DÁIL ÉIREANN

AN COISTE UM CHUNTAIS PHOIBLÍ

COMMITTEE OF PUBLIC ACCOUNTS

Déardaoin, 8 Samhain 2018

Thursday, 8 November 2018

The Committee met at 9.00 a.m.

MEMBERS PRESENT:

Deputy Bobby Aylward,	Deputy Alan Kelly,
Deputy Shane Cassells,	Deputy Marc MacSharry,
Deputy Catherine Connolly,	Deputy Catherine Murphy,
Deputy David Cullinane,	Deputy Jonathan O'Brien.
Deputy Alan Farrell,	

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 Georgina O'Mahoney, deputy director of audit. Apologies have been received from Deputy Pat Deering. We are holding over the minutes to a further meeting and moving on to the next item, correspondence. There are three categories of correspondence. Category A is briefing documents and opening statements in respect of the meetings. Nos. 1701 A and 1702 A are from Ms Cliodhna Sweeney of the State Claims Agency, dated 6 November 2018, and enclose the opening statement and briefing information for today's meeting. We will note and publish this. Agreed? Agreed. We will discuss it during our meeting with the State Claims Agency, which will begin shortly.

The next category is category B, correspondence from Accounting Officers and Ministers, correspondence following up from meetings of the Committee of Public Accounts and other items for publishing. We held over a number of items from previous meetings. We can continue to hold some over but I want to take two of them because they have been on our desk for a while. No. 1490 B is from the Government accounting unit in the Department of Public Expenditure and Reform, dated 18 July. We have a duty to deal with it because it was received so far back. It encloses a minute from the Minister for Finance and Public Expenditure and Reform in response to our first periodic report which covered the period from September to October 2017. This might not take as long as it looks like it might because I have gone through it. If members are happy for me to guide them through these they can pick me up on any point. We have to deal with some of these. They are an important follow-up on our own work programme. We have already noted and published the correspondence.

We are now dealing with No. 1490 B from the Government accounting unit which relates to our period report. We had a series of recommendations in that report. The system is that the report goes to the Department of Public Expenditure and Reform, which gets responses from the individual line Departments and comes back with the responses from the Ministers. We will not debate all of these again because we have debated them at length. The first recommendation in the report is B.1. This letter deals with our earlier recommendations and the report we published in respect of An Garda Síochána, the Health Information and Quality Authority, the Industrial Development Authority, Transport Infrastructure Ireland, Tusla and the Health Service Executive. I propose to quickly summarise the responses from the Ministers. I will not read them in detail as it is an extensive document but our recommendations have been out there for quite some time.

The first issue related to the reopening of Garda stations. The second recommendation was that the reopening of Garda stations should be included in the Estimates process for 2018. These stations included Stepaside. The third recommendation was that the OPW should carry out a detailed examination of Stepaside Garda station. We recently received detailed information from the OPW. It gave us, for the first ever time on the public record, a breakdown of the costs of the different projects in respect of the Garda stations. It has accepted the response which said that it should be a policing decision. We have received that information since. We note that and move on.

With regard to the Health Information and Quality Authority, HIQA, we recommended that

an examination of the cost of agency staff be carried out. We all understand that employing agency staff is more expensive. The response says that the Minister for Health accepts the recommendation with regard to HIQA carrying out an examination. We are now writing to HIQA or the Department of Health as appropriate for a follow-up on that recommendation. We want an update on recommendation B.4.

We will move on to B.5, which is a request. At that stage, we had asked for additional staff vacancies in HIQA to be filled. The Department stated recently that appointments below the grade of principal officer on the standard scale no longer require sanction from the Department of Public Expenditure and Reform. The Department of Health can give sanction directly. The Department gave us the numbers, which have increased from 198 at the end of 2016 to 216 at the end of 2017. There has been an improvement and we will return to that issue.

We asked for a breakdown of the consultancy services mentioned in HIQA's 2016 accounts and for further information to be provided. We will ask the secretariat to circulate a copy of the 2017 HIQA accounts and we can see whether the authority complied with that in its 2017 accounts.

The next item relates to IDA Ireland. The committee recommended that IDA Ireland review its methodology to verify the number of jobs created by its client companies. To be put it bluntly, the Department of Business, Enterprise and Innovation does not accept this recommendation. We will discuss this briefly because a follow-up question arises. The Department states that it carries out the employment annual survey, which is done on a voluntary basis whereby companies return the survey. The Department states the survey has a track record over many years of identifying employment trends. I find this interesting because it is a bit like the practice of basing figures on house completions on ESB connections. The argument that it should continue because it has been taking place for a number of years does not satisfy us. To give us some comfort that this survey is meaningful we will write to IDA Ireland and ask what percentage of companies overall respond to its survey. If the survey covers 5% of companies, we need to know that and if it has a 95% response rate, we can have a high degree of confidence in it. We need some information on the survey and on how extensive it is. We will draft an appropriate letter. Maybe it will be fine or maybe there will be a problem, but we do not know based on the answers provided so far.

We will move onto transport infrastructure. This recommendation was about publishing post-project reviews of public private partnerships, PPPs. That has been accepted. Following our meeting on this issue, our recommendation was implemented by the Department of Public Expenditure and Reform on 26 March when it issued Circular 06/2018. The circular provides that all new projects must publish a post-project review within a reasonable timeframe and reviews for current projects must be published as soon as possible. That is ongoing issue to which we will return because PPPs are part of our work programme this year.

The next recommendation was that Transport Infrastructure Ireland, TII, avail of road safety reports from the Road Safety Authority, RSA, to develop its objectives for future investment. The Department states that TII avails of the reports as they become available and continues to use road safety benefits in prioritising where funding is allocated and improvement works are carried out.

The next item relates to Tusla. The recommendation was to ensure a proper service level agreement is in place with all Tusla funded organisations. At this stage, we will write to Tusla requesting an update on how it is getting on with the recommendation because it was made a

couple of months ago. Recommendation B.12, which also relates to Tusla, is on procurement. There are serious issues with procurement in Tusla. The organisation states it now has an internal procurement support section which deals with communications, data access and training. We will continue to monitor that. The recommendation has been accepted.

The next recommendation was that Dr. Geoffrey Shannon's report, Audit of Processes and Procedures adopted by Members of An Garda Síochána in Initiating the Provisions of Section 12 of the Child Care Act 1991, be implemented. That has been accepted. That is following up on a policy issue. The letter we received in July stated that Tusla and the Garda Síochána were currently in the process of agreeing a memorandum of understanding on information sharing and data protection. We need an update on whether such an agreement is now in place. We will probably not receive a copy of the agreement but we want to know whether the memorandum of understanding has been completed.

B.15 deals with the delays in the HSE implementing the process of appointing a lead community health organisation, CHO, in cases where national organisations have a number of agreements with different community health organisations. The HSE is now appointing one CHO region to deal with that, which is fine. We will raise the matter with the HSE when its representatives appear before us again.

The next item was the review being carried out by the HSE regarding non-compliance with public sector pay policies. This is a little dated but the HSE indicated that 745 business cases had been presented by section 38 organisations. Some 351 had been dealt with and 394 were being examined. According to the HSE, given the scale of the complexity of the matter, it would not be possible to bring the process to a conclusion early in 2018. However, it indicated the process should be concluded by the end of 2018. We will ask for an update on that. The HSE accepted our recommendation but we want to see if it is being implemented.

We also recommended making an *ex gratia* payment to employees of Console employees. The response indicated that the Minister for Finance and Public Expenditure and Reform was not in a position to comment on the matters arising in respect of the organisation Console, having regard to the fact that this is a section 39 agency and, accordingly, its staff are not public servants. That is fine and we will note that response. We have done what we can. Individual members can chase up on the matter but the Minister is not accepting the recommendation and we cannot make him do so. There is nothing to prevent individual members from continuing to raise the issue.

Deputy Catherine Connolly: Do we know how many employees have been affected?

Chairman: Perhaps we could write to the HSE on that.

Deputy Catherine Connolly: Yes, we should ask it to clarify the position.

Chairman: We will ask the HSE to give us an update, including figures on the original number of staff, the number of staff who transferred and the number who did not transfer. We will at least ask the HSE to provide the current position on the numbers. That is the periodic report. We will follow up on a few matters. We are noting many matters and there are others on which we are seeking additional information.

The other issue I want to deal with is the second periodic report, which covered our work from November to December 2017 and which we launched on 28 March 2018. We received a reply from the Government accounting unit in the Department of Public Expenditure and

Reform on 9 August last. In fairness, we cannot allow these matters to go on any longer. If we make recommendations we should follow up on them and I will try to do so on these recommendations. I have read through them and if anyone wants to take up any of the specific recommendations over which I have skirted, that is fine. I made a genuine effort to go through them as quickly as possible.

This report dealt with the Department of Communications, Climate Action and Environment; education and training boards; the Department of Education and Skills; An Garda Síochána; the Department of Employment and Social Protection; and the Department of Finance. The first recommendation was for the Department of Communications, Climate Action and Environment. Members will laugh at this. We talked about planning for major projects such as broadband infrastructure, sustainable energy and landfill remediation. The Department tells us it had hoped to have agreement finalised in respect of broadband infrastructure. I will read the last sentence of the correspondence from the Department. "The Department is working to a timeline of having selected a preferred bidder by September 2018." That is a little ironic at this stage. Broadband is on our work programme primarily for that reason, although we have not covered it yet. This was based on the 2016 accounts, with which we are dealing. It is in the 2017 accounts. The planning process is historical and has been ongoing for a couple of years. Where we are today is a result of what has been done for the past couple of years. It goes without saying that the committee will return to that topic. We will include it in our work programme.

The minute mentions the Sustainable Energy Authority of Ireland and landfill remediation. There are a number of landfill remediation issues in the country. We will ask for an update based on our report.

The next item was oversight arrangements in respect of RTÉ. While an oversight agreement and legislation are in place, the Department does not want to put a service level agreement in place. It states that it would be inappropriate to do so and that it has an oversight agreement. It has the legislation and the Broadcasting Authority of Ireland as the regulator but the Department maintains that in the case of RTÉ a service level agreement is inappropriate in view of other issues included into it. We have discussed this at length. I do not know how much further we can go. We have made our recommendation and that is the answer we got. We will just note it, bank it and hold it for another day.

In regard to the Department of Communications, Climate Action and Environment, this relates to 71 landfill sites. We covered that in a separate recommendation and we want an update on the remediation of the sites in question.

The next item was the national broadband plan, on which we made another recommendation. The issue is in our work programme and we will deal with it.

The next item is Ireland's potential liability for not meeting its 2020 carbon emissions targets. The recommendation has been accepted and the Department stated it has established an interdepartmental work group, comprising a number of wonderful people, which is examining this issue. It also stated that Ireland is permitted to bank and use surplus emissions credits from the years it overachieved on its annual emissions targets, from 2013 to 2015, to comply with the effort-sharing decision. That is also the case with any surplus due and carried over in the 2008 to 2013 Kyoto Protocol compliance period, thereby reducing the net additional cost to the Exchequer. We will ask for an update of the workings of that interdepartmental group.

Deputy Catherine Murphy: Part of the reason there was an overachievement was that there was a significant downturn. It is disingenuous to use that as part of the compliance. Once the economy started to reignite, we essentially went further backwards. That kind of response means we will be significantly exposed in monetary terms, never mind the survival of human beings on the planet. In economic terms, we were told by the Department of Finance that the expectation was that there would be fined €600 million per annum from 2021 onwards because we are not in compliance.

Chairman: Much of the response refers to purchases of surplus emissions allowances from other European Union member states. Deputy Catherine Murphy is correct in reference to the years of overachieving. Using the word "overachieving" is making out that the recession, and the level of development we did not have at that time, were achievements. That is set out in the document. We will ask for an update on the interdepartmental work group. Members are free to raise these policy issues in the Chamber and other forums. It is a major policy issue. The committee will seek an update on the working group.

The next item related to education and training boards, ETBs. We discussed this issue extensively and requested improvement in the presentation of appropriation accounts to show payments to the education and training boards. We also recommended the strengthening of oversight of the governance of the ETB sector, the implementation of performance indicators for ETBs and that ETB boards be strengthened and comprehensive governance training given. All of those recommendations have been accepted and we are as good as we can be in terms of getting on top of the ETB sector. We made one other recommendation that the chairperson of the ETB boards take responsibility for the submission of accounts. That has been accepted and there has been a major improvement in that regard.

The committee recommends that the minutes of the ETB boards be made available publicly and promptly through their websites following approval by the boards. That recommendation has also been accepted. Some ETBs do that already while others do not. The Department stated that it intends to make this an explicit requirement in the context of its current review of the code of practice of the governance of ETBs. It is good it will be made a requirement from now on because some of the ETBs do not do it. We are achieving something.

Deputy Catherine Murphy: There is a further item of correspondence we will reach later, No. 1566 B, which is from the Kildare and Wicklow Education and Training Board.

Chairman: We will come back to that.

Deputy Catherine Murphy: It covers some of this area as well.

Chairman: We will discuss the acceptance of the specific recommendation regarding the Kildare and Wicklow ETB investigation. The committee also recommended that the outcome be established and agreed between the Department of Education and Skills and Education and Training Boards Ireland, ETBI. It was also recommended that all future public funding to ETBI be clearly aligned to clear and measurable goals. The ETBI stated that the format of the engagement will be reviewed for 2019 with a view to including more measurable goals, where appropriate. That is good and we will presume that will be done in 2019.

The committee recommended that the Department of Education and Skills carry out a full assessment of the risk associated with an ETB chief executive and the director not being based in the head offices. That has been accepted and, as an initial step, the Department will collect

further information from the ETBs on how functions are managed across their offices, the locations of the relevant senior personnel and it will engage further as appropriate. The Department is taking up that recommendation and obtaining the necessary information to help it do that.

Recommendation 15 was to the Department of Education and Skills and referred to the conclusion of a transfer of property - here we go again - from religious organisations to the State under the redress scheme. That job is not being done and we are having to do it for the Department. We have been doing it here every quarter. We are being told that quarterly reports are being produced but they indicate that the dates are being moved out. That issue will not be dropped from our agenda. We are pleased the Department has accepted the recommendation but we want it to ensure it is implemented.

The next item is the published quarterly report of the Department of Education and Skills. We are agreed on that. Some of our recommendations are on the same topic but from different angles. We had a recommendation that the Department of Education and Skills complete and publish the Caranua eligibility review forthwith. The Department stated the review had been completed and published in May 2018, which was after our report was produced.

The next recommendation was to An Garda Síochána. It referred to the Garda internal audit service and improvements in respect of Templemore Garda College. That has been accepted. I can deal with all of these now. An Garda Síochána wrote back to us stating that 11 of our 19 recommendations were completed or closed. The Policing Authority is dealing with that issue but it is no harm for us to ask for an update on the recommendations in the report. There were 19 and 11 had been completed when we received this letter in the summer. We also had other recommendations on all of the internal audit reports. That correspondence will cover it.

In recommendation 21 the committee recommended that the Department of Employment Affairs and Social Protection prioritise the recruitment of additional medical assessors to ensure that cases awaiting medical review are dealt with in a timely manner. The Department states that a further recruitment drive to establish new medical assessors on a panel is proposed to commence in quarter 3 of 2018. Will that add to the problem with disability payments? It could be a different issue. There was a slowness in processing any application that had a medical assessment because there was a shortage of medical assessors. The Department has stated it is recruiting more assessors in quarter 3 of 2018.

The next item was the committee's recommendation that the Department of Employment Affairs and Social Protection focus social welfare debt recovery efforts on the 5.7% of cases which contribute 60% of the outstanding debt. The Department has accepted that. We also made a recommendation that every amount on its books of under €100 should be written off. To chase those debts would probably cost more than it is worth. The Department has also accepted that and it is looking at the procedure in respect of writing off older and smaller debts. I am sure that the Comptroller and Auditor General will report on how the Department gets on to us next year.

Deputy Catherine Murphy: On the medical assessors, I have asked about this in parliamentary questions on a number of occasions. It seems it is not just a question of recruiting additional medical assessors. There may also be a problem of retention. General practitioners, GPs, are the nominated people around the country. We may need to ask if there is an issue with retaining as well as recruiting medical assessors. It is causing delays and they in turn cause costly administrative delays. That is an issue that we might write to the Department about.

Chairman: We will write back to the Department in respect of recommendation 21 and ask that it give us the number of medical assessors it had, how many have left, how many have been recruited and the net increase. It is fine to say a further three full-time equivalent medical assessors are expected to be recruited by the end of July. That may only be replacing three who have left. We need the full picture so we will ask for that. Members will remember the use of the word "fraud" in various publicity campaigns by the Department of Employment Affairs and Social Protection whereas we said it should use the phrase "suspected fraud". The Department accepts our recommendation and says consideration is being given to the use of the terminology recommended by the committee. It goes on to say that while overpayments resulting from suspected fraud and fraudulent activity by customers constituted on average 39% of total overpayments in the four years 2014 to 2017, customer error amounts to an average of 43% over the same period and overpayments arising from errors by officials related to 2.75% of overpayments. Obviously, quite a lot is due to error and it is unfair to categorise it as fraud or even suspected fraud. It is important to keep those figures separate and we are achieving that.

Deputy David Cullinane: I do not know whether that is what the Department is accepting. One of the issues we discussed was that its reporting of these issues of overspend was fraud and error. That is the language used. It did not separate them. If it is accepting the recommendation that it should use the term "suspected fraud", that is fine, but that could still be "suspected fraud and error". When we probed the Department officials, 70% of the issues were error, some on behalf of the State itself and some committed by customers or citizens. Can we get some clarity on that? Are they separating those two?

Chairman: They have given us the breakdown of suspected fraud versus error.

