curring extra expenditure without the making of a robust business case.

Mr. Robert Watt: The circular states Departments or offices - in this case, the OPW - have to produce a business case and outline the rationale for-----

Deputy Catherine Connolly: I understand that. It did.

Mr. Robert Watt: I am not going to comment on it because-----

Deputy Catherine Connolly: I am asking the Department of Public Expenditure and Reform to comment on why it gave the thumbs up to a lease which led to a greater burden on the taxpayer as a result of a miscalculation when other options were not looked at.

Mr. Robert Watt: I do not know whether other options were looked at. If the Deputy is asking me whether the option to purchase was looked at-----

Deputy Catherine Connolly: I am asking how the Department of Public Expenditure and Reform gave the thumbs up to the lease without looking at the details. Perhaps that should not be a role it should have, but the Department of Health asked the Department of Public Expenditure and Reform if it was okay and it stated it was.

Mr. Robert Watt: Yes, that is what happened.

Deputy Catherine Connolly: I have a difficulty with that. On achieving value for money and tendering, it is very often the case that our energy is focused on non-compliance in procurement. An issue in the education and training boards has been drawn to my attention. I still call them vocational education committees. The framework from the Office of Government Procurement includes the rules that apply in seeking tenders from trainers to provide courses for the various VECs. How does Mr. Watt judge the value for money achieved in that instance? How was it assessed?

Mr. Robert Watt: The background is that the Office of Government Procurement provides a contract framework which allows several bodies, including many of the education and training boards, to access expertise, rather than individually having to procure such services. Without knowing the details, I presume that if one is procuring a trainer to provide a particular course or module, experience and previous references, including about capacity and so on, are investigated, and that the cost per day is considered.

Deputy Catherine Connolly: As I understand Mr. Watt is speaking in a vacuum, I am not particularising. I am looking specifically at procuring trainers to provide various courses in a situation where there is a framework in place. I am being told that it is costing much more and that people on the ground with experience have seen costs go up by 100% in some cases as a result of the new framework. There is less competition and fewer courses, but prices have gone up. How does the Department of Public Expenditure and Reform assess value for money when such a framework is introduced and people on the ground are saying it is now much more expensive.

Mr. Robert Watt: I would certainly be interested in receiving the data available. Our colleagues in the Office of Government Procurement would also be interested in receiving them because they operate procurement contracts to achieve the best possible value for the taxpayer. If it looks as if the framework is not delivering, we will be happy to look at the matter. As I do not know the details, I cannot comment on it.

Deputy Catherine Connolly: I do not expect Mr. Watt to know the details, but I welcome what he said. If a framework is brought forward based on an presumption that it will provide for better value, what structures are in place to check that is the case?

Mr. Robert Watt: We look at the previous cost of the service, the value of the service, the level of satisfaction with the service and the results of the competition and what is achieved when we run it, including the number of providers and the cost of tenders. A key aspect is-----

Deputy Catherine Connolly: I am glad to hear that the previous cost and the cost under the new framework are compared. When and how is it done? Who does it?

Mr. Robert Watt: It is done by the Office of Government Procurement which is a division of the Department of Public Expenditure and Reform.

Deputy Catherine Connolly: Is there a random selection of certain services which have been procured, or how is it done?

Mr. Robert Watt: It depends on the nature of the service provided. For some services, there is a very clear matrix. Other services are more heterogenous and it is very hard to have comparators across different areas or between different time periods. The Office of Government Procure tries to establish benchmarks and a matrix. It then considers whether we are getting value for money. It was established to consolidate and professionalise the procurement process because of concerns raised repeatedly by successive Comptrollers and Auditors General.

Deputy Catherine Connolly: I understand that. As I said, most of our time is taken up examining non-compliance. This is different. I am asking about the achievement of value for money where a new framework obliges services to be procured in a particular manner. The feedback is that it is much more expensive.

Mr. Robert Watt: We would be very happy to look at that feedback and reflect it. If the Deputy could make it available to us, we would be happy to do that.

Deputy Catherine Connolly: Good. My final question relates back to this lovely document, which is very helpful in the context of the information it provides regarding value for money and renting buildings as opposed to purchasing or constructing them. The document in question is one of the Department's 200 papers. It states that there are a number of areas worthy of further research and refers to "an assessment of the balance between capital and current expenditure (long term value for money of construction/acquisition ... versus leased options)". This is crucial in the context of the astronomical rents people are paying and the fact that the Government is i lár an aonaigh. It is in the middle of the fair, actively increasing the prices in conjunction with the policy. I do not expect Mr. Watt to comment on policy - that is my comment on it. Is there not an urgency to look at getting value for money in terms of leasing, purchasing or building?

Mr. Robert Watt: There is. It is always a decision as to whether one leases or purchase. It is sometimes a judgment call. There are benefits to leasing. The maintenance costs, the life-cycle costs and so on-----

Deputy Catherine Connolly: I understand that.

Mr. Robert Watt: -----are for others to consider.

Deputy Catherine Connolly: I am beyond that just for the moment. As I understand it, the

business case for Foras na Gaeilge recommended not leasing. The business case in respect of the Miesian Plaza was not sufficiently robust. When will the Department conduct the further research? Has such research been commissioned? Given the expenditure involved, is it value for money to continue renting at astronomical prices? The NTMA stated that its accommodation costs more than €1 million per floor. When will the research start, when it will be completed and who will carry it out?

Mr. Robert Watt: I am not sure where the work programme stands in the context of the follow-up to that report. I will check. I am not sure where we are with it.

Chairman: Mr. Watt will come back on it.

Mr. Robert Watt: We will come back to the committee. However, the purchase price of a building is also a reflection of the rent, as the Deputy will know. If the rent is high, the purchase price will also be high because it is based on a certain rate of return that is expected.

Deputy Catherine Connolly: It is construction prices.

Mr. Robert Watt: They are not decoupled from each other. It not as simple as saying that if renting a building costs €1 million, then buying it is a function of the rent.

Deputy Catherine Connolly: I do not think it is simple but I would like evidence that it is better value for money to rent, for example, the NTMA building, at more than €1 million per floor. We at least need evidence that this is good value for money as opposed to construction and getting a building on a long-term basis.

Chairman: I call Deputy Catherine Murphy. Deputy Cullinane is next.

Deputy Catherine Murphy: I want to ask a number of questions. I will try and keep them short and I would appreciate short replies.

On financial reporting for audit, the Department gave different figures for different years in terms of time compliance. It has been improving but there is no reason it should not be 100%. How did the Department bring about the improvements? Are there sanctions? Is a carrot-and-stick approach being employed? What approach is the Department taking to those that fall outside the time limits with which they should comply? Is it the same organisations that are repeat offenders or is there a mixture? What is the profile in that regard?

Mr. Robert Watt: In recent years, the bodies have mainly been ETBs and various higher education bodies, for example, universities. A variety of issues in this regard are listed in various reports of the Comptroller and Auditor General. There was a change of structure, from VECs to ETBs. The Deputy will be aware of all that history. That impacted upon their ability to prepare their accounts on time. As for how convinced one is of those arguments, I will leave it there.

The issue is that compliance has improved because it has been highlighted by the Comptroller and Auditor General and this committee, and we followed it up through various actions and circulars. We published Circular 25/2017: Requirements for Appropriation Accounts 2017, which puts an onus on Departments to set out why particular bodies may not have complied with timeframes. The purpose of this is to throw a light on the matter. In most cases, there is an element of inertia. If one highlights that, one can address the problem and put pressure on boards and CEOs to ensure they are complying.

Just to say, and speaking privately here, this would not be tolerated-----

Chairman: We are in public session. I say that just in case Mr. Watt thinks we are in private session.

Mr. Robert Watt: -----by a Department. If a Department did not have its accounts ready by Easter, the Comptroller and Auditor General might give the Deputy a view as to what would happen. He would make a phone call. Whether it was a case of me phoning him or him phoning me, we just would not tolerate it. In any event, I just do not quite understand why they cannot be prepared.

The reality is that we have got the number up in terms of the completion. By the end of 2017, 99.6% of the total turnover had been audited. There is an issue about the presentation, which the Chair mentioned earlier and which we need to work on. It is difficult to get 100% compliance in any area.

Deputy Catherine Murphy: I understand that.

Mr. Robert Watt: That is as good as we are going to get.

Chairman: I will be only a split second, and I am not taking it off Deputy Catherine Murphy's time.

Deputy Catherine Murphy: Mr. Watt can come back to me on that.

Chairman: The HSE has got it to 100% in respect of section 38 organisations because it threatened to slow down the funding to those organisations next year.

Mr. Robert Watt: We had some encouragement with those sanctions.

Chairman: Yes, the stick and carrot.

Mr. Robert Watt: That is right.

Deputy Catherine Murphy: Does the Department have oversight of public bodies that do not come not under the remit of the Comptroller and Auditor General such as, for example, Irish Water, which was established as a semi-State company? What, if anything, does the Department do in respect of Irish Water? Are the other organisations similar to Irish Water over which it has oversight?

Mr. Robert Watt: These are bodies that are not commercial semi-State companies. An organisation is not a commercial semi-State because it is in receipt of Exchequer funding. The bodies in question are not audited by the Comptroller and Auditor General.

Deputy Catherine Murphy: There is a gap.

Mr. Robert Watt: There is a gap but they are audited independently.

Deputy Catherine Murphy: There is no oversight.

Mr. Robert Watt: The allocation of Exchequer funding to the body in question is the responsibility of the Accounting Officer for the Department of Housing, Planning and Local Government, that is, the Secretary General, Mr. John McCarthy, who must account to this committee for the voted spending, some of which will end up in Irish Water. John McCarthy is

accountable for that spending. There have been discussions about whether the Comptroller and Auditor General would have a more formal role regarding Irish Water. I have an open mind on the best way to ensure that these bodies are accountable.

Deputy Catherine Murphy: They spend a significant amount of money. We do not know if there is value for money because we cannot drill down into the figures and because the Comptroller and Auditor General does not have a function here. Is that a unique situation?

Mr. Robert Watt: The board of the commercial semi-State company is accountable. It has responsibility for ensuring that the company adheres to the code of practice. These companies are obliged to meet a variety of obligations in terms of how they account for public money and how they audit it. They are responsible. As for whether there should be a formal role for the Comptroller and Auditor General and this committee, I do not know if that would work or if people feel that would improve the basis of our accountability.

Deputy Catherine Murphy: The nature of the organisation changed from when it was initially set up but it does not seem that the arrangements have changed accordingly. That is the point I would make. I will leave it at that.

Returning to the point on property assets, it is proposed to amend the financial reporting framework to address some shortcomings and to provide guidance and certainty for Departments for some classes of buildings and replacement costs. I presume this includes matters such as depreciation. What shortcomings does the Department see there?

Mr. Robert Watt: Is this in the management of assets?

Deputy Catherine Murphy: It is.

Mr. Seamus McCarthy: In accounting for property assets, the key problem is that there is not consistency across Departments and offices in how they value and account for capital assets. I am drawing attention to the fact that it is inconsistent. What we would be looking to see in a restructuring of the framework for accounting is more consistency in how assets are valued and accounted for.

Deputy Catherine Murphy: Are there wide variations?

Mr. Seamus McCarthy: There are quite significant variations. Let me give an example from the Office of Public Works, which came before the committee last week to discuss its Vote. The OPW has four different bases of accounting for land and buildings. There is valuation, there is a question of revaluation, there is carrying them at historic cost and so on. Wherever an organisation has capital assets, in particular buildings, on its statement of financial position, it is left to each Accounting Officer to determine how the building will be valued. There is no single view by the Department of Public Expenditure and Reform on this matter. It probably reflects historical developments and the very considerable diversity in the nature of the assets, such as courthouses, schools, prisons, office buildings, heritage properties and so on. It is complicated and it will take a piece of work to get an acceptable and consistent framework.

Deputy Catherine Murphy: Is there work being done on that?

Mr. Robert Watt: Yes, there is. It is related to the move to accrual accounting. In effect, at present we have a cash-based approach. There is a budget.

Deputy Catherine Murphy: When will we see that work come to fruition?

Mr. Robert Watt: At present the accounts are presented on a cash basis and a part-accrual basis and one can see various statements where partial balance sheets are provided. If we move to a fully integrated balance sheet, that is, a full accrual system, it would be particularly important that we would have very clear rules in terms of valuations of assets and the depreciation of those assets because the depreciation item will become a significant issue. This comes back to the question that Deputy Connolly asked about capital versus leases. The cost of a lease is very clear and transparent on our accounts because the cash goes out, but the capital asset, the value and treatment of the asset and who pays for the asset is treated differently because it is cash. That is the reason there is a challenge within public accounting, which has not moved fully to accrual accounting, when it comes to how we manage assets.

Deputy Catherine Murphy: I wish to ask questions on the cost of buying a building as opposed to renting it and the relationship of both of those. There was a sizeable public landbank, but I do not know whether this land was located in suitable locations. Location would have an impact in that building on it would probably be cheaper than buying it, given that the price of land would have had an impact on the cost. Has the Department given consideration in detail to that issue? It seems that we are spending an absolute fortune on leases. Last week we discussed the lease of a building for the Department of Health, which was a case in point.

Mr. Robert Watt: I am not privy to the debate on leasing that the Committee of Public Accounts had because I have not read the report of the Comptroller and Auditor General. We had the budget last week.

Chairman: Is Mr. Watt on the board of NAMA?

Mr. Robert Watt: I am on the board of the NTMA, not NAMA.

Chairman: Did the NTMA decide recently to release the building it is occupying?

Mr. Robert Watt: The NTMA is moving from the Treasury Building, so the lease is finished.

Chairman: Where is the NTMA going to locate?

Mr. Robert Watt: The NTMA is moving to a new building beside the Central Bank of Ireland.

Chairman: Is that on a lease basis?

Mr. Robert Watt: Yes, on a lease basis.

Chairman: Mr. Watt is a Secretary General and Accounting Officer. He is on the board of the NTMA, which is in the process of moving. The NTMA was before the Committee of Public Accounts and was a party to the discussion on the issue of leasing buildings as opposed to purchasing them. Mr. Watt must be familiar with the broader debate on this matter.

Mr. Robert Watt: Yes, I am familiar with the broader issue.

Chairman: We are getting the impression that there is a view emanating from quarters such as Mr. Watt's - not Mr. Watt personally but board members, the Department of Finance and the Department of Public Expenditure and Reform – that there is a preference to lease rather than purchase property. Expenditure ceilings and other such issues were raised. We are receiving the view that officials are moving towards long-term renting rather than purchase.

Mr. Robert Watt: The Chairman has expressed an interesting view but I have not heard it. One can argue that the accounting rules would militate against upfront purchase, because of our cash based approach to budgeting and the rules that if we incur the capital cost this year, the full capital cost goes on the balance sheet, whereas renting is different. It depends-----

Chairman: There is validity in the point, and it is part of the thinking.

Mr. Robert Watt: It depends on the nature of the lease. In some leases, all of that spending could be accrued for general Government purposes in the year in which the lease is signed. It is analogous to purchase for Government accounting reasons. It depends on the nature of the lease, because one is entering into a contract. It depends on the nature of risk transfer. The Chairman may recall the conversation on public private partnerships, which one could argue is in the same place.

Chairman: That is Miesian Plaza, a contract for €300 million over 25 years. What went on the State balance sheet for that?

Mr. Robert Watt: What goes on to the State balance sheet is the lease cost each year, that is, the rental cost each year that goes out of the OPW.

Chairman: Is that on a year-by-year basis?

Mr. Robert Watt: Yes, on a year-by-year basis.

Chairman: However, Mr. Watt had mentioned that in some cases-----

Mr. Robert Watt: There is a broader policy question, and it is a significant question.

Chairman: Will Mr. Watt give an example where the full lease for the 20 years went upfront onto the State balance sheet in year one?

Mr. Robert Watt: There are examples, but it depends on the nature of the risk transfer, for example, if we took over more of the maintenance of the building as well as the leasing of it. I will come back to the Chairman on that point.

Chairman: I ask Mr. Watt to bear with me. He introduced the matter that all of the cost could be brought onto the balance sheet in year one, depending on the nature of the lease. I have now asked him for a single example but he cannot give me one. He cannot make statements without giving an example of what he is talking about.

Mr. Robert Watt: Let me row back for a second. If the Chairman is saying that the fiscal rules might be encouraging people to lease rather than upfront-----

Chairman: I am saying that is what Mr. Watt is saying.

Mr. Robert Watt: The Chairman said to me that people were telling him that the Department of Public Expenditure and Reform and the Department of Finance-----

Chairman: Yes, that the Department of Public Expenditure and Reform and the Department of Finance are pushing this.

Mr. Robert Watt: I am not privy to the Chairman's conversations. He is telling me now, so I am trying to be helpful. If the Chairman is telling me that bodies are telling him that they would prefer to purchase a building but are discouraged and prefer to lease because of the fiscal

rules, that is something we will have to look at to see if that is the case. If it is accounted for, it is all general Government spending in year one as opposed to being spread over 20 years. The suggestion I was making is that this does not apply in all cases. I will go back and check.

Chairman: Will Mr. Watt provide the committee with a full note?

Mr. Robert Watt: If the balance sheet treatment could be affected so that one could purchase but the balance sheet treatment would be different, then it would have implications for how public bodies would make the decision between different options.

Chairman: This is a matter that has come up when we had the NTMA, the OPW and others before us. It has come up a few times. We are asking Mr. Watt to give a detailed note from his perspective.

Deputy Catherine Murphy: It seems the State has an aversion to building. Given that we have a landbank-----

Mr. Robert Watt: Next year there will be an increase of 25% in the capital spend. We will be spending €7.5 billion on buildings.

Deputy David Cullinane: From a very low base.

Mr. Robert Watt: I understand the point the Deputy is making.

Deputy Catherine Murphy: I will await the note and I am sure we will take it up at that point. I will now deal with the open data portal. We are into a new regime with freedom of information, FOI, requests and such things that will be heavily used. I use it myself. If one gets a whole throughput of things on a particular data set, does that influence what is put on the open data portal?

Mr. Robert Watt: We naively assumed that when we had put all the data on the open data, and we have more than 8,000 data sets now, that would reduce the volume of FOI requests because people would access the data from the portal. In fact, the number of FOI requests has increased since we amended the Act. It has led to an increase of more than 40% in the number of FOI requests and last year we had 37,000 FOI requests, so it has not reduced the number. Part of the motivation for us is to be more out there when it comes to the availability of data and putting them on websites. We put nearly everything up on our website. We just put it up there. We hoped that would reduce the volume of freedom of information requests but it has not. The philosophy since 2012 is to be much more open and transparent around publication. We now publish pretty much everything. There are a whole variety of administrative data which are available for the first time and we have an enormous level of activity on the site with people downloading the data sets. It is an important innovation. It was guided by the wish to reduce the volume of FOI requests, which are administratively time-consuming, and for people to go to the website to access the data themselves.

Deputy Catherine Murphy: Is the 37,000 figure for all Departments?

Mr. Robert Watt: Yes.

Deputy Catherine Murphy: That is all of the Government Departments.

Mr. Robert Watt: Civil Service Departments, yes.

Deputy Catherine Murphy: Is that an annual figure?

Mr. Robert Watt: I think those numbers are for 2017. I have a recollection of reading that yesterday. It is 37,000.

Deputy Catherine Murphy: Obviously, it is very welcome that the IT systems have been-----

Mr. Robert Watt: I apologise; it was 34,000.

Deputy Catherine Murphy: It is very welcome that there is an information officer and improvements and ongoing investment in IT systems. I wonder about the historical records as there are different generations of IT and a potential to lose records. What is happening in that regard? Is that happening on an ongoing basis given the potential to lose information. While the Department can mind the data that are being put up now, how is the system kept up to date? What ongoing investment is required?

Mr. Robert Watt: We work with the National Archives as we have a responsibility as a public body under the National Archives Act to maintain proper public records and to make them available to the archivist under the various rules. An issue has arisen as we move from a purely paper-based system to one which is paper-based and electronic and then on to a system which will ultimately be almost entirely electronic. We are between the latter two stages now. More and more records are electronic rather than on paper. The position in the past was that if one got an electronic record, one printed it off and put it on a file which would go to the archives. In future, everything will be recorded electronically. Any physical copy will be scanned to become an electronic record and the physical copy will be destroyed, unless it is a legal document such as a deed. We are working with the archivist on this and we have a very significant project linked to the build-to-share matter I spoke about earlier where all record-keeping will be electronic record-keeping. We will no longer have paper records in Government Departments. However, there is a danger. We are very conscious in moving from paper records now of the need to ensure the electronic records are kept for future generations. There is a danger there, which other countries are also facing. As such, we are working with the National Archives on this.

Deputy Catherine Murphy: What about early generation IT systems and the things that were generated then? Is that paper-based as well?

Mr. Robert Watt: I am not that technical but what happens is that most documents are in PDF, which is a general readable format as I understand it. If one had an earlier version of Word which one cannot now access, those documents would have been transferred to PDF, which is a readable format.

Deputy Catherine Murphy: Do we have any idea how big this project is?

Mr. Robert Watt: It is enormous.

Mr. Robert Watt: Is there a section in the Department dealing with it?

Mr. Robert Watt: Yes.

Deputy Catherine Murphy: Is there a cost on that?

Mr. Robert Watt: The OGCIIO is rolling out the electronic records system and we have it

in the Department now. In effect, it is an electronic filing system whereas in the past one would have had a paper file. One now has an electronic filing system so that rather than being printed off, photocopied and put in a file, electronic files are dragged across. If the Deputy and I were corresponding about a leasing issue, for example, there would previously have been a folder containing that correspondence whereas it is now an electronic record and all emails and letters are dragged across into the file which is kept. If people look at the issue in future, the archivist will provide them with a memory stick rather than having us hand over volumes of paper. That is how it will work. The savings are enormous and it will be a good deal easier for future historians looking at our deliberations to search files and track what went on in however many years' time.

Deputy Catherine Murphy: And catalogue.

Mr. Robert Watt: Yes.

Deputy Catherine Murphy: My final question is on the review under way on the local property tax. The review is due later this year and the Department has been involved in it. Is the review looking at the valuations or is it also looking at the baselines?

Mr. Robert Watt: The Minister has announced it and I think the rate struck is a function of the base of properties. I do not think one can look at it without looking at the totality of the-----

Deputy Catherine Murphy: What about the problem with the baselines?