Deputy David Cullinane: We were not told how they formally report this.

Chairman: We will write and ask for the breakdown. We will ask the Department to explain whether it will separate these items in all communications from now on.

Deputy David Cullinane: Not just in regard to communications. Reporting was the issue.

Mr. Seamus McCarthy: They are on schedule to appear at the committee. There is a chapter on payments in excess of entitlements, so it is a perennial issue. They have tried to change the language and I think they may have addressed the issue raised by the committee. There is still a judgment call to be made when they identify a payment in excess of entitlement and they look to the cause. In general, they have been, if one likes, erring on the side of caution and not determining that something is a fraud, or even a suspected fraud, unless they have some piece of evidence that suggests a deliberate action was taken by individuals. They will generally treat an error as a genuine error.

Chairman: We will write back to them on that because they will be appearing before us in a routine manner shortly. We will write back to them on the basis sought by the Deputy and they can send that on to us in the meantime. It is an issue that comes up quite often.

Deputy David Cullinane: The issue is that journalists or politicians simply pick that global figure and put it out that it is all fraud. That is the point, although I am not pointing fingers at any politician.

Chairman: Overpayments are due to a variety of factors, full stop, and it is not just fraud. We are agreed. We will write and ask for the position on that.

The committee recommends closer co-operation between the Revenue Commissioners and the Department of Employment Affairs and Social Protection on the issue of outstanding debt relating to redundancy in employers' insolvency schemes. It is no coincidence there are similar figures. It is said that two thirds of the companies are insolvent and the money is unlikely to be recovered. The recommendation states that a dedicated debt management team should engage directly with employers with a view to recovering debt. We are writing to them in this regard. We want details of the number of staff and the work programme of that debt management team. I got the impression they might just send out a statement once a year but we want to know the detailed work programme carried out by that team and the breakdown of the work. We understand that many of these companies are gone but they are not all gone. There is money out there that I do not think they are properly and actively pursuing. That is why we suggested talking to Revenue. We should be able to get details from Revenue in regard to those companies that are still trading and making returns for VAT or PAYE. We will see if that can be done and it is something we will come back to in our work programme. In the meantime, we will ask for the detail on the team.

The next item concerns the special liquidator for IBRC, on which we had various recommendations. Since then, the work of the committee has overtaken the various recommendations we had on that issue and we have discussed it at recent meetings with the Department.

The next recommendation was that there be a Dáil debate on the utilisation of NAMA's projected terminal surplus of €3 billion in view of the fact EUROSTAT and the EU have no rules on this due to the unique nature of NAMA. That €3 billion we mentioned then was €3.5 billion when NAMA came before us during the summer, and it issued its most recent quarterly report yesterday, with media reports today saying it expects that terminal surplus to be €4.5 billion. The Minister accepts the recommendation on a Dáil debate and we can discuss whether the committee initiates it. The recommendation states: "However, the intention has always been to use such receipts from the resolution of the financial sector crisis to pay down our national debt and reduce our debt servicing costs." That is the stated position.

There is a second recommendation that, "a Dail debate takes place on the orderly wind down of NAMA or the possible consideration of use of NAMA for other specific purposes." It is made very clear that, under the European Commission approval for the establishment of NAMA, it has to finish its functions by the end of 2020 and that any extension of NAMA's functions could breach existing state aid approval. It got state aid approval exemptions to 2020 and, without EU approval, the Government cannot go beyond that. That does not preclude using the expertise in NAMA for some other purpose in regard to the housing crisis, however, which is another issue. We will note this. We have done our bit so far.

Deputy Catherine Murphy: Do we know whether there was an expectation of surplus, although I hate to use the word "surplus" because, in fact, it is a huge loss, or a surplus on a huge haircut. Do we know if there was a figure? Does it matter that it goes beyond the expected surplus in terms of the EU insisting on it being used to write down debt? Is there an ability to use anything that was over and above this figure in a different way?

Chairman: I sat through all the meetings on that issue. The mission of NAMA was to recover what it paid. The fact it is a surplus rather than a deficit is good. NAMA's projected surplus has been increasing over the years. That is not a Government target. It is just NAMA announcing what it expects. The legislation only expected it to break even.

Mr. Seamus McCarthy: At the time the state aid was being assessed, there was very lim-

ited expectation of any surplus being generated.

Chairman: The surplus is increasing. It is clear it has not yet realised that surplus because there is still money and debt to be collected. However, based on how it is going and its knowledge of what is to be collected, it is projected it will have a surplus of at least €3.5 billion. This is very important. When we had the Department of Finance in here some months ago as part of this debate, we asked about the use of these funds and I asked whether there were any EU rules on it. The answer is no because NAMA is unique at the European level. It is a once-off. While, as I read out earlier, the intention has always been to use such receipts from the resolution of the financial sector crisis to pay down our national debt, that is just the Government position, not an EU requirement. It is just the Government's intention. Europe is not telling it to do that. Let us be very clear. The use of the surplus is a matter for the Government, although it will probably have to clear it with Europe and Europe would probably love it to be used for that purpose, knowing Europe. I am just saying the Government is not required to do that.

Deputy Catherine Murphy: The fiscal treaty limited what we could do in terms of expenditure, deficits and all the rest, but there is the potential of that surplus being used. There does not appear to be a restriction on the surplus being used to build thousands of extra houses, for example.

Chairman: As I understand it, a surplus can be used to pay off debt. The limit is not on the amount of the surplus but on the amount by which we are allowed to increase expenditure. Under the fiscal rules we could not use the €3.5 billion for house construction. If we did that, we would be in breach of the fiscal rules. The surplus could be spread over a couple of years. We could not spend it all over one or two years because in doing so we would be breaching the fiscal rules rather than the state aid rules.

Deputy David Cullinane: All of these issues should form part of the Dáil debate we have been seeking.

Chairman: Yes.

Deputy David Cullinane: In regard to the request for a Dáil debate, to whom was it recommended?

Chairman: It was recommended to the Minister for Finance, who has replied that he accepts the recommendation. In light of the Minister's agreement to a Dáil debate on the use of the NAMA surplus, the secretariat will draft a motion in that regard for next week's meeting.

Deputy David Cullinane: Will it be sent to the Dáil Business Committee?

Chairman: This committee has to pass the motion requesting the debate next week, following which it will be sent to the Business Committee. We will deal with that motion next week. The Department of Finance has already agreed to the debate. It will probably take place on a Thursday evening, which is when committee reports are usually dealt with. It is useful to have a debate on the issue in the Oireachtas, particularly for this committee in terms of the amount of work it has done on NAMA.

The next item is recommendation No. 5, which is a general recommendation rather than one specific to the Departments. It provides that the chairpersons and boards of every public body be asked to ensure that their financial statements are submitted on time. This has been accepted by Departments of Finance and Public Expenditure and Reform. Good progress is being made

in this regard.

Recommendation No. 6 is that the appropriation accounts be re-appraised and that additional notes be provided with the accounts identifying sectors and outlining expenditure on all public organisations. This is accepted. The Department of Public Expenditure and Reform is currently examining the layout of the appropriation accounts with a view to enhancing the information provided to assist the readers of the accounts. There have been some improvements this year in regard to the listing of all of the organisations under the remit of each Department, which we never had before. Having the information Vote by Vote is not only great for the committee, it is good for everyone else. We will monitor the layout of the reports each year.

The final recommendation is that the engagement of consultants or professional advisers for any public contract should have a time limit attached. Open-ended contracts are an issue because we cannot prove value for money if there is not a regular retendering process. This recommendation has been accepted in principle but as what is proposed does not always happen we will continue to monitor the public contracts.

We have completed our discussion on several months' of last year's work. Many of our recommendations have been accepted and implemented. We are seeking further information on the ones that have not been accepted. We are also seeking verification as to whether additional information is being sought from various Departments on a number of the recommendations that have been accepted.

We move now to correspondence received in the last week. Correspondence 1682 is from the chief operations officer of Teagasc providing follow-up notes requested by the committee at the meeting with Teagasc a couple of weeks ago in regard to advisory fees, regional analysis of viable farming, increasing financial charges, a comparative note on pay and pensions, the percentage of land owned by Teagasc that is in forestry, details of consultancy costs and a breakdown by county of farm debt. Is it agreed to note and publish this correspondence? Agreed.

Correspondence 1683 is from Mr. Niall Cody, chairperson of the Revenue Commissioners, providing follow-up notes requested in regard to forecasting tax receipts. Is it agreed to note and publish this correspondence? Agreed. The Revenue Commissioners are scheduled to appear before us next week to discuss two chapters. We will ask Revenue if it can also deal with the Vote at next week's meeting. If it can, it would save it a further visit. If not, we will deal with the Vote separately. When it comes to Revenue, there are four or five big items that it might well be capable of dealing with in one meeting.

Mr. Seamus McCarthy: The Vote is relatively simple. It is an administrative Vote.

Chairman: There are two chapters in the Comptroller and Auditor General's report. We have already written to Revenue asking that it appear before the committee to deal with those two chapters on smuggling of tobacco and high wealth individuals but I think it would be possible to deal with the Vote as well. Discussion of the chapter on high wealth individuals will stray into other areas. It would be helpful if we could deal with the Vote as well at next week's meeting. In general, when we are dealing with a chapter in the Comptroller and Auditor General's report we try to also deal with the Vote if the Department concerned is not too big, otherwise we are bringing officials here on numerous occasions. There is a limit to how many meetings we can hold.

Correspondence 1684 is from Mr. Robert Watts, Secretary General, Department of Educa-

tion and Skills, dated 24 October 2018 enclosing a minute from the Minister for Finance and Public Expenditure and Reform on the committee's third periodic report from January to May 2018. We dealt with the two previous reports in the last half hour. We will note and publish this correspondence for now. We will come back to it as soon as I have had time to read it in detail. I will try to examine over the coming days, with a view to the committee being able to clear it next week.

Correspondence 1685 is from Mr. Maurice Coughlan, principal officer - finance and accounts section - Department of Housing, Planning and Local Government, dated 25 October providing evidence of engagement between the Department and major partners for delivery through partnership and shared vision. We did not note this correspondence at our last meeting, but we did receive it that day.

Deputy Catherine Murphy: I still believe that what we have received is insufficient. The programme states, "build, acquire and lease". We need information under each heading. The Department should consistently provide information in this way.

Chairman: We are all in agreement that we need the information broken down in that way. If the response is that that cannot be done, that speaks for itself. The information should be available.

Correspondence 1686 B is also from Mr. Maurice Coughlan, in regard to correspondence provided to the committee during our meeting on 25 October 2018 dealing with the 2017 expenditure breakdown and overview of homeless exits. The information provided at our last meeting did not include children. Is it agreed to note and publish this correspondence? Agreed.

Correspondence 1687 B is from Professor Willie Donnelly, president, Waterford Institute of Technology, dated 25 October 2018 regarding the review of the spin-out and sale of companies from telecommunications software and systems group, TSSG, at Waterford Institute of Technology. Is it agreed to note and publish this correspondence?

Deputy David Cullinane: Professor Donnelly states in the correspondence that he is looking forward to appearing before the Committee of Public Accounts to talk to the report. I think he may be referring to the HEA report. At some point, we will receive the special report from the Comptroller and Auditor General and I imagine we will be asking him to appear before us in regard to that report once it has been published. On the issue of the Department seeking advice from the Attorney General regarding the powers of the HEA and the committee's commitment to follow up on this matter, has the committee followed up on it?

Chairman: Yes, but we have not yet received a response.

Deputy David Cullinane: We were told that advice was imminent.

Chairman: We have followed up on the matter but we have not yet received a response. Is it agreed to note and publish this correspondence? Agreed.

Correspondence 1688 B is from Mr. Neil McDermott, system funding, Higher Education Authority, dated 26 October 2018 providing clarifying information in regard to the Waterford IT review which was discussed at our meeting on 18 October 2018. Is it agreed to note and publish this correspondence? Agreed.

Correspondence 1691 B is from Professor Sarah Glennie, director, National College of

Art and Design, dated 25 October 2018 providing follow-up notes requested by the committee on its non-competitive procurement, governance compliance and the discontinuance of the HR management project. There were a lot of issues surrounding the financial reporting and corporate governance of this organisation, but it appears to be making a major effort now in this regard. Can we agree to publish it? I will ask the secretariat to redact some items because it deals with staff who are named in the appendix. We might just exclude the appendix and I hope the report will be sensible without it. We will not put staff names in the public arena. I will ask the secretariat to publish what is fair and reasonable. I have a copy of it here. We will not publish staff names.

Deputy Catherine Murphy: The Chairman skipped No. 1690, correspondence received from Mr. John Stack, chairperson of the-----

Chairman: We will deal with that correspondence in private session in a few minutes. I thank the Deputy. Is that the correspondence received from Cork?

Deputy Catherine Murphy: It is the correspondence received from the Irish Thalidomide Association.

Chairman: It is in category C.

Deputy Catherine Murphy: It is on the list.

Chairman: It is hard to follow. We have to separate the numbers between the three sections.

Mr. Seamus McCarthy: It was circulated with a different reference number-----

Deputy Catherine Murphy: Yes.

Mr. Seamus McCarthy: There is confusion.

Chairman: My note lists it as correspondence in category C, to which we will come in a moment.

Deputy Catherine Murphy: It is on my list.

Chairman: I know. It happens.

No. 1595C was held over.

No. 1601C is correspondence, dated 21 September 2018, received from an individual about wards of court. The correspondent has contacted the committee on a number of occasions. I can update committee members on where we are on the issue of wards of court. The lady who has corresponded with us has also been in touch with the justice committee which, as I stated, compiled a detailed report on the issue. In view of the fact that the matter was before two committees, the Ceann Comhairle asked to meet me and the Chairman of the justice committee. He was keen that there would be a Dáil debate on it. The justice committee will seek time to pass a motion on its report on the wards of court issue. The debate is moving to the Dáil based on the report of the justice committee. I encourage members of this committee to participate in the debate when it takes place. The justice committee has taken the lead on the issue, even though we were dealing with a lot of correspondence on it. It has completed a report and we will certainly not duplicate the work it has done. There will be a Dáil debate on the report in

due course once the Business Committee allocates time for it. That is where we are on the matter. We will forward the correspondence and let the person know that this is what has been scheduled to happen.

No. 1678C is correspondence received from Mr John Connaghan, director general of the HSE, providing an information note on West Kerry Community Hospital. I propose that we note the correspondence and forward it to the individual who raised the matter. Our consideration of the matter is now closed. Is that agreed? Agreed.

No. 1690C is correspondence, dated 27 October 2018, received from the Irish Thalidomide Association, forwarding previous correspondence on thalidomide litigation to the State Claims Agency. The association has asked the committee not to forward the correspondence in question so as not to compromise ongoing litigation. While related matters will be raised during this meeting, members should be careful not to identify any individual case. The association is asking us not to forward the correspondence we have received to the State Claims Agency in the event that it compromises ongoing legislation. We will raise the issues with the State Claims Agency but not the specific cases at the request of the association. In fairness, the agency will be at a disadvantage today because, as members of the committee, we have received correspondence that we have not been given permission to share with it. It will be in an awkward position in responding to something we have been requested not to give it on a matter we have raised with it.

Deputy Marc MacSharry: As it has a lot more correspondence than we do, it will know a lot more about it.

Chairman: It will know all about it.

Deputy Marc MacSharry: As it will know a lot more than us, I would not worry about it.

Deputy Catherine Connolly: It does not have sight of the letter. The only issue concerns the record of the Committee of Public Accounts. The other issues can all be raised. The only issue on which Mr. Breen will be at a disadvantage is being asked to correct the record without seeing the letter. The issues raised in it are valid.

Chairman: They are valid for the committee's meeting today.

Deputy Catherine Murphy: The letter states the State Claims Agency's role in the thalidomide litigation is to oppose the interests of thalidomide survivors, in accordance with its charter to minimise costs. There is an issue with the culture.

Chairman: We can deal with that matter during the meeting.

Deputy Catherine Murphy: That is not how it presented itself to us. It is diametrically opposed-----

Chairman: Its legislative requirement is to keep costs to a minimum and then we give out when it is not generous. The Oireachtas has told it to keep costs down. That is the other side. That is its legislative mandate, but it is for the agency to answer. The Deputy can raise the matter with it.

Deputy Catherine Connolly: It is unfair in the sense that it has multi-roles.

Chairman: I stand corrected.

Deputy Alan Kelly: The Chairman is too doctrinal in his definition.

Chairman: My focus was too narrow. It has a broader focus and I accept the correction. We can deal with the issue shortly.

No. 1694C is correspondence, dated 19 October 2018, received from an individual who alleges that some hospitals are putting pressure on patients to use their private health insurance in availing of publicly available services. The individual is asking the committee to deal with the issue of the principle of consent with the HSE and recommend a cooling off period in giving consent. I propose that we write to the HSE, with the individual's permission, to look for a detailed response. This is an issue about which we all know.

Deputy Catherine Murphy: I raised it previously when representatives of the HSE were before the committee. I discussed the case of somebody whose blood pressure had increased and who required a medic because she had been put under so much pressure in being chased around with a clipboard. The HSE was to come back to us. That was months ago, perhaps even a year ago. If it is continuing to happen, the HSE has not dealt with the issue we raised with it.

Chairman: We will go back through the previous transcript and see whether we asked for specific follow-up infomration on that day.

Deputy Catherine Murphy: I gave the witnesses the details of the individual in question.

Chairman: We will follow up the matter.

No. 1695C is correspondence, dated 25 October 2018, received from Deputy John Lahart requesting the committee to make inquiries about procurement by the HSE in the engagement of two companies to provide services. The Deputy has asked the committee to request the Comptroller and Auditor General to report on whether the HSE and the National Ambulance Service are operating within procurement guidelines in the case of these two companies and the committee to look at the procurement process. I propose, in the first instance, with his permission, that we forward the Deputy's correspondence to the HSE and seek a full response on the matters raised. When we receive it, we can decide on how to proceed. We will ask for a response and take it from there. Is that agreed? Agreed.

I will hold No. 1696C to be discussed in private session.

No. 1699C is correspondence received from Deputy Willie O'Dea. He has forwarded an item from an individual who made a protected disclosure in the University of Limerick and believes legislation on data protection and protected disclosures has been breached. I propose that we write to the individual to let him know that we will be returning to matters related to the University of Limerick and Sligo Institute of Technology on receipt of the Comptroller and Auditor General's report. However, if data protection legislation has been breached, he should contact the Data Protection Commissioner and if protected disclosures legislation has been breached, the appropriate body to deal with the matter is the Workplace Relations Commission. Is that agreed? Agreed. We will tell the individual that we will deal with the matter when we receive the report of the Comptroller and Auditor General. Breaches of data protection legislation are matters for the Data Protection Commissioner, while breaches of protected disclosures legislation are matters for the Workplace Relations Commission, not the Committee of Public Accounts.

There is another item with which I want to deal. Some items of correspondence sent to the

Committee of Public Accounts have not yet been circulated to members. The secretariat was concerned about circulating various items and I want to go through three or four of them. I will not identify them, but I will tell members the nature of what we have received and why they have been held. The secretariat has copies if any member wants to see them, but we think it is appropriate not to circulate them. I will give a summary.

No. 1532C is correspondence, dated 24 July 2018, received from the same individual who sent No. 1595C. It raises concerns about the procurement of training services at Our Lady's Hospice in Harold's Cross. It has not been circulated as it makes defamatory allegations relating to specific individuals regarding HR training procurement. We have received some items of correspondence that we have noted and agreed to deal with but this letter is defamatory and we cannot give it parliamentary privilege so I am asking the committee to agree that we do not circulate it. If anyone wants to see the letter, he or she can contact the secretariat directly but I propose that we do not circulate it because it will only cause trouble for us if we do so.

Deputy Catherine Murphy: It might be the way it is framed that is problematic. Is the substance an issue we should consider?

Chairman: Is the Deputy suggesting we return the letter to the person who sent it to us and ask them to rewrite it?

Deputy Catherine Murphy: Yes.

Chairman: We will not circulate it. We will ask the secretariat to say the committee has decided not to circulate it because of that reason and send it back to the person in question. If they want to write to us without items such as those in the letter, we will happily accept a letter without those issues.

Deputy Catherine Connolly: It could clarify the issue.

Chairman: Yes, rather than mentioning names.

Deputy Catherine Murphy: And whether it is an issue that it is proper for the Committee of Public Accounts to deal with.

Chairman: That is a good suggestion.

Nos. 1596 C, 1597 C and 1604 C are pieces of correspondence from an individual who is alleging cover up by senior HSE and Tusla staff regarding retrospective allegations of abuse and with regard to his own employment. The correspondence refers to specific individuals and contains a considerable amount of personal information relating to the individual and his employment with the HSE. The case is complex and goes back a number of years. The correspondence includes copies of a complaint made to the Office of the Ombudsman that refers to court proceedings instigated by the correspondent against the HSE and Tusla. The correspondent was advised by the Office of the Ombudsman that his complaint did not come under its remit. The individual contacted the secretariat in October to inquire about the status of the correspondence because we had not dealt with it in public session when we received it and mentioned there was a case before the courts related to the matters raised in the correspondence. I propose that we do not circulate electronically and that we write to the correspondent to advise him that it is not within the remit of the committee to deal with matters that are before the courts or to deal with individual employment matters. Is that agreed? Agreed. The correspondence is available from the secretariat should any member wish to see it.

No. 1639 C is correspondence from an individual, dated 4 October 2018, relating to St Munchin's Community Centre, Kileely Court, Limerick. The correspondence is submitted as a protected disclosure and relates to an employment matter. It has not been circulated electronically because it contains a number of possibly defamatory allegations. The correspondent states a complaint has been submitted to the Workplace Relations Commission. Members will recall that we have received another item, No. 1396, from an anonymous source regarding St Munchin's. It is not clear whether the two items are linked. Regarding the item today, I propose that we do not circulate it and that we advise the individual that the committee does not generally investigate matters that are being investigated elsewhere and that it is not within our remit to investigate individual employment matters. Is that agreed? Agreed. It is an employment grievance that is before other State bodies and some of the correspondence is possibly defamatory so we cannot circulate it. It concerns St. Munchin's Community Centre in Limerick. We have already received one item of correspondence from an anonymous source concerning St. Munchin's and we now have correspondence from an individual whose name is there. They may or may not be connected. We cannot know because one is anonymous. This correspondence contains potentially defamatory material. The Deputy can inspect the correspondence, which is available from the secretariat, and if he wishes to bring it up next week-----

Deputy Alan Kelly: I will do that.

Chairman: We will hold this over in case anyone wants to examine that correspondence and come back to it next week.

No. 1692 C is a copy of correspondence sent to the office of the Comptroller and Auditor General from an anonymous correspondent, dated 18 October 2018, regarding governance issues, control failures and misuse of public funds and employment matters relating to the last interim chief executive at the Nursing and Midwifery Board of Ireland. The correspondence was not circulated because the anonymous correspondent encloses a private third party email without the permission of the author or the persons named within. I stress that we have only received a copy. I think the matter originally went to the Comptroller and Auditor General. Can we agree not to circulate the item and take no further action because, again, it names other people without their permission? Agreed.

The next items concerns statements and accounts received since our last meeting.

Deputy Catherine Murphy: No. 1528, which is correspondence received on 17 August 2018, was held over. It concerns the national director of the HSE. I raise this matter because somebody contacted me and because it is something we have all raised about the original slides in the cervical screening programme not being released to the women. We were given assurances. The contract for the two laboratories states that the ownership of the slides resides with the HSE and they can be returned within three days. I have a note of that. According to an article in *The Irish Mirror* today, a solicitor dealing with one or some of the cases is harshly critical of the delay in releasing these slides. I raise this issue because we previously raised it here and received assurances that there would be no delay. This correspondence seems to talk about a process to ensure the integrity of the slides and minimise risk and I agree we want that to happen. We do not want any damage because the slides' integrity must be preserved. However, if this is being used as a reason to delay releasing slides and is causing additional stress, and I am told it is, it is unacceptable.

Chairman: The HSE and the State Claims Agency are here.

Deputy Catherine Murphy: Are they?

Chairman: They are here today.

Deputy Catherine Murphy: Okay.

Chairman: The HSE and the State Claims Agency will appear before us to deal with CervicalCheck.

Deputy Alan Kelly: Damien McCallion, the chap with responsibility for that area, is here.

Chairman: He will be here shortly so we can raise that issue very soon.

Deputy Catherine Connolly: Before we move on, there was a section 172 declaration regarding Project Nantes. We had written about that.

Chairman: Do we have a reply from NAMA? We will follow it up. We have not seen the reply. Our first letter to it asked questions and we had to write a second letter to it about Project Nantes. That only went out when we-----

Deputy Catherine Connolly: To make sure we follow up on it.

Chairman: That was the second letter we sent out so we will follow that up.

The next items concerns statements and accounts received since our meeting last week. There are three such accounts and statements. The list is being put on the board. One is the Dublin and Dún Laoghaire Education and Training Board. There is a clear audit opinion. Attention is drawn to a material level of non-compliance with national procurement rules in respect of goods and services that operated in 2017, the adequacy of the internal audit resources available and the significant organisational challenges and potential control weaknesses of having a multi-system ICT environment. Are the details in the report or do we need to-----

Mr. Seamus McCarthy: They are in the statement on internal control in the financial statements that are presented.

Chairman: I will ask the secretariat to circulate the statement. If anybody wants to follow it up in detail next week, we will do so. There is no point in writing to it for information if it is already in its annual report, which is available to us.

Mr. Seamus McCarthy: Essentially, that third point is a common issue in education and training boards, ETBs, where, effectively, the training centre accounting system, which was transferred from FÁS, is not integrated with the ETB's main financial system so it does pose a risk for accounting and control.

Chairman: People can read the full details of that in the annual report and financial statement, which is available. I will ask the secretariat to send an email.

Deputy Catherine Connolly: This has come up over and over again.

Mr. Seamus McCarthy: It has.

Deputy Catherine Connolly: And it has come up informally with me on the ground. They are struggling at that level.

Mr. Seamus McCarthy: They are. It is one of the legacy issues from integration and the

establishment of the ETBs. Five years on, they are still working with a multiplicity of systems rather than having an integrated system. There is a project for shared financial services - a financial management system - that the Department is bringing forward. As I said, it is four or five years on and it is still in a development phase.

Deputy Catherine Connolly: In that regard the Comptroller and Auditor General is saying there are significant organisational challenges and control weaknesses five years on.

Mr. Seamus McCarthy: That is the terminology they use. They are struggling with it.

Deputy Catherine Connolly: It was used elsewhere as well.

Mr. Seamus McCarthy: That is correct.

Deputy Catherine Connolly: What is the solution? Will we wait for the shared services to sort themselves out? Where are we going with this?

Chairman: I do not know. As a result of our work here, some extra resources were given for the finance function for various education and training boards, ETBs. That is really as a result of our work in the past 18 months in the sector. Additional staff have been appointed to the finance sections in each of the department to try to deal with the matter.

Deputy Catherine Connolly: There are two matters. The first is the adequacy of the internal audit resources, which is a practical matter. Without adequate internal audit resources, we are going nowhere. Separate to that is the information technology programme.

Mr. Seamus McCarthy: Yes. For 2017 many of the education and training boards are referencing the difficulty they have in carrying out internal audit.

Chairman: There is the centralised function.

Mr. Seamus McCarthy: They depend on a centralised function to have resources and they did not have sufficient resourcing in 2017. The Department has accepted that and steps have been taken so that for 2018, more resources will be made available.

Chairman: We know each education and training board has an internal audit committee but the question is how many of them have had the resources to carry out some internal audit work.

Mr. Seamus McCarthy: That is the point.

Chairman: The unit might be in Cavan.

Mr. Seamus McCarthy: That is correct. It is headquartered in Cavan.

Chairman: It is the internal audit function on a shared basis for all the education and training boards. I suspect some education and training boards have had no internal audit work carried out-----

Mr. Seamus McCarthy: Or very little.

Chairman: We need to write to the Department to ask for the number of internal audit programmes or work carried out for each of the education and training boards. We can then see where are the gaps. We need to get that.

Deputy Shane Cassells: It is Dublin and Dún Laoghaire today and a couple of weeks ago

a significant number of education and training board accounts were presented on a particular slide, with the same recurring theme of poor controls. I noted a number of recurring cases. It was not once-off and it was across the board and a cultural occurrence. After five years, what is the opinion of the Comptroller and Auditor General? Can he see it changing? I know he has had personal engagement with a number of the chief executive officers, who have themselves complained about the challenge they face. Will it change?

Mr. Seamus McCarthy: Progress is undoubtedly being made but certainly something like the fully integrated financial management system is a key project that must be delivered. The Department is leading that.

Deputy Shane Cassells: The chief executive officers are telling the ETB boards of directors that they have problems. They are telling the Comptroller and Auditor General that they have problems and the Comptroller and Auditor General's reports tell us that as well. Who will eventually grapple with the problem of what is happening? These are major organisations in the delivery of education throughout our country. Nevertheless, we are here with the reports and the same problem is occurring throughout the country. It is not just in regions or on a once-off basis but throughout the country. Who is going to grapple with the matter?

Chairman: In the Department there is a lack of adequate resourcing for the internal audit function nationwide.

Mr. Seamus McCarthy: That is the case on that specific point.

Chairman: We will write to the Department about a full assessment.

Deputy Shane Cassells: One might have thought the so-called merger of all these would have led to better scenarios rather than worse.

Chairman: It is a centralised unit. We need to know the number of staff and how many internal audits have been carried out.

Mr. Seamus McCarthy: From memory, the City of Dublin Education and Training Board has internal audit function, given its scale.

Chairman: We will ask the Department to give us a full breakdown on the internal audit function and staffing.

Deputy Catherine Connolly: That is absolutely key.

Chairman: We are getting there eventually. We should have tripped over this before now.

Deputy Catherine Murphy: The Department is leading on this. Knowing what we do about education and training boards and some of the failures, it is difficult to visualise anything being led in the Department. We are seeing things being remediated when failures are identified. Are people in the Department specifically dealing with these matters? If there are not, nothing is being led.

Chairman: We must accept the Department of Education and Skills was very poor in not getting timely financial statements from education and training boards in the first place. It will say this always happens in the merging of organisations and there is always a couple of years of build-up. However, that excuse is now well worn, to be honest. We have been on the case to get the accounts done and that has resulted in some additional work as a result of that pressure. We

are hearing that around the country but we are not there yet. We are now realising the internal audit function has not been adequately resourced, and that is the next step.

Deputy Catherine Connolly: There are governance issues we saw that are clearly the direct responsibility of the board and the people on it. In fairness to ETBs, this is a matter of a lack of resources for internal audit.

Chairman: Yes.

Deputy Catherine Connolly: We have all been informed about the delay in rolling out information technology. They are struggling on that level. I am the first to be critical about a lack of governance but these matters are beyond the ETBs currently, in fairness to them.

Chairman: We will write to the Department on that basis and we might have to delve deeper when we get the response.

Mr. Seamus McCarthy: Dún Laoghaire has been mentioned and the specific point is the level of internal audit reporting has been considered. Representations have been made in this regard to the Department of Education and Skills over the past number of years, with sanctions sought for the appointment of a dedicated internal auditor. Whereas this application was not granted, Dublin and Dún Laoghaire Education and Training board recognises the efforts being made by the audit unit and notes the increase in audit activity that has been outlined for future years.

Chairman: We want to know what happened in 2017 and 2018, as well as the plans for 2019, and we will say that in our letter to the Department. That will give us a good and clear picture of whether there is improvement.

The other two items are financial statements before us. They are the Sea-Fisheries Protection Authority clear audited opinion and the Heritage Fund.

Mr. Seamus McCarthy: That is a 2016 account but the 2017 account was presented last week. They may have realised when they presented the 2017 accounts that they had not presented the 2016 accounts.

Chairman: Okay. It is a clear audit opinion.

Deputy Catherine Murphy: I do not know if the document relating to the report on the Office of Public Works, OPW, has been circulated. There was certainly an article in *The Irish Times* about it and the reporter had sight of the document. Is there any reason it has not been circulated?

Chairman: We got the document on the OPW from a senior employee in the organisation. As there were some possibly defamatory remarks or a suggestion of possible corruption, we decided not to publish it without considering redacting it. The document was circulated to members. That was several days ago. I am not talking about the second letter and I will come to it in a moment. The document was circulated to members and some member leaked it to the media. I got a phone call from the journalist about the report and I commented on it. I indicated the Committee of Public Accounts made the decision not to publish the report but the reporter said he had it. He got it from a member of the committee. I said it had not been published and we would invite in the person in question. At a previous meeting we agreed to invite in the author but some member of the committee circulated it without the consent of the committee and

knowing it was not published. There we go again. I hope that answers the question.

Deputy Catherine Connolly: In the course of that the Office of Public Works indicated it was looking at Galway. One of the five elements related to Galway. It was Fairgreen.

Chairman: I am told something has arrived from the Office of Public Works today.

Deputy Catherine Connolly: That is fine. We can come back to it as it will be on the correspondence next week.

Chairman: We circulated the correspondence for this week over 24 hours ago. There is nothing else in the work programme we cannot discuss next week. We will just move on to today's business but before bringing in the witnesses, we must go into private session to discuss one item of correspondence.

The committee went into private session at 10.30 a.m. and resumed in public session at 10.40 a.m.

Matters related to Medical Negligence, Open Disclosure, Cervical Cancer and Thalidomide Litigation

Mr. Ciarán Breen *(Director, State Claims Agency)* called and examined.

Chairman: Today we will be dealing with matters related to medical negligence, open disclosure, CervicalCheck and thalidomide litigation. It follows our meeting on 10 May when we dealt with the State Claims Agency's financial statements for 2016, the cost implications of the CervicalCheck revelations and matters related to open disclosure. The Joint Committee on Health has engaged with Dr. Scally on his report, but our focus is on the financial liability arising for the State as a result of claims related to CervicalCheck, as well as other clinical claims. The estimated liability for all claims before the State Claims Agency amounts to €2.4 billion. We need to know why the figure is so large and what is being done to ensure the liability is controlled.

From the State Claims Agency we are joined by Mr. Ciarán Breen, director; Mr. Pat Kirwan, Ms Jenny Foley and Ms Anne Duffy. From the Department of Health we are joined by Ms Mary Jackson, principal officer, and Ms Patsy Carr. From the HSE we are joined by Mr. Damien McCallion, national director of screening services, and Dr. Colm Henry, chief clinical officer.

By virtue of section 17(2)(*l*) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the committee. However, if they are directed by it to cease giving evidence on a particular matter and continue to so do, 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 long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the House or an

official, either by name or in such a way as to make him or her identifiable. They are also reminded of the provisions of Standing Order 186 to the effect that the committee shall refrain from inquiring into the merits of a policy or policies of the Government or a member of the Government or the merits of the objectives of such policy or policies.

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

There will be no formal opening statement by the Comptroller and Auditor General, as we had a formal statement on this set of accounts earlier.

Mr. Ciarán Breen: For the convenience of the committee, I will take my opening statement as read and refer to some of its key points.