Mr. Robert Watt: All aspects are being looked at. I am not involved personally in the review which is being led by the Department of Finance. We will have a role when the Minister is presented with the conclusions. It is looking at the overall funding of the local property tax element and how that funds the local government system.

Deputy Catherine Murphy: I thank Mr. Watt.

Deputy David Cullinane: I welcome Mr. Watt and his team to the committee. It is fair to say that it is a good job all around as far as I can see. There was not a huge amount I could have picked from the Comptroller and Auditor General's special report for this Department, which is obviously good. However, there are a number of questions I want to put, along with making a number of observations. Some of these may have been asked. I was doing some media interviews and was not here for all of the contributions. If there is any repetition, Mr. Watt might say so.

My first point is a bit repetitious but I wanted to make an observation as well as to put a question. In his summary in the report, the Comptroller and Auditor General said two thirds of bodies produced their audited accounts and that those accounts covered 97% of the value of the turnover audited. Obviously, 97% is high on the face of it and is very good. The difficulty is when one looks at the amount of money. My calculation is that 100% would be €218 billion. If 3% is not audited, that is €6 billion which is not audited as it should be. Does Mr. Watt accept that it is a great deal of money? While he said 97% may be as good as we are going to get it, I do not think he intended it in that way.

Mr. Robert Watt: I did not say that. To clarify, the number I referred to was 99.6% by the end of 2017. The Comptroller and Auditor General's report says that 99.6% of the total turnover was audited within 12 months of the end of the year. It is a lot of numbers.

Mr. Seamus McCarthy: The 97% of value was by the end of September.

Deputy David Cullinane: So it has increased again.

Mr. Seamus McCarthy: It does by the end of the year.

Mr. Robert Watt: In the last quarter, the last few percent come through. What I was saying was that 99.6% of the amount was audited by the end of the year, which is not a bad result. However, 100% of it should be done within the next few months. My point was that it is very hard to get 100% within 12 months given the vastness of the system. However, the Deputy is right to say that every cent should be audited.

Deputy David Cullinane: I just wanted to make the point that 99.6% is obviously a very high figure. I accept that and am not being churlish about it. I accept that it is very good. Looking at some of the sectors, the HSE, for example, is an area the committee has put a spotlight on in the past. The previous incarnation of the committee did the same. It has resulted in improvements.

Chairman: To interrupt for a split second, I suspect that after we break, we will resume at 2 p.m. with the Higher Education Authority and the Department of Health. For general information, we will resume at 2 p.m.

Deputy David Cullinane: The areas in which further improvement is needed can be seen from page 17 of the Comptroller and Auditor General's report, which sets out the audit completion table. I know Mr. Watt has discussed the third level education bodies and education and training boards. We have focused on that area ourselves and the HEA and the Department will be here today. Why are they slower or simply slow to present accounts? Does Mr. Watt have a view as to why that is the case?

Mr. Robert Watt: We spoke about this earlier. Their performance was not acceptable and it has improved considerably, in fairness to them, since the position was first outlined in the 2014 report. There was an issue around the change in status of ETBs from VEC boards with a resulting change in structure. At least, that was the explanation and reason put forward. Whether it is valid, it is history now. The point is that the situation has improved.

Deputy David Cullinane: I accept that it has improved, but why did it take an effort by the Office of the Comptroller and Auditor General, which reports every year to us, and then scrutiny from the committee where we put Accounting Officers through their paces? In fact, I think we sent some of them out of the room at one point earlier this year or last year for not having their accounts up to date. Why was there a problem? The situation has improved but it is still well below the level reached by other areas.

Mr. Robert Watt: I mentioned-----

Deputy David Cullinane: Why do third level institutions behave differently from all of the other bodies that have obviously improved?

Mr. Robert Watt: First of all, I think everybody is in-----

Mr. Seamus McCarthy: Everybody has improved.

Mr. Robert Watt: There was an issue and they have, in fairness, improved. There was, obviously, a problem in the past. I think the problem arises, and we see this in other areas, from

the fact that third level institutions are not entirely funded from the Exchequer. They have, obviously, scholarship money, or they have got research funding, or they have got students' fees, so they are not as dependent on the Exchequer. Some of the bodies would have 40% or 50% of their funding coming from the Exchequer. It is very different from a public body like ours that is 100% funded from the Exchequer.

I do not know if the Deputy was here when I was asked about this, but it would be inconceivable that a Department would not have its accounts prepared for the Comptroller and Auditor General by the end of March, going into Easter. I could not imagine a situation where that would arise. I guess a different culture arose or different practices arose which are not acceptable. The Comptroller and Auditor General and the Committee of Public Accounts were spot on to identify it, and we supported it. We have been pushing it as well and we have been saying to people-----

Deputy David Cullinane: I take on board the fact that the Office of the Comptroller and Auditor General has put on the record several times, when we have been asking questions, that there have been improvements. When we discover issues and when we see improvements, we must acknowledge the improvements that have been made, and we have acknowledged those. There has been a huge improvement in the health area, which is good. While we have seen improvements in the education sector, it has not been what we want, perhaps, which is in the presentation of accounts.

An area where we still see recurring problems, and it is in almost in half of the audit on subsets of health, HSE and education spending, is in adherence to procurement rules and non-compliance in terms of procurement. We spoke about a carrot and stick approach in terms of the presentation of accounts. There does not seem to be much stick, as far as I can see, in cases of non-compliance with procurement rules by any public bodies. Does Mr. Watt think that it is acceptable for us, almost year in and year out, when we get the audited opinion from the Comptroller and Auditor General, to get a lack of adherence to and non-compliance with procurement rules? The matter is raised repeatedly and the Comptroller and Auditor General raises it, yet there has been no real improvement of any substance, as far as I can see. Perhaps there has been an improvement in some areas but the problem continues to arise. Does Mr. Watt see that as acceptable behaviour? If not, given that the matter is under his remit, what focus has he put on this area?

Mr. Robert Watt: There can be occasions where there are valid reasons for non-compliance with procurement rules. Departments have to comply with the Circular 40/02 requirement, where if the process is not gone through, it must be explained. Since 2012, we have established the Office of Government Procurement, OGP, whose job it is to professionalise this function and ensure greater compliance. In areas for which the OGP has responsibility, and it works with Departments and offices, there is 100% compliance with the rules.

If services are routinely procured without a competitive process, that is unacceptable. If a service is provided by company X to a public body for ten years and it has not gone through a competitive process, that is not acceptable. There needs to be a competitive process. We have been arguing consistently about the need for people to co-operate with the OGP and to work with it.

Deputy David Cullinane: I must stop Mr. Watt. That is one element. I do not want to go through any of the individual instances because the Office of the Comptroller and Auditor General furnished this committee with a full list of every single organisation that is audited and a list

of the areas where there was non-compliance, which is quite substantial. Some of it is due to insufficient competition, which is a problem. Some of it is due to insufficient planning and not enough time being set aside, for example, An Garda Síochána's computer or IT system. Those in An Garda Síochána did not give themselves enough time and the contracts had to be rolled over. That happens as well. It is the culture and planning.

As Mr. Watt will know, we had instances where conflicts of interest in procurement were not managed. Some of those cases now involve criminal proceedings so we cannot talk about them. There are a multitude of reasons. There might be a valid reason for non-compliance but we can adjudicate on that. The reasons are not always valid.

Mr. Robert Watt: I agree. There are very specific provisions which allow for exclusion from the procurement rules, but they are very specific. In general, non-compliance outside of those exclusion provisions is not acceptable.

I saw it with the Comptroller and Auditor General a number of years ago and we debated at this committee, but the last report, which I am not quite sure whether it was for Civil Service bodies or what part of the public service, showed a very, very high compliance with procurement. I am trying to remember but it was a number of years ago, and I think it was €124 million of procurement was non-compliant, which was about 0.2% or 0.3% of the total subset that the Comptroller and Auditor General looked at. I do not know whether he can remember the details. We had a discussion about it at this stage in terms of materiality and whether that material was lost. The conclusion of that report was, ultimately, that it was material and it was very clear in terms of compliance.

What Deputy Cullinane is saying is that, since then, he has encountered, and I kind of disagree with him-----

Deputy David Cullinane: Perhaps Mr. McCarthy can illuminate some of this for me, which might help Mr. Watt to answer my question. My point, which we have discussed at this committee several times, is that this comes up repeatedly. There are a multitude of reasons for it happening. We ask the Comptroller and Auditor General about it and he tells us this is the reason. Some of it is due to practical reasons. It is not right but it can be said that there is a practical reason. Some of it is not, however, and is either a disregard for the rules, a lack of planning or the board did not have sufficient controls in place. Will the Comptroller and Auditor General give us a flavour of what I see as a problem by outlining where it happens the most and in what areas does it repeatedly happen?

Mr. Seamus McCarthy: I have said on a number of occasions that the problem is most specifically evident in the health sector and the HSE. There is a systemic problem in the HSE around procurement. We have reported on that. Every year the HSE accepts that it has a problem. There are very specific reasons for it and it is not making as much progress as either it or we would like to see.

In other organisations, we report where we identify procurement in excess of €500,000 that is not compliant with the relevant procurement rules. Certainly, there is a way of looking at it and saying that it is not particularly material in the overall scale of an organisation of, let us say, the size of a university, an institute of technology or whatever. That is the level that we are reporting at because there is no other way of drawing the line on materiality. If non-compliant procurement was more than 2%, let us say, that could be a huge sum of money that could have huge implications-----

Deputy David Cullinane: Or it may not.

Mr. Seamus McCarthy: -----for small and medium enterprises that would like to get some of that. We have approached it from an absolute value perspective.

There are many reasons there may be non-competitive procurement. The Secretary General has outlined some of those. Some of them make sense but there are still strategies that need to be applied. For instance, if one is tied into a particular supplier, one needs to ensure when doing a business case for procuring that kind of service that one takes a whole-of-life view. The Department of Public Expenditure and Reform would certainly agree with that kind of approach. We need to see the evidence of that to be satisfied that it is a proper approach. There are other reasons and they may be individual reasons that arise from time to time. It may even be personnel problems in an organisation. We would need to look at getting a statistic for the Deputy.

Deputy David Cullinane: I accept the Comptroller and Auditor General's analysis that there is a systemic problem in the HSE because that is the one area that we keep focusing on.

Mr. Seamus McCarthy: Consistently, yes.

Deputy David Cullinane: Not enough progress has been made, that is for sure. What sanctions are in place?

Deputy David Cullinane: Aside from the Comptroller and Auditor General noting it in his accounts, and the committee asking questions of him or the Accounting Officer when he or she comes before the committee, what sanctions are available in the event that the strategies the Comptroller and Auditor General stated are needed to correct failures are not applied?

Mr. Seamus McCarthy: I am not aware of sanctions in relation to it. One reason I keep referring to it is that there are remedies in the procurement rules which an organisation may expose itself to if it does not comply. That is the reason.

Deputy David Cullinane: I am not out to punish organisations unnecessarily. However, if there is no sanction applied or the only sanction is a slap on the wrist, a note in the Comptroller and Auditor General's audit opinion or a question asked of the organisation in question when it appears before the Committee of Public Accounts, does Mr. Watt think that is sufficient? Could improvements be made in how we sanction the worst offenders?

Mr. Robert Watt: The issue with the HSE is that it needs to engage with the Office of Government Procurement, OGP. This issue has been raised with the HSE many times by the OGP. It needs to engage properly and the committee might raise its engagement with the OGP the next time HSE officials are here. We are not satisfied with the procurement practices and we have made it clear to the HSE. Systemic non-compliance with procurement rules in an organisation is a major governance failure and should not be tolerated.

Deputy David Cullinane: Is Mr. McCarthy hopeful that next year, when we have this discussion again, we will have seen improvements in the health area?

Mr. Seamus McCarthy: No, I do not think that I could give that assurance.

Mr. Robert Watt: I would not be confident about that.

Deputy David Cullinane: If Mr. Watt is the Accounting Officer and Mr. McCarthy is the Comptroller and Auditor General, who is responsible, apart from the head of the Department or

the director general of the HSE? Does the Department of Public Expenditure and Reform have a role in ensuring that the HSE is compliant and does improve?

Mr. Robert Watt: The OGP has been engaging with the HSE for a significant amount of time.

Deputy David Cullinane: Does Mr. Watt personally, as an Accounting Officer, have any responsibility to ensure the HSE is more compliant?

Mr. Robert Watt: No. We have put in place a professional service which will enable the HSE to procure. We have repeatedly highlighted our concerns about procurement practice in the HSE. However, there should not be any need for sanctions. People should be doing the right thing with public money in the absence of any sanctions.

Deputy David Cullinane: We could say that about anything. People should not steal from shops either but unfortunately they do. Sanctions are provided in order that people know a penalty will be paid when they do certain things.

Mr. Robert Watt: We are talking about people working in Government offices providing services. The fact that they are operating with public money and there are rules in place should be sufficient.

Deputy David Cullinane: It is not, however.

Mr. Robert Watt: The key point, and I reiterate this, is that the HSE needs to engage with the OGP. I will give the numbers in terms of non-compliance under Circular 40/2002. This relates to non-competitive procurement. I have figures from the OGP. For 2016, excluding the HSE, the total amount of non-compliance was €94 million. Several of these relate to defence. I do not have the full details but one case involved the purchase of a ship and the extension of a contract. Another related to an armoured cars upgrade and was probably because there was only one supplier in a position to do the upgrade. It amounted to €55 million. Another involved the replacement of an aircraft, which I presume was replaced by the same kind of aircraft. There was then an issue in relation to RTE providing a service to do with the commemorations in 2016. The most significant cases are clear.

I accept that it is an issue in the HSE. I would love to see more evidence. Maybe the Comptroller and Auditor General could update the work his office has done previously. I am not discounting any concerns about any individual case for one moment, but I do not think that there is a general non-compliance problem, with the caveat I just gave. That is my sense. The last review that the Comptroller and Auditor General did was not material, in my view. When one examines the reasons for non-competitive procurement and strips out the genuine reasons, there was a very small number of cases where there was a problem. I do not disagree with what the Deputy said in relation to the HSE.

Deputy David Cullinane: I will conclude with two questions on the same theme.

Chairman: The Deputy has two minutes left. He should put the two questions together.

Deputy David Cullinane: Mr. Watt mentioned the Public Service Pay Commission. I met Mr. Watt on this issue in a previous role. What is the current position regarding pay equalisation for public servants recruited since 2011? Where will they be at the end of the time period for resolving this issue?

A number of pay restoration increases have been made to public servants as a consequence of pay agreements. They range depending on income. Does Mr. Watt have to hand a breakdown of these increases, for example, for someone on a salary of €150,000 compared with someone on a salary of €50,000? What would someone have received who was earning €150,000 at the beginning of pay restoration compared to someone on an average income of €40,000 to €50,000? It would be great if Mr. Watt had those figures and if he could walk us through the plan to deal with those affected by the additional reduction in public service pay in 2011.

Mr. Robert Watt: Under the terms of this agreement, 90% of public servants will have their pay restored by the end of 2020. All those paid up to €70,000 will have their pay restored to above what they were paid. People earning above €70,000 - and the group the Deputy mentioned who are earning €150,000 - are a long way from having their pay restored.

Deputy David Cullinane: However, under the terms of the current agreements, how much will they have got back in monetary terms under pay restoration?

Mr. Robert Watt: I do not have the numbers to hand. The increase in percentage terms in this agreement are between 6.2% and 7.3% over three years. There would have been increases under the previous agreement. I can send the figures to the Deputy.

Chairman: I ask Mr. Watt to send us the schedule.

Deputy David Cullinane: Is that separate from pension related deductions?

Mr. Robert Watt: We must account for the pension because the pension related deduction is an additional pension contribution.

Deputy David Cullinane: I will tell Mr. Watt what would be helpful. I do not want to hold anyone else up.

Mr. Robert Watt: We will send the details.

Deputy David Cullinane: I am seeking a breakdown in tabular form and by income band, for example, up to €25,000, between €25,000 and €50,000, between €50,000 and €75,000 and so forth. It should also show how much was taken from these salary bands under the unilateral pay cuts, how much was restored and how much it is planned to restore, year on year, since pay restoration began. That would give us a good picture. There is also the issue of new entrants' pay.

Chairman: I ask Mr. Watt to send us a detailed note and we will study it.

I have some questions for Mr. Watt. His opening statement noted that in the current year, 2018, voted expenditure was €61.8 billion. It states that, as a result of adjustments and the Christmas bonus and social welfare increases, the revised allocation is €62.8 billion, which is an increase of €1 billion.

Mr. Robert Watt: Yes.

Chairman: If the Exchequer had not received an additional €1 billion in corporation tax, would this have happened? I am asking Mr. Watt because he included this figure. Where did the Department of Expenditure and Reform get that extra €1 billion to give it out on budget day?

Mr. Robert Watt: The Dáil will appropriate the money in due course so it will not be our Department getting it. The Dáil will decide to approve the spending or not. The increases are due to a variety of reasons and will be covered from the Exchequer by a combination of taxes or borrowings in the normal way.

Chairman: Would the Department have had a difficulty if it did not have that extra money? Could it have held off some of the revised allocation?

Mr. Robert Watt: This year revenue has increased by more than was budgeted for by the Department of Finance. That is being used to fund spending, which is above what was allocated, and to close the deficit. The deficit this year is a little lower as a consequence.

Chairman: The Department of Public Expenditure and Reform is covered in Vote 11 and Appendix A sets out the accounts of bodies and funds under the aegis of the Department. This is a new appendix, which has been inserted in all appropriation accounts, and it lists the body, the Department and the date of the audit report. Will Mr. Watt take me down through Appendix A. Who is the Accounting Officer for the various bodies? I will start with the Economic and Social Research Institute?

Mr. Robert Watt: I am the Accounting Officer for the allocations of these moneys from Vote 11 to the various bodies.

Chairman: Who is the Accounting Officer for the ESRI?

Mr. Robert Watt: I am the Accounting Officer. I am responsible for the allocations and that the money is going to the ESRI as a grant-in-aid and that the ESRI is spending it for purposes consistent with the ambit of the Vote.

Chairman: I understand that. The date of audit of the 2016 accounts was 2017.

Mr. Robert Watt: I understand the point the Chairman is making.

Chairman: Given that the ESRI took almost a year to get its 2016 accounts ready for audit - there may be a typing error there - who is the Accounting Officer? Who is the head, the boss?

Mr. Robert Watt: Alan Barrett is the director of the ESRI.

Chairman: That is all I want to know.

The 16 accounts of the Institute of Public Administration, IPA, came in May. Who is the Accounting Officer?

Mr. Robert Watt: The CEO of the IPA.

Chairman: What about the Ireland-United States education fund?

Mr. Robert Watt: There is nothing in that.

Chairman: Who is the Accounting Officer?

Mr. Robert Watt: I am.

Chairman: That is the reason I am asking.

Mr. Robert Watt: There is no activity on that fund.

Chairman: The Department should have had that in on 7 January, a week after the year end. Why did it take 11 months-----

Mr. Robert Watt: There is no activity in that fund.

Chairman: If there is so little activity, it should be done at the beginning of the year, rather than hanging around for 11 months. That is all I am asking.

Why did the regulator of the national lottery take almost a year to get its accounts in? These are under the Department's-----

Mr. Seamus McCarthy: To be clear, this is after the audit has been completed. This is the date that is on my report. We had the Financial Statements, carried out the audit and followed up any queries by that date.

Chairman: That is the date of the audit.

Mr. Seamus McCarthy: That is the date of audit completion. A number of these would have been available much earlier.

Chairman: They would have been in the system of the Comptroller and Auditor General.

Mr. Seamus McCarthy: They would have been in the system but I would not have a team ready to go through all 287 audits at the same time.

Chairman: Inevitably, there is a backlog in the Comptroller and Auditor General's office.

Mr. Seamus McCarthy: Yes, and particularly for the very small ones.

Chairman: We are making an appeal for further funds for the Office of the Comptroller and Auditor General for next year to make sure-----

Mr. Seamus McCarthy: The Government has given us extra resources this year.

Chairman: -----all these accounts that are arriving very quickly get audited very quickly and that the office has the resources to match the increased rate.

The next issue is Vote 12. On the 2016 accounts, I find it unusual that if a retiring civil servant owes overdue tax, it can be repaid over 20 years. That is inappropriate. I know it is paid to the Revenue by the relevant body, but it is inappropriate that a civil servant, or anybody else, should have 20 years to pay.

Mr. Robert Watt: I understand that is the excess charge. If there is a fund threshold of €2 million and if the Revenue calculates that, on retirement, one's notional pension pot is above that threshold, one's personal fund threshold is above the standard fund threshold, then, according to the legislation, one pays back the excess charge over 20 years. It is not income tax. I presume it relates to the excess charge on pension pots. It is related to the standard fund threshold.

Chairman: What is the standard fund threshold at which that kicks in?

Mr. Robert Watt: The fund threshold is €2 million.

Chairman: What salary does that apply to if somebody has done 40 years' service?

Mr. Robert Watt: It depends on how many years' service.

Chairman: Take somebody who has done 40 years.

Mr. Robert Watt: If one has done 40 years, it depends. For service accrued up to 2014, there is a certain multiplier factor related to one's income up to that time. After that, there is a higher factor applied to service accrued after 2014.

Chairman: Roughly what kind of retirement salary are we talking about here?

Mr. Robert Watt: It would be people at the very top, senior levels.

Chairman: A salary of €100,000?

Mr. Robert Watt: And the rest.

Chairman: Above €100,000? In that case, this does not apply to many people.

Mr. Robert Watt: No. In the future, given the current rules, it will involve many people. It will affect people above €120,000, €130,000 or €140,000, depending on how many years' service they have.

Chairman: The excess on the fund must be paid to Revenue from the superannuation and retired allowances within three months.

Mr. Robert Watt: I think it can be paid in a lump sum or over 20 years. In effect, the gross pension is then reduced further by the excess charge. It relates to the fact that the person would have received notional tax relief on the pension contributions. The benefit of that tax relief is capped at €2 million. If one's pension fund is above that, one must pay an excess charge to the Revenue Commissioners. It is related to the Finance Act.

Chairman: That is paid to the Revenue from the superannuation and retired allowances within three months. However, it could take 20 years to recoup that payment from the individual.