On page 2 of my submission I have set out the division between the general indemnity scheme and the clinical indemnity scheme, listing the respective numbers of claims and figures for outstanding liabilities. In regard to medical negligence generally, I mention the review of the administration of civil justice group which is chaired by the President of the High Court and the expert group to review the law of torts and the current systems for the management of clinical negligence claims which is chaired by Mr. Justice Meenan. The State Claims Agency is represented on that group, with others.

In the table on page 4 I have outlined an update on litigation pertaining to CervicalCheck, with information on litigation concerning other national screening services following in tables on page 5. I have given a note to the committee on the thalidomide litigation, outlining the current number of cases and matters relevant to that litigation.

My colleagues and I are happy to take questions the Chairman or committee members may have on the matters raised in the submission.

Chairman: CervicalCheck is a key issue. Separately, we recently wrote to the State Claims Agency about the overall bill facing the State as a result of medical negligence. To be upfront, we sought very extensive details of the breakdown of the figure of €2.4 billion for medical negligence claims. We have received some information today and I spoke to Mr. Breen earlier in the week. Some information is not yet available but will come to us in due course.

One of the items I want to highlight for the public which I do not believe has been made public before is the breakdown of the estimated liability by size of the estimated claims. The figures about which we are talking are the sums for which the State Claims Agency expects the cases to be settled. The cases have not necessarily been to court, but they are not our valuations. They are the State Claims Agency's valuations of how it thinks these claims might work out. We asked for details of the claims that the agency expects to settle for less than €1 million, between €1 million and €4 million, between €4 million and €10 million, and in excess of €10 million. The agency tells us that it expects to settle 2,954 cases on its books for less than €1 million, 207 claims for between €1 million and €4 million, 91 claims for somewhere between €4 million and €10 million and 113 cases for in excess of €10 million each. The Committee of Public Accounts has to look at these figures because medical negligence is a major bill, and it goes without saying that the less medical negligence, the more money the HSE has for its work in the health service and building hospitals among other things.

I want to put the information on the large figure into public domain as it has not been known

to date. I refer to the more than 100 cases with the State Claims Agency each of which will cost in excess of €10 million. I understand that ten of those cases are in the Dublin North East hospital group, 17 are in the Dublin Midlands hospital group, ten are in the Ireland East hospital group, 22 cases are in the South/South West hospital group, 29 cases are in the Saolta University hospital group, 14 cases are in the University Limerick hospital group and five are in the Children's hospital group. The 113 cases are estimated to cost the taxpayer approximately €1.4 billion, which is an average of €12.8 million each. The figures are staggering. We know some of the cases are catastrophic and involve lifelong issues. Some of the costs will be very high.

We do not have information today on a difficult issue, which is one the committee will have to discuss with the State Claims Agency, in terms of the 3,000 cases on its books, especially some of the 113 cases, namely, whether any one medical professional is connected with more than one case. If a number of cases have been taken against an individual and negligence is an issue, then action should be taken to ensure such an individual does not continue to practise in a hospital. I had a conversation with Mr. Breen earlier and I will ask him to comment on it before we begin to discuss CervicalCheck. Many of the claims that are made, especially involving maternity departments, involve several staff. When something goes wrong, one cannot always pinpoint it to one individual, so individuals *per se* are not held personally responsible, and the hospital, State or HSE takes overall corporate responsibility for defending the case. That means, however, we are not formally compiling incidences of consultants who might be involved in several cases and we need to know such information. The State needs to know there is a system in place.

The information I outlined is based on hospital groups, but ultimately we need to get the information on a hospital-by-hospital basis. I accept that issues will arise for hospitals in that, if there were a couple of big cases in one hospital, it might look bad, but everyone knows the big hospitals will have the biggest figures and we would expect the smaller ones to have the smallest figures. That is an issue to which we will return. I accept Mr. Breen has said that publishing those figures individually could cause other unintended problems as it might identify cases and compromise the State Claims Agency's defence or it might be unfair in certain circumstances.

The Committee of Public Accounts will examine further the expenditure of €2.4 billion. We have got the first headline breakdown of the figures and we will discuss the matter of further information with the State Claims Agency. From dealing with the HSE and the State Claims Agency, my observation is that there is a demarcation line that is not helpful to the State. Once a case is sent to the State Claims Agency, the HSE says it is nothing to do with it anymore and it is for the State Claims Agency to tell it at the end of the year how much it owes for the cases that have been settled. I do not think there is enough ongoing joint work between the two agencies to identify where the problems lie. We should not find out there is a recurring problem in a hospital at the end of a case settlement for €10 million. People need to know and to take action on matters as they arise and not wait for cases to be settled.

Those are my personal observations. They are not the views of the Committee of Public Accounts. The committee will discuss the issue and members may have stronger views or different views on the issue. As a committee I am flagging that the sum of €2.4 billion should be available to build hospitals and to provide health services and should not be spent on medical negligence. I have asked for details of the increase in that bill in recent years. We must discuss what the HSE can do in the first place, not to mind the State Claims Agency, to reduce the number of medical negligence cases in hospitals and other health settings. Mr. Breen might make a brief comment. If he wants to disagree with anything I have said, he should please do so, I am

just making opening remarks and this is something we will discuss again on a more structured basis.

Mr. Ciarán Breen: There is a good deal of interaction between the State Claims Agency and the HSE. We regularly furnish each chief executive of the hospital groups and the chief executives of the individual hospitals and HSE management with management information reports that are relative to their adverse event data and all the claims data so that they are aware of where their claims are coming from.

In addition, there are regular meetings at a very high level between the executive management team of the State Claims Agency and the executive management team of the HSE where we exchange information with it about particular things, patterns, groups or clusters that we might be seeing, or very often worries that we might have around a particular topic. I would hate for it to be characterised as nothing happening while a claim is being settled and that the HSE does not care about it. Our claims team in the State Claims Agency and the clinical risk team liaise, and there is a great deal of learning that we take from closed claims about why we had to settle at a particular level, if there are lessons to be learnt from that, and how we feed it back into the system. We constantly do that.

As you said, Chairman, we had a conversation and I will outline one of the reasons we do not break down the data on a hospital-by-hospital basis. NHS Resolution, which is our equivalent in the UK, has what it calls fact sheet 5, and it issues it publicly and regularly. It is a trust-by-trust analysis. It breaks down the information in the way we have into a group of hospitals. Its reason for not publishing it at a more granular level is in line with our reason, namely, that claims and claims analysis are not necessarily a good measure of quality because one has case mix, demographic and size of hospital. Some hospitals take on very hard cases, so therefore one would expect to see a higher rate of claims. Maternity units obviously have higher incidences of compensation rather than volumes of claim. Then there is the issue that one might raise undue concerns among the public no matter what context one puts around it. There might be a perception, wrongly, that a hospital is not one a person might go to, and there are consequences for the system if people decide they will not attend hospital A as well as for the reputation of both the hospital and the practitioners. Those are just some of the reasons. I am informed by my colleague, Colm Henry, in the HSE that it carries out real quality analysis and publishes it, which is helpful in terms of understanding what is happening in hospitals.

In the time since the inception of the State Claims Agency and all the analysis that we do, there have been very few occasions where we have had to take an issue up with a hospital chief executive about a particular practitioner. That is not to say that we have not done that. We have, and where we have done that, a hospital addresses the issue. It might involve nothing more than the association of a practitioner with a cluster of claims. There might be different factors involved, including difficult cases such as difficult surgeries. When we come across such a cluster and where we look at the expert evidence, if there is something we need to say to a hospital chief executive, for example, that he or she might have to look at what has been happening in those cases together with the practitioner, we hand the case back to him or her and let him or her deal with it. We have done that.

Chairman: The figures are big. Mr. Breen has provided the figures per hospital, but he sees an issue in making the figures publicly available for the reasons he has outlined. We understand that and will discuss it again. The issue is that the figures are increasing each year. We are here to protect the interests of the taxpayer and would prefer the extra money that is being used to pay medical negligence settlements every year to go into health services and to improve facili-

ties. We all believe that.

Dr. Colm Henry: There are a wealth of data, not just from the HSE but also the Department, which reports on individual conditions, individual mortality and compares hospitals. The Department of Health has this year, for the fourth year running, published the national healthcare quality reporting system, NHQRS, which reports mortality from strokes, overall hospital mortality and overall mortality for myocardial infarction, or heart attack, and other metrics such as access to cancer services. The caveat is written very strongly in the foreword and the introduction that we are not comparing like with like. A stroke specialist carrying out a thrombectomy, in which a clot is removed from the patient, is going to attract more complex and difficult cases. A neurosurgery unit will attract cases from other hospitals which deal with less complex cases.

When we are looking at quality of healthcare, adverse events are one important component, but there is much more to it. We have to look at access as well. Every month we discuss performance management at our hospital groups, looking at access to cancer clinics and healthcare associated infections. We look at patterns between hospitals and, in some cases, patterns between practitioners. Our governance structure is set up so that the first port of call is management at local level, meaning the hospital and the hospital group, which are best placed to interpret the data and to put in place improvement plans where they believe they are needed. We are confident that it happens in an ongoing quality improvement cycle.

Chairman: I will hand over to Deputy Kelly. It is an issue we will return to because the figure is so big. The Committee on Public Accounts has to look at this issue.

Deputy Alan Kelly: I have a lot to get through, so I would appreciate it if the witnesses can be concise. The table Mr. Breen provided contained information on claims and litigation. On CervicalCheck it tells us that there are 73 claims which are active and which have not been settled, five claims have been settled, one claim has closed and there are six potential claims. How many cases have been settled due to negligence?

Mr. Ciarán Breen: The Deputy will be aware that there are co-defendant laboratories in those cases. I previously discussed the issue of non-disclosure with the Deputy and other committee members. The substantive liability and causation issues are issues for the laboratories. The assessment of negligence, whether a negligent misread or a false negative, falls for determination by them, having regard to their expert report. They do not normally share that kind of information with us.

Deputy Alan Kelly: This information is very important. There are 73 active claims and six further potential claims. Of the cases that have settled because of negligence, is the witness aware of the reasons for their being settled?

Mr. Ciarán Breen: In an individual case we might be given expert reports from the laboratory that it has relied on either to defend a case or admit liability. That is all we see. It is up to the laboratory after that as to whether it admits liability or liability for negligence or settles the cases without admission of liability. The laboratories are very much in the driving seat.

Deputy Alan Kelly: I appreciate that and I understand that, but I wanted to get a sense of it for the public because there has been a lot of commentary on this matter. We need to bring this debate back a bit and get a sense of where the division is from the point of view of the witness, who is representing the State. It is important that people have that information.

Cases have been settled or closed where liability has been accepted. It is really a matter for

the laboratories to make a decision to settle based on their own interpretation as to whether they were negligent or not. Is that correct?

Mr. Ciarán Breen: That is correct.

Deputy Alan Kelly: The witness just accepts that the laboratories accept that.

Mr. Ciarán Breen: Absolutely. We are-----

Deputy Alan Kelly: It is an important point that I do not think we have discussed before.

Mr. Ciarán Breen: We are like a co-defendant in any other type of case. We are saying that the liability is an issue for the laboratories to deal with, not us.

Deputy Alan Kelly: That is an important point. The distinction between non-disclosure and negligence or potential negligence will become more of an issue as we go through these cases. As the cases progress, we will get more transparency on that. Is that fair to say?

Mr. Ciarán Breen: Yes.

Deputy Alan Kelly: My colleagues have referenced the next matter I want to discuss. Much attention has been given to the length of time it is taking for the women affected and their solicitors to get the slides from the laboratories. One solicitor has very publicly said that three clients were waiting more than three months for their slides after having agreed to the protocol release of the slides, and we know that one person has had to go to the High Court and instigate legal proceedings to get the slides. That person's court appearance will happen in the near future. Is it true that the HSE has hired a firm to deal with the requests for slides? If so, why? This firm will be separate from any solicitors dealing with actual cases. This firm of solicitors is dealing solely with the release of slides.

Why is this delay happening? These women have gone through enough. I am very clued in to how the 221+ CervicalCheck Patient Support Group campaign came about. Lorraine Walsh has created fantastic slides on this matter. These women all have an issue. They are legally entitled to these slides. Why is there a delay?

Mr. Damien McCallion: I will provide the figures as of last Friday. There have been 38 requests for slides, of which two are outstanding. The average turnaround time was 22 days over that period. As the Deputy said, some of the slides should definitely have been released in a much more timely fashion. To touch on one of the other points made by the Deputy, we have a process where a HSE team which was established following the crisis does nothing but deal with recording of slides and requests from women and their solicitor. Some women request them directly, while others do so through their solicitor. It is an internal team, for which there is legal support. As I said, the average figure is 22 days.

Deputy Alan Kelly: An average figure is fine, but what is the longest period for any individual?

Mr. Damien McCallion: It is 70 days.

Deputy Alan Kelly: Why was that?

Mr. Damien McCallion: In that case we had to go to the laboratory and make a number of escalation calls to have the slide released. Its excuse at the time was pressures of contracts,

backlogs and other factors. It had a legal case pending. We held an escalation meeting with the laboratories on a fortnightly basis to review records, slides and other pressures to ensure we would trap them much earlier in terms of requests made to the laboratories.

Deputy Alan Kelly: Does the HSE have contractual obligations that the laboratories have to honour? One should not have to wait for 70 days for slides. In a period of 70 days the health issues for a woman in these circumstances could range from fairly serious to who knows what. They are entitled to them.

Mr. Damien McCallion: Absolutely

Deputy Alan Kelly: It is their human right. Having to wait for 70 days is just unacceptable and beyond commentary.

Mr. Damien McCallion: Absolutely. Women are entitled to the slides and the purpose of the team in the HSE is to ensure they will receive their slides and records, whether from hospitals, screening services or the laboratories. In the outlying cases where it takes an inordinate amount of time, it is not acceptable and we have put a process in place to ensure it will not happen with the laboratories and to try to minimise the delays. Some have been turned around very quickly.

There is one other point which is probably relevant. In any case where a legal action is pending or someone is known to be in a serious health condition, we have absolutely sat on whoever needs to be sat on to ensure the slides are released. The requests have all been met within the timeframes.

Deputy Alan Kelly: Why, in some cases, did solicitors representing clients have to go to court to escalate the matter?

Mr. Damien McCallion: I am not aware of a particular case or request where the people involved have had to go to the High Court, but I am happy to look into the matter.

Deputy Alan Kelly: I will come back to it. I want to ask the Department of Health about when the decision was made to offer free screening to all women. The Committee of Public Accounts would like to know how much it is going to cost. In fairness to him, the Minister for Health, Deputy Harris, made the decision for the right reasons, but there may be questions as to whether it was the right one. I definitely give him the benefit of the doubt because of the circumstances involved, but what was the advice of the Department? I will start with this question, but there are follow-on questions arising from it.

Ms Mary Jackson: This is not my area of expertise. My area of expertise is clinical indemnity claims. I am not sure if Mr. McCallion has figures for the cost of the additional screens. A policy decision was made by the Chief Medical Officer and the people in acute hospitals dealing with the CervicalCheck reports. A decision was made based on what was the best response for the women involved.

Mr. Damien McCallion: I do not have figures for the cost, but I do have figures for the volume and throughput.

Deputy Alan Kelly: To be honest, I know what they are. From a departmental point of view, we do not have answers to those two questions.

Ms Mary Jackson: I will check with colleagues in the Department and get the information

for the Deputy.

Deputy Alan Kelly: That is a pity because it a fairly important point.

Chairman: Would it be possible during the course of the meeting to obtain it? We will probably not finish before 1 p.m. Is there somebody here who could make contact, other than Ms Jackson, because she will need to stay here?

Deputy Alan Kelly: Let us be honest, the Department of Health is watching the proceedings. Can we publicly ask it to answer my two questions?

Chairman: The Deputy can ask them on behalf of the committee.

Deputy Alan Kelly: Can someone from the Department, on behalf of colleagues in front of the committee, please, furnish the information on the cost of free screening and the advice received from the Department?

Chairman: We are asking that the information be emailed to the Committee of Public Accounts. It will be circulated it to members when it is received.

Deputy Alan Kelly: If Mr. McCallion does not mind, there is a pathway in this questioning. In fairness to him, his answers are very transparent. We now know that between May and September, there were almost 42,500 repeat screenings and that 86,000 samples have been progressed. Is that correct?

Mr. Damien McCallion: There might be two related figures. The figure of 45,000 is the indicative number of out-of-cycle smears. Consultations were also offered to women. The total was around 80,000. That is the second figure. There was a consultation programme and a-----

Deputy Alan Kelly: I understand the differential. The issue I am trying to get to is that we now know publicly that there is a big backlog. What is the extent of the backlog? It runs to how many thousands?

Mr. Damien McCallion: There are two aspects to the matter. First, there is the delay in reporting. The figures are out to 20 weeks.

Deputy Alan Kelly: We are getting there.

Mr. Damien McCallion: There is also a backlog of over 80,000 smears which are still to be processed.

Deputy Alan Kelly: Being honest, that is as a direct result of the fact that there is now free smear testing.

Mr. Damien McCallion: There are three factors, the first of which is the free smear test. The out-of-cycle smear test is the primary factor, but there are other factors also. On the positive side, what we have seen is that more women are attending their appointments.

Deputy Alan Kelly: That is good.

Mr. Damien McCallion: Yes, it is. Furthermore - this is also good - women are engaging with the programme who previously had not engaged with it.

Deputy Alan Kelly: That is also good. There are pluses and minuses. I understand that.

Mr. Damien McCallion: The challenge is that it is all coming at the one time in terms of capacity and the size of the-----

Deputy Alan Kelly: When the decision was made to go down this route, it was to cause an avalanche and we all know why. There is no way I am making a political point because the circumstances were quite unique and I just want to get to the facts. As a consequence, what was the resource differential or what capacity was created to deal with the issue?