Mr. Robert Watt: Yes, 20 years.

Chairman: That is a long time.

Mr. Robert Watt: That is what the Finance Act states. It will raise an issue for the Department and how it accounts for this over time, if it becomes significant. It will raise an issue. The Department has not thought about it. It will raise an issue if it becomes significant but it is not significant now.

Chairman: Mr. Watt and I probably both get it, but many people are confused. People hear mention of pensions of €2 million and 20 years to pay excess tax. I can see people jumping up and down and I would like the matter clarified with a detailed information note about the categories of people to whom it applies and the salaries they earn. I do not need to know who the people are or anything like that. The 20-year repayment period is what caught my eye this morning and it needs to be explained to the public. The best way to do that is through a note that the committee can put on the record for public information.

Mr. Robert Watt: The Chairman will recall that one could previously have a pension pot of up to €5 million or €6 million.

Chairman: I recall that.

Mr. Robert Watt: The fact that this has been brought down means there will be many people involved.

Chairman: That is all the more reason to give a detailed note on how this is operating.

Deputy Bobby Aylward: What happens to the money if an individual dies?

Chairman: It will come off their estate.

Mr. Robert Watt: It will come off their estate.

Chairman: They will not get clearance from whomever and it will come off their estate. People would like to know if there is a potential claim against their estate. Does Mr. Watt get where I am coming from?

Mr. Robert Watt: Yes.

Chairman: A little public information on this would be helpful.

I have two questions about Chapter 2 of this year's report. This is about the collection of pension contributions due to the Exchequer. It is extraordinary that, a couple of years on, we do not know who is in and who is out of the system. What was intended when the legislation was being drafted? There must have been a probable or an exact list of those who should be in the system. What happened? The legislation must have been drafted with some intent?

Mr. Robert Watt: The Chairman and I have spoken about this before. The Act was enormous because the pension system is incredibly complex. We consolidated and rationalised and we now have 65,000 people who are part of the pension scheme. It is amazing how the numbers have increased so dramatically. It was not the most immediate priority in terms of implementation of the Act. That is the reality. This is an element of housekeeping for the Department. It is something that should have been done earlier.

Chairman: The chart of those who are in the system already includes the Institute of Technology, Tralee and the National University of Ireland, Galway. Does that imply that all the institutes of technology and universities will be included? Why would some be included? Mr. Watt said there are 14 bodies in the system and there are only a few left to be included?

Mr. Robert Watt: In relation to elements that are funded themselves, to take Galway, if there is a research entity which is funded independently-----

Chairman: It might not be the full organisation?

Mr. Robert Watt: That is right. It is just a small element of it.

Chairman: I ask Mr. Watt for a note on that.

Mr. Robert Watt: Reading that, one could think it applies to hundreds or thousands of people. It does not.

Chairman: Anyone giving a cursory glance at this list of organisations will presume it refers each organisation in its entirety. I ask Mr. Watt give the committee a note on this.

Mr. Robert Watt: The amount is €4.35 million.

Chairman: It is very small.

Mr. Robert Watt: Yes. The Department accepts that and it will have a report for the end of the year which sets out-----

Chairman: We will mark it down for the end of the year and get it from Mr. Watt in the new year.

Mr. Robert Watt: Let us say that Galway-Mayo Institute of Technology did not have an institute in 2013 that was self-financing and it has one now. I am being hypothetical. The situation with these bodies is subject to change.

Mr. Seamus McCarthy: In the cases of third level institutions, it would apply where the research they are undertaking is commercially funded. It is not that one can say that class all fits in to the thing. There must be a process of analysing their financial statements and identifying that.

Chairman: Where are the employees' contributions held after collection? Are they passed on?

Mr. Robert Watt: That is remitted to the Department. It is netted off in this Vote.

Chairman: The Department has a bit of work to do. That could change, from year to year, depending on the activity of different organisations.

Mr. Robert Watt: Depending on the nature of the activity, yes.

Chairman: The work they carry out. The Department needs an ongoing review system.

Mr. Robert Watt: We need to ensure that the relevant authorities understand the matter. The team are following up to ensure that people understand their responsibilities exactly. There is a wider issue relating to the scale of receipts from the single scheme and how they are accounted for. Those receipts are netted off. They are contributions being made to pensions from which people will benefit in the future. For accounting purposes, we are netting off the pay-as-you-go bills. We are considering whether that is appropriate or whether it should be-----

Chairman: One of the reasons for the surplus is that the Department had more income. It is unusual to have these-----

Mr. Robert Watt: Recruitment has proceeded much faster than was anticipated. All new recruits are members of the single pension scheme.

Chairman: Under the new single pension scheme, the contributions being made by people and which they will be entitled to draw down are being used by the Department to pay today's pensioners.

Mr. Robert Watt: We are netting off the pay-as-you-go bills.

Chairman: This is wrong in every respect.

Mr. Robert Watt: We are examining the options. Pension contributions used to go to a fund that was managed by the National Pensions Reserve Fund, the predecessor of the Ireland Strategic Investment Fund. Provision was made-----

Chairman: Why are those contributions not going to a fund such as that?

Mr. Robert Watt: Ultimately, it is guaranteed by the State, so-----

Chairman: It defeats the whole purpose of people contributing to that fund.

Mr. Robert Watt: The staff are making a contribution towards their pensions. I acknowledge that a big policy issue for us is the extent to which those funds should be ring-fenced.

Chairman: They should be.

Mr. Robert Watt: We are examining the accounting treatment of the contributions.

Chairman: New recruits to the Civil Service are members of the single pension fund and are making contributions to the pensions they will receive in 40 years, but the money they are contributing is being used to fund current pension payments. Mr. Watt is stating that the State will eventually cover that gap. That is not good enough. It is defeating the whole concept of-----

Mr. Robert Watt: Even with the enhanced contributions under the single scheme and on foot of the recent pay agreement, it is not a fully funded system.

Chairman: We know that.

Mr. Robert Watt: The State will have to stand behind it. If a fund is set up, the implication might be that it will fully fund future pensions when that is not the case. Rather, it will partially fund them. There is an issue about how we invest-----

Chairman: The previous fund never fully funded the pension but it was, at least, a dedicated managed fund.

Mr. Robert Watt: It was a dedicated fund until it was needed for other purposes.

Chairman: The Department is using the pension contributions which people are making to pensions that they expect to draw down in the future. That is not what we thought this scheme was about. This issue should be revisited in the new year. I was a Member of the Oireachtas when the single scheme was brought in. The understanding of Members was that the contributions would be going into a fund. Mr. Watt understands my point.

Mr. Robert Watt: Yes.

Chairman: The Department is robbing Peter to pay Paul. It is using contributions by new recruits to pay the pensioners who have left the Civil Service. That should not be happening.

Mr. Robert Watt: It is a pay-as-you-go system. That is how the contributions have always been managed. I am not saying it is the correct way to do it.

Chairman: This was one of the biggest pieces of legislation in recent years and its intention was clear. However, it does not seem to me that the intention is being followed through. The pensions of new recruits will be calculated based on career average salary rather than final salary. They are contributing under a different regime. The money they have paid since joining has gone elsewhere and the Government will make it up to them at some time. They were entitled to believe those contributions were going into a managed fund. Mr. Watt knows that.

Mr. Robert Watt: They have accrued the right to a pension.

Chairman: We know that the State will stand behind those pensions. On chapter 3, I ask Mr. Watt to refer to table 3.7. The Budget Statement is announced before 15 October every year in accordance with EU rules but it takes six months for the Estimates to be dealt with. The Estimates are considered by the relevant committees in March or close thereto and voted upon by the Dáil in April. As Accounting Officer and Chairman of the Committee of Public Accounts, I wish to state that that is no way to do business. Most draft Estimates for next year have been published. Six months are being lost. The budget used to be in December but was brought forward to October under EU guidelines. That gave the Oireachtas the opportunity to pass the Estimates for 2019 before the end of 2018. I do not know of any organisation worth its salt that approves its budget four or five months into the year. Such a company would go bust. No business should be run in that way. The fact that this concerns Departments is not a reason to say the State guarantees everything and it does not matter anyway. It is bad practice. As budget day has been brought forward by two months, the approval of the Estimates should be brought forward by at least the same period. At one stage, Estimates were coming through just before the summer recess. During committee discussion of an Estimate, members were told that two thirds of the allocation had been spent. Four twelfths of the Estimates will have been spent by April in any event. Mr. Watt, as the Accounting Officer for the Department of Public Expenditure and Reform, which oversees this side of the budgetary process, should be making an effort to get those Estimates through the Oireachtas by Christmas. That would be the correct time for it to be done. It would be better to have them completed in January than maintain the current situation but it would still be too late. It should be done by Christmas.

Mr. Robert Watt: We will do it next week.

Chairman: Please do.

Mr. Robert Watt: I am not responsible for how the House does its business.

Chairman: The matter is being raised by the committee.

Mr. Robert Watt: I do not disagree with the point made by the Chair.

Chairman: We are debating an issue that needs to be discussed.

Mr. Robert Watt: That was one of the intentions behind moving to the calendar year.

Chairman: I am backing up Mr. Watt. He should state that the Committee of Public Accounts is putting pressure on him in this regard.

Mr. Robert Watt: More allies for us.

Chairman: We are in agreement that it would be far more desirable for the Estimates to be dealt with in a more timely fashion.

Mr. Robert Watt: Absolutely.

Chairman: On chapter 5, figure 5.5 is a chart depicting the Votes with Supplementary Estimates for 2012 to 2017, inclusive. We know about 2018 as well. The Department of Health required a Supplementary Estimate every year. It is systemic. That is how it does its business. The chart also shows that a Supplementary Estimate was required every year for Army pensions.

Mr. Robert Watt: Yes.

Chairman: Surely it is possible to estimate the required provision for Army pensions but it has been miscalculated for six years in a row. Whoever is responsible should be better at counting. It is a fairly straightforward issue which does not involve tens of thousands of people.

On the Garda Síochána, Mr. Watt will tell me that the Supplementary Estimate is to provide for Garda overtime. However, there will be overtime next year and that should be budgeted for in the Estimates rather than there being a shock announcement by the Commissioner stating that there will be no Garda overtime for three months. There does not seem to be an effort to get the Estimates right at step one. Mr. Watt knows them inside out and is probably sick of looking at them. Neither he nor the Minister should be seeking Supplementary Estimates year in, year out. It is systemic. The only answer is to try to do it right in the future.

Mr. Robert Watt: We have addressed the issue of Army pensions.

Chairman: The Department got it right this year. Well done.

Mr. Robert Watt: The other matters are systemic issues which do not relate to-----

Chairman: They are foreseeable.

Mr. Robert Watt: It relates to management of-----

Chairman: We were told that under the new fiscal rules there would be expenditure ceilings for each Department that the Departments would not be allowed to breach. Two years ago we were told that there would be no more Supplementary Estimates as they would not be allowed under the rules. What about the multiple statements by various Ministers a few years ago that it was going to be the last year of the Supplementary Estimates and there would be expenditure ceilings under the fiscal rules? Is the imposition of those rules movable from year to year like everything else?

Mr. Robert Watt: The fiscal rules provide a framework within which decisions can be taken. Every year we must comply with structural balance in line with the overall medium-term objective, MTO, and keep increases in gross spending below the estimated trend in potential output in the economy. The MTO targets a structural deficit of 0.5% of GDP. There is discretion for this Parliament or that of any other member state to increase spending if it is compliant with the rules. There was a view that unexpected revenues would not necessarily be spent, which is true if such spending would not be consistent with the rules. However, if consistent with the rules, unexpected revenues can be used to fund unexpected spending. Our preference is to stick within the rules such that revenues are used to improve the balance if those revenues are a function of an improved economy and improving cyclical position. Ultimately, the fiscal rules are a matter of interpretation.

Chairman: So we can carry on.

Mr. Robert Watt: No. We cannot carry on.

Chairman: Okay. I will ask a question that relates to the Estimates which were published by the Minister last week as part of the Budget Statement. To what extent is there headroom in those Estimates for extra expenditure by the end of 2019 without breaking the rules?

Mr. Robert Watt: We do not believe there is any extra headroom.

Chairman: The Department probably said that last year, and then an extra €1 billion was

found.

Mr. Robert Watt: We are saying we do not believe there is any extra headroom.

Chairman: Was there headroom last year?

Mr. Robert Watt: No, there was not.

Chairman: Nevertheless, an extra €1 billion was spent this year.

Mr. Robert Watt: That happened after an assessment of where the economy moved, the fiscal position and the revenue changes. In recent years, we have been fortunate to have been in a growth phase.

Chairman: Lucky.

Mr. Robert Watt: Revenue has been keeping-----

Chairman: Lucky with corporation tax.

Mr. Robert Watt: There has been a very strong cyclical recovery. We know that will come to an end. As we get to full employment, there is less headroom in the economy so the future will be different. Irrespective of that, bearing in mind that the vast majority of the Votes stayed within profile, we are not happy with the fact that-----

Chairman: Yes.

Mr. Robert Watt: I am not criticising anybody for producing this table. It is a snapshot. Another table that shows all the Votes would give a different impression.

Chairman: Yes.

Mr. Robert Watt: There are issues in the areas that have been mentioned. We all know what those issues are.

Chairman: Okay. The position today is that there is no headroom for next year. If we get a windfall again next year, there will be plenty of headroom to be absorbed.

Mr. Robert Watt: Well-----

Chairman: That is kind of-----

Mr. Robert Watt: People like me-----

Chairman: What if corporation tax receipts-----

Mr. Robert Watt: -----would advise the Minister-----

Chairman: We know.

Mr. Robert Watt: -----or a future Minister and give a clear view on what should happen with such unexpected revenues.

Chairman: The advice would be to use them, just as they were used the previous year.

Mr. Robert Watt: The Chair can guess what advice would be given by the Department of

Public Expenditure and Reform and the Department of Finance.

Chairman: Yes. I know what the Departments would say. On the headroom issue, Mr. Watt has said that a €500 million shortfall in corporation tax would change the profile of what happens.

Mr. Robert Watt: Yes.

Chairman: Would the rules require us to reduce expenditure during the course of the year?

Mr. Robert Watt: They might, depending on the assessment. If we have-----

Chairman: Has that ever happened?

Mr. Robert Watt: We do not know.

Chairman: Has that ever happened in an EU country that is not in the phase Ireland is in? This is a European rule.

Mr. Robert Watt: There is a debate taking place at present in the context of the Italian budget which is not dissimilar. The Italian authorities are increasing their deficit beyond what they had previously committed to. This is partly due to revenue shortfalls, but it is also due to spending additional money above what the previous Government in Italy was committed to doing. That will be discussed at Council level.

Chairman: The Italian authorities can ultimately get European Commission approval.

Mr. Robert Watt: We shall see what happens.

Chairman: That can happen.

Mr. Robert Watt: We shall see what happens in that case.

Chairman: Okay. Mr. Watt can understand my question.

Mr. Robert Watt: Yes.

Chairman: I see this as systemic. We were all fed the line a few years that Supplementary Estimates were gone, but they are not really gone. It is all based on headroom and growth. Mr. Watt is telling me that there is plenty of wriggle room.

Mr. Robert Watt: No, I am not saying there is plenty of wriggle room. I am saying it is possible.

Chairman: We are in the same corner on this one, believe it or not. I would be agreeing with holding the line.

Mr. Robert Watt: Yes, so-----

Chairman: If we agree an Estimate, we should stick with it.

Mr. Robert Watt: I think-----

Chairman: It does not happen.

Mr. Robert Watt: We shall see in the future how the rules interact with how the economy

and the budget evolve. We will face situations in the future where we will not meet our revenue forecasts. When revenues fall, a decision will have to be made on whether that fall is due to a cyclical issue or to an underestimate of growth in the economy. That assessment will determine whether the Government of the day will take corrective action or whether we allow the deficit or the surplus to disimprove.

Chairman: Okay. I call Deputy Connolly.

Deputy Catherine Connolly: There are four things that I would like to mention quickly. Out of interest, paragraph 5.2 in the appropriation accounts for 2017 refers to pensioners and paragraph 8.3 refers to ex gratia pensions for widows and children. Will Mr. Watt clarify the nature of the ex gratia payments to widows and children of civil servants, members of the Judiciary and court officers? Was there no cover there?

Mr. Robert Watt: The payments in question were made under the widows and orphans scheme, of which civil servants are part. I presume these payments are made to spouses in respect of people who die in service.

Deputy Catherine Connolly: There are payments-----

Mr. Robert Watt: I am informed that these payments are made in respect of people who die in retirement and whose widows and orphans still have an entitlement under the widows and orphans scheme.

Deputy Catherine Connolly: Why are they called ex gratia payments?

Mr. Robert Watt: Yes, it is not the best expression for them.

Deputy Catherine Connolly: These people are entitled to the payments.

Mr. Robert Watt: Yes.

Deputy Catherine Connolly: Okay. I also have a question under chapter 5 about accounting for property assets. I am not sure if this question has been answered. The Department responded by saying that it acknowledges the limitations of the current financial framework and by talking about a review. Has the review started? Is there a timeframe for the review? Who is carrying it out?

Mr. Robert Watt: There is an issue with how we value assets under the current rules.

Deputy Catherine Connolly: I understand all of that. My question relates to the review. Has the review started?

Mr. Robert Watt: Yes. In recent weeks, officials from the OECD were in with us to talk about practices in other countries.

Deputy Catherine Connolly: Yes.

Mr. Robert Watt: The question of budget accounting for capital assets is a function of how far we move to accrual accounting in the future. It depends on the financial management and shared services scheme, which we hope to introduce at the beginning of next year. It is a question of the capacity of our system to modernise the accounting system so we can move to full accrual of balance sheet accounts. As the Deputy can see with the account, the current system presents the accounts on a cash basis and then there is a part-accrual. The review we are talking

about relates to the reviews being undertaken by the OECD. We hope to have a report by the end of this year.

Deputy Catherine Connolly: Has the review started?

Mr. Robert Watt: Yes.

Deputy Catherine Connolly: Okay. Who is undertaking that review?

Mr. Robert Watt: The OECD is doing the review.

Deputy Catherine Connolly: The OECD is doing it for the Department.

Mr. Robert Watt: Yes.

Deputy Catherine Connolly: Okay. It will be completed at the end of this year.

Mr. Robert Watt: Yes, at the end of 2018.

Deputy Catherine Connolly: Okay.

Mr. Seamus McCarthy: As the Deputy may recall, the Chairman informed the committee that he has attended a meeting with the OECD group which is carrying out this undertaking.

Deputy Catherine Connolly: Yes.

Mr. Seamus McCarthy: Officials from my office have met the group as well.

Deputy Catherine Connolly: Great. Lovely. Okay. I have two more questions. I have asked about value for money in the provision of services. Mr. Watt kindly said that if this is brought to his attention, he will look at it. I would like to go back. How does the Department pick this up? I forget what Mr. Watt said when he answered that question. I am talking specifically about the framework that was brought in for the provision of services. How does the Department judge whether it is more effective in value for money terms? What analysis does it do?

Mr. Robert Watt: We would look at the cost of the service and the value of the service. It depends on the nature of what we are procuring. Some services are more amenable to easier matrix. Other services are more heterogenous, so it is very hard to make comparisons between different service providers or between different periods of time.

Deputy Catherine Connolly: If I were to follow up on this with Mr. Watt, I would say that they have no choice but to implement this framework.

Mr. Robert Watt: Yes.

Deputy Catherine Connolly: That framework was introduced in 2016 or 2017. Where can I see that the Department has evaluated whether the framework is producing better value for money than the previous one? Does Mr. Watt understand the specific point I am making?

Mr. Robert Watt: Yes.

Deputy Catherine Connolly: Where can I follow that up? Where can I see that the Department has evaluated this?

Mr. Robert Watt: We spoke earlier about issues of non-compliance with procurement processes. As a result of such issues, the Office of Government Procurement has frameworks in place and bodies can access those frameworks. That is the whole-----

Deputy Catherine Connolly: The consequence of the framework that is in place is that they procure the services in this manner. I am being told on the ground that this manner is not cost-effective. I want to be clear because I was not clear the last time. It was my fault. I am being informed that the framework is leading to a process which is not saving money but is actually costing more money. What does the Department do about that? Does it just leave the framework in place and say it is more cost-effective?

Mr. Robert Watt: The framework is in place for a period, usually of three years.

Deputy Catherine Connolly: Three years, okay.

Mr. Robert Watt: We review it after that period.

Deputy Catherine Connolly: During that three-year period, is there any way for people to come forward and say this is not working and is costing more?

Mr. Robert Watt: If it is not working, we can pause the framework and say we are no longer using it to procure services. As I mentioned, we are happy to talk to the Deputy in more detail about a particular case.

Deputy Catherine Connolly: I understand that, but this is not so much about me as it is about the people who are seeing this happening on the ground.

Mr. Robert Watt: Yes.

Deputy Catherine Connolly: What is in place for such people? Ultimately, this is about accountability and the processes that are in place. Many people on the ground are afraid to put their heads above the parapet for various reasons. If they are seeing things happening, is there a process that enables them to say that a particular framework is much more expensive? That is what I am trying to get-----

Mr. Robert Watt: There is a process. The Office of Government Procurement has various groups that link in with small and medium-sized enterprises and various industry bodies and associations to hear their views on how the frameworks are working and how we are engaging with the sector. There are various bodies in place.

Deputy Catherine Connolly: If we take the board of Galway and Roscommon Education and Training Board, GRETB, as an example, is there a mechanism in place to look at this framework after it has been in place for two years?

Mr. Robert Watt: I do not know the details.

Deputy Catherine Connolly: Mr. Watt does not know. Okay.

Mr. Robert Watt: I will be happy for the team to get in contact with the Deputy on this.

Deputy Catherine Connolly: My final question relates to the Department's study on rents.

These studies are welcome but if they are done, the follow-up is essential. This paper clearly recommends a follow-up analysis of value for money as between renting and purchasing or

whatever else. Tied with this is the Miesian Plaza, and the Comptroller and Auditor General's report on that outlined in very clear terms at paragraph 6.10:

It was noted that

- There was no evidence of detailed consideration of other options - Miesian Plaza was identified as 'virtually the only option'.

- No cost-effectiveness analysis or other economic appraisal was carried out - in particular, there was no consideration of lease, buy or build options.

- There was no evidence that the full costs of leasing Miesian Plaza were identified

It goes on. The witnesses come into this as that lease was approved. I put it to them at the beginning when I came in that they approved that lease.

Mr. Robert Watt: We did.

Deputy Catherine Connolly: There is no evidence they looked at other options.

Mr. Robert Watt: I have not read the Comptroller and Auditor General's report on this. It is not one of the reports I am here to speak about today. I am very happy to look at it.

Deputy Catherine Connolly: No, I am trying to make a general point. That is one example. There is apparently another example in Galway with a building for the Revenue Commissioners and an example involving Foras na Gaeilge, which we have raised many times here. In that example, the business case identified a different solution and Foras na Gaeilge is renting a building. There is also the National Treasury Management Agency, where the witness is on the board, and the National Asset Management Agency. There is a huge amount of money going out in rent. If this is an example of the options appraisal, are we not in serious trouble in a sense? There does not seem to be any proper options appraisal being done with alternatives.

Mr. Robert Watt: I cannot be asked to comment on reports I have not had a chance to read.

Deputy Catherine Connolly: No, I am asking the witness to comment on value. Just to be clear, I am talking about renting buildings and actively being in the market where rents were not sustainable. Government bodies are doing that. That is what I am asking about.

Mr. Robert Watt: It could be worse to buy a building in an unsustainable market than rent it in an unsustainable market. At least with a break clause, the party could get out.

Deputy Catherine Connolly: The witness does not know that and I can only say-----

Mr. Robert Watt: I do.

Deputy Catherine Connolly: More research is being sought in this paper.

Mr. Robert Watt: I know that if a building is bought in an unsustainable market, it is worse than leasing it in an unsustainable market.

Deputy Catherine Connolly: We can be glib or we can-----

Mr. Robert Watt: I am not being glib. I am very happy to come back on these issues, as the Chairman asked me to.

Chairman: The topic has come up a few times.

Mr. Robert Watt: I am not stonewalling. Between the publication of the Comptroller and Auditor General's report and now, we had a budget to do for two weeks, which took all my time.

Deputy Catherine Connolly: I understand that.

Mr. Robert Watt: Since the budget I have been doing other things and preparing for today so I have not had the chance to read the entire report.

Deputy Catherine Connolly: This was July 2018.

Mr. Robert Watt: I know the report.

Deputy Catherine Connolly: It has nothing to do with the Comptroller and Auditor General's report. It is a more general point and it zones in on the absence of data, the need for further research and the need to compare and contrast. That type of research must inform policy. When will it be done and when will this paper see follow-up in specific recommendations?

Mr. Robert Watt: The report was published in July and I will check with colleagues to see where we are going-----

Chairman: Mr. Watt can come back to us.

Mr. Robert Watt: -----and come back to the committee.

Deputy Bobby Aylward: I am sorry I was late. I did not want to ask questions that were probably asked already. Mr. Watt spoke of the new single public service pension scheme established in 2012 under the Public Service Pensions (Single Scheme and Other Provisions) Act 2012. The Comptroller and Auditor General report indicates that, as a result of the work completed to date, 14 bodies were making employer contributions and at 14 September 2018 these bodies had made contributions totalling €4.35 million. However, the report later states that, as of September 2018, "the Department has yet to finalise the list of all State bodies that will be required to make employer pension contributions in respect of Single Scheme employees." Will Mr. Watt explain that statement? I know the Chairman touched on it.

Mr. Robert Watt: There are some bodies liable to make employer contributions in respect of part of their activities. There was uncertainty about how this is applied and we issued a circular in 2016 setting out what we believe is the interpretation of the Act. In effect, this is something we have been chasing up.

Deputy Bobby Aylward: Why did it take four years? The Act was introduced in 2012 and it was being interpreted in 2016.

Mr. Robert Watt: A number of the bodies were making employer contributions and it came to our attention that there could be other relevant authorities not making the contributions. We are chasing that up and clarifying the matter. The Deputy can be assured, as I mentioned earlier, that any funds outstanding and owed to the Exchequer from these bodies will be recouped.

Deputy Bobby Aylward: Does it make any difference to employees from either before or after 2012?

Mr. Robert Watt: The employees have been making their contributions and they have been remitted to the Exchequer. The contributions made by people first employed either before or

after 2012 are different.

Deputy Bobby Aylward: The €4.35 million is being spent on current expenditure to pay the pensioners that we now have. The Chairman asked about that. No pot is being created.

Mr. Robert Watt: No.

Deputy Bobby Aylward: That is despite the contributions being made by these employees. The taxpayer will have to carry the cost at a later stage. Is that the way it is going? Is that proper management of a pension fund?

Mr. Robert Watt: State pension funds are pay-as-you-go funds. This year over €3.2 billion is to be paid out on behalf of previous accrued liability of public servants now retiring. It is paid for out of current receipts.

Deputy Bobby Aylward: Does the money coming in cover that?

Mr. Robert Watt: Yes, in effect the money coming in covers it. Receipts of the State cover this, whether they are appropriations-in-aid or taxation. It is a valid point that was outlined by the Chairman. I agree that we must look at the accounting treatment of this and the extent to which we will, over time, allocate receipts into funds that will part-fund future pensions.

Deputy Bobby Aylward: It would lower the burden on the future taxpayers when compared with the current scheme. The taxpayers of the future will have to pay for it.

Mr. Robert Watt: Yes. From 2014 the terms of the scheme have been less burdensome on the taxpayer than the previous scheme.

Deputy Bobby Aylward: Will it ever come to a point where contributions will be put into a reserve fund?

Mr. Robert Watt: That is what we are debating.

Deputy Bobby Aylward: When is it envisaged that will happen?

Mr. Robert Watt: We have not gone to the Minister or the Government about it but Mr. Pender and I have been discussing this with colleagues on the pensions side. It is something we did before, although it is not exactly analogous, with the National Pensions Reserve Fund, when we used money from the sale of Eircom and contributions each year to build a fund. A third of this was to fund public service pensions and two thirds of it was for social welfare. We had pre-funding in the past and we would certainly like to move to a more funded scheme for public pensions. It would not be entirely funded but it could be partly funded.

Deputy Bobby Aylward: Is the new scheme a better guarantee to an employee than the old scheme, or is it much the same?

Mr. Robert Watt: The guarantee is the guarantee. If one believes in the sovereignty and solvency of the State, the pensions are guaranteed. It is as strong as it was in the past.

Deputy Bobby Aylward: Would recessions affect pensions or are they guaranteed no matter what happens?

Mr. Robert Watt: They are guaranteed.

Chairman: I thank Deputy Aylward. We have concluded our discussion relating to a number of Votes, chapters and Comptroller and Auditor General special reports. We have done quite a bit this morning, although some of this has been before us, off and on, previously. Before concluding I thank witnesses from the Department of Public Expenditure for their attendance and the material they will send to us shortly.

Witnesses will be aware that the committee will examine procurement across the board and the topic will be before us all the time. We have said we will consider public private partnerships as part of our work programme for this year. We have been getting some information but we have not yet considered how good it is. It is an ongoing topic on our agenda. Recently, we were sent the official minutes of the response to our earlier periodic report. We have not yet had the opportunity to examine those. Depending on the content of those reports, we may have to respond on some matters. We will deal with those matters as they arise. I am alerting the witnesses that some matters cutting across their Department will be discussed in the time ahead. I thank all the witnesses for their attendance. In the afternoon we will meet representatives of the Department of Education and Skills and the Higher Education Authority.

The witnesses withdrew.

Sitting suspended at 1 p.m. and resumed at 2 p.m.

HEA Financial Statements 2017

Dr. Graham Love (*Chief Executive, Higher Education Authority*) and **Mr. Seán Ó Foghlú** (*Secretary General, Department of Education and Skills*) called and examined.

Chairman: We are joined again by the Comptroller and Auditor General, Mr. Seamus McCarthy, who is a permanent witness to the committee and Ms Colette Drinan, deputy director of audit at the Office of the Comptroller and Auditor General. We are meeting representatives from the Department of Education and Skills and the Higher Education Authority, HEA, to discuss the Higher Education Authority's financial statements for 2017 and governance arrangements in the Department of Education and Skills and the HEA for the third level sector. The committee has been giving much consideration to matters in the third level sector in the past two years and in July last year published its report on the examination of financial statements in the sector. A key recommendation made in the report was that the committee was of the view that the balance between the Department and the HEA in the financial and governance oversight of the third level sector might need to be reviewed and updated. The committee is of the opinion that the HEA has a key role to play in ensuring the important issues raised in the report will be addressed by each institution. The committee is also of the opinion that the HEA needs to be empowered and resourced to carry out a greater oversight role effectively.

Dr. Graham Love has been chief executive of the HEA for the past two years and is due to leave the organisation this month. The committee felt it was important to engage with him and the Department prior to his stepping down from the role. While there have been newspapers reports on his resignation and the committee did receive a copy of his resignation letter, our engagement today is not about the personal circumstances of his resignation but, rather, about ascertaining, as per the committee's recommendations on its work, the level of progress made towards the empowerment and resourcing of the HEA to ensure it will have greater oversight of the third level sector. Accordingly, I ask members to keep the focus on the changes to the HEA

and the Department's oversight of third level institutions.

We are joined from the Department of Education and Skills by Mr. Seán Ó Foghlú, Secretary General; Mr. William Beausang, assistant secretary; Mr. Tom Gaynor, principal officer, and Ms Stephanie Good, assistant principal officer; and from the Higher Education Authority by Mr. Michael Horgan, chairman; Dr. Graham Love, chief executive; Mr. Neil McDermott, assistant principal officer; Ms Sheena Duffy, assistant principal officer; and Mr. Stewart Roche, management accountant.

I remind members, witnesses and those in the Visitors Gallery to turn off all mobile phones or switch them to airplane mode. Switching them to silent mode is not sufficient because they can still interfere with the broadcasting and recording systems.

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. If witnesses are directed by it 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 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 to them 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 Higher Education Authority is the statutory planning and policy development body for higher education and research in Ireland. It is the primary funding authority for the universities, institutes of technology, teacher training colleges and a number of other designated education bodies. Over 90% of its income comes directly from Vote 26 - Education and Skills, with the balance consisting largely of research funding from Vote 32 - Business, Enterprise and Innovation. It had gross expenditure of €1.17 billion in 2017. As shown in the graph, the bulk of that expenditure was in the form of grants to education bodies for specified purposes, either current spending, including fee recoupment to colleges, or capital project funding and research funding. I issued a clear audit opinion on the HEA's 2017 financial statements.

Chairman: I thank Mr. McCarthy. I invite Dr. Love to make his opening statement.

Dr. Graham Love: I am joined by the chairman of the HEA, Mr. Michael Horgan, and my colleagues, Ms Sheena Duffy and Mr. Neil McDermott from the system funding and governance sections and Mr. Stewart Roche, our management accountant.

The HEA's accounts for 2017 were presented recently to the committee. They were certified by the Comptroller and Auditor General at the end of June. I am pleased to note that once again they have been certified, with no issues arising.

In 2017 the HEA allocated over €1 billion in funding to the higher education sector. The funding covers the traditional core grant to institutions but also targeted initiatives such as Springboard which provides free places on courses for the unemployed and people returning to education and the Irish Research Council that acts as the key national funder of basic research across all disciplines. This allocation of funding is a significant responsibility for the HEA but one that it performs effectively.

I would like to update the committee on other developments since we last appeared before it in May. In May I briefed it on the status of the report arising from the independent review of the spin-out and sale of companies from Telecommunications Software and Systems Group, TSSG, at Waterford Institute of Technology and the reasons it had not been published. I assure the committee that the HEA and the Department of Education and Skills are working together to progress the matter as soon as possible and I am happy to brief it in further detail today.

In November 2017 the HEA published Dr. Richard Thorn's report on the University of Limerick. The report made 36 findings and ten recommendations to be implemented by the university. The HEA continues its monitoring of the university's implementation of the recommendations arising from the report. Eight of the ten recommendations have been implemented and the remaining two are on course for completion by the end of the year.

At the meeting in May I also briefed the committee on the HEA's rolling governance reviews. Our first such review dealt with procurement and our second, intellectual property policies. This year's rolling review will focus on employee remuneration and other benefits. Like previous reviews, the rolling review is based on a sample range of universities, institutes of technology and other colleges. The institutions to be examined as part of the review have been notified and fieldwork will commence shortly.

Procurement, rightly, remains an area of focus for the committee. Our first rolling review in 2016 focused on procurement and led in part to the HEA's annual higher education procurement summit. This year's summit, held in April, saw the launch of a corporate procurement plan template to help higher education institutions to better plan their procurement requirements and ensure better compliance with national procurement guidelines. The plan has generated a lot of interest and there is a commitment by institutions to adopt the templates and complete the work to ensure and improve compliance in this area.

Earlier this year the Comptroller and Auditor General published his annual report on public sector financial reporting. I am pleased to note that there continues to be improvement in the timeliness of the production of financial statements for higher education institutions, particularly universities.

This year has seen not only the passing of the technological universities legislation but also our first technological university designation. In July the Government announced that the application for such status from the TU4Dublin consortium would be granted and it is on course to officially become a university next January. Other technological university consortia continue to make progress with their respective applications.

Next week the HEA will commence its annual round of strategic dialogue meetings with higher education institutions. At the meetings institutions will receive feedback from the HEA and a panel of external advisers on their mission-based performance compacts. The compacts set out each institution's strategic priorities and contribution to overall system objectives.

As I finish up my role as chief executive, I acknowledge the work of HEA staff and their contribution in supporting and overseeing the development and growth of the higher education sector. I wish my successor, Mr. Paul O'Toole, the very best in taking up the role of interim chief executive. I am confident that he will bring a valuable insight and experience from his time in SOLAS.

My colleagues and I will be happy to answer queries from the committee.

Chairman: Is Mr. O'Toole moving from SOLAS to the HEA?

Dr. Graham Love: Correct.

Chairman: I now invite Mr. Seán Ó Foghlú to make his opening statement.

Mr. Seán Ó Foghlú: I thank the committee for the invitation to appear before it. To assist me in the discussion, I am joined by my colleagues, Mr. William Beausang and Mr Tony Gaynor.

The HEA's 2017 financial statements were certified by the Office of the Comptroller and Auditor General on 29 June 2018 with a clear audit opinion. The HEA is the statutory funding body for the higher education sector. One of its core functions is the allocation of moneys provided by the Oireachtas for universities, institutes of technology and other designated institutions. In 2017 the HEA allocated over €1 billion of Exchequer funding to the higher education sector in the form of recurrent grants, access grants, capital grants and research grants.

The importance of good governance is a theme which can be clearly identified within the HEA's financial statements. In addition to the high standards of corporate governance within the authority, as evidenced by the financial statements, the HEA has also introduced a number of measures in recent years to further enhance its role in the governance and accountability of the higher education institutions within its remit. Measures that have been taken include the following: the introduction of a new governance framework for the higher education system in 2015, the purpose of which is to provide assurance of compliance with legislative and other requirements and more timely and responsive interventions to address issues arising. The new governance framework also makes clear the central oversight role of the HEA in monitoring governance practice across the system.

A further measure that has been introduced is the reduced timelines for the submission of draft accounts for certification by the Comptroller and Auditor General and the submission of annual governance statements to the HEA. The HEA also meets quarterly with the Comptroller and Auditor General to discuss the status of his audits of the financial statements of higher education institutions and the identification of issues or difficulties arising.

In 2016 the HEA commenced the introduction of a programme of rolling reviews of governance matters. The first rolling review focused on procurement, which was followed by a review of intellectual property in higher education institutions. A further rolling review has commenced in 2018, focusing on staff remuneration and benefits in higher education institutions.

Another measure undertaken was the review of the allocation model for funding higher education institutions, undertaken by the HEA, which was published in January 2018. The review proposes a reformed funding model that would provide for greater transparency in how State investment in higher education is allocated. It would also provide for stronger and clearer links between national strategic priorities and the types of programme delivered in higher educa-

tion institutions. In addition, the HEA ensures codes of practice are in place in respect of the institutes of technology and the universities. The updated code of governance for institutes of technology was published by the Technological Higher Education Association, THEA, in January 2018 and it is anticipated that the universities' code of practice will be completed shortly.

The Department of Education and Skills works closely with the HEA to strengthen governance arrangements and ensure a robust system of accountability in the sector. The HEA, as a body that acts under the aegis of the Department, is required to comply with the 2016 code of practice for governance of State bodies. The annual allocation letters from the Department to the HEA highlight the code's requirements. Compliance with the code is one of the terms and conditions under which the Department funds the HEA. In accordance with the provisions of the 2016 code of practice for governance of State bodies, the Department has a performance delivery agreement with the HEA. It sets out the purpose and scope of the agreement and defines the roles of both organisations. The core activities and key services to be provided by the HEA are agreed and set out, together with how each service commitment is to be measured. The current agreement covers the period 1 January to 31 December 2018. The 2018 performance delivery agreement supports specific high level goals and objectives of the Department and the HEA and sets targets in line with the HEA's statement of strategy and work plan for 2018. It also defines the output and outcome indicators, on which the performance of the HEA will be measured. A number of review meetings are set out within the agreement to allow the Department to formally review the HEA's progress towards the agreed key deliverables.

In addition to these meetings, the Department and the HEA meet more regularly than is provided for in the performance delivery agreement. There are regular meetings on specific issues and general themes such as funding or governance across the sector. As well as ensuring open channels of communication are maintained, these regular dialogues between the Department and the HEA facilitate a collaborative approach to managing issues presenting across the sector.

Another important element of the relationship between the HEA and the Department is the annual system performance report which sets out progress across the higher education sector against the agreed national policy objectives identified by the Minister. In addition, the financial accountability framework is an agreement to provide for proper and effective use of public funding, effective control audit and accountability measures and cost effective and efficient delivery of services. A corporate governance risk register and an early warning reporting system are also in place to enable the HEA to identify to the Department potential risks and allow for early intervention to address them.

During his time as chief executive of the HEA the Department has worked very closely and effectively with Dr. Love on a range of issues that include very significant reforms to the funding model for higher education, the institutional landscape and the governance framework between the HEA and the Department and between the HEA and higher education institutions. I publicly acknowledge the contribution Dr. Love and his colleagues in the HEA have made in the past 18 months in delivering these important reforms. I also wish him every success for the future.

I am conscious that the Department has been in correspondence in recent times with the Committee of Public Accounts on a number of issues particular to higher education. I assure the committee that the issues raised in the sector are taken very seriously by the Department. We are working with the institutions, through the HEA, to seek to have the issues dealt with appropriately and as efficiently as possible. I will be happy to provide an update for the committee on any of the issues raised.

Before concluding, I would like to highlight one issue, in particular. I understand the committee has inquired about the current position on the independent review of the spin-out and sale of companies from the Telecommunications Software and Systems Group at Waterford Institute of Technology. As members are aware, I am precluded from involvement in the matter and will defer to my departmental colleagues present to answer questions members may have in this regard. I will be happy to answer any other question for the committee.

Chairman: I thank Mr. Ó Foghlú. We shall move on questions from members who have indicated in the following sequence: Deputies David Cullinane, Alan Kelly, Marc MacSharry, Catherine Murphy and Catherine Connolly. The opening speaker will have 20 minutes and the second, 15. Because this is an afternoon session I will stick to these times limits. Members will have a further opportunity to come back in. As members may have to get away, I want to give everyone an opportunity to speak.

Deputy David Cullinane: I welcome Mr. Ó Foghlú and his team and Dr. Love and his team. Because it is his last appearance before the Committee of Public Accounts, I thank Dr. Love for his service with the HEA and engagement with the committee. He has been a very helpful witness on the number of occasions he has appeared before us. He has also been a staunch defender of the higher education sector. I commend him for the work he has done in that regard. I have some questions about his statement of resignation, to which I will come shortly.

I have some questions about the independent review of the spin-out companies at Waterford Institute of Technology. I hope Dr. Love shares or at least understands the frustration other members and I feel about this issue, given that we were due to receive a report last September or October. I met a lot of people who had engaged with Mr. Michael McLoone as part of the process. I also met him at his request and know that a lot of people came forward. I believe in due process and know that we cannot draw conclusions and must wait until the report is published. The committee has received a letter from the Teachers Union of Ireland, TUI, which was debated at our last hearing and in which it expressed concerns on behalf of its members who, in good faith, had engaged in the process. They feel aggrieved that one year on there is still no report, be it good, bad or indifferent.

Dr. Love briefed the committee in private session on some of the challenges. I do not want to put him in a position where it might be more difficult to publish the report, but does he understand the frustration of members and WIT staff? Perhaps he might outline for the committee - if he has the numbers - how many staff at WIT engaged with Mr. McLoone as part of the process. Was it dozens? When are we likely to see the report? One way or another, we need a resolution of the issue today. If Dr. Love is not in a position to answer the question, the Department needs to answer it. I am very anxious to ensure absolute clarity for everybody involved, including the management and staff at WIT. Everybody would benefit from having the report published as soon as possible. If Dr. Love is not in a position to answer the question, I will put it to the departmental officials.

Dr. Graham Love: I thank the Deputy. I will take the three questions questions.

I share the frustration felt. There has been a lot of time spent on this issue. I make it clear that there has been a spotlight on it and the frustration is palpable on our side of the table also. It is our intention that a report will be published. This is a statement of principle and objective.

The Deputy asked how many people had engaged in the review process with Mr. McLoone.

More than 50 came forward, more than we had expected at the time. We were surprised at the number.

The third question - probably the more important - was about the status of the report. It is almost one year on, which is intolerable and deeply frustrating for us. As I said in my earlier update, I must be careful in what I say, but I must give enough information to satisfy the committee. We have run into very significant legal challenges or problems with the report, including a very considered statement that, effectively, I would be exposing the HEA to a significant risk of litigation and damages. We went further than that where we produced a modified version where major risks were considered to be present. We got a senior counsel opinion on this, who went as far as to say that we were not necessarily empowered to be doing this. We engaged extensively with the Department and understand it is with the Department and has gone all of the way to the Attorney General and we are waiting for that to come back. This is quite significant but it is important, given the nature of this to be upfront about that.