Mr. Damien McCallion: It is important to set the context. There are three laboratories providing services - a public laboratory at the Coombe and two others. The laboratory at the Coombe provides around 10%, while the figures for the others can vary year on year. However, they can provide approximately 45% each of total capacity. One of the challenges is that as a profession or service cytology is starting to cease as HPV testing is introduced. In simple terms, in the current model, everyone a receives cytology service. Only 10% receive a HPV testing service. In the future 100% will receive a HPV testing service, while only 20% will receive a cytology service. We are trying to source capacity in many countries and everyone is struggling to find a cytology service. It is a global challenge; it does not matter to which company one talks or where one goes.

Deputy Alan Kelly: I understand that. I have read a lot about the issue. We have gone from a delay two weeks ago of 18 weeks to 20 weeks.

Mr. Damien McCallion: That is correct.

Deputy Alan Kelly: There are two or more steps. First, the resources being put in from a HSE perspective in bringing forward HPV testing have to include similar people in some way. Are the resources being put in undertaking the more immediate task - finding capacity to deal with the issue - the same as those being put in in providing HPV testing? Is this going to affect the roll-out and timeline for implementation of HPV testing? That is the first question and it is very important. It is best to answer it before I get to the next one.

Mr. Damien McCallion: We secured extra resources for HPV testing from the United Kingdom and other places to try to ensure we would minimise the risk. There is still an overlap with some of the people involved in managing the backlog in the current system also involved in the HPV testing project. There is still an overlap in that some of the people that are involved in managing the backlog and the current system are also involved in the HPV project. We have tried to minimise that by taking in additional people. We have taken someone into our project office who has cervical screening experience in the UK. We established a project management office to try to manage and secure the HPV project. I mentioned the previous time we were here that we have had challenges in securing some of the clinical resource to advance the HPV project as well. We are starting to make some inroads into getting some of that resource in place. We have recruited a new clinical director for the cervical screening programme and we are also trying to bring in someone to lead on the cytopathology or laboratory side, which would have been one of Dr. Scally's recommendations. We had commenced that process prior to Dr. Scally's report. There is some overlap and we are trying to minimise it.

Deputy Alan Kelly: Mr. McCallion has been most eloquent, but I think this is a huge risk. I think there is a significant overlap. I do not think there are enough resources and that will affect the roll-out of HPV testing.

When it comes to the backlog, some of the women who were triaged cases may have to go

back for screening sooner than others. Some women might be asked to come back because of potential changes in six months or a year. How are they prioritised when it comes to the back-log? If somebody wants a free smear or somebody is coming back for a standard review but another woman needs a test as a priority because she is told to come back every six months or every year, I want to have confidence that the woman with a more serious need will not end up in a scenario where she is waiting 20 weeks or there is a delay. If women are being asked to come back earlier than normal then there is a medical reason or potential risk involved. Could Mr. McCallion give guarantees in that regard? That is important for the people watching at home. I have had a lot of correspondence on the matter. I even spoke to a woman this morning before I came in here. It is important that those women are prioritised and for the want of a better phrase, are put on the correct step of the ladder.

Mr. Damien McCallion: Sure. There is another group as well in terms of the colposcopy clinics. We are able to differentiate-----

Deputy Alan Kelly: I was going to move on to that. Perhaps Mr. McCallion saw my notes.

Mr. Damien McCallion: I do not think so. I wish I did. All joking aside, because it is a very serious matter, we are able to prioritise the colposcopy cases. We are not in a position to differentiate between the out-of-cycle cases and the in-cycle cases in terms of the laboratories. That is a serious challenge for us.

Deputy Alan Kelly: That is a serious risk. Just to clarify for the public watching, and for the Minister for Health, is Mr. McCallion saying that the system cannot distinguish between women whom I have described, who have to come in more often, for example every six months or year, and those who come in for a three-year review?

Mr. Damien McCallion: We cannot differentiate between the slides in the laboratory between those who are out of cycle or on a planned cycle of one year or three years but we can differentiate between those who are coming through colposcopy.

Deputy Alan Kelly: Is that not a serious problem?

Chairman: Could Mr. McCallion explain the word "colposcopy"?

Mr. Damien McCallion: If concerns are raised following a smear a woman will be referred to a colposcopy clinic for a gynaecological examination. The service is provided in a hospital. The colposcopy clinic will also avail of a smear test as part of its service.

Chairman: Is it when women need a physical examination?

Mr. Damien McCallion: There is a physical examination as part of it and an examination is undertaken in the colposcopy clinic.

Chairman: I am only asking the question because I know some people do not understand the term.

Deputy Alan Kelly: That is new information and that is a risk.

Mr. Damien McCallion: It is, and the way we are trying to minimise it is by growing capacity. We are looking at how we can stagger the recalls. We have managed to make some inroads in recent weeks in terms of growing capacity, by securing capacity from the two existing providers. That has been quite challenging because, as the Deputy is aware, we have been in the

middle of complex contract negotiations to try to ensure that the cervical screening programme continues.

Deputy Alan Kelly: Of course. I appreciate that.

Mr. Damien McCallion: That has been quite difficult.

Deputy Alan Kelly: We have been given a figure of 221 but Dr. Scally has said the figure will grow and he is correct. I want to tease that out a bit. Is it correct that the audit stopped on 1 January?

Mr. Damien McCallion: Yes, that is correct. I cannot recall whether it was 1 January or at the time of the crisis but the audit did stop.

Deputy Alan Kelly: That is not a good thing.

Mr. Damien McCallion: I agree.

Deputy Alan Kelly: It is a bad thing. All the other variables stayed the same. Potentially, there will be more women affected, *pro rata*? That is why we hear reference to 221 plus. The audit has stopped since 1 January so the figure will have to increase *pro rata*, given that all other variables are the same. Is that correct?

Mr. Damien McCallion: Deputy Kelly is correct in terms of the audit. It is not a good thing because audit is a good thing and we should do that. I might ask my colleague, Dr. Henry, to comment on that in a moment. One of the things we have looked at, which is in Dr. Scally's report, which we discussed with him during his scoping inquiry is that the audit was clearly flawed in its implementation and design and we needed to put a process in place. That is what we are going to do. We have spoken to Dr. Scally to make sure that the audit process can restart.

Deputy Alan Kelly: I appreciate that. I fully understand all of that. All the variables are the same and we are broadly talking about 221 cases on 1 January 2018. The guts of almost another year have elapsed. With all the variables being the same the total has increased *pro rata*. That is the first thing to point out. I do not think Mr. McCallion disagrees with any of that.

Mr. Damien McCallion: No.

Deputy Alan Kelly: My next point concerns important information which was given to us, which I think was only found towards the end of the Scally report by Karin Denton. In order to be audited one obviously had to have cancer and have had smears taken, but she brought in a variable of which we were publicly never aware, namely, the matter of 18 months.

Mr. Damien McCallion: I could perhaps clarify that for the Deputy.

Deputy Alan Kelly: Yes. That means a woman had to have had cancer and to have had a smear. If it was under six months everyone understood because it was too close but we did not know that it was between six and 18 months. When it comes to the 221 cases we know the audit has stopped and the variables have stayed the same so the figure will go up because of that, but what we publicly need to know is whether it will go up because of the decision to use 18 months?

Mr. Damien McCallion: Perhaps I can clarify that. I met with Dr. Scally yesterday and I discussed that with him.

Deputy Alan Kelly: I am aware of that.

Mr. Damien McCallion: Dr. Scally took the reference to 18 months from a set of minutes in May 2015 concerning a comment from the then clinical director of the programme. When we became aware of that I asked that all of the records that were reviewed for cytology would be reviewed to check the date. In fact, it is not the case that the 18 month cut-off was used.

Deputy Alan Kelly: It is not the case?

Mr. Damien McCallion: It is not.

Deputy Alan Kelly: So Dr. Scally's report is wrong.

Mr. Damien McCallion: It is not that Dr. Scally's report is wrong. He took that from the minutes of a meeting in 2015.

Deputy Alan Kelly: So the minutes are wrong.

Mr. Damien McCallion: I presume the minutes were reflecting what might have been intended at that time, but I wish to give absolute assurance on the matter because it is important.

Deputy Alan Kelly: Yes, it is important to clarify it.

Mr. Damien McCallion: I asked that each of the records would be reviewed to check the timeframe in which they were worked in, and the 18 month criterion was not used in those. For example, if a woman had symptoms she could have been within a month of diagnosis.

Deputy Alan Kelly: What criteria were used?

Mr. Damien McCallion: There was not a timeline, effectively.

Deputy Alan Kelly: So there was no timeline. It was not even six months, as I understood.

Mr. Damien McCallion: It was not.

Deputy Alan Kelly: There was no timeline. That is good information.

Mr. Damien McCallion: It is positive but it is unfortunate that the minutes reflected something different at the time.

Deputy Alan Kelly: In fairness, Dr. Scally needs to come out and-----

Mr. Damien McCallion: In fairness to Dr. Scally-----

Deputy Alan Kelly: I do not want to wrong him, as I think he has done a good job.

Mr. Damien McCallion: -----he intends to write back to the committee to do that.

Deputy Alan Kelly: On the labs, does any of the witnesses yet have a copy of the tenders that were put out a number of years ago, which were destroyed? I do not imply there was any wrongdoing in that regard but has anyone found any copies of the original tenders?

Statistically, Dr. Scally found that the labs were clear as regards international norms. I accept that. However, what I do not understand is that where cases were taken and where labs settled or said that there was a failure of duty, for want of a better phrase, would it not be normal

that the HSE, as the contractor, would then inspect the lab concerned? In any other walk of life, if a case was settled related to services contracted in, the contractor would seek reassurances. I am accepting what Dr. Scally said with regard to international statistics and norms.

My questions are: Have the tenders been found; did the HSE inspect the labs; and, if not, why not? In fact, I am aware that it did not and we know from the Scally report that the labs were rarely, if ever, inspected. In particular, why were they not inspected when cases were settled? Are they being inspected?

Mr. Damien McCallion: On the tenders, Dr. Scally highlighted the fact that one tender had been destroyed. Our procurement people looked into this and found that it was destroyed in line with the records retention policy. It was unfortunate that it happened when it did. We have sought the original tender from the laboratory and it is trying to source that for us currently. While it was within the policy of record retention, it was unfortunate in the context and should not have happened but as I have said, we have sought the original tender document from the laboratory concerned.

On the issue of lab performance, when the crisis broke and the issues emerged around the laboratories, Dr. Scally was very clear that he was going to conduct an investigation into the labs. That was done and that was the immediate response. Deputy Kelly has highlighted an important point going forward. One of the lessons from this, which is in Dr. Scally's report, is that we need to strengthen the quality assurance around the process and the inspections. Another observation that Dr. Scally made was that we need to ensure, as a laboratory-based programme for cervical screening, that we have much stronger laboratory and cytopathology input to the programme than was the case previously. In that context, we advertised for a national cytopathology lead for the cervical screening programme. We have also brought in a quality and risk person to analyse our quality assurance processes and to try to strengthen them.

The straight answer is that we will need to increase site visits and quality assurance as a result of Dr. Scally's report.

Deputy Alan Kelly: In fairness to the witnesses, it must be said that the answers they are giving are pretty direct. It has been a failure. It should not have happened. The labs were not inspected when cases were settled. These cases were not just about non-disclosure but were about potential negligence and in that context, the labs should have been inspected. Let us be honest about that.

Mr. Damien McCallion: Yes, and in the intervening period, Dr. Scally was carrying out that inspection so we obviously did not want to overlap with him in that work.

Deputy Alan Kelly: My next question is for Mr. Ciarán Breen. In the context of the Taoiseach's comments that the women affected would not have to take the legal course and following the publication of Mr. Justice Meenan's report, how will the State Claims Agency ensure that women do not end up in court or, if they do end up in court, how will it help them if they decide not to be in the process outlined my Mr. Justice Meenan?

My next question is for Mr. McCallion or one of his colleagues. I ask for the start date and completion date for the RCOG review, which I have not got into detail on as yet and about which I have many questions. Perhaps that question is for the Department rather than the HSE. I also seek-----

Chairman: Explain the RCOG review please.

Deputy Alan Kelly: It is the review of all of the slides of the women affected which is being conducted by the Royal College of Obstetricians and Gynaecologists.

Chairman: Is that the review that is being done in London?

Deputy Alan Kelly: Yes. My last question is also for the HSE. What is the intended date for the implementation of HPV testing as part of cervical check? This is a very important question and lots of people watching these proceedings want to know the answer. This is absolutely critical. We need a date. A few months ago we were told it would happen within six months. When will HPV testing begin? What is the implementation plan in that regard?

Mr. Ciarán Breen: Regarding the cases where women do not voluntarily enter into what we can call the Meenan process, the best we can do, which is what we have been doing all along, is to effectively, where appropriate, broker a settlement with the women. We have been making sure, wherever possible, that between the making of the claim and its resolution, we are using mediation and talking to the laboratory co-defendants. Quite clearly, they have their own mind and their own advisers and different legal issues arise in individual cases. What we will be doing in every case is trying to ensure that even where mediation breaks down - as has happened in some cases for various reasons - that we keep the mediation process as alive as possible. That is a challenge. The challenge is always to ensure that women do not have to go into court and that the process is not adversarial. We are trying to remove as much as the adversarial element as possible. However, being absolutely realistic about this, there is only a certain amount that we can do because the co-defendant laboratories ultimately will be the large-part paying party.

Deputy Alan Kelly: I accept that and to be honest I think the State Claims Agency is caught in a bind because of the commitments made by the Taoiseach.

Mr. Damien McCallion: The RCOG audit will look at the cases of all women who were diagnosed with invasive cervical cancer, including those who may now be deceased. That is being operated by the Royal College in the UK, using services is Bristol, Scotland and various places. It is more comprehensive than just reviewing slides. It is also looking at the colposcopy and the overall treatment. The initial phase is to seek consent from people. While the review was commissioned by the Department, I do have the figures here and can share them with the committee.

Deputy Alan Kelly: That would be great.

Mr. Damien McCallion: A review has been offered in respect of 1,591 women. Letters were issued to the women themselves or to their next of kin and to date 851, or 56%, have consented to that review. We expect that figure will grow. In some cases, particularly involving the next of kin, we are trying to confirm that we are contacting the right person and so on. Deputies will appreciate the sensitivities around that aspect.

In terms of the end date, that is a matter for the RCOG. That said, the indications are that we are talking about somewhere in the order of five to six months. It is a significant piece of work and is not-----

Deputy Alan Kelly: When is it beginning?

Mr. Damien McCallion: The process has begun in the sense that we have been working through the whole consent process and the logistics-----

Deputy Alan Kelly: I understand that but when will the actual work begin?

Mr. Damien McCallion: There has been a significant amount of work done already, including weekly meetings with RCOG. Enormous efforts are going into the process.

Deputy Alan Kelly: It is expected to take six months.

Mr. Damien McCallion: That is the RCOG's estimate. It is not for me to say. I am just giving an indication here. The Deputy will appreciate that it is a matter for the college itself but it has given an indication that the period involved is of that order.

The Deputy also asked about the HPV project and the points he made earlier are relevant in terms of prioritisation and resources. The critical issue with regard to the HPV project is that in order to run it or to implement the switch over from the current model to the new model - remembering that we use HPV screening now for women who have a low-grade test from cytology to give greater assurance - we must flip the process, for want of a better term, so that 100% are on HPV. The critical part in that will be the laboratories. Put simply, we need laboratories to provide a service and the current negotiations that we are concluding, in terms of contracts and so on, will determine the start date. We cannot provide a start date until those negotiations conclude. A critical step must be taken between now and Christmas, which has two parts. As we conclude the contracts, we will be clear on the private laboratories that have the capacity to work with us going forward and on what we can do within the public system. One of our objectives is to balance the public and private system pieces. We also intend to run a pre-market process rather than proceeding with a standard procurement. Given everything that is happening, there is a serious risk in terms of service providers so we intend to do an open, pre-tender market engagement some time towards the end of November or in early December. That will give us an assessment of what is available to us. In parallel, we are working with our own public system to see if we can grow that to improve the balance.

Deputy Alan Kelly: That is very welcome news. I would encourage the utilisation of the public system to the greatest extent possible.

Mr. Damien McCallion: Clearly a balance must be struck. In terms of determining the date, there will be a point at which we will need to move it on as quickly as possible and that is the critical piece.

Deputy Alan Kelly: I thank the witnesses for the clarity they have brought. It has been pretty good.

Deputy Catherine Connolly: While I would like to go into the minutiae, that is not the job of the committee. Our job is to examine governance, accountability and value for money. In that context, what is the cost of running the cervical smear service every year?

Mr. Damien McCallion: I will pull out the figures.

Deputy Catherine Connolly: Would I be wrong in saying it is €22 million or €23 million per year?

Mr. Damien McCallion: The total figure in 2017 - there will clearly be additional costs in 2018 - for the screening service was €78.25 million. The CervicalCheck service figure in 2017 was €32.1 million.

Deputy Catherine Connolly: Was that €32 million?

Mr. Damien McCallion: It was €32.1 million in 2017.

Deputy Catherine Connolly: Is that clearly set out? I had difficulty finding that figure, although I must have got it somewhere.

Mr. Damien McCallion: The figure Deputy Connolly has possibly came from the fact that the budget comprises the CervicalCheck screening part of €24.7 million and a further €7.4 million that is managed through the hospitals. That may be where the €24 million came from.

Deputy Catherine Connolly: I came without the accounts, but if I look at them will I see a figure for €32 million?

Mr. Damien McCallion: No. The total cost of the service is €32.1 million, comprising €7.4 million in the hospital budget and €24.7 million in the screening budget.

Deputy Catherine Connolly: What will the failure in governance and open disclosure cost? What is the estimate?

Mr. Damien McCallion: Is Deputy Connolly talking in terms of the legal claims, etc?

Deputy Catherine Connolly: I am talking about everything, the investigation, the Scally report, the ongoing Royal College of Surgeons report, etc.

Mr. Damien McCallion: I could not give the total numbers on that at this point. Perhaps the State Claims Agency might be able to comment on the legal costs. The Scally report was commissioned through the Department. It was not a cost borne by the HSE.

Deputy Catherine Connolly: One moment, please. There is a figure for the running of it. The figure for rectifying it is entirely separate. What is the cost of the failure of governance and open disclosure? There must be some figure.

Mr. Damien McCallion: There are three elements and the Deputy flagged them. One is in respect of the claims, which clearly I would not-----

Deputy Catherine Connolly: Mr. Breen might answer that.

Mr. Damien McCallion: The second element is the Scally report and other reviews, including that of the Royal College of Obstetricians and Gynaecologists, RCOG, which would be matters for the Department. From the HSE side, we are trying to conclude what the costs have been in dealing with this and putting in the extra supports that have been necessary.

Deputy Catherine Connolly: Would I be totally wrong to say the difficulties will the service will cost more than running it? Would I be far off the mark?

Mr. Damien McCallion: It would be difficult in terms of the claims side. That would be----

Deputy Catherine Connolly: Will Mr. Breen help me with that? Would I be way off the mark to say the total cost of the cases, awards, legal fees and various investigations will be higher than the €32.1 million it cost to run the service in 2017?

Mr. Ciarán Breen: No, I do not think so. If we look at the cost of the cases to date, bearing in mind that this cost will not necessarily accrue to the State-----

Deputy Catherine Connolly: I understand.

Mr. Ciarán Breen: -----but if we look at it broadly in terms of the laboratories and what they might pay out and so on, I think Deputy Connolly is right.

Deputy Catherine Connolly: Would anyone have a bald figure on what that cost will be? It is clearly more than €32.1 million. Does anyone have an idea of what the cost will be, separate from the cost of rectifying and the new contracts?

Mr. Ciarán Breen: On the litigation side of it, we do not have a figure on that right now because we do not quite know how the cases will present themselves. As I indicated, we have 85 cases now and, potentially, many more. The cases will present differently and attract different levels of compensation and there will be different costs.

Deputy Catherine Connolly: I understand that.

Mr. Ciarán Breen: Of course, there is also the Mr Justice Meenan tribunal issue, which may intervene in all of those costings.

Deputy Catherine Connolly: For the first time, we are getting a clear idea of the cost of governance failure and a failure to act. This does not just apply to the HSE but applies to all organisations. We are getting a clearer idea of what would be cheaper and more effective. To return to governance and disclosure, there was a voluntary disclosure policy. Legislation was introduced and enacted very late. That is the fault of the Government, not the organisations before us. Legislation providing for voluntary disclosure was enacted in 2017 and commenced in September 2018. There was a policy in place and it was only legislated for 2017 and enacted in 2018. We are only now in the process of setting up a national office for open disclosure. Is that correct? Who can answer that?

Ms Mary Jackson: We are setting up a new independent patient safety council.

Deputy Catherine Connolly: I have a note somewhere - I think it is from Mr. Breen - stating a process of setting up a national office for open disclosure has commenced and the State Claims Agency has been invited to sit on the interview panel. Am I wrong about that?

Mr. Ciarán Breen: No, I think that is true. That was following a recommendation of the Scally report.

Deputy Catherine Connolly: That is where that is coming from. Is it happening speedily enough?

Mr. Ciarán Breen: Yes, it is.

Deputy Catherine Connolly: When are the interviews?

Mr. Ciarán Breen: Perhaps Ms Duffy could answer that question. She deals with open disclosure.

Ms Ann Duffy: I am going to be part of the interview panel. We are short-listing next week with a view to interviewing two weeks after that.

Deputy Catherine Connolly: In Mr. Breen's opening statement, he referred to a protocol and the necessity for a pre-action protocol for medical negligence cases. Has that been done?

Mr. Ciarán Breen: No, it has not.

Deputy Catherine Connolly: Will Mr. Breen clarify that for me?

Mr. Ciarán Breen: The pre-action protocol, as Deputy Connolly knows, is a device which makes sure that the parties engage each other.

Deputy Catherine Connolly: I have the document here. It refers to a pre-action protocol relating to clinical negligence and the making of regulations. Have the regulations been made?

Mr. Ciarán Breen: No.

Deputy Catherine Connolly: Where does the fault lie for that?

Mr. Ciarán Breen: I was at a meeting last week where officials from the Department of Justice and Equality were present. It is the Minister for Justice and Equality who will make those regulations.

Deputy Catherine Connolly: Why have they not been made before now?

Mr. Ciarán Breen: The officials indicated to us at that meeting that there was a complexity associated with them.

Deputy Catherine Connolly: How long will it take?

Mr. Ciarán Breen: They indicated that they felt the pre-action protocol would probably be ready early in the new year.

Deputy Catherine Connolly: We see so many good recommendations and reports and then there are delays in rolling them out.

I ask the Chairman to indicate when I have five minutes left because I want to ask a number of questions on the thalidomide issue. A very good report was done by the Comptroller and Auditor General in 2012 on the clinical indemnity scheme. The issues raised then are very much alive today. One of the issues was the savings recorded. I looked at the two reports provided by the State Claims Agency. The 2017 report recorded even bigger savings than a previous report. Legal costs were reduced by 48% in 2017, while the figure for 2016 was 43%. However, the chapter of the report of the Comptroller and Auditor General notes that the agency recorded savings in a manner that was not in keeping with policy at the time. When a selection of cases where money was saved were examined, it was found that the money had not been paid out and the savings figure could not be relied on. Will Mr. Breen comment on that and the changes made since then?

Mr. Ciarán Breen: That was an historical issue and I think the Comptroller and Auditor General might want to comment on that as well. When we get a bill of costs in relation to any case and we settle it, we make an entry in our national incident management system, which is the system where we record the financial information. We recorded exactly what the level of saving was and, over and above that, there were certain cases that we settled on a cost-inclusive basis. What happened was that-----

Deputy Catherine Connolly: An overall figure was given.

Mr. Ciarán Breen: Yes, an overall figure was given. That would be a matter between the plaintiff and his or her solicitor.

Deputy Catherine Connolly: Those costs would not be identified then.

Mr. Ciarán Breen: Exactly. What we tried to do in those cases was estimate what the likely costs would have been and what kind of savings we would have made. The Office of the Comptroller and Auditor General stated - rightly and I understand why - that was speculative on our part and that we might be overclaiming credit for what we were saving. Following that, we discounted doing that and we only now record what our actual savings are between the bill of costs and what we ultimately settle at.

Deputy Catherine Connolly: There was a recommendation that there should be a system of spot-checking. Has that happened?

Mr. Ciarán Breen: Yes, it has. That is in place.

Deputy Catherine Connolly: What is the result?

Mr. Ciarán Breen: The result of it is that we completely changed our process on this. I wish to reassure Deputy Connolly that if the Comptroller and Auditor General were to look at that again, for example, he would find that the savings indicated on the system are actual savings made.

Deputy Catherine Connolly: They are actual savings made.

Mr. Ciarán Breen: Yes, and no sum in there is speculative.

Deputy Catherine Connolly: There are savings of 48% in 2017, which we have not looked at yet. We have looked at the figures for 2016. Mr. Breen is saying these are actual savings in legal costs.

Mr. Ciarán Breen: Yes.

Deputy Catherine Connolly: That raises a question. I realise the agency is not responsible for the costs and that it is the body making the saving. How is the bill coming in so high that the agency can achieve a 48% reduction in costs?

Mr. Ciarán Breen: As committee members possibly know, in 2012 following a Government decision a legal costs unit was established within the agency. The unit was set up to deal primarily with the tribunals of inquiry costs initially, but it has spread its wings much wider. Now it handles all our costs arising from the clinical indemnity scheme and the general indemnity scheme. What Deputy Connolly says is correct. There is overstatement of legal costs by plaintiffs' lawyers – that is a fact. Our job in every case is to get best value for the taxpayer, analyse costs forensically and then agree what we believe should be the appropriate costs.

Deputy Catherine Connolly: How does the agency do that?

Mr. Ciarán Breen: For example, there is a physical examination in the office of the plaintiff's solicitor by our people of the file, what the solicitor has done and their time costings.

Deputy Catherine Connolly: Agency officials go through that in minute detail. Is that correct?

Mr. Ciarán Breen: Yes.

Deputy Catherine Connolly: As a result, the agency has achieved a saving of 48%. Is that

correct?

Mr. Ciarán Breen: Yes.

Chairman: I have an obvious question. Surely the solicitors submit excessively high bills in the knowledge that the agency will knock something off, in which case we are starting with an inflated figure?

Mr. Ciarán Breen: That might be true. Notwithstanding that, the challenge is that ultimately when we reduce a bill as we do, it can be challenged by the plaintiff and we may go to taxation with it.

Deputy Catherine Connolly: How many go to taxation?

Mr. Ciarán Breen: Not many, in truth, because we are capable of relying on taxation precedents to argue people down to the kind of figures we believe are more appropriate.

Deputy Catherine Connolly: One figure struck me when I was reading through the documentation. Only 3% of cases end up in court ultimately. It seems 97% are settled outside of court, yet the costs are extraordinarily high.

Mr. Ciarán Breen: Yes. They are either settled out of court or they might be defeated by a statute of limitations or whatever.

Deputy Catherine Connolly: Whichever way it arises, only 3% actually end up in court.

Mr. Ciarán Breen: Yes.

Deputy Catherine Connolly: I will come back to the matter of thalidomide when the Chairman indicates I have five minutes left.

I have a question for Mr. McCallion on the audit. I have followed up on this because it is so important. The view was that we were misinterpreting what the audit was about and that its purpose was to enable the system to learn. It was not really for the women, although women would ultimately benefit from a better system. That was part of the reason officials from the National Cancer Screening Service told us that communicating with the women was not their uppermost priority. The idea was that the audit was an internal learning process. Am I correct in saying that?

Now that the audit process has stopped, I wonder how the system is learning. I have asked numerous questions and, in fairness to the Minister, he has been straight in stating the Scally report and review processes are ongoing. How is the National Cancer Screening Service learning now? It seems to me that there was not much to learn in a sense. The service was not applying the open disclosure policy and did not treat women as being a fundamental part of the treatment by the service. These are basic things. One realises that very quickly and changes one's approach. Why does the National Cancer Screening Service need to wait so long to reintroduce the audit that is such an essential educational tool?

Dr. Colm Henry: Of course it is important that we learn.

Deputy Catherine Connolly: Why has it not been reintroduced? Has the service not learned and does it know what to do now?

Dr. Colm Henry: I am trying to answer the Deputy's question. Not only do we need to

learn from what happened but we need to design an audit that is fit for purpose for all three cancer screening programmes. In doing so, we have to map out best international practice. We need to go back to where this all began. It involves working back from interval cancers, how we audit interval cancers and how we then determine the way that relates to the original screening result. That is a core part of the work. We have put together a group. I hope we will announce in the coming week or two the appointment as chairperson of an eminent person who has been involved in the world of oncology for some years. The group will look at all three cancer screening programmes and decide a best practice audit for them. The idea is that we operate not simply in reaction to this problem and not only by learning from it because without audit, there is no learning or no improvement. That is an important point.

Deputy Catherine Connolly: I hear that and I hear that more experts are being appointed. However, as a woman and a politician, what jumped out at me was the patronising and terrible attitude to women. They should have been at the core. It is not so difficult to change. If the audit is an essential tool, as we know it is, it is simply taking too long and immediate steps have to be taken. It is now months and months later.

Dr. Colm Henry: It is an essential tool. What we have learned is that it is important to do it correctly and right from the start. It is important not only that the design is right but that implementation and engaging with clinicians and patients have to be absolutely right too. The design is crucial and it must be right. It must be mapped against best international practice.

Deputy Catherine Connolly: It has taken more than the cost of the running of the service to learn some basic lessons. Anyone who reads the briefing documents can see it is obvious that the woman was not at the core of this. It was a matter of protection. I will not waste any more time on it.

Mr. Damien McCallion: Deputy Connolly is making an important point in terms of the woman and the patient and family being at the centre. That is something that we are rectifying. Several important points arise. One is that the group Dr. Henry referred to will have two patients involved. We have already brought patients onto a number of our other groups.

Deputy Catherine Connolly: I have read all of that. I am commenting on the passage of time to achieve what should have been fundamental to the process.

Mr. Damien McCallion: One of the reasons we had to pause was to allow Dr. Scally to do his work. We had to see what observations he would make. As a result of his report, we have now moved. One of his recommendations relates to putting a process in place on the audit. That is what we are doing in putting the group in place.

Deputy Catherine Connolly: When will the audit be reinstated?

Mr. Damien McCallion: We would hope that group would be in place within a couple of weeks. The timescale we are setting is around three or four months to complete the work.

Chairman: Deputy Connolly has five minutes remaining.

Deputy Catherine Connolly: I wish to discuss two final matters on the clinical side. I will then come to the question of thalidomide.

I have been trying to get my head around things. I have a personal involvement so I apologise if my question was not clear enough at a previous meeting. Mr. Breen was not here but the

question arose in a different context.

We want to get value for money. We also want an effective public health service that runs smoothly, and we are trying to reduce the number of cases. I had an involvement in a review. That pushed me to look at how many independent reviews of various incidents were carried out by University Hospital Galway. I had thought I had made clear how many reviews were undertaken. There are different types of reviews but I specifically asked about independent reviews. This is fundamental to helping to keep costs down. My question related to the cost of all external reviews or investigations of patient care at University Hospital Galway in the past ten years. I received an extraordinary note in reply to my question. It states that following a search for the information requested, the hospital was advising me that it did not have a system to record the number and cost of all external reviews and-or investigations of patient care. Could someone explain to me how it is possible that there is no system in place for recording all of the investigations and their costs? Is such a system not fundamental to avoiding litigation and learning?

Mr. Ciarán Breen: I will comment initially. Independent review is something carried out by the HSE quite independent of the State Claims Agency. Therefore, we do not capture any financial or other information concerning that.

Deputy Catherine Connolly: I understand that and that much is clear. Should that information be available? Does anyone from the Department of Health wish to comment?

Ms Mary Jackson: My understanding is that for any adverse incident there is automatically a review within the hospital or facility on what has gone wrong. Is an independent review something further than that perhaps?

Deputy Catherine Connolly: Yes, it is done from outside of the hospital. I was specific in my question. It struck me as an extraordinary lack of disclosure. We are talking about disclosure and cost. I will return to that point but as I have only a couple of minutes left, I will discuss thalidomide. My question is for Mr. Breen. There are two accounts. In respect of the 2016 accounts, Mr. Breen referred to 34 active cases involving thalidomide and he referred to nine cases being received during 2016. The 2017 accounts include a figure of about 34 cases and no others. Therefore, we go from 34 plus nine to just 34 in 2017.

Mr. Ciarán Breen: I refer the Deputy to page 6 of my opening statement. It outlines the factual position on the number of cases. As she can see, in total, we have 23-----

Deputy Catherine Connolly: One second, please. Will Mr. Breen explain the difference between the 2016 and 2017 figures, given that there were an extra nine in 2016 and just 34 in 2017?

Mr. Ciarán Breen: We are dealing with people who have commenced proceedings. We are dealing with litigation. There are persons who have been affected by thalidomide who have not made claims. My colleague from the Department, Ms Carr, might-----

Deputy Catherine Connolly: Do we know how many victims of thalidomide there were in Ireland?

Ms Patsy Carr: There are 30 persons who are receiving an *ex gratia* payment-----

Deputy Catherine Connolly: From the Government or the German authorities?

Ms Patsy Carr: From the Government and the German authorities.

Deputy Catherine Connolly: There are two *ex gratia* payments.

Ms Patsy Carr: Yes.

Deputy Catherine Connolly: There are 30 people who are receiving *ex gratia* payments from the Government.

Ms Patsy Carr: From the State.

Deputy Catherine Connolly: From the State and the German company.

Ms Patsy Carr: Yes. Irish payments are being made on the basis that the person is an acknowledged case by the German state. We make *ex gratia* payments which range from €6,000 to €13,000 annually. Therefore, 23 of the individuals are receiving €13,000.

Deputy Catherine Connolly: That is 23 out of the 30.

Ms Patsy Carr: Yes. It depends on their injuries.

Deputy Catherine Connolly: In addition, they receive other medical benefits.

Ms Patsy Carr: On an administrative basis, they all receive services as if they had a medical card. In the last couple of years we have also been making payments where they need housing adaptation to meet their needs.

Deputy Catherine Connolly: That is 23 out of the 30.

Ms Patsy Carr: Yes.

Deputy Catherine Connolly: What about the remaining seven?

Ms Patsy Carr: The 30 are receiving those payments. Six also accepted a payment of €62,000 that was offered by the State in 2012.

Deputy Catherine Connolly: That was the payment negotiated by Mr. Breen for the State Claims Agency.

Mr. Ciarán Breen: Yes; it was a figure we offered in the context of litigation at the time arising from the State Claims Agency's report.

Deputy Catherine Connolly: That report is available.

Mr. Ciarán Breen: Yes; it was published a number of years ago.

Deputy Catherine Connolly: I understand the background to it was the German company had stated, "If the State pays more, we will reduce our contribution". Is that right?

Ms Patsy Carr: Since 2013, if the State was to provide extra benefits, the payment from the German Government would be reduced.