Deputy David Cullinane: I am aware that Mr. Ó Foghlú cannot answer the questions but I have to say that I am amazed and blown away by the fact that this has got to the Attorney General's office. It is extraordinary that we have arrived at that situation where for those 50 people who came forward and were part of this process - if I am reading Dr. Love correctly - the senior counsel is saying not to publish this report. It is with the Department and it is trying to figure out what to do and is getting advice from the Attorney General. How did we end up in that situation? I can only read from that that the process over-reached itself, the terms of reference were not clear or the person who did the review overstepped the mark or whatever. I want to be very careful in what I say because I do not want to prejudice whatever report does come out. I want to see a report.

I must however put a deep frustration on the record. I have been personally attacked by an Accounting Officer, in respect of which Mr. Ó Foghlú also has accountability. I do my work in here without fear or favour. It is a matter of fact-----

Chairman: To clarify, the Deputy is not referring to any Accounting Officer in this room.

Deputy David Cullinane: It is the Accounting Officer in Waterford.

Mr. Seán Ó Foghlú: It is the accountable person.

Deputy David Cullinane: Mr. Ó Foghlú, I am sure, knows the nature of that. It is a matter of fact that 50 people engaged with this process. It is a matter of fact that they expressed concerns. If there is a draft report that there is a fear of litigation, then that speaks for itself, in terms of some of what was in the report. I am aghast that it has gone to the Attorney General's office. This is just bizarre.

Can Mr. Beausang enlighten me as to what the Department can do now to salvage this report?

Mr. William Beausang: It might be useful now to outline the different steps that we have gone through to get to the point that we are at currently. The Deputy was briefed by the CEO of the HEA at the committee's May meeting in private session on where things stood. Subsequent to that briefing we met with the HEA, the CEO and his team, to discuss the draft review and the legal advice that they had got on the submissions that they had received, of the CEO that Dr. Love had outlined. We responded to the CEO with our view of that legal assessment, back in June. The meeting was on 5 June and we met with the CEO and his team on 11 June. This

was not a legal response but one from the officials in the Department to the legal advice that the HEA advised the committee of at their May private session. That letter was considered by a subcommittee of the board of the HEA and culminated in the HEA requesting senior counsel's advice.

The senior counsel's advice is a much broader piece of work relating, as Dr. Love has already said, to the powers that the HEA has to carry out reviews and investigations. It was a very significant and substantive legal analysis that arrived in to us at the end of July, if I am correct. Subsequent to that, we worked through with our own in-house legal adviser, a seconded official of the Office of the Attorney General, in order to develop our understanding and to formulate a question. A scenario in which the HEA's legal advice is wide-ranging-----

Deputy David Cullinane: Did the Department at any point advise the HEA not to publish the report?

Mr. William Beausang: The report is a report that has been commissioned by the HEA.

Deputy David Cullinane: There was a draft report that was subsequently modified, as we know. There is a modified version which we did not know about until now. Did the Department offer the HEA any advice or give any direction on that modified version of the report being published or not?

Mr. William Beausang: That would not be appropriate for us to say.

Deputy David Cullinane: So Mr. Beausang has not, so it is "No".

Mr. William Beausang: The decision-making on the publication, and reflecting what the CEO has already said, is a matter that the board has been raising and where it arrived at a point-----

Deputy David Cullinane: What was the position then when Dr. Love then said that this was now with the Department?

Mr. William Beausang: No, the legal advice is with the Department. The legal advice relates to this much broader issue as to the powers of the HEA to carry out reviews and investigations, including reviews and investigations of the nature that arise in this case.

Deputy David Cullinane: I am going to come back to this and will ask to put down for the second round, as I want to deal specifically with those issues and tease some of that out. I am very alarmed with what I have heard so far. This has been a right mess. It is ridiculous how this has worked out but I will come back to it.

If I can come to Dr. Love's resignation email, a letter that he sent to Mr. Horgan who is the chair of his organisation. I do not want to put him in a difficult position in any way because I believe that it would be unfair of any member of this committee to do that. It is fair for us, however, to ventilate the issues that he has put in writing in his resignation email. It is important from our perspective in how it interacts with our work. He said in his email that he formed the view that his role has not matched his expectations. Can he expand on that for me, firstly, please?

Dr. Graham Love: The key attractant for me to this job back in 2016, when I was approached, was the kind of role that involves strategic development of the sector. That is the area I am interested in. That is what was so attractive about it. Something that is as important as

higher education in Ireland was the key attractant. For the four reasons I have outlined below there, I found it difficult to deliver on strategic development to the sector.

Deputy David Cullinane: Why was this?

Dr. Graham Love: I have mentioned that there were challenges as to lack of role clarity between the agency and the Department; the difficulties posed by the lack of resolution to the funding crisis; the nature of the executive to board relationship; and, the dominance of the compliance and regulatory agenda.

Deputy David Cullinane: Can I end by talking Dr. Love through those individually? I am interested in what he means by all of that. I understand what he is saying but it is important for him to expand and to put on the record what he means. He said that the actual nature of his job militates against any realistic opportunity to deliver much-needed strategic development in the sector. This is what we were interested in and, in fact, we were working with him and, I would hope, the Department in making that happen. What does Dr. Love mean by the actual nature of his job militating against being able to deliver the reforms which are necessary?

Dr. Graham Love: I found that the issues that we were facing day to day were a classic case of the urgent crowding out the important. As alluded to in the previous conversation - which is worth developing here because it explains a lot of the lack of role clarity question that is raised - there is a significant issue with the HEA legislation. Let me be very clear on that. This legislation dates from 1971. The HEA is good at allocating funding; it is good at policy advice and the gathering statistics and data analytics etc on policy advice; it is good, to a degree, at advocacy for the system; but it struggles significantly with the fourth function - the one that was conferred on the HEA after the Hunt report and the national strategy published in 2013 - which is the oversight and regulatory piece.

Deputy David Cullinane: Why is that Dr. Love?

Dr. Graham Love: Our legislation simply does not enable the HEA properly.

Deputy David Cullinane: Is it the legislation solely or is it the dynamic, the relationship between the Department and the HEA?

Dr. Graham Love: It is significantly the legislation and that is what Mr. Beausang was alluding to earlier. We have found that in the conduct of a number of pieces of work, such as the one we have discussed previously in the WIT report, but also in relation to some of the matters relating to the University of Limerick, and others, we simply do not have the powers to do what is expected of a regulatory body. When push comes to shove we are not in a strong position at all. That has resulted in myself and the team trying to work almost on a voluntary and acceptance basis for things that are very often pushing people right up to the edge. As far as that side of the equation goes, we are not well set up. What Dr. Love is saying is that while he has responsibility for governance and oversight of institutes of technology and universities he does not have the powers to truly be able to do it.

Dr. Graham Love: In all areas.

Deputy David Cullinane: That is one of the frustrations he has faced.

Dr. Graham Love: Yes.

Deputy David Cullinane: Dr. Love has stated this goes back to the legislation and the

powers the HEA has. Dr. Love has also said there is a lack of role clarity between the HEA and the Department of Education and Skills.

Dr. Graham Love: On that question, at times there is a question about who does what because there are some powers in legislation for the Minister. When it comes to trying to decide on the appointment of an investigator some of the functions lie in the domain of the Minister in legislation and the HEA does not have them but there is an expectation in policy that the HEA does them. Who does them is a question that has arisen over the past 18 months and it has been quite difficult at times to be clear.

Deputy David Cullinane: Let me be clear about this. Is the lack of clarity down to the fact there is general confusion or is it down to the fact that the Department decides it is its turf and it does not want the HEA doing what it sees as its job?

Dr. Graham Love: It is because of confusion in parts. At times the board has wanted to do something. Perhaps the chairman of the HEA will speak on this.

Deputy David Cullinane: Is there any level of preciousness by the Department and protecting its organisation and what it does and stating something is its role and it does not want the HEA doing what it sees as its role and the HEA may have a different view?

Dr. Graham Love: I do not want to refer to it as preciousness on the part of the Department but there have been times when we have disagreed about aspects of the remit. At times it has been difficult for us because in policy and the national strategy it is very much the expectation that the HEA is the authority on these issues but, in fact, as we have figured out, in many cases, including that to which we referred earlier, we are not really in a position to implement it.

Deputy David Cullinane: This concerns us because we are all here in good faith and we have shone a spotlight on the third level sector. We have always done so with a view that the sector has many good people who do a lot of good work but we had concerns about a number of areas and we tried to shine a spotlight on them. We struggled at times to understand who was responsible for what. We did a periodic report on this issue-----

Dr. Graham Love: Last summer.

Deputy David Cullinane: -----and we raised some of these issues. When the head of the HEA resigned and cited the reasons he did so to the Committee of Public Accounts and spoke about serious concerns on a lack of clarity, not being able to deliver much needed strategic development in the sector and a failure to resolve overall funding issues, this concerned members of the committee. As the Secretary General of the Department, when Mr. Ó Foghlú read Dr. Love's resignation email, which I am sure he did, what was his response and his view?

Mr. Seán Ó Foghlú: What was my response to the issues as opposed to my personal response to his resignation?

Deputy David Cullinane: I have no interest in Mr. Ó Foghlú's views on Dr. Love. I want to know about the issues in the email and the concerns Dr. Love raised.

Mr. Seán Ó Foghlú: We recognise there are difficulties and challenges and we are progressing to address them. I do not fully agree on the extent of the challenge there is with regard to the respective roles. We have set out in our performance delivery agreement that the respective roles are clear and we have worked through them with regular meetings.

Deputy David Cullinane: What are the difficulties and challenges from Mr. Ó Foghlú's perspective?

Mr. Seán Ó Foghlú: At present, we are consulting on legislation for the Higher Education Authority. We recognise we need to differentiate more clearly the regulatory and oversight role of the HEA. We issued a public consultation on this in the summer and we hope to move to legislation to clarify aspects of it.

Deputy David Cullinane: Mr. Ó Foghlú is the Secretary General of the Department of Education and Skills, which has responsibility for overall funding of the education sector. I would argue that even though the HEA has a governance and oversight role so does the Department and there is a lack of clarity. If I were in the shoes of the Secretary General and I read an email from the head of the HEA that stated his role had not matched his expectations and the actual nature of the job militated against any realistic opportunity to deliver much needed strategic development in the sector I would be concerned because I would want to see that strategic development happen quickly.

Mr. Seán Ó Foghlú: Of course I am concerned but I consider there has been significant strategic development in the sector, particularly during Dr. Love's time in office. I highlighted some of it in my opening statement. The developments on the funding model and the technological universities are two very good examples of this. We are working through change. I recognise that the role of the chief executive of the HEA must balance various interests between strategy and governance, as do all senior public servants. We are all working on these challenges. I am concerned when he raises them with me but I believe we have been advancing a significant strategic agenda for change in higher education.

Deputy David Cullinane: Basically Mr. Ó Foghlú does not agree with Dr. Love. I commend Dr. Love on going to this trouble and taking a very personal risk. I would have preferred if he had stayed in his role, to be honest, because I thought he was doing a very good job and was a very good witness before the committee. He made a decision and that is for him. It was very difficult for him to walk away from a job such as this, put in writing that he has serious concerns and essentially state that he is not able to do his job because the lines of demarcation between the HEA and the Department are unclear and he is not able to deliver the necessary strategic reforms. It is very troubling that Dr. Love has this view while the view of the Secretary General seems to be completely at odds with it. That is fine if that is his view-----

Mr. Seán Ó Foghlú: My view is not completely at odds. I recognise it is a very challenging role, as are all senior public servant roles, but I do not believe the job is undoable. The HEA is on a journey of change to move into the area of regulation, oversight and policy advice. If we look at the nature of the job specification for the role that was advertised we see the emphasis put on this. We are listening to his concerns and we are trying to work through them.

Deputy David Cullinane: Mr. Ó Foghlú might also listen to my concerns, which I will articulate as best I can. We have dealt with a number of institutes of technology and universities where very serious issues have emerged. These include the University of Limerick, Cork Institute of Technology, Waterford Institute of technology, and institutions in Galway and Sligo. A report of the Comptroller and Auditor General will come out in respect of Limerick and Sligo with a separate report on Waterford. Some of these are issues that we raised. I remember when I first raised the issue of the spin out companies and research and development and we were told there was nothing to see and there was no issue. Mr. Ó Foghlú was not in a position to answer the questions then but we were told to wait and see. We pushed and pushed and the more we

pushed and looked into it the more we saw there were issues. Now we have two reports, one of which went to the Attorney General and I will come back to that later. The two reports of the Comptroller and Auditor General, into Waterford, Limerick and Sligo, will deal with a range of issues. We know that whistleblowers came forward in those organisations and raised very serious concerns. Our view collectively, and we have all raised issues individually, is we did not think the issues were taken as seriously as they should have been. That is my experience.

Dr. Love spoke about a lack of lines of demarcation between the HEA and the Department but then we have the Accounting Officers of some of the institutes and universities not believing they are accountable, as far as I can see. The attitude of some of those who have come before the committee left a lot to be desired. I ask Mr. Ó Foghlú to respond to this.

Dr. Love spoke about a difficulty in the relationship between his board and the executive. What did he mean by this? I ask Mr. Horgan to respond to this question also.

Dr. Graham Love: It relates to the first point, that the role clarity created a cloudiness and greyness at times that left the organisation and the Department not completely clear as to whose job was what. At times, I found myself in the middle of this trying to referee. Mr. Horgan will attest shortly to the fact the authority felt very frustrated at times. I was trying to mediate this on the basis of the powers we have and, in most cases, do not have, particularly when it comes to governance and oversight.

Deputy David Cullinane: Maybe Mr. Horgan will be able to respond to that.

Mr. Michael Horgan: I am personally sorry Dr. Love is leaving. He knows, I have written to him about it. One would expect some tension between the board and the chairman, and the chief executive and the executive. That kind of tension is in the board and within the HEA. It is a good thing to have a bit of healthy tension. Dr. Love is right that the combination of issues that are within our power to address, not within our power to address and over which there is a question mark made him the meat in the sandwich between the Department looking for something and us asking for something that was probably slightly different. This caused a lot of stress and pressure for him. It is the kind of thing that happens all the time between the board and chief executive in organisations. In Dr. Love's view, it was one of the issues he felt added to all the other things that led him to make his personal decision to leave.

Deputy David Cullinane: Mr. Ó Foghlú might come back on the points I made on the institutes of technology and universities. Consider the level of co-operation this committee feels it gets or does not get from accountable persons when they appear before it. Does Mr. Ó Foghlú believe that heads of institutes of technology and universities are fully accountable to the Committee of Public Accounts and that they see it as one of their functions to be fully accountable to it?

Mr. Seán Ó Foghlú: It is in their legislation that they are accountable to this committee, just as I am and Dr. Love is. Absolutely, they are accountable to the committee. We have a very strong governance framework, between the HEA and institutions and between the Department and HEA. I set out many of the elements in my opening statement. The extent of governance checks and so on is significant. The institutions themselves have primary responsibility to respond, and they should be speaking for themselves where there are breakdowns in governance. They should, of course, report here as appropriate.

Deputy Alan Kelly: I thank the witnesses. Best wishes to Dr. Love in the future. I am

sorry to see him go. Best wishes to Paul O'Toole who is taking over his role. I used to work with him many years ago in Bord Fáilte. It is an excellent choice.

Deputy Marc MacSharry: We will have a man on the inside then.

Deputy Alan Kelly: One might as well be upfront and say when one has worked with somebody. I have personal experience of working with the man.

Dr. Love's openness on the issues is very welcome. It will serve us well. I welcome the fact that he is being so upfront on the issues today. It is quite obvious to all members of the committee, who have experience of the issues concerning the HEA, that there is a serious breakdown when it comes to roles and responsibilities between the Department and HEA. We have had a number of reports and interim reports on third level issues. If there is a significant, difficult issue, what is the position on the various roles? I refer to the Accounting Officers in the individual institutions, HEA and Department. The questions of who is responsible and who takes responsibility for dealing with issues are all over the place. It is not fully known internally within the three tiers, and it is certainly not fully known to people who work in them or to us, the members of the Committee of Public Accounts. We know the heads of the institutions are the accountable officers but it is almost as if there is a pipeline of responsibility, through the HEA, through the Department, etc. Where one takes responsibility in its own right is not very clear. That is a real issue. Following on from the questions of the last speaker, I would like Dr. Love to give us specific examples, if he can, of where he feels, from a governance point of view, responsibly is falling between the cracks.

Dr. Graham Love: I will give a few but I have to be careful about processes that are under way. There are a couple of shining examples but I believe the members are all well used to them. I will call them out here as much as I can.

Deputy Alan Kelly: I appreciate that.

Dr. Graham Love: The Waterford case is one. What has been described is very clearly the story because, while we have pushed our legal powers to the limit, they have not been able to go far enough.

Deputy Alan Kelly: We know about that one.

Dr. Graham Love: That is a very significant one. It has driven a lot over the past year.

We found it very difficult in the case of Limerick previously in terms of our capacity to go in and look at the situation that had arisen there for a number of years. Members will know about the whistleblowers, etc. The issue is quite significant there as well. It is in this regard that one finds who has the power or the role to go in, or the legislative basis to do so. There is a perception that it should be the HEA, but we found we are not able to do so in many cases as we are prevented by legislation, whether it is the Universities Act or our own Act, that of 1971.

May I make a general point that might be of assistance in generally colouring this palette? The HEA's role is changing significantly. The allocation of funding role is staying the same. The organisation has been doing this for 30 years very well. The gathering of statistics and producing of intelligence about the system for policy advice are being done very well, in the main, but, since the Colin Hunt report of 2011, which turned into the national strategy for higher education, a significant regulatory oversight role has been given to the HEA. The policy has developed quite a bit over the past few years but the legislation underpinning it has not matched

that. That is where we have run into trouble. A classic role change is taking place in an agency that is driving some of this greyness. That is an opinion but-----

Deputy Alan Kelly: Dr. Love is spot on. That is a fairly accurate and useful comment. Mr. Paul O'Toole is entering the role. Will he be as constrained as Dr. Love was? Are we in a vacuum whereby, from a regulatory point of view, nobody who is ever in Dr. Love's role will be able to deal with the issues in the way this committee expects or the public would require until this legislation is dealt with?

Dr. Graham Love: Certainly, the HEA, when it comes to serious stuff, is not empowered and will not be until the new legislation that was referred to earlier is being implemented. There is a consultation and, if the role described is the one envisaged, it needs to turn into hard legislation that empowers. Some of the powers do vest in the Minister. There are some powers today, in terms of the Institutes of Technology Act, etc., to-----

Deputy Alan Kelly: This is pretty good stuff. In fairness, the consultative process is going on so we know there is a requirement to do as proposed. Until it is actually dealt with, and because of the Hunt report, the obvious changing role of the HEA and the fact that the legislation does not match up to it, we will not be able to meet the standards required from a regulatory point of view. That is just a fact.

Dr. Graham Love: It is certainly challenging.

Deputy Alan Kelly: It is impossible.

Dr. Graham Love: There is another layer to this, if I may bring it up, namely, governing bodies in the institutions. Deputy Cullinane referred to this. There are 24-plus institutions and it is critical they get it right so there will not always be reliance on a central body such as the HEA or the Department. They have to be skilled and enabled, and they have to take responsibility for doing this stuff themselves. It should only be the trickle-over bit – the exception – that ends up-----

Deputy Alan Kelly: So what Dr. Love is saying is that-----

Dr. Graham Love: I am agreeing with the Deputy's general point. I want to be clear about that. I am just adding to it.

Deputy Alan Kelly: I know that and I know exactly what Dr. Love is saying. In his experience, when it comes to governing bodies, there have been glaring examples-----

Dr. Graham Love: In some cases-----

Deputy Alan Kelly: -----where there has been a complete breakdown and it has fallen to the HEA to deal with the mess. However, the HEA does not have the capacity to do so from a legislative point of view. Is that a fair point?

Dr. Graham Love: In some cases, through voluntary engagement, we have managed to manoeuvre both sides to a decent solution but it is not fit for future purpose. It needs to be improved.

Deputy Alan Kelly: This is very revealing. Dr. Love's evidence would mean that we need to speed up this process from a legislative point of view. It should be a priority for the Department. Would Mr. Ó Foghlú agree with that?

Mr. Seán Ó Foghlú: It is a priority. I support Dr. Love's comments. We must be very careful that the primary responsibility is with the accountable person within each institution and the governance role with the governing body of each institution. The most important frameworks are the codes of practice for the two sets of institutions and the HEA's oversight of those. What Dr. Love is referring to is the partial legislative lacuna relating to the universities when a very serious intervention is needed. We have some powers of investigation, and stronger powers of investigation with regard to institutes of technology. In the case of the University of Limerick, we worked very closely with the HEA. Together, we engaged with the University of Limerick and with its agreement, the HEA led on an independent review. It was possible but we had to get its agreement to do it. Furthermore, with the HEA, we have come up with a concept of rolling reviews, which has also worked well. As Deputy Cullinane mentioned, spin-out and procurement were two examples. They were very helpful in terms of advancing policy.

Deputy Alan Kelly: In July, we were promised a report from the HEA on Cork Institute of Technology, CIT, companies. I know we have referred to Waterford. Where does that stand-----

Dr. Graham Love: That has-----

Deputy Alan Kelly: -----in the context of spin-out for the CIT companies. I must be honest with Dr. Love. CIT is the gift that never stops giving to this committee. It has been going on for years. The evidence that has been provided is incredible. From a regulatory point of view, if Dr. Love wants an example of breakdown and falling between the cracks, that is it.

Dr. Graham Love: That report is almost complete. By "almost complete", I mean it will be ready in the next couple of weeks. I understand that we are getting the report in the next couple of weeks. It will go through our internal governance process. It is imminent.

Deputy Alan Kelly: In the context of falling between cracks, I want to deal with protected disclosures. When such disclosures come through the HEA and the Department, what steps does the Department undergo?

Dr. Graham Love: Is that question for the HEA?

Deputy Alan Kelly: No, I am asking the Department first.

Mr. Seán Ó Foghlú: If we receive a disclosure about an institution, we ask the HEA to engage with the institution in respect of it. Typically, without revealing anyone's identity, there would be an engagement to get an initial response from the institution about the nature of the disclosure and how it wished to act in respect of that. The HEA would consider that initial response, discuss it with us and see if it was satisfied. If it was not satisfied, further action might have to be taken.

Deputy Alan Kelly: Does Dr. Love agree with those steps? Does he believe that there were any issues during his period of office - I am not getting into any individual cases - where protected disclosures were not been dealt in the manner in which they should have been? Were there any case that would be dealt with differently if they were being dealt with now?

Dr. Graham Love: I think I know the case to which the Deputy is referring. The process described by Mr. Ó Foghlú is correct. I know there is a dispute regarding the nature of a particular disclosure that was made in one of the institutions referred to by the Deputy. Can I be forthright? We are moving towards the end of a process with CIT and are awaiting a final report that is being verified by the board and the audit and risk committee there in response to a

disclosure we received last year. It came to the Department first and then to us. I must be very careful in what I say here so that I do not draw inappropriate links to a disputed case regarding whether something is a protected disclosure that was made several years prior to that. That is a separate matter.

Deputy Alan Kelly: What is Dr. Love's understanding of a step disclosure?

Dr. Graham Love: Could the Deputy repeat that?

Deputy Alan Kelly: A step disclosure.

Dr. Graham Love: I am not familiar with it by name.

Deputy Alan Kelly: Basically, it is where a disclosure is made, the issues are the same and it is followed up. In respect of the case referred to by Dr. Love - and, obviously, we will not go into any details - does he believe it was dealt with appropriately through the Department? Was there any part that should have been dealt with differently? For example, where a disclosure is made to an individual in the institution and that person is part of that disclosure, should he or she actually be involved in dealing with the disclosure in the first instance?

Dr. Graham Love: Typically, when we try to get information relating to something like that, we kick it up to the next level. If it involves person X, we try to go to the X-plus-one level in the organisation. That is a typical way around this. I think the Deputy asked whether I thought it had been done properly in this case. I do not yet know because we only got a new protected disclosure last year as part of our investigation into that, which is not yet complete but which will be soon. We want to get a response from the institution.

Deputy Alan Kelly: It is good to hear that.

Dr. Graham Love: To be clear, this has gone right to the level of the chair.

Deputy Alan Kelly: What happened before 2014 when it came to disclosures? What process was in place through the HEA and the institutions under it? How were they dealt with? How did a person making a disclosure prior to 2014 know that it was a disclosure? What processes were in place, was there a uniform process across institutions, was there guidance from the HEA and what was in place prior to 2014?

Dr. Graham Love: Prior to 2014, there was nothing in the form of the protected disclosure that we know today. The legislation only came in during the summer of 2014. Prior to that, it involved the good faith policies in the individual institutions. I know this matter is potentially at issue in this case.

Deputy Alan Kelly: Dr. Love will not know the dates off the top of his head but I would appreciate it if the HEA would write back to the committee. On what dates, if at all, did the institutions introduce employee assistance helplines?

Dr. Graham Love: Employee-----

Deputy Alan Kelly: Employee assistance helplines. In evidence given here previously, it was stated that employee assistance helplines were in place. When were they put in place in each institution prior to 2014?

Dr. Graham Love: Can we follow up with that answer?

Deputy Alan Kelly: In general, would Dr. Love know when they were put in place?

Dr. Graham Love: I cannot say off the top of my head but I would be surprised if they were not in place at that point. I certainly think we had done so in the HEA and it was done in other State bodies in which I had worked. I will have to follow up on the matter.

Deputy Alan Kelly: This is a general concern of mine that is directed to Mr. Ó Foghlú. Obviously, in some ways, this is an example of falling between the cracks. It concerns how issues relating to how protected disclosures were dealt with from a governance point of view.

Mr. Seán Ó Foghlú: I do not accept that as an absolute example.

Deputy Alan Kelly: Fine, I am just talking about it as an issue rather than as an example of a case. I presume we will find out when the report is published. Issues might be dealt with in a certain manner now but is Mr. Ó Foghlú satisfied that there were clear knowledge guidelines in place between the Department, the HEA and the institutions in recent years regarding how all of these issues were being dealt with?

Mr. Seán Ó Foghlú: The codes of governance have evolved over time so we have had a number of different codes with regard to overall governance issues and have updated them as the central one has been updated by the Department of Public Expenditure and Reform or as other issues have emerged in accountability terms, including issues such as this. We have been seeking to improve accountability on a continuing basis.

Clearly, on protected disclosures, with the passing of the legislation the arrangements have been more standardised and have to follow the legislation. However, the redress parts of the 2014 legislation are retrospective so that a person who feels that he or she was not appropriately treated and made a disclosure previously does have access to that. That is something unique about that legislation.

Deputy Marc MacSharry: I welcome everybody. My records show that a meeting of the committee in May 2014 discussed whistleblowing. I was not a member at the time. The minutes show, in the context of what Deputy Kelly said about what would have happened before the Bill was passed, that Mr. Ó Foghlú stated that even as late as the previous week the HEA had written to the institutes of technology about whistleblowing, asking them to ensure that they put arrangements in place to deal with any issues that may arise prior to the completion of the legislation being enacted. Was there a response from each institution on that or was that merely a memorandum that was sent around?

Dr. Graham Love: I am not aware.

Deputy Marc MacSharry: Would Mr. Ó Foghlú be aware because he was aware at the time? I accept it was a few years back.

Mr. Seán Ó Foghlú: It is HEA correspondence the Deputy is referring to.

Deputy Marc MacSharry: Mr. Ó Foghlú was obviously aware of it because he was telling the then committee about it.

Mr. Seán Ó Foghlú: Yes. It is a matter for the HEA to respond. To be fair now, to ask us questions of responses to the HEA is part of arguably-----

Deputy Marc MacSharry: I am only asking Mr. Ó Foghlú about something he stated in

2014.

Mr. Seán Ó Foghlú: I am saying that I reported that the HEA had written to the institutions in 2014.

Deputy Marc MacSharry: Okay. From memory, can Mr. Ó Foghlú recall if there was the hope-----

Mr. Seán Ó Foghlú: The intention was that they would have arrangements in place prior to the legislation being enacted.

Deputy Marc MacSharry: We have had somebody suggesting good faith policy. The hope was good faith policies were in place and that it is hoped that would have been the default position should what we now describe as disclosures come forward. In Cork Institute of Technology, CIT, for example, we had a draft disclosures policy. If Mr. Ó Foghlú recalls, it arose at our previous meeting. Was there any sanction for colleges that did not follow a protocol?

Mr. Seán Ó Foghlú: We have introduced that concept in the funding review which the HEA has undertaken and we are considering it in the legislation in response to the issues that have been raised here.

Deputy Marc MacSharry: There probably will be when legislation is enacted to deal with this issue, but-----

Mr. Seán Ó Foghlú: Perhaps also in advance of that under funding mechanisms.

Deputy Marc MacSharry: I presume that will not be retrospective.

Mr. Seán Ó Foghlú: Retrospection can be considered but I do not believe a decision has been made on that.

Deputy Marc MacSharry: There are a few points on a similar subject matter that I would like to put on the record. The matter dates back to June. I will refer to the transcript of that day. On three occasions, December 2015, on which date I would not have been here, June 2017 and June 2018, the Committee of Public Accounts was informed by the president and vice president of CIT that they never received a disclosure before the Act. Dr. Love was alluding to this with Deputy Kelly but I want to go into a bit more detail. On three occasions, they said that. There was reference to an unnamed whistleblower in the context of a letter that came to the vice president. That was eventually admitted.

We know this is nonsense because I have an email from the vice president which was referred to in a Topical Issue debate on this issue by Deputy Kelly, Deputy Cullinane and me. I will read it into the record: "Just to confirm that I have a copy of the letter you gave to [X, who was a head of faculty in the college] dated the 9th of October [This email is dated 12 October 2012] and that I will deal with it." This is from the vice president, the person who told us on three occasions, along with colleagues, that there was no disclosure. It goes on:

I have attached copies of two policies that will guide us in terms of developing an approach when we meet on Tuesday at 6. Please note that the disclosure policy is only in draft currently but I would suggest that we will apply it in this case.

That is the email of 12 October 2012. It would seem to my untrained interpretation to be a clear example of what we would now describe as a disclosure, considering that use of the

disclosure policy, albeit in draft format, was suggested by that self-same individual, then vice president, who was responsible for a wide variety of areas and who suggested that no such disclosure took place. That was brought to the Minister's attention in the House on 10 July last and I note there has been correspondence with Dr. Love. What is the HEA's position on this?

Dr. Graham Love: Following up on what I mentioned earlier, we have a process under way with this matter, particularly with the 2017 disclosure.

Deputy Marc MacSharry: That is very important, because Dr. Love stated that is the 2017 disclosure.

Dr. Graham Love: Yes.

Deputy Marc MacSharry: I am back in 2012 here, and that is what the question refers to. The HEA got a disclosure in 2017 that went around the houses. Unfortunately, from a governance perspective, there seemed to be a bit of checking in with CIT before it went to the HEA, which is not good governance. I note Mr. Ó Foghlú suggested that sometimes, through the back channels, one might touch base to see what their initial response is.

Mr. Seán Ó Foghlú: I did not suggest that. I said we would go to the HEA and I did not use the words "back channels".

Deputy Marc MacSharry: I used the words "back channels", because it was inappropriate to have done so. The Department should have gone to the discloser. We are talking about 2012. What is the HEA position on that? Was it a disclosure or not?

Dr. Graham Love: I want to be very careful here, because there is also an associated High Court action potentially related to this. I do not want to say-----

Deputy Marc MacSharry: That relates to a-----

Dr. Graham Love: Can I continue, please?

Deputy Marc MacSharry: I will just help Dr. Love continue. I understand that there is a High Court case, but that relates to a human resources matter, not a disclosure.

Dr. Graham Love: I am not sure about the overlap.

Deputy Marc MacSharry: I think they are different things.

Dr. Graham Love: The 2017 disclosure has matters that relate to the earlier process, and that is why we should allow that come to a conclusion. It will reflect on that matter that the Deputy is inquiring about.

Deputy Marc MacSharry: There may be-----

Dr. Graham Love: I am sorry if that sounds evasive.

Deputy Marc MacSharry: It is, actually.

Dr. Graham Love: It is deliberately to allow the process.

Deputy Marc MacSharry: There may be similarities between one and the other and I appreciate that. What I am asking is very simple. Is it the position of the HEA and the Department of Education and Skills that the 2012 matter was a disclosure or not?

Dr. Graham Love: We cannot make that judgment here today yet, because-----

Deputy Marc MacSharry: Is it because the HEA will make that judgment based on the 2017 disclosure?

Dr. Graham Love: When we get further information, we should be in a position. Exactly.

Deputy Marc MacSharry: Is that right? The HEA is deciding what happened in the past, in 2012, based on what happened in 2017. In 2017, it was clearly a disclosure because there was an Act defining it.

Dr. Graham Love: Can I ask my colleagues to help with this?

Ms Sheena Duffy: The first time we became aware of the 2012 issue was when we received the 2017 protected disclosure.

Deputy Marc MacSharry: Is that not the problem?

Ms Sheena Duffy: We have engaged in a process on the 2017 one.

Deputy Marc MacSharry: The HEA has all this correspondence now. From what the HEA knows of it, and Mr. Ó Foghlú of the Department should feel free to come in whenever he wants here, and I am happy to give them copies of the email if they do not already have it-----

Mr. William Beausang: There is an important point to be made here, and it came up the previous time we were here. It is never possible to say whether a disclosure is a protected disclosure until a third-party process adjudicates on that and a claim is determined in looking at whether a person has been penalised for making a protected disclosure. Obviously, the policy is that an assessment is made as to whether an issue should be treated as if it was a protected disclosure and as to whether it looks, by virtue of that process, that it may fall into that category and should be treated in a serious manner as a result of that, but one cannot determine outside the legal process whether a protected disclosure was made. We must be careful on that as otherwise-----

Deputy Marc MacSharry: Who is the third party?

Mr. William Beausang: It would be something like the Workplace Relations Commission. If I made a protected disclosure in the Department and I felt penalised by the Secretary General as a result, the Protected Disclosures Act 2014 allows me to go to the Workplace Relations Commission and have it determined as to whether I have made a protected disclosure and been penalised as a result. In those circumstances I would have very significant legal rights in terms of compensation, for example. Those are the circumstances in which the issue is ever only answered. Outside of that, it is around this process of making an assessment of whether it is likely and whether people believe it falls under the categories in the Protected Disclosures Act. It is an important distinction and we can never be absolute. There are clearly circumstances in which one might look at a report or disclosure and be quite convinced that it falls into the category of protected disclosure and should be treated as such, but one cannot say it definitively. It is a matter for the Workplace Relations Commission or the Circuit Court if some interim leave has been granted.

Deputy Marc MacSharry: Who decides that? I am confused now. If I make a protected disclosure to the head of the HEA when I work there-----

Mr. William Beausang: How does the Deputy know it is a protected disclosure?

Deputy Marc MacSharry: I am the one disclosing it.

Mr. William Beausang: It may not necessarily be a protected disclosure.

Deputy Marc MacSharry: So whose call is that?

Mr. William Beausang: It would be a matter for the Workplace Relations Commission or the Circuit Court in due course.

Deputy Marc MacSharry: Okay. So really a protected disclosure should not be made to the head of an organisation in the first place.

Mr. William Beausang: Concerns should be brought to the head, and the purpose of the legislation is to bring concerns to the attention of the organisation.

Deputy Marc MacSharry: As long as we know that a discloser will be thrown under the bus, with the only recourse being the legal process.

Mr. William Beausang: That is certainly not the objective of the legislation.

Deputy Marc MacSharry: That is what it would be in practice. We have an example from before the legislation, which is 2012 in this instance, and an example from after the legislation, which is 2017. In the meantime there is a discloser out of work since 2014 and unable to get answers from anybody.

Mr. William Beausang: Taking away from the specifics-----

Deputy Marc MacSharry: No, I am quite happy to stay with the specifics.

Mr. William Beausang: Okay.

Deputy Marc MacSharry: If we do not consider specific cases, we will always be able to take refuge in those terrible words, “culture” and “systemic failure”.

Mr. Seán Ó Foghlú: We cannot look at specific cases because we are precluded from doing so. A disclosure is being considered currently and we cannot get into the detail of it. There are different rights of different people involved, including the discloser and any person or organisation that he or she makes disclosures about. The Higher Education Authority, HEA, is clear this is in process. The person who makes the disclosure can always go to the Workplace Relations Commission if he or she wishes to. That is the protection in the legislation. We cannot get into analysing protected disclosures when the process has not been completed. The HEA has indicated there may well be a link between a possible disclosure of some sort in 2012 and the case under consideration. It cannot come to a view until the process for the current disclosure is complete. It is very hard for us to say anything more than that. This has not fallen between the cracks and we are working together on it. We are working through it. It is a very difficult-----

Deputy Marc MacSharry: Is there a healthy tension with this matter? Mr. Horgan mentioned “healthy tension” as being a good thing and I wondered if this was a matter where there might be a healthy tension.

Mr. Seán Ó Foghlú: I have not detected any tension but we must keep it under review.

Deputy Marc MacSharry: Has Mr. Love observed it?

Dr. Graham Love: No, not on this.

Deputy Marc MacSharry: Okay, that is good. Could I have a timeline on an outcome for this process? The witnesses are waiting for a report but who is doing it?

Dr. Graham Love: There are a couple of things going on so let us not mix apples and oranges.

Deputy Marc MacSharry: It is the 2017 disclosure that relates to Cork Institute of Technology.

Dr. Graham Love: It is in process currently.

Deputy Marc MacSharry: Who is doing the report?

Dr. Graham Love: We are doing it but we are getting a report from the institution right up to the level of the chair, which is currently being signed off by the chair of the audit and risk committee and going to the chair of the board. It is the very top.

Deputy Marc MacSharry: Okay. Some of those people would have been mentioned in the disclosure.

Dr. Graham Love: Some of which people?

Deputy Marc MacSharry: The people doing the report in the institute.

Dr. Graham Love: No, I do not believe so.

Deputy Marc MacSharry: Okay. Is the witness sure about that?

Mr. Seán Ó Foghlú: I do not know exactly to whom the Deputy is referring.

Deputy Marc MacSharry: I am not referring to any individual.

Dr. Graham Love: Well then I cannot answer the question.

Mr. Seán Ó Foghlú: The Deputy is getting into the detail of the disclosure. When the HEA receives a report on the disclosure, it will see who it is about and who is involved in any process. Dr. Love has said he does not believe anybody involved with the disclosure is involved with the process. The authority will have to satisfy itself when it sees the response. Other than that, it is all hypothetical comment on a real disclosure. This is risky territory and I am a bit uncomfortable about this.

Deputy Marc MacSharry: Why is it risky territory? Could that be explained?

Chairman: It is in process and there has been no decision or outcome yet.

Deputy Marc MacSharry: This is in process since 2012. We were here before-----

Chairman: No, the HEA stated it only became aware-----

Deputy Marc MacSharry: It is like the “commercially sensitive information” cop-out that we regularly get from people or if something “is a matter for the courts”. It seems to be a

matter for everybody except the public or the poor discloser who is being thrown under the bus.

Mr. Seán Ó Foghlú: We have responsibilities as people to whom disclosures are made and they cannot cross over.

Deputy Marc MacSharry: In practice, it seems to be secondary to the responsibility to the institution and the system. I interrupted Dr. Love.

Mr. Seán Ó Foghlú: I disagree about that.

Deputy Marc MacSharry: Fair enough. Clearly, Mr. Ó Foghlú disagrees. I will wrap up in a moment. Will Dr. Love give me that timeline again as I interrupted him very rudely? The HEA is awaiting a report from the institute.

Dr. Graham Love: We are expecting a report, probably within a fortnight. It must go through our process then at the HEA side when we get it. It is coming very soon.

Deputy Marc MacSharry: It will be two weeks and then it will be integrated with the HEA's internal report.

Dr. Graham Love: Correct. That will include our board etc. It has to go through that.

Deputy Marc MacSharry: What happens then?

Dr. Graham Love: It will depend on the information. We must adjudicate on that.

Deputy Marc MacSharry: Let us pretend there is nothing in it. What happens then?

Dr. Graham Love: If there is no substance to it in our considered view following the gathering of evidence etc., we will assess to close the case.

Deputy Marc MacSharry: Would the authority write to the discloser or what would happen?

Dr. Graham Love: Yes.

Deputy Marc MacSharry: What happens if there is something in it?

Dr. Graham Love: We would decide on the next steps. There is a range that might be available to us.

Deputy Marc MacSharry: Are they laid down in legislation?

Dr. Graham Love: No, or not particularly. Examples elsewhere have resulted in a review, perhaps.

Deputy Marc MacSharry: What is that?

Dr. Graham Love: In other scenarios there may have been an investigation or review.

Deputy Marc MacSharry: Who would carry that out?

Dr. Graham Love: We spoke about one earlier.

Deputy Marc MacSharry: It could be the Garda or anybody.

Dr. Graham Love: It depends on the information.

Deputy Marc MacSharry: I thank the witnesses.

Chairman: The Minister has powers to commission various investigations and the HEA has not with respect to universities. The process for the Kildare and Wicklow Education and Training Board, ETB, was commissioned by the Minister.

Mr. Seán Ó Foghlú: It was a statutory investigation. There is a similar statutory investigation-----

Chairman: Would the Minister have had the authority to commission the investigation in Waterford?

Mr. Seán Ó Foghlú: The Minister commissioned an investigation in Waterford approximately six years go. I do not want to comment in any way about the Waterford case.

Chairman: I am not asking you to get into it.

Mr. Seán Ó Foghlú: It depends on the grounds for the reviews. I really do not want to comment on the Waterford case.

Chairman: Okay. The HEA commissioned a report and issues have yet to be resolved. That is fine and the matter is parked until we get there. The Minister has separate powers to commission an investigation if he or she believes statutory requirements to do it have been met, as was done in the case of the Wicklow and Kildare ETB.

Mr. Seán Ó Foghlú: It was also done for Waterford Institute of Technology, WIT.

Chairman: Yes, he did it with the previous case in Waterford. In other words, power rests with the Minister. In parallel, the Minister for Health could commission HIQA to do a report on a hospital if he or she so chose. What power does the Minister have to commission an investigation? I know the HEA might be constricted with its legal powers but perhaps whoever drafted the legislation did it to leave the power with the Minister. If people feel the HEA has a role and authority, perhaps it should have some of the delegated power that the Minister has. The power might exist but it might not be with the HEA. I am only asking a question as I want to understand this.

Mr. William Beausang: As the HEA would indicate, the legal advice that we received at the end of July had a conclusion that the type of investigation that was the subject matter of the legal advice might seem more appropriate to the powers of the Minister.

Chairman: Mr. Beausang can see now why I was asking the question.

Mr. William Beausang: It is important to add that we would then need to understand the limits of where ministerial power extends. When we are speaking of any kind of investigation, there are different types of investigations. There are those that might look at whether systems have operated-----

Chairman: I am sorry for interrupting but Mr. Beausang is going into an important area. Will he send us a note?

Mr. William Beausang: Does the Chair mean a note on the powers of the Minister?

Chairman: Yes, a note on the powers of the Minister and the different types of investigations based on the circumstances-----

Mr. William Beausang: Could I say that-----

Deputy David Cullinane: I will be coming back in on this.

Chairman: I am coming out of it.

Mr. William Beausang: Subject to agreement, I propose to share that information with the committee once we have received the advice back from the Attorney General on the powers-----

Chairman: The respective powers.

Mr. William Beausang: -----of the HEA. That would then mean the response the committee would get would be fully informed. I do not think there should be a long delay before we should be able to provide that information to the committee.

Chairman: That is fine. It is only information and it is not about this particular case. It is just in a general sense. Something could happen in some other county or in some other institution tomorrow-----

Mr. William Beausang: No, it is a general issue of legal powers. It is relevant to the review of Waterford Institute of Technology, WIT, but it is not specific to it.

Chairman: We will wait until we get a fuller picture and more information on the powers of the Minister compared with the power of others. A review of legislation is being done at the moment. It is under consideration and there has been no decision. What stage is that review at?

Mr. William Beausang: We have done a lot of work, as the Secretary General mentioned. We have carried out a public consultation on the new HEA legislation. We have been looking at models in other jurisdictions-----

Chairman: Will Mr. Beausang give us the timeline? All I can say is that passed me by. When was that?

Mr. William Beausang: The current objective would be to bring draft heads to Government in the first quarter of next year. It can be gauged from the conversation that it is accepted that it is an urgent priority. It is a priority in the action plan for education.