Deputy Catherine Connolly: Was that the context in which it was done?

Mr. Ciarán Breen: To be very clear, what happened at the time was there was a cut-off date, which I believe was 1 August.

Deputy Catherine Connolly: It was a cut-off date from the German company.

Mr. Ciarán Breen: Yes. It stated, "As and from this date we will reduce your payments by any amounts you receive."

Deputy Catherine Connolly: Therefore, the State Claims Agency prepared a report and offered the payment of €62,000, which some accepted.

Mr. Ciarán Breen: Exactly.

Deputy Catherine Connolly: Did they waive their right to engage in further litigation?

Mr. Ciarán Breen: It was made in settlement.

Deputy Catherine Connolly: Full and final settlement. Were they children at the time?

Mr. Ciarán Breen: No; this was in 2013.

Deputy Catherine Connolly: Of course, I beg your pardon.

Mr. Ciarán Breen: It was roughly during the last week of July. We became aware of this very late in the day and immediately made an offer that people could accept the payment in order to avoid the punitive sanction.

Deputy Catherine Connolly: It would not be counted. We have received correspondence which Mr. Breen has not received and I understand it places him in a particular position. I just want to establish the facts. On the settlements made when some of the people concerned were children, were they ruled on in court?

Mr. Ciarán Breen: My understanding - this dates back to the mid-1970s - is that they were not ruled on in court, the reason being there were no proceedings in train at the time. Matters are normally ruled on in court where the proceedings are up and it would be the parent or "next friend" who would take them. They are ruled on in court on that basis. My understanding is the payments were made *ex gratia* outside formal proceedings.

Deputy Catherine Connolly: Was it in full and final settlement? There were no proceedings in train.

Mr. Ciarán Breen: No.

Deputy Catherine Connolly: Mr. Breen is saying the money was offered and that there was no need to rule on the matter in court, even though they were children. I am just trying to be clear.

Mr. Ciarán Breen: I do not mean to be evasive in any way, but I find myself in a difficult position in that these matters are or, more particularly, that matter is before the courts and being case managed by a judge.

Deputy Catherine Connolly: It is Mr. Justice Noonan.

Mr. Ciarán Breen: Yes. I have to be very careful about what I say and cannot say.

Deputy Catherine Connolly: I understand that. However, it was one of the biggest scandals. Had we learned from it, perhaps others might not have happened, but we are where we are. What I am trying to establish is the number of people who have outstanding cases and are receiving nothing from the State. Are there a number who are receiving no payments from the

State who have suffered from thalidomide?

Ms Patsy Carr: As far as I am aware, going back a number of years, there is one person who refused a payment. There are also a number of people who are not acknowledged. The State has paid for a number of people to travel to Sweden to be assessed. Where it is deemed that their injuries are as a result of thalidomide, the State makes payments.

Deputy Catherine Connolly: There is the process where they have to be assessed to say they are acknowledged as thalidomide sufferers. If they succeed in that process, they receive what Ms Carr has outlined. At the same time, the unacknowledged cases are taking action in court. Is that correct?

Mr. Ciarán Breen: That is correct. As I indicated on page 8 of my opening statement, there are a number of people who have taken action and are referred to as "unacknowledged".

Deputy Catherine Connolly: I am almost out of time. The issue of mediation was of concern to the person who wrote to us. It has been said mediation is ongoing, but it was pointed out in the letter that mediation was not ongoing. Mr. Breen has come back with an answer that as neither side has terminated mediation, it is still in being.

Mr. Ciarán Breen: The situation is that tomorrow, if the parties were to decide to reinstate mediation because it has not been terminated either by the mediator or any of the parties, it could again take place.

Deputy Catherine Connolly: I understand and that is Mr. Breen's reply. However, the reality is that no mediation has taken place since 2016. Is that correct? Was that the last mediation?

Mr. Ciarán Breen: That is correct.

Deputy Catherine Connolly: To be factual, it has now been corrected. Although Mr. Breen is saying either party could come back as nobody has formally terminated mediation, no mediation has taken place.

Mr. Ciarán Breen: No mediation has taken place in the meantime. In fact, it was said by counsel for the plaintiffs in July 2017 that, through nobody's fault-----

Deputy Catherine Connolly: I read that. I am sorry, but I am out of time.

Deputy David Cullinane: I want to follow on from Deputy Connolly. I will come to Mr. Breen first and want to start with CervicalCheck. He said in his opening statement that there were 85 claims, of which 73 were active, five had been settled, one was closed and six were potential claims. The co-defendants are the laboratories. The substance of the awards made in the five settled claims was the misreading of the smear tests, with the laboratories shouldering most of the responsibility and the liability. Is that correct?

Mr. Ciarán Breen: That is correct.

Deputy David Cullinane: Was there any liability of the State for non-disclosure in any of the settled claims?

Mr. Ciarán Breen: Yes. When I was here the last time, I indicated to the committee that that was the case.

Deputy David Cullinane: Yes, but at that point Mr. Breen was not in a position to give us an estimated cost. Given the passage of time and the fact that there are now five settled claims, can he give us a breakdown of the cost to the State for non-disclosure in the five settled claims?

Mr. Ciarán Breen: I cannot and not for any reason other than that each case is different and presents differently-----

Deputy David Cullinane: I know all of that, but------

Mr. Ciarán Breen: Let me follow on by saying I am reluctant to do so because, if I give a figure, there will obviously be an expectation in any case that it might be that figure, whereas the trauma that might arise from non-disclosure differs from case to case and the matter may be pleaded differently.

Deputy David Cullinane: This concerns accepted liability. I am asking what the cost to the State has been thus far of cases where the State has accepted liability. Surely Mr. Breen is in a position to give me the overall figure for that liability, rather than breaking it down case by case.

Mr. Ciarán Breen: I can furnish that to the committee-----

Deputy David Cullinane: Does Mr. Breen not have it at his disposal?

Mr. Ciarán Breen: I do not have it with me.

Deputy David Cullinane: Can he give it to us during the course of the day? I could ask for a second speaking slot if so.

Chairman: Which breakdown is Deputy Cullinane referring to?

Deputy David Cullinane: I am talking about the State's liability in settled cases concerning non-disclosure, not upon a case-by-case basis but the overall sum.

Mr. Ciarán Breen: I would like to point out that we were given a complete indemnity by the laboratory in some of the settled claims, as can be seen in the table I have provided.

Deputy David Cullinane: This briefing note, which is very good, includes a breakdown of the overall number of active claims, broken down into bands up to €1 million, €1 million to €4 million and so on, and the amount involved. That is quite helpful. There are 3,365 claims, with an estimated liability of €3.57 billion. Is that correct?

Mr. Ciarán Breen: That is correct.

Deputy David Cullinane: Do those 3,365 active claims include the 85 CervicalCheck claims?

Mr. Ciarán Breen: Yes.

Deputy David Cullinane: Can Mr. Breen give us the overall estimated liability for those 85 claims?

Mr. Ciarán Breen: The reason I do not want to release that figure is that it is very commercially sensitive information, as the Deputy can imagine. We are dealing with lawyers on the other side, and to make that available would make our life very difficult-----

Deputy David Cullinane: One could argue the same logic about giving us the overall figure of €3.57 billion for 3,365 cases.

Mr. Ciarán Breen: No, because there is such a mix of cases there. There is everything from relatively straightforward medical negligence injuries, if there is such a thing, to very serious matters. There is a huge range of cases.

Deputy David Cullinane: To be clear, Mr. Breen is saying that he can reveal that there are 3,365 active claims for medical negligence generally, with an estimated liability for the State of €3.57 billion. While the 85 claims for CervicalCheck are included in that, Mr. Breen is not able to give us a breakdown of what the estimated liability for them will be. It goes back to the point that Teachta Connolly spoke about earlier. The cost of the service is €31 million.

Mr. Ciarán Breen: Yes. It is not that I am not able to give this information.

Deputy David Cullinane: Mr. Breen is not in a position to do so.

Mr. Ciarán Breen: Clearly we can do that, and we do that for every case. There are special reasons that we would not like to make that kind of figure public. Doing that would make our life so difficult when transacting our decision making with plaintiffs and their lawyers in those cases.

Deputy David Cullinane: When will we know what that liability is or even get an estimate of it? Are we ever going to know?

Mr. Ciarán Breen: Yes.

Deputy David Cullinane: When?

Mr. Ciarán Breen: As cases settle, there will come a point in time when we will be able to give an overall figure for what these cases have cost on an aggregate basis, but it will take time. If we were to do this in advance the Deputy can imagine how such sensitive information could be used against us.

Chairman: I wish to help the Deputy on that. In seven weeks' time, the financial year of the State Claims Agency, SCA, will end. The agency will have to put a figure for the CervicalCheck cases into its financial statements. Mr. McCarthy will audit that. The agency will need a system with some rigour in order to be satisfied with what it puts into its audit and financial statements. Without giving the figure, can Mr. Breen tell us how it will do that? The agency will need to do this within seven weeks, one way or the other. How will it arrive at a figure for Mr. McCarthy's audit?

Mr. Ciarán Breen: Normally we do not itemise it quite like that. We outline the transactional cost of claims in an individual year on an aggregate basis.

Chairman: The HSE's financial statement provides the estimated cost.

Mr. Seamus McCarthy: It is also listed in the SCA's-----

Chairman: It is in both bodies' financial statements.

Mr. Seamus McCarthy: The balance sheet contains a note rather than an estimate.

Chairman: Surely the note should be reasonably-----

Mr. Seamus McCarthy: Absolutely. It should be well-founded.

Chairman: In other words, how is the SCA going to produce well-founded figures to satisfy the Comptroller and Auditor General for 31 December, though he might not audit this figure in detail? Does it have a procedure in place for that?

Mr. Ciarán Breen: Yes.

Chairman: Without compromising the approach, can Mr. Breen outline the general procedure? The SCA must work on the basis of the cases settled so far, or the estimates. Presumably that is the first step.

Mr. Ciarán Breen: Yes, just as we do generally.

Deputy David Cullinane: That was helpful. We will come back to the issue. I appreciate the point Mr. Breen is making but at the same time we are looking at what this will cost the State in overall terms and we would like some sense of what the liability will be. I can somewhat understand what Mr. Breen is saying, but it would be very helpful to us and the women involved to have some understanding of what the State's liability for non-disclosure matters will be. Mr. Breen has given his reasons.

Mr. Ciarán Breen: If I may add to that, given that these are cases principally against the laboratories, the members can imagine that the liability for the State is a *de minimis* rather than a *de maximis* figure, subject to how any individual case is pleaded.

Deputy David Cullinane: Is Mr. Breen saying that in some cases the laboratory indemnifies the State for non-disclosure as well?

Mr. Ciarán Breen: No, what I am saying is-----

Deputy David Cullinane: I am only asking about non-disclosure and the liability therefor.

Mr. Ciarán Breen: I am just pointing that out.

Deputy David Cullinane: The Chair can pick up on this. My question concerned the liability of the State for non-disclosure, where we are not indemnified by the labs, what the estimated liability is and what the actual liability has been so far. Mr. Breen has given reasons that this information cannot be given to us, but we will come back to it.

I want to return to the issue of breaking down the figures into numbers of cases and dividing them by hospital group. I fully understand Mr. Breen's response as to why it would be difficult to break the information down by hospital. We do not want to compare general hospitals with regional hospitals or hospitals that provide specialist services. That could cause a general hospital, which does not provide tertiary care, to be compared with a regional hospital. I completely understand that, but surely the information can be broken down by specialty. I am interested in where the predominance of cases is. Is it in maternity care, cardiac care or cancer care? Where are those cases concentrated? If we know that, we can compare like with like, and perhaps classify hospitals as general hospitals, specialist hospitals or hospitals that provide cancer care. Maybe that is a better way to do it. We do not want to create undue problems for any hospital. People can see that it is unfair to compare apples and oranges. At the same time, we do not want to create circumstances where problems are hidden from public scrutiny because this committee cannot see them. I am interested in comparing like with like, not comparing apples and oranges. Can Mr. Breen comment on whether that type of breakdown could

be given to us?

Mr. Ciarán Breen: I have agreed with the Chairman to break out maternity cases, given that they cost the most. We will break out all specialties by hospital group. In other words, we will not go into those specialties and break out maternity separately. The difficulty remains that in certain categories, for example in a particular specialty and a particular hospital, there might only be one or two practitioners. A breakdown of claims would therefore get very close to identifying a particular practitioner and particular cases, with all the difficulties that might come with such identification. We are trying to give the committee more granular information by separating maternity cases from the rest. I have agreed to this with the Chairman.

Deputy David Cullinane: That is grand. We do not want to be unfair, and we do not want to create unfair difficulties for any clinician or give rise to any perception that might not reflect reality. We do not want a headline to say there is a problem in a hospital where there is not. I completely understand that. At the same time, we need some kind of metrics by which we can determine whether there is a problem. There is a balance there and perhaps the information Mr. Breen gives might help us. We do not want to create a situation where we are being unfair to anybody or are creating an undue or unfair perception. We are more concerned about seeing where there might be a problem. Mr. Breen might be able to see it from the information. Dr. Henry was talking earlier about the comparisons the HSE makes and the work it does. Does Mr. Breen see the point I am making?

Dr. Colm Henry: I will give a brief comparison. All 19 units receive a suite of quality indicators, some of which are events that occur at a very low frequency. When one looks at a graph and sees an outlier, because it is a low frequency event, it is not appropriate to draw conclusions. What is appropriate is that management and clinicians investigate it to see if it reflects a quality issue, among the other explanations there could be for it. There is a degree of interpretation required, especially with low frequency events such as something that may be a claim in a particular unit.

Deputy David Cullinane: We will await the additional breakdown, on receipt of which we will examine it again.

In his 2012 report the Comptroller and Auditor General examined the issue of legal costs. Page 36 of the 2016 annual report of the NTMA, details the cost of State Claims Agency claims resolved between 2012 and 2016. It shows that in 2016 the average total legal cost per clinical claim was €40,000, compared to €8,000 for a general claim. There is a breakdown of general and clinical claims, but for clinical claims the average legal cost was €40,000. Given that 98% of claims are resolved through a negotiated settlement or mediation, why are legal costs so much higher for clinical than for general claims? Why is the legal cost per clinical claim €40,000 when the cost for a general claim is €8,000?

Mr. Ciarán Breen: It is because clinical claims are much larger. Also, a great deal more work goes into, for example, a complex medical negligence case than into a case that involves a relatively simple employer's liability insurance injury.

Deputy David Cullinane: A cost that is five times greater appears to be a problem. The report also states that in 284 cases that were settled the total bill received from third parties was €49 million, with the actual cost being €27 million, giving a saving of 45%. Surely, if a saving of 45% was made, it suggests the bills coming in are hugely inflated.

Mr. Ciarán Breen: They are. For example, we dealt with the Corr *v.* Sheehan case, which is in the precedent books in relation to costs. The professional fee for a solicitor in the case was reduced by the Taxing Master from €325,000 to €265,000. It was an individual case and that was the adjustment made by the Taxing Master at the time. Equally, the Taxing Master adjusted counsels' fees. We have a taxation of costs system, whereby if the parties ultimately do not agree on costs or cannot agree reductions, whereby the costs are settled at acceptable levels, they can go to the Taxing Master and ultimately the High Court. The Corr *v*. Sheehan case went all the way to the Supreme Court.

Deputy David Cullinane: Okay.

I have two questions for Mr. McCallion. The Scally report - it is an interesting report that I have read a few times - references a whole system failure, a systemic failure. Is it now accepted in the HSE that there was a systemic failure in regard to the issues that arose from the audit of CervicalCheck?

Mr. Damien McCallion: Dr. Scally's report makes it clear that there is a range of areas that we need to address.

Deputy David Cullinane: Dr. Scally uses the phrase "whole system failure".

Mr. Damien McCallion: We accept the Scally report, about which there is no question. We are working on the implementation plan for Dr. Scally's recommendations.

Deputy David Cullinane: Mr. McCallion accepts that there was a whole system failure. What we are concerned about is the cost to the State and also the lessons learned. When did problems first arise? In what year did the HSE first become aware that there might be problems with the audit of smear tests?

Mr. Damien McCallion: I will have to check for the Deputy.

Deputy David Cullinane: Was it pre-2017?

Mr. Damien McCallion: The Deputy will appreciate that as I was not involved at the time, I cannot give an exact date. I do not want to speculate.

Deputy David Cullinane: Would Dr. Henry know?

Dr. Colm Henry: This issue was worked through in previous hearings. I am trying to recall when-----

Deputy David Cullinane: The HSE was certainly aware of it in 2015.

Dr. Colm Henry: I do not want to give inaccurate information. There was notification of an audit that was to commence. There was a time lapse and a realisation the audit findings had not been communicated to women. It began-----

Deputy David Cullinane: In 2015, 2016 and perhaps 2017 at many meetings of this committee we heard about discussions on a media strategy and disclosures. From our perspective, in terms of governance and procurement, what was most alarming about the Scally report was the finding that much of the original proposal material had been destroyed in 2017 and that it was in line with policy that after a particular timeframe documents were destroyed. Given that in 2015-16 the HSE and the Department would have known about the problems in this area,

why were the documents destroyed? Surely, the system would have kicked in to protect documents. Will one of the witnesses explain why procurement documents were destroyed in 2017? I do not understand how that was allowed to happen. Somebody made the decision to allow it to happen or somebody did not have his or her eye on the ball. For whatever reason, the documents were destroyed. I ask Mr. McCallion to answer the question.

Mr. Damien McCallion: I mentioned to Deputy Kelly that the procurement division had been tasked with examining two issues. While the documents were destroyed in line with policy, in the wider context, it is regrettable that it happened. We have sought to get the tender document back and the company involved is searching for it. As per Dr. Scally's recommendations, we will be changing the record retention policy such that if a contract is still in place, no tender documents will be destroyed. The change has been made with immediate effect.