Chairman: Will there then be pre-legislative scrutiny?

Mr. William Beausang: There will be pre-legislative scrutiny.

Chairman: We are then talking about 2019, if all goes well.

Mr. William Beausang: Ideally, we would like to enact legislation in 2019. If we bring draft heads to Government in early 2019 and they are of a high quality, there is no reason, subject to prioritisation by Government, that legislation could not be drafted in the course of the year. That is, however, a decision for Government.

Chairman: That is next year's work. In respect of the public consultation-----

Mr. William Beausang: That is now concluded.

Chairman: Was there anything in that process? I presume the results are on the website of the Department of Education and Skills.

Mr. William Beausang: We have not published that yet but we can share the information from the public consultation.

Chairman: Was there anything in that public consultation regarding the issue we are talking about now?

Mr. William Beausang: There was a broad acceptance, reflecting many of the themes we heard this afternoon, that it is important that the HEA is equipped with the regulatory powers needed to carry out its functions. I should say that some of the higher education institutions, and the universities in particular, would highlight the need for-----

Chairman: Independence.

Mr. William Beausang: -----balance between the regulatory powers and the question of their autonomy. That is, however, a trade-off that always plays out in regulation.

Chairman: When the Committee of Public Accounts examines third level institutions, we are looking at their financial matters and not their academic independence. We do not go there. They might hold their academic independence to state that nobody could come at that at all-----

Mr. William Beausang: We broadly share that perspective that there needs to be a distinction between accountability for public funds and the academic freedom that is safeguarded in the Universities Act 1997.

Chairman: That is agreed. I am sorry but I wanted to get an understanding of where we are at. I call Deputy Connolly. Deputy Catherine Murphy had indicated. Is she gone?

Deputy Catherine Connolly: She had to leave.

Chairman: Deputy Cullinane had also indicated. I will take Deputy Aylward before Deputy Cullinane because he has not come in yet. I am sorry for that interruption. It was for my own information.

Deputy Catherine Connolly: The witnesses are very welcome. On that last point, I presume the HEA made a written submission in respect of this consultation. When was that?

Dr. Graham Love: I think it was at the end of September.

Mr. Michael Horgan: At the last board meeting, we went through all of the public submissions made until then and compiled a list for ourselves and submitted that-----

Deputy Catherine Connolly: Did the HEA make a written submission in respect of what was necessary in the new legislation?

Mr. Michael Horgan: It was what we thought was necessary.

Deputy Catherine Connolly: Will Dr. Love clarify what essential things are being looked for in that legislation?

Dr. Graham Love: We are looking for the capacity to send investigators into universities, if needs be. Deputy Connolly will know this has been a significant gap in the past. It is a kind

of zero or nuclear option in the Universities Act 1997. I refer to the visitor function. That was one aspect. We also talked about regulation of the system and looked around the world at what other jurisdictions were doing and the different types of regulation. We looked at the models in New Zealand Hong Kong and the recent change in the UK etc. We advised or gave a view on some of the different systems because it is a trade-off, as Mr. Beausang said a moment ago, as to how far to go and-----

Deputy Catherine Connolly: The HEA has made a very detailed submission-----

Dr. Graham Love: We have.

Deputy Catherine Connolly: -----looking for very specific changes. If those changes had been in place, would that have made Dr. Love's life easier?

Dr. Graham Love: It is safe to say yes.

Deputy Catherine Connolly: That is fine.

Dr. Graham Love: At least we have learned something from the past year.

Deputy Catherine Connolly: Did Dr. Love take up his position in March 2017?

Dr. Graham Love: Yes, it was March 2017.

Deputy Catherine Connolly: Dr. Love was there for about a year and a half, is that correct?

Dr. Graham Love: Yes, I was.

Deputy Catherine Connolly: I am here about two and a half years, I think, since February 2016. Roughly, on this committee alone we have got an investigation into the Grace case - it came before the previous Committee of Public Accounts - in the south east and an investigation into Project Eagle. In this area of education, we have an investigation into Limerick IT, Kildare-Wicklow Education and Training Board, Cork IT and Sligo IT. We have the Comptroller and Auditor General-----

Mr. Seán Ó Foghlú: There has not been-----

Chairman: It is nothing to do with the HEA.

Deputy Catherine Connolly: No, I am just saying-----

Mr. Seán Ó Foghlú: There has not been an investigation into Sligo IT.

Chairman: We are talking about the work of this committee.

Deputy Catherine Connolly: I am trying to show how difficult it is here as a member because governance is not working. It is simply not working. That is why we end up with tribunals or commissions of investigation. That is the difficulty I see. If we look at the Grace case, which has nothing to do with the HEA, there were three reports. Had those reports worked, there would not have been a need for a commission or a tribunal. I refer to Project Eagle and all of these investigations. That is by way of preface. I am only mentioning a tiny amount and we are only a very small country of just over 4 million people. It seems extraordinary. On the report into WIT, when is it envisaged that it will be published, if at all?

Dr. Graham Love: I have indicated we are waiting for feedback from the Department and the Attorney General which will have a significant-----

Deputy Catherine Connolly: How long is it with the Attorney General?

Dr. Graham Love: I might ask the Department to comment.

Deputy Catherine Connolly: How long is it with Attorney General?

Mr. William Beausang: As I mentioned earlier on, we engage with the in-house-----

Deputy Catherine Connolly: How long has it been with the-----

Mr. William Beausang: We wrote to the Office of the Attorney General on 18 September and we met advisory counsel on 21 September. It is not with the Attorney General for very long but it is being treated as a priority. We expect to receive a detailed response shortly. To be clear, and to correct what I said earlier, I am referring to our request for legal advice on the powers of the HEA to carry out reviews. That will then inform the next steps of the HEA in finalising the report.

Deputy Catherine Connolly: What is being sought then is general advice. Is that correct?

Mr. William Beausang: It is going to be very detailed advice because it relates to what powers the HEA has to carry out reviews and investigations. The legal advice we got from the HEA was that its senior counsel could not identify a power for it to carry out reviews and investigations. We have therefore sought a definitive view from the Attorney General on whether that is the case.

Deputy Catherine Connolly: As my colleague has indicated, this is very serious because if the HEA was acting without power, then this report cannot be published. Is that correct? I refer to whether the HEA was acting ultra vires or outside of its powers.

Mr. William Beausang: Yes, if that was the case and if that was the conclusion of the Attorney General, but we await that advice.

Deputy Catherine Connolly: Absolutely, but we cannot pre-empt it. We do have to look at options-----

Mr. William Beausang: Yes, as a risk.

Deputy Catherine Connolly: It is a big risk because otherwise the Department would not have waited this long. How long is the draft report ready?

Mr. William Beausang: As I said earlier-----

Deputy Catherine Connolly: How long is the report ready? It is a simple question.

Dr. Graham Love: I might step in here. The previous draft was put for feedback six months ago, I think.

Deputy Catherine Connolly: That is fine.

Dr. Graham Love: That is how long it has been since it moved into a higher gear legally.

Deputy Catherine Connolly: When did it start?

Dr. Graham Love: It was last summer.

Mr. Neil McDermott: It was July.

Dr. Graham Love: Excuse me, it was July 2017, to be clear.

Deputy Catherine Connolly: That is one year and three months ago.

Dr. Graham Love: Yes. I share Deputy Cullinane's frustration with the architecture of this. I have said that. It is not reflecting well on any of us.

Deputy Catherine Connolly: To return to the board, did the absence of power not come up for discussion before at board level regarding what authority the HEA did or did not have?

Mr. Michael Horgan: On this particular issue or prior to that?

Deputy Catherine Connolly: Both. On this issue and generally, given the range of difficulties with governance regularly emerging at this committee alone.

Mr. Michael Horgan: It had not come up before the Waterford Institute of Technology, WIT, report. To go back through the history of all of this, the Higher Education Authority Act 1971 was written in broad terms. It is a short Act, each section of which is a line or two. I suspect that at the time it was viewed as a good, enabling Act because it was not specific.

Deputy Catherine Connolly: Before the WIT report, the absence of power did not come to the HEA's attention.

Mr. Michael Horgan: Part of what has happened is that when the Hunt report suggested the HEA should have a regulatory role, that became the national strategy, and I think, although I was not there then, that the HEA assumed that it then had the power because of the contents of the Hunt report and the national strategy, but the legislation did not catch up with that. That is the area where our legal advice-----

Deputy Catherine Connolly: That is clear and the HEA's representatives have been clear, upfront and blunt about it. My question is when the board of the HEA became aware of it. Dr. Love says it did not until the WIT report.

Mr. Michael Horgan: The University of Limerick, UL, report was probably the first time we realised we had doubts about our power.

Deputy Catherine Connolly: Will Dr. Love elaborate on that? He did the report on UL and Kildare-Wicklow.

Dr. Graham Love: To clarify, we did not do the Kildare-Wicklow report.

Deputy Catherine Connolly: No, the HEA did that report.

Dr. Graham Love: No, we did not.

Deputy Catherine Connolly: I am sorry.

Dr. Graham Love: That is the territory of the further education and training sector and SOLAS, to be clear. On the question about UL, the report goes back a few years. There were a number of attempts to access UL that either were not received or were not complied with. I imagine it was then that the HEA understood it did not have power with regard to universities,

at least, because it was clear the Universities Act prevented it. The power has moved on and been built up subsequently with the institutes of technology and so on, which comprise separate legislation, which the WIT case made clear. It has been a process of becoming clearer over the past couple of years since about 2016, when the UL report was published.

Deputy Catherine Connolly: Did the HEA not do Kildare and Wicklow also?

Dr. Graham Love: No.

Chairman: That was the Department.

Deputy Catherine Connolly: Yes.

Chairman: Kildare and Wicklow are an education and training board, ETB, but the HEA is separate from ETBs.

Mr. Seán Ó Foghlú: Education and Training Boards Ireland is responsible for schooling and further education and training. It is across the board, therefore. The Minister has the investigative powers and he initiated an investigation.

Deputy Catherine Connolly: I thank Dr. Love for releasing his resignation letter. I know it is difficult and I do not intend to ask a single personal question. I wish him the best of luck in his next job or in whatever he chooses to do. I also thank him for his frankness every time he came before us.

All the reasons Dr. Love gave for his resignation concern me. Will he clarify what he meant by the dominance of the compliance regulatory agenda, which is one of the four reasons?

Dr. Graham Love: I will elaborate on it but also try to be succinct. I am probably a bit blunt here but I think that is helpful to the committee. It is hard to put an exact percentage on it, but I think I have spent more than 70% of my time in this space since I joined a year and a half ago. While I understand that oversight and governance would be a part of the role, I did not think it would be on such a vast scale. It is partly because a significant number of issues were coming forward, but also because of all the other issues we have been discussing here today, namely, that the machinery, the architecture and so on are not suitable to take care of some of the issues.

Also, something we have not discussed enough here today is the responsibility that lies with the governing bodies of the institutions themselves to manage this, which is the bit that we ultimately need to get right. We talked about the HEA legislation that is required for the emergency position or spillover, but we have to get it right at the level of the individual institutions. They need to have this working properly.

Deputy Catherine Connolly: I agree with Dr. Love on that point, as I think we all would. All the governance procedures are in place to avoid these types of investigations. We agree with Dr. Love and we see the gaps every time the organisations come before us. It is particularly shocking to see it in the third level sector, which is one of the most privileged sectors, where there should not be any difficulties.

The regulation and compliance should be dominant. I am not sure if I am correctly interpreting the phrasing in Dr. Love's letter. Does he mean there is an absence of regulation and compliance where they should be dominant?

Dr. Graham Love: I was trying to outline the dominance over all other issues, especially the strategic development, which is why I used the example of 70% of my time. I would expect, as an accountable person should, that there would be oversight and governance work to do. When it takes 70% of one's time, however, and one cannot pay enough attention to other things to develop the sector-----

Deputy Catherine Connolly: That happens because there are difficulties.

Dr. Graham Love: I agree.

Deputy Catherine Connolly: The manner in which Dr. Love has described it in his letter, however, is different. He is clarifying that here, but the governance should be dominant in the sense that it should work.

Dr. Graham Love: Yes, it should work.

Deputy Catherine Connolly: Dr. Love says it is dominant in that it does not work.

Dr. Graham Love: It is dominant in the time it takes, in my personal experience this year. I mentioned 70%. I meant dominant in a figurative way.

Deputy Catherine Connolly: On Kildare-Wicklow ETB, and this is directed to Mr. Ó Foghlú, a direction was sent by the Department. How many directions have been sent by the Department to organisations?

Mr. Seán Ó Foghlú: The Kildare-Wicklow ETB review is the only such review. A direction by the Minister arising out of a review has been made only once.

Deputy Catherine Connolly: Just once.

Mr. Seán Ó Foghlú: In this context, yes.

Deputy Catherine Connolly: In the follow-up to that, a period of two weeks was given for a reply if there were any comments to be made. Was that reply given within two weeks?

Mr. Seán Ó Foghlú: It is not a higher education issue and I have not got the brief with me, but I understand it was.

Deputy Catherine Connolly: Okay. I will finish because it is late and we have been here since 9 o'clock, but I would love to continue discussing education here. I would like to discuss Springboard and the fact that it has dropped significantly from €21 million, and to ask why. If the Chair lets me ask that, I will certainly ask it. There are many other interesting items here that one should look at to see if we are getting value for money.

Chairman: Do any of the witnesses wish to comment on Springboard?

Dr. Graham Love: Will the Deputy clarify the question?

Deputy Catherine Connolly: In the 2017 accounts for higher education, funding has fallen from €21 million to €14.8 million.

Dr. Graham Love: I invite my colleagues to comment but I think it is just a matter of the timing in which the funding is provided. Springboard is actually growing.

Ms Sheena Duffy: In the 2019 budget there was an additional provision for Springboard.

Dr. Graham Love: A further €3 million.

Chairman: What is it expected to be in 2019?

Deputy Catherine Connolly: Why has it decreased?

Ms Sheena Duffy: It is the timing of the accounts.

Deputy Catherine Connolly: Okay. In that case, the number of students is not down.

Dr. Graham Love: It is growing.

Deputy Catherine Connolly: It is just the timing of accounts.

Dr. Graham Love: It is just a timing issue with how the funding is allocated. It is actually a growing programme. This is important because it is nice to talk about something strategic for a moment. The Springboard programme is fundamentally changing. It was born in a time of 15% unemployment, which it was an excellent measure for combating that. It is morphing into a programme for upskilling within jobs because we have moved down to between 4% and 5% unemployment, which is a significant change in the programme.

Deputy Catherine Connolly: My final question relates to the performance level agreement that was signed. Is it correct to say there has always been one?

Mr. Seán Ó Foghlú: It was instituted a number of years ago.

Deputy Catherine Connolly: When was it instituted for the HEA?

Mr. Tony Gaynor: About 2015.

Deputy Catherine Connolly: Dr. Love has obviously looked at that performance level agreement. Is he satisfied with it? Does it contain what he wished it to contain?

Dr. Graham Love: It contains some of what I wished it to contain, but the problems are being caused at a higher level, through the legislation and so on that we discussed today. We put the full annual work plan into that performance level agreement but we found ourselves running into problems with actions on the work plan because, for example, we do not have the powers in certain places to do what we are expected to do.

Deputy Bobby Aylward: I will probably be repetitious in touching on some topics because it seems to be all about governance and accountability today. As was said, it is a pity we are not talking about further education and having a better system in place, rather than talking about governance and accountability.

I am sorry to hear that Dr. Love is leaving. I wish him well in his future career wherever he goes. Is the reason for his departure the system of governance in place and the relationship between the HEA and the Department? Perhaps I am asking him to repeat some of the things he has said, but is that one of the reasons that influenced him to retire from the role after 18 months?

Dr. Graham Love: Certainly I have been frustrated. I was attracted to the job because of development work such as pushing along the universities and institutes of technology. As Deputy David Cullinane referred to, I am passionate about this stuff and research. Ireland's talent is its main chance. We do not have a big internal market, or oil and other resources. Our people,

their education and smarts are what Ireland has to offer; it is what makes living standards high in this country. I really believe in them. In my year and a half with the HEA I have struggled to advance this work significantly, for some of the reasons I have laid out in my letter. Frankly, all four aspects are interrelated in terms of legislation. For example, the term “dominance of the compliance and regulatory agenda” may be a poor choice of words, but it has subsumed me and much of our team. We have not been able to work enough on the really good initiatives because of the time available.

Deputy Bobby Aylward: Dr. Love’s talents are very honourable. We consider Ireland to be the island of saints and scholars. While I do not know about the saints, it is important that the scholarly ambition be retained.

On Mr. Ó Foghlú’s statement, every bit of the report is about accountability and governance. It includes lines such as, “The introduction of a new governance framework for the higher education system in 2015 ... to provide assurance of compliance with legislative and other requirements.” It goes on: “The review of the allocation model for funding higher education institutions, undertaken by the HEA ... will provide greater transparency in how State investment in higher education is being allocated,” and “The Department works closely with the HEA to strengthen governance arrangements and ensure a robust system of accountability in the sector.” It is all about accountability and governance. Have we had a creaking system in place up to now? Was the system broken when this five or six page report which is all about new rules and regulations and proposed plans was compiled? What was wrong with the system up until now that we had to look at reviewing all of this? Where did it fall down during the years in the Department of Education and Skills and the Higher Education Authority?

Mr. Seán Ó Foghlú: We have been seeking to improve governance in the past few years. There has been a hugely increased emphasis on governance. In a way, we have sought to detail the nature of governance relationships, be it through institutions and the HEA or between the HEA and the Department, in order that there will be increased clarity. The committee will see in our performance delivery agreement with the HEA that there is clarity on what it plans to do and what the Department’s expectations are in terms of outputs and outcomes. It is a much improved way of doing business with agencies. We are doing this with all of the national agencies and it can work very effectively in order that we will all know what our plans are for a given year. We do a lot more than governance; there is a lot more than governance being called for in the actions in the performance delivery agreement, or in the Department’s strategy for the action plan. The focus, obviously, has to be on governance and accountability.

Deputy Bobby Aylward: Is Mr. Ó Foghlú saying there were failures in the system and that it was creaking up until the new regulation on governance was brought forward in 2015? Where were the failures, problems or the breakdown in the system?

Mr. Seán Ó Foghlú: Challenges and issues emerged such as the ones about which we have been talking at this committee. We have been trying to work through them by improving governance.

Deputy Bobby Aylward: On the institutions under our control that have been mentioned such as those in Limerick, Cork and Waterford, as well as the institutions in counties Kildare and Wicklow, representatives of have appeared before the committee, and where the big faults were found in the system, were the institutes out of control in ignoring the rules and regulations in place and in terms of the powers to control them? Somebody has to say why these things happen, without interference. Were the institutions out of control? Were they self-governed?

Were they ignoring all of the rules and regulations in place? Is this to try to bring them to heel?

Mr. Seán Ó Foghlú: As each of the institutions is different, I would be very reluctant to make a sweeping statement.

Deputy Bobby Aylward: I am referring to institutions and universities.

Mr. Seán Ó Foghlú: There have not been findings in the HEA's or the Department's investigations on Cork Institute of Technology. Obviously, there have been some governance issues, but there has not been any major investigation. I cannot refer to the Waterford Institute of Technology investigation, but previously there were serious governance challenges, which is why there is an investigation. The issues are related to the nature of borrowing to fund certain activities. With reference to the University of Limerick, we have had the Thorn report and there is a report pending from the Comptroller and Auditor General. We will be appearing before the committee at some stage in the future to talk through that report.

Deputy Bobby Aylward: It was all about governance. Why did we have representatives from those institutions before the committee and why were we asking questions? Why were there investigations after they had been here? There were questions to be answered, whether about governance or errors. There was a breakdown somewhere along the line. They would not have been before the committee which investigates how public money is spent unless there was a breakdown. The committee has a remit to bring them to heel and ask them why there were problems. Somebody has to be responsible. I would like to know why.

Mr. Seán Ó Foghlú: As Dr. Love said, the primary responsibility lies with the institutions and their governance arrangements. Just as committee members do, the Department and the HEA have to call out minor and larger bad behaviour, draw it to their attention and seek to tell them to put new arrangements in place. However, the institutions are responsible for the new arrangements.

Deputy Bobby Aylward: I accept the concept of self-governance, but if there is no self-governance, there are breaches of the rules and some are running away with themselves in exercising their powers-----

Mr. Seán Ó Foghlú: It is not so much about self-governance, it is a set of statutory rules. For example, membership of governing bodies and so on is not about self-governance; it is just governance. Institutions have to be able to operate independently. There cannot be command and control in how institutions are run as that would not work and we would not have our responsive education system in meeting the need for skills. Dr. Love spoke about the responsiveness of the system. There have been significant developments in recent years in the work of the National Skills Council and the engagement of the human capital of the institutions. These aspects are best enabled by having responsive institutions taking responsibility. If the Department was to oversee and control higher education institutes, I could guarantee it would not work and it would have a worse outcome for Ireland's future economic development.

Deputy Bobby Aylward: Should there be some system in place that would ring an alarm bell if there were breakdowns or breaches? Everyone is not perfect and there are always breakdowns and problems with individuals or institutions.

Mr. Seán Ó Foghlú: We have arrangements in place such as the early warning system between the HEA and the Department. We are seeking to improve the systems in place through, as was discussed with Dr. Love, some of the possible future statutory developments.

Deputy Bobby Aylward: On powers to investigate in the future, does the legislation need to be strengthened through the Dáil or is it a matter for the Minister? Who has the power to give the HEA or another entity the power it needs to step in? Who is responsible? Is it the Minister of the Government of the day, or is it us as legislators?

Mr. Seán Ó Foghlú: While, obviously, the Oireachtas legislates, it is the responsibility of the Department or the Minister to come up with proposals. However, they have to be agreed by the Oireachtas.

Deputy Bobby Aylward: Therefore, the legislation needs to be strengthened. I want to clarify that we, as legislators, are responsible to make the powers-----

Mr. Seán Ó Foghlú: Yes, the Oireachtas is responsible for the overall framework, but it is not its responsibility to come up with new frameworks for every part of the public sector. It is the responsibility of the Minister to propose them to the Oireachtas. It can come up with proposals, but primary responsibility rests with the Minister.

Deputy Bobby Aylward: Does Mr. Ó Foghlú believe we in this House are falling down in that regard?

Mr. Seán Ó Foghlú: I will not comment on the behaviour of the Houses.

Deputy Bobby Aylward: Would Mr. Ó Foghlú not give us wind of it in order that we would look in the right direction?

Chairman: At 4 p.m. you might walk into us.

Deputy Bobby Aylward: My last question is about the relationship between the Department and the HEA. Does Mr. Ó Foghlú think it is good, with there being no conflict and with transparency and accountability between the two? Is there a good working relationship?

Mr. Seán Ó Foghlú: I think there is a good working relationship. We have achieved a lot together. Dr. Love referred to issues where there might have been legislative lacunae. We are seeking to address them. It is not that the HEA and the Department have been arguing. I can think of quite a number of aspects that have been advanced significantly in recent years through co-operation between the HEA and the Department. A very good example of that is the technological universities and the Dublin Technological University. When the legislation was passed the HEA went out of its way to ensure that an independent process would be put in place very quickly while the Minister of State in the Department is encouraging all of the institutions to come together, appropriately, to serve these and to establish technological universities. The HEA has to be independent in its role. It undertook its role independently and speedily and that led to the designation of the first technological university. That is just one example of good co-operation and reflecting respective roles.

Deputy Bobby Aylward: Does Dr. Love agree? Does he wish to comment?

Dr. Graham Love: In the main, those are the key things that have caused the issues we have been through at length here today. We need legislation that clarifies who does what. We also need to strengthen governance in the institutions because I do not think it is the role of the HEA or the Department to step into every situation and sort it out. There has to be a self-learning and self-correcting capacity, and it is there in quite a number of institutions but it needs to be spread further.

Can I make another general comment?

Chairman: Yes.

Dr. Graham Love: I am mindful that this is a public session, etc. While there is more to this Act, which was produced in 1971, the key functions are set out on five short lines. There was a time when there were about 25,000 students in the system, or maybe 30,000. There are 250,000 students in our system at the moment.

Chairman: Is that in third level education?

Dr. Graham Love: Yes.

Dr. Graham Love: Our third level system had done a fantastic job. In addition to our tax, talent is one of the reasons we are where we are and it is really important that we treasure this. It is also a reason to get the governance right but I do not want that message being lost in here. There are 250,000 students and nearly 20,000 staff across 24 institutions. In terms of the level of funding, by international standards we are pretty efficient in producing approximately 45,000 graduates every year. It is really important to make that intervention and get that on the record here. This is one of our good products as a nation.

Deputy Bobby Aylward: We all agree with and fully endorse that view. I am delighted to hear that we have a good education system, in particular at third level. We should be proud of it and strengthen it.

Dr. Graham Love: It is appropriate that we have constant and continuous self-improvement. A lot of that force comes from here and others, and that is appropriate. It is really important that we acknowledge and encourage because that is actually our go forward position for the country - our talent.

Deputy David Cullinane: I want to deal almost exclusively with the Waterford issues. I wanted to expand on them earlier but I had to deal with other issues.

I will make a general point about the overall issues raised today, one which is separate from but also slightly related to the issues with Waterford. We have had a very good hearing for a number of reasons. The meeting has given us a glimpse into where improvements need to be made, and we, as legislators, must do our part. I fully concur with Dr. Love that we need to get this right at local level in the institutes. Governance boards in institutes and universities are extremely important. If one gets governance right in the first instance, the HEA would not spend 60% or 70% of its time engaged in firefighting.

Dr. Graham Love: Yes.

Deputy David Cullinane: Essentially, it is engaged in firefighting rather than proactively considering the necessary strategic changes and development. I hear that message loud and clear. There are real lessons to be learned. I hope the Department will also accept that because it is very important for all us that that is the case.

We are also very mindful of the huge amount of talent in the third level sector. I will discuss Waterford Institute of Technology in a moment. I have visited Telecommunications Software and Systems Group, TSSG, in Waterford a number of times. I have also visited ArcLabs. I was blown away by the incredible cutting edge research and development and technology in those centres. Such talent should not be lost and it is not lost on me. Sometimes it is portrayed as

that by those who seem to have an issue with people asking genuine questions. The work that is being done is amazing and I share Dr. Love's enthusiasm and respect for the huge level of talent we have in the third level sector.

I will return to the Waterford issue because it is important but I will first quickly contextualise it. The matter first appeared on the radar of the Committee of Public Accounts when the accountable person, the head of the institute, made what seemed to be genuine mistake when, in answer to a question at a meeting of the committee in 2015, as to whether he was a director of the FeedHenry company, he said "No". Subsequently, he wrote to the committee stating he had made a mistake and confirmed that he was a director. However, he did not disclose that he was also a shareholder but we subsequently got that information. He then asked the governing body to do a report and examine whether he had acted appropriately. It then did a review and the individual in question then asked the HEA to validate this internal review. Then, coincidentally or not, protected disclosures were made to me and information came to light that people had broader concerns connected with research and development in spinout companies. This led to the deeper dive, as described by Dr. Love, that resulted in the HEA review. Mr. McLoone was appointed to be the person to conduct the review. He met many more people than Dr. Love may have expected.

Dr. Graham Love: Yes.

Deputy David Cullinane: A large number of people came forward. There was considerable engagement and Mr. McLoone drafted a report. I assume the report went to Dr. Love. Was the first draft report sent to the board?

Dr. Graham Love: It was initially sent to me and then-----

Deputy David Cullinane: Did the report go from Dr. Love to legal or did it go from the board to legal?

Dr. Graham Love: Legal have been involved pretty much all the way along. We were aware that with any report like this that there are legal-----

Deputy David Cullinane: Was legal involved when the terms of reference were set?

Dr. Graham Love: No.

Deputy David Cullinane: Did legal only become involved when the draft report was compiled?

Dr. Graham Love: Later on, yes.

Deputy David Cullinane: I want to get the timelines and context right. A draft report was done and it had to go to the institute. I imagine senior management and, potentially, people who may have been identifiable in the draft report would receive copies. That is part of the process.

Dr. Graham Love: Yes.

Deputy David Cullinane: Did legal get involved when it received legal letters from individuals in the institute or maybe people who worked in the institute, or was it involved before that?

Dr. Graham Love: We had legal involved at an earlier point. Its view of the report was that

it, potentially, had problems or could be legally challengeable.

Deputy David Cullinane: Was legal's concerns based on what might have been factual or not in the report or was it based purely on the powers of the HEA to actually do the report?

Dr. Graham Love: What was the first part of the Deputy's question?

Deputy David Cullinane: Were there any concerns about the facts in the report, by which I mean the content?

Dr. Graham Love: There were and are concerns about some of those, the manner in which they were obtained in terms of being legally proofed and, then, subsequently, the power of the HEA to do this.

Deputy David Cullinane: I accept that. We will deal with the issue of powers because the matter is now with the Attorney General and we will get advice, not only on the Waterford report, but the powers of the HEA to do these types of reports.

Dr. Graham Love: Yes.

Deputy David Cullinane: If I was legal looking at it this, there is the issue of whether the HEA has the powers to do this. There is also what is in the report, its content and the facts that were established. Were there concerns about the facts that were established? Was it more-----

Dr. Graham Love: I understand the Deputy's question better now. My apologies. The principal concern was the facts that were established led to the legal view that the HEA, with the kind of material being written in the report, was potentially impacting on individuals and, ergo, what power does it have to do that. The legal opinion then was that it did not have power to do this.

Deputy David Cullinane: This is very important for me. We have established facts that are in a draft report and a modified report, which we cannot see and may never see. The facts are there so the issues do not go away. We will deal with whether the HEA has these powers but the issues still remain.

I want to paint the scenario and maybe Mr. Beausang can help me with this matter as well. The Attorney General will consider whether the HEA has powers. In fact, this matter is very interesting because it could set a precedent in many ways in terms of what the HEA can and cannot do. It is, therefore, very important and has wider implications beyond Waterford. Let us consider for a second that the Attorney General decides the report is outside the powers of the HEA and cannot be published. In that scenario, there seem to be a number of options. The HEA could start again within its powers. The report could be scrapped by the HEA and we could have a report compiled on foot of a ministerial direction, which is, perhaps, what should have happened in the first instance. Alternatively, some other body could do it. Would that body be a commission of investigation, a law enforcement organisation or some other regulatory entity? The witnesses are going to have to help us to understand who will examine this, because the facts remain and they are not going away. Before I leave here today I want to know what is going to happen if this report is dead in the water.

Mr. William Beausang: In the first instance, it is important to say that we have not sought legal advice from the Office of the Attorney General on the WIT review because the legal advice we received from the HEA related to its broader power to carry out reviews. When we

receive that advice, we will have to apply it to the situation in which we find ourselves or in which the HEA finds itself.

Deputy David Cullinane: That is the same thing. At some point, the Department is going to have to make a judgment call. Actually, it will not be the Department. Will the HEA make the final call?

Mr. William Beausang: The HEA will need to make a determination.

Deputy David Cullinane: I ask Mr. Beausang to stop for a moment because I am going run out of time and I have a number of other points to make. The HEA will make that call at some point. The call will be that it cannot publish the report, based on the legal advice and the advice of the Attorney General. Dr. Love said that, in principle, he wants to publish the report but that it may be out of his hands; it may not be possible. In that scenario, we should not leave the matter there. The committee can form its own opinion, but in my view we should not leave it there. We are going to have to look at the options. The options I can see are the ministerial or departmental option; or alternatively, some other body. The issues have not gone away. I know that Mr. Ó Foghlú cannot answer the question, but perhaps-----

Mr. William Beausang: The Deputy will understand that I will not speculate about the advice of the Attorney General on this matter. The necessary follow-on is a matter the HEA will need to assess in light of whatever advice is forthcoming.

Deputy David Cullinane: If it is the case that the report is dead in the water - let us hope it is not - then the Department and the HEA will have to come back. In light of that advice, we will then discuss what is next. My point is that the matter cannot be let go; it cannot end there. It is not going to end with a conclusion that the report cannot be published, that we must forget about the 50 people who engaged with the process and who have concerns because, unfortunately, the review relating to the report was outside the proper remit. We will come back and look at a different avenue. That is my point.

I want to raise several other issues-----

Mr. Michael Horgan: That would also be our intention. We have legal advice at the moment, so we have to manage that risk as well. It would be the intention of the board to look again at the process we have gone through and at the contents to see if there is a way that we can produce a report. That is what Dr. Love was suggesting. The principle of producing a report remains.

Deputy David Cullinane: That is what I wanted to flesh out in a bit more detail. It may not be the current modified report. Come what may, there has to be some process that does exactly what Mr. McLoone did, but within whatever remit and powers-----

Mr. Michael Horgan: With the legal guidance we might get.

Deputy David Cullinane: -----are appropriate. The established facts are never going to change. The facts are the facts and they have to be made public at some point, because that is what public accountability involves. That is my point.

I have very real concerns about the way I, as a member of this committee, was treated. I want to put them those concerns to Mr. Ó Foghlú and Dr. Love. Mr. Ó Foghlú can answer my questions because they do not relate to the actual report. The accountable person who appeared

before the Committee of Public Accounts last year said to me outside this committee room - in a very robust way, if I can say that - that if I continued to ask the questions I was asking, he would resign from the institute. Does Dr. Love think it is acceptable for an accountable person to do that?

Dr. Graham Love: It would be better if the accountable people answered the questions this forum puts.

Deputy David Cullinane: Would Mr. Ó Foghlú see that as an appropriate response from the accountable person?

Mr. Seán Ó Foghlú: The behaviour of the president of an institution is a matter for management by its governing authority. I cannot cut across that. Institutions have a responsibility to be accountable to this committee. It is a legislative responsibility, period.

Deputy David Cullinane: Here is my concern. We have a HEA examination into an institute. The accountable person - the head of the relevant organisation - went to local media in the constituency of a Deputy who is member of the Committee of Public Accounts and called into question the motivations of that member in asking questions. This person said that the member, referring to me, was trying to deconstruct 20 years of work done by the institute; that he was trying to damage Waterford city and county; that he was not acting in the best interests of the staff; and that he was acting on the basis of ulterior motivations which he has never put on the record. That is a very inappropriate way for an accountable person to respond to the Committee of Public Accounts. We have written to the accountable person and asked him to put his claims in writing.

I am saying this to Mr. Ó Foghlú and Dr. Love because it fits into our relationship and the role we play. It gives me no pleasure whatsoever to have to examine issues concerning any institute. However, we are appointed to this committee to do a job without fear or favour and to pose questions. I did not invent the issues. People came to me with protected disclosures and information and we had to do what we felt was best with that. It is completely inappropriate for an accountable person to call into question the motivations of a member of the Committee of Public Accounts who was simply asking questions. That has also happened to other members here in the context of work they do. Yes, it is a matter for the accountable persons, but surely it is also a matter for the Department and the HEA to ensure that we get certain protection. We are allowed to do our job and nobody is above accountability. Does Mr. Ó Foghlú accept that?

Mr. Seán Ó Foghlú: I do not think the Deputy is really asking for us to protect him, as a member of the Committee of Public Accounts, is he?

Deputy David Cullinane: Sorry?

Mr. Seán Ó Foghlú: The Deputy is not asking me, as an Accounting Officer, to protect him.

Deputy David Cullinane: I am not asking Mr. Ó Foghlú. I do not need his-----

Mr. Seán Ó Foghlú: To be fair, the Deputy has a very strong voice, as do the other Members of the Committee of Public Accounts. He does not need my protection. The accountable person is accountable to this body for his-----

Deputy David Cullinane: I will stop Mr. Ó Foghlú there. That was a flippant response.

Mr. Seán Ó Foghlú: No, it was not-----

Deputy David Cullinane: Mr. Ó Foghlú may bear with me for one second. I will be very straight with him, as the Accounting Officer for the Department. If the head of an institute comes before the Committee of Public Accounts, is asked questions and then raises questions outside the committee about the motivation of the member who asked the questions in the first instance and if all of the questions asked were about facts and information which was presented to us - which actually led to a report that ventilates the questions - that is a real issue. It could happen to any member of the committee.

Mr. Seán Ó Foghlú: The primary issue is that an accountable person is accountable to the committee and operates on that basis. I will note that there is an issue concerning evidence from one institution in higher education and we will come back to that at another time. The committee has had issues with the University of Limerick. We are very concerned about that and we have acted on that concern. To be clear, when accountable persons are before the committee, it is their role. I may not think their conduct outside of here is very advisable behaviour, either as presidents or accountable persons. If, however, there is a concern, the primary responsibility for the behaviour of a president of an institution is with the governing body. It is not for the HEA or the Department of Education and Skills to intervene in that regard. That is where the primary responsibility for an overview of that person's behaviour is.

Deputy David Cullinane: That is an acceptable response. We will have the Accounting Officer before the committee again at some stage and we will address those issues.

If I can just make a final observation to the Chair, this issue has given rise a larger one, namely, the remit of the HEA in the context of conducting reviews. That is actually quite serious for our work. It could call into question previous reviews and whether they have protections. Perhaps some of those were done outside the scope of the HEA. To me, this has very profound implications beyond WIT. We cannot pre-empt and one has to extrapolate from the advice of the Attorney General, but if it is the case that the report has to be shelved, then we are in very dangerous territory, as to future reviews, who does them and what exactly the role of the HEA in all of that might be? We raised concerns about some of this, about these independent reports that were being done and their nature and powers. The Cathaoirleach may remember that there was a lot of them and we had these concerns. In fact we raised concern about legalities on the Waterford one.

We are where we are with it, in many respects. We are definitely going to have to come back to this once the advice comes back.

The issues at Waterford IT are very real. There is a huge amount of good work being done. I commended Dr. Love, and Mr. Ó Foghlú will know that the cutting edge technology we have in research and development in Waterford is absolutely first class. As we sit here today, however, we have 50 people who engaged with a process who are left without answers to questions that they put. That is the outworking of it. They deserve the answers. Those 50 people who engaged with the process, many of whom still work within the institute, deserve answers.

In a point to Mr. Ó Foghlú, individuals have to account for their own behaviour. Given how I was treated by senior people in WIT, if I was one of those 50 people who came forward, I would be thinking if that is the way they treat a member of the Committee of Public Accounts and a TD in the constituency, it raises very serious questions. I am uncomfortable about that because it is not fair or right. Those people who work in that organisation who engaged with the process deserve a report and answers to questions that they put, be they good, bad or indifferent. I do not know what the outcome of the process will be but the process needs to be brought to a

conclusion.

Dr. Graham Love: Very briefly, I reiterate exactly as the Deputy has said, the facts are the facts and that the intention is to produce a report. I want to be very clear on that for the Deputy.

Deputy Marc MacSharry: I meant to wish Dr. Love well earlier and express regret that he is moving on. Wherever he is headed, the best of luck. A number of things arise from our last engagement that I want to put on record.

On that specific disclosure, in June 2018, the vice-president said that the person did not engage. In October 2012, the discloser requested a meeting with the president, the vice-president and the head of faculty. The meeting took place but only with the vice-president. In November 2012, the whistleblower-discloser asked for an investigator. The vice-president did not set terms of reference and was told that that would not happen. In 2013, the discloser wrote - I have seen evidence of all of this - to the chair of the audit committee, to the president, to the chair of the Cork Institute of Technology, CIT board, requesting a dispute resolution committee, which was turned down. In 2013 also, the whistleblower went to the office and met with each of the vice-president and registrar - now the president, vice-president of strategy, head of faculty and head of school. In 2016, the whistleblower's legal firm asked twice if the CIT board was made aware of the case. There was no response to that. In 2017, the discloser wrote directly to each board member without response and in 2017 also wrote to the then and current president without response.

It is important that that account was defined as not engaging last June by the vice-president. The reason I am bringing this up is that the HEA requested a report, which will come back and feed into its own conclusions. Many people are in the same positions now, or maybe have moved up a little, as was the position as far back as 2012, most notably the chair of the board and the vice-president, who are one and the same, and the president is a former vice-president. I hope, and I am putting it to the chairman of the HEA - Dr. Love is obviously moving on but hopefully the chairman will still be with us - that when this report emerges, that the HEA's consideration of it, without prejudice to what is going to be in it, will be tempered by the fact that many of the participants in drawing up the report may well have been associated with the subject matter of the original disclosure in 2012, and indeed that of 2017. There is the X plus one that the chairman mentioned - a disclosure could be made against me, yet I am the party that this disclosure comes to; in the context of CIT, this does not exist. It is the Department or the HEA or the HEA or the Department. This should be borne in mind, also.

Chairman: I must interrupt for a moment to say that I have to leave. I will ask Deputy Aylward to take the Chair as I have another commitment now.

Deputy Marc MacSharry: That is no bother, as I only have a different thread for Mr. Ó Foghlú and it is one that is to be the subject of a meeting so I will only touch on it.

Chairman: Will the Deputy need another five or ten minutes?

Deputy Marc MacSharry: Five minutes maximum.

Chairman: I will stay then, Deputy. Sorry about that Deputy Aylward.

Deputy Marc MacSharry: I ask the chairman, Mr. Horgan to take my last comments on board on the basis that Dr. Love will be moving on, because it is important that it is reflected in the record.

Turning to Mr. Ó Foghlú, we will be coming to this matter at a meeting in our work programme; we have discussed loosely here without firming it up that we are going to invite him in again with the Department of Agriculture, Food and the Marine and the Irish Greyhound Board. The issue concerns the sale and purchase of the Harold's Cross centre for a much-needed school out there in the area, which we all support. The issue concerns two schools and the issue of price. I had the misfortune to have had some experience of valuing. Back in May I crudely put a valuation on it that was less than half of the amount paid. I queried whether a valuation was available and the Irish Greyhound Board said that it had one from Savills but would not give us the amount at the time. I speculated that it would have been very substantially less. This figure is now in the public domain and it is €11 million less. How does that happen?

Mr. Seán Ó Foghlú: Does the Chair want me to answer that?

Chairman: I believe we have written to Mr. Ó Foghlú in the last-----

Mr. Seán Ó Foghlú: I have not received the letter yet.

Chairman: A letter was sent during the course of this week specifically on this and we will be talking to Mr. Ó Foghlú separately on this issue.

Deputy Marc MacSharry: There is probably a very good explanation for everything but it is just the complexion looks a bit off.

Chairman: With the full knowledge the Committee of Public Accounts will come back to Mr. Ó Foghlú.

Mr. Seán Ó Foghlú: We got an appropriate independent evaluation from the Valuations Office and we are bound to go with that price and that is what we did.

Deputy Marc MacSharry: Right.

Mr. Seán Ó Foghlú: Since then, we have asked the Valuations Office to do a market check and it has stood over its price and indicated that prices have gone up further since that time.

Deputy Marc MacSharry: It is hardly going to come in and say that it got it wrong by about €11 million and that it will go with the Marc MacSharry valuation.

Mr. Seán Ó Foghlú: It would have been great if we could have gone with the Deputy's valuation, but that was not the valuation that came through.

Deputy Marc MacSharry: Are we going to have a meeting about that Chairman?

Chairman: Separately. This is an issue Mr. Ó Foghlú.

Deputy Marc MacSharry: I will not delay the meeting now and I want to thank everybody for their attendance.

Chairman: This is a topic we will come back to and I thank Deputy Mac Sharry and Deputy Aylward.

We have concluded our meeting and I have found it an interesting and helpful exercise. Many members found the contributions positive and beneficial to the whole public discourse into the role, the regulation, the authority and powers of investigation of the HEA *vis-à-vis* the Department. In particular, I want to thank Dr. Love for coming in as I am aware he will be leav-

ing shortly. He has been here on a number of occasions in his short period and he has always acquitted himself in a very straight, honest and upfront manner in which he knew his job. This was greatly appreciated by our committee and we would not have asked him back if we did not consider that he had a meaningful contribution to make, which he can take as a compliment. If we had let him slip off and said, “goodbye and good riddance,” it would be different; therefore, Dr. Love should take it as a compliment that we talked to him before he left.

I thank the witnesses from the Department of Education and Skills and the Higher Education Authority for their attendance and the material provided in advance of the meeting. There is still some information to be given to us by the Department and the HEA in the coming period.

I thank Dr. Love and wish him every success in his future career.

The witnesses withdrew.

The committee adjourned at 4.30 p.m. until 9 a.m. on Thursday, 25 October 2018.