Deputy David Cullinane: Looking forward is fantastic and I hope lessons have been learned. Looking back is primarily the core function of the committee. I appreciate that today in the main we are dealing with the claims issue, but the procurement issue is also important. The organisation knew from the findings of the audit that there were problems in procurement yet, when Dr. Scally tried to do his work, he was unable to do it because documents had been destroyed. Surely, when there is an issue of this importance, there should be processes in place to protect documentation. To be honest, it is common sense that documents should be protected, yet documentation was destroyed. I want to know why this was allowed to happen and who was responsible for it. For example, is senior management responsible or was it a process problem and so on? Will the Department and the HSE forward a note on the matter to the committee?

Mr. Damien McCallion: We can respond on that issue.

Chairman: Will the Department and the HSE provide a detailed note on the matter, not just a note stating that it happened and that X was responsible for it. The ladies and gentlemen seated behind Mr. McCallion are from the State Claims Agency. It takes ten years to work through many of its cases. In cases involving catastrophic injury at birth children are often nine or ten years old by the time they get to court. Five years is a very short timeframe in the context of a case which involves a significant health issue. While what happened might have occurred in a normal commercial environment, in the context of health and potential litigation, the timeframe should be much longer. I ask the witnesses to provide a detailed note on the matter.

Mr. Damien McCallion: Yes.

Deputy Marc MacSharry: I welcome the witnesses. Who in the State Claims Agency directs a case? If I am taking a case, I brief my solicitor on the outcome I would like to achieve. Who in the State Claims Agency does this?

Mr. Ciarán Breen: We have claims managers.

Deputy Marc MacSharry: When a case ends up with the State Claims Agency, is the agency briefed by the Department or the Minister or is its only *modus operandi* to protect the State and minimise exposure?

Mr. Ciarán Breen: We receive a letter of claim. We immediately inform the plaintiff's solicitor that we are acting on behalf of either a hospital or a State authority.

Deputy Marc MacSharry: Or a Minister, if the action is being taken against him or her or

any of the State agencies within his or her remit.

Mr. Ciarán Breen: Yes.

Deputy Marc MacSharry: Does the State Claims Agency have plenipotentiary status to direct a case without any toing and froing with the Department or the Minister or does that interaction take place?

Mr. Ciarán Breen: No. That interaction goes on to the extent that we investigate every case that we get and therefore require documentation and sometimes a site visit if it is for an employer or public liability.

Deputy Marc MacSharry: I understand that. Mr. Breen says the State Claims Agency investigates it. It investigates matters with its preferred outcome, which is presumably to minimise exposure to the State.

Mr. Ciarán Breen: Our stated aim is to ensure that we assess liability. We decide whether somebody has a case and that the State is liable or they do not and we defend it. If there is a liability, our job is to make sure that we pay appropriate compensation and costs, neither undercompensating nor overcompensating.

Deputy Marc MacSharry: Mr. Breen might have referred to this with Deputy Connolly earlier. In cases overall, how often does the agency pay people off or settle without any litigation and say there might be an issue and that the agency is prepared to pay a certain amount?

Mr. Ciarán Breen: There have been cases where we have made a direct payment, for example, where a lawyer comes on record for a plaintiff and says he or she does not want to go through the whole process of litigation. This relates more to employers and public liability. The plaintiff would have his or her medical records, the lawyer would say the agency has investigated the case, understands there is liability and asks if the agency is willing to enter into a settlement. It rarely arises. People will mostly go to piab.ie in the first instance, for non-clinical issues, and submit their claims. We are asked if we consent to the level of settlement which the Injuries Board has assessed.

Deputy Marc MacSharry: Normally the agency would not, so it would end up in court.

Mr. Ciarán Breen: That is not the case.

Deputy Marc MacSharry: What percentage ends up in court?

Mr. Ciarán Breen: Approximately 2% to 3% of our cases end up in court.

Deputy Marc MacSharry: Is being under case management different from being in court? I do not know the legalese.

Mr. Ciarán Breen: Case management is when, before the case is concluded, it is heard by a judge who gives directions on what the parties should do.

Deputy Marc MacSharry: When Mr. Breen says "in court", he is not including that process.

Mr. Ciarán Breen: We are talking about a full contest-----

Deputy Marc MacSharry: In the room?

Mr. Ciarán Breen: -----where the parties are at odds.

Deputy Marc MacSharry: With regard to litigation, Mr. Breen would not associate discovery as being in court.

Mr. Ciarán Breen: It may physically be in court but I am talking about a trial of the action.

Deputy Marc MacSharry: I am maybe not as up to date on the thalidomide issue as some other members. An offer of €62,500 was made. Had Mr. Breen a different role in the State Claims Agency at that point?

Mr. Ciarán Breen: No.

Deputy Marc MacSharry: So he was negotiating and made this offer.

Mr. Ciarán Breen: Yes.

Deputy Marc MacSharry: Is it true that an offer was made at 4 p.m. after the courts had closed, giving a deadline of 12 midnight for a response?

Mr. Ciarán Breen: That mischaracterises it. I was involved and remember this vividly. We indicated in correspondence to the plaintiff's solicitor that we had become aware of this drop dead date. It was very late in the day.

Deputy Marc MacSharry: Was this 1 August?

Mr. Ciarán Breen: This was years ago and I do not have documents in front of me. If my memory is correct, the date was 27 or 28 July.

Deputy Marc MacSharry: I think it was 31 July.

Mr. Ciarán Breen: That was the drop dead date. I am talking about when we became aware of that drop dead date from German authorities. Between that date and midnight before the drop dead date, we tried to make the offer of €62,500. I was in the room when the offer was made after the courts closed on that day. That was not of our making. We were trying to make contact with the plaintiff's solicitor to draw attention to the fact that this was a drop dead date and we wanted to do the right thing by making these offers available so they could be taken up without that kind of punitive sanction that would be set off.

Deputy Marc MacSharry: That caused a difficulty because there were some people with mental capacity issues and a High Court judge had to be found.

Mr. Ciarán Breen: That is correct.

Deputy Marc MacSharry: To somebody untrained such as me, it looks like sharp practice. Would that be a fair point?

Mr. Ciarán Breen: I assure the Deputy that it was not sharp practice and was never intended to be sharp practice.

Deputy Marc MacSharry: Circumstantially, it put people in a very difficult position.

Mr. Ciarán Breen: In the timeline as I outlined it, the time between when we became aware of that drop dead date and the making of the offer was very short.

Deputy Marc MacSharry: Was any attempt made at national level to contact German authorities and ask to add a week to that because of mental capacity issues, the availability of judges, the courts being closed over the weekend and so on?

Mr. Ciarán Breen: We had no control whatsoever over the German authorities.

Deputy Marc MacSharry: I know. Was any attempt made? Did Mr. Breen ring the Department and ask if anyone could intervene?

Mr. Ciarán Breen: I had met German authorities to try to understand what was happening generally in the Contergan Foundation beforehand. I had a line of contact to the German authorities. I assure the Deputy that once they brought the law into play, they simply did not want to hear from us. They said their law was their law and there was no interaction after that. They were quite adamant about their position.

Deputy Marc MacSharry: Would Mr. Breen say they were employing sharp practice?

Mr. Ciarán Breen: I cannot comment on a German law. That is a matter for German authorities.

Deputy Marc MacSharry: We just accepted their position and made our offer accordingly.

Mr. Ciarán Breen: Exactly.

Deputy Marc MacSharry: It is unfortunate. It looks like sharp practice. I appreciate what Mr. Breen has said and take his word that that is how it played out, but it certainly put the victims in a very difficult position.

Mr. Ciarán Breen: I think the victims were in a very difficult position but it was not of our making.

Deputy Marc MacSharry: As a State, we might have tried to intervene at a higher level and say that perhaps some time could be afforded rather than just accepting German law is their law.

Mr. Ciarán Breen: I think there should be context. German authorities decided that, for people, they would compensate under German law. They would provide it across the board, not just in Ireland but across jurisdictions. They called a drop dead date and would not be shifted from that. I understand that German authorities also wrote to plaintiffs' solicitors. I could be corrected on that but I am pretty sure that is the case.

Deputy Marc MacSharry: How much has the litigation cost the State so far?

Mr. Ciarán Breen: We, the State, have paid the costs of medical reports for examinations of a number of thalidomide plaintiffs. That is for such things-----

Deputy Marc MacSharry: I understand. I am not looking for an itemised list of costs. Does Mr. Breen have a number for the cost so far?

Mr. Ciarán Breen: The sum paid out for these reports-----

Deputy Marc MacSharry: There are payouts, costs, legal costs, bills of costs and so on. Is it €5 million, €10 million or €100 million?

Mr. Ciarán Breen: The payment for all these reports and such, while there are no legal costs because we have not incurred legal costs at this point because the cases are not concluded-----

Deputy Marc MacSharry: Mr. Breen means that the agency has not paid anybody but costs will be incurred.

Mr. Ciarán Breen: There will be costs ultimately but the payment for these reports would be approximately €750,000 to €1 million.

Deputy Marc MacSharry: Who are the solicitors for the State?

Mr. Ciarán Breen: A firm called Hayes Solicitors which is instructed by us. The Chief State Solicitor's office was originally the solicitor of record but came off record on the basis that the office was being reorganised and was not dealing with personal injury matters.

Deputy Marc MacSharry: Is it normal for the Chief State Solicitor's office to move away and for the business to be privatised?

Mr. Ciarán Breen: Yes. We have had this with other litigation. This was a strategic move by the Office of the Chief State Solicitor. It is largely not handling personal injury litigation. That is handled by us and our external panel.

Deputy Marc MacSharry: Is it an expertise deficit in the Chief State Solicitor's office?

Mr. Ciarán Breen: I could not comment on that and I do not think that was the factor. I think it was more to do with pressures of litigation in relation to many different areas in which that office is involved in on behalf of the State and the feeling in that office that litigation in personal injury matters is quite attritional in terms of time and so on. That office felt it would be better situated dealing with other complex litigation against the State.

Deputy Marc MacSharry: In the view of the Comptroller and Auditor General, would it be more cost-effective if we had the relevant expertise in the Chief State Solicitor's office rather than going to the private sector?

Mr. Seamus McCarthy: That is a matter the Deputy would have to raise with the Chief State Solicitor. I could not-----

Deputy Marc MacSharry: Did Mr. McCarthy do any work on that?

Mr. Seamus McCarthy: I have not done any work on that. I cannot say if the Chief State Solicitor's office has or not.

Deputy Marc MacSharry: It might be worth having a look at. How do we select Hayes Solicitors as opposed to "Alan Kelly Limited" or any other firm?

Mr. Ciarán Breen: In any individual case, we choose firms who have particular expertise. For example, this is a product liability case. Therefore, one would want to instruct a solicitor's office which would have knowledge of the entire product liability law area. The firms would be picked for their specialist expertise.

Deputy Marc MacSharry: What protocols exist in the State Claims Agency?

Mr. Ciarán Breen: We procure all our solicitor firms through the normal procurement rules.

Deputy Marc MacSharry: Are these the public procurement rules?

Mr. Ciarán Breen: Yes, the public procurement rules.

Deputy Marc MacSharry: Is that done on a case-by-case basis or does the State Claims Agency put a panel together for a few years? How does that work?

Mr. Ciarán Breen: We put a panel together for a period of at least four years, with I think an option of a further year before we procure again. All firms throughout Ireland are entitled to apply and we go through a stated process of picking those firms based on criteria that would attach to the procurement, for example, some of the things I have spoken to the Deputy about like particular expertise, what fees may be charged and other criteria.

Deputy Marc MacSharry: Is there a panel for counsel as well?

Mr. Ciarán Breen: There is a panel for counsel, both junior and senior.

Deputy Marc MacSharry: Are they procured in the same way?

Mr. Ciarán Breen: Initially, our first panel was not procured and there is no requirement to publicly procure counsel. In any event, in 2013 we procured panels of counsel, both senior and junior.

Deputy Marc MacSharry: There is a panel in place.

Mr. Ciarán Breen: Yes.

Deputy Marc MacSharry: I do not enjoy asking this question but I must ask it from a governance perspective. The counsel acting in that case are Eoin McCullough SC, John Healy SC and Seamus Breen BL. Is that correct?

Mr. Ciarán Breen: That is correct.

Deputy Marc MacSharry: Were they all on the panel?

Mr. Ciarán Breen: They were all on the panel.

Deputy Marc MacSharry: Is Seamus Breen a relative?

Mr. Ciarán Breen: Yes. He is a nephew of mine.

Deputy Marc MacSharry: He was on the panel and selected by-----

Mr. Ciarán Breen: I stood aside from his selection originally.

Deputy Marc MacSharry: Mr. Breen stood aside in his selection.

Mr. Ciarán Breen: In fact, when we procured our panel on the second occasion, I equally stood aside from that. By the way, as it happened, he did not make the new panel which was put in place from 2013 onwards.

Deputy Marc MacSharry: Mr. Breen stood aside and Seamus Breen did not make the panel and is no longer on the panel. Is that the position?

Mr. Ciarán Breen: He is not on the panel for current work so he only got work which he

had historically. I should say that he acts not just for the State Claims Agency but on the instructions of the Attorney General's office and the Chief State solicitor's office.

Deputy Marc MacSharry: I have no doubt that he is eminently qualified. It came up in research and I had to ask this question from a governance perspective. As I said, I do not particularly enjoy asking the question. I may return to the thalidomide issue in the afternoon. How am fixed for time?

Chairman: I want to let Deputy Catherine Murphy in before the break, in order to finish-----

Deputy Marc MacSharry: Does the Chair want to cut me short?

Chairman: No, I did not say that. I will give the Deputy five more minutes.

Deputy Marc MacSharry: I want to make sure Deputy Murphy has enough time also.

Chairman: It will be 1 o'clock before we finish.

Deputy Catherine Murphy: I would like to contribute.

Chairman: The Deputy will be able to contribute.

Deputy Marc MacSharry: I do not want to eat into anybody's time.

Chairman: We will finish a little after 1 p.m.

Deputy Marc MacSharry: I want to touch on a few points on the CervicalCheck issue, if I may, and address other issues in the afternoon. I do not want to take too much time from Deputy Murphy. Are many random audits carried out on cervical smear results that were found to be normal in the period from 2015 to 2018?

Mr. Damien McCallion: There are two things. The ongoing quality assurance would look at slides, as they are processed, which is one part of the process. In terms of the audit itself, from when it was initiated until it ceased, it would have included slides for people who, effectively, had interval cancer. If someone had a normal slide, as the Deputy describes, and was subsequently diagnosed with cervical cancer, she was included in the wider scope of the audit.

Deputy Marc MacSharry: Were they included for that period from 2015 to 2018?

Mr. Damien McCallion: Until the audit ceased, anything that would have been part of it from when the audit commenced would have been part of the scope of any of the audits. There have been no audits since that time.

Deputy Marc MacSharry: Mr. McCallion said earlier that the audit is about to recommence.

Mr. Damien McCallion: We have a process set in place to ensure that we restart audits but there will have to be an audit process that meets what Dr. Scally has set out.

Deputy Marc MacSharry: Will slides from that period be looked at?

Mr. Damien McCallion: Yes. It is also important to say that the Royal College review is looking back at all the women who had invasive cervical cancer in Ireland, for which I gave numbers earlier.

Deputy Marc MacSharry: The whole governance area was raised as a problem. Has all of that been dealt with now? Does everybody know who is responsible for what?

Mr. Damien McCallion: We put some of the immediate things in place to ensure there is clarity. There are subsequent pieces that Dr. Scally identified and I have touched on one or two of them earlier. I will give the Deputy some examples as an illustration. We had identified ourselves a need for a cytopathology lead within the programme. We put a job description together and advertised for that. Dr. Scally also had a recommendation along the same lines. We would have concurred with him on that and we are currently trying to recruit someone. We were unsuccessful in finding someone in Ireland and are trying to recruit internationally to get someone into that role. There are a range of roles that Dr. Scally has identified and we will further strengthen governance through the recommendations he has proposed on these matters.

Deputy Marc MacSharry: Have timelines been set?

Mr. Damien McCallion: The cervical screening group is meeting at the moment. It is working through the implementation plan for Dr. Scally, which has not just screening but has wider implications for the HSE, for the Department and other agencies as well. The group is meeting in the Department as we speak this morning.

Deputy Marc MacSharry: The Scally report refers to a compelling requirement on clinicians to disclose. Was the issue of reprisal against clinicians whether from the HSE, hospital management, the Minister or the Department, part of the issue with disclosure and, if so, how is it planned to address that?

Dr. Colm Henry: Could the Deputy clarify what he means by "reprisal"?

Deputy Marc MacSharry: Someone could get shafted for promotion if he or she likes to openly disclose matters he or she feels may be a problem. Is there a fear of doing that because it might affect a person's promotional pathway or his or her standing with peers, colleagues, bosses, the Department or the Minister?

Dr. Colm Henry: To be clear about this, Dr. Scally correctly identified that there can be no ambiguity in terms of clinicians' obligation for open disclosure. What has happened in the intervening period is that there has been enabling legislation in the form of the Civil Liabilities Act, which was put what could be called a framework in place to give protection to people who engage in open disclosure.

As well as that, in response to Dr. Scally's report, there were immediate recommendations that needed to be put in place to alter the wording of the existing policy to ensure there is no ambiguity, particularly where there was any inference that there were options not to disclose. We have gone through the wording of our current policy and we have to go through a period of consultation with clinical directors and so on. We expect that to be passed by the HSE leadership in January.

There is a bigger piece of work to which Dr. Scally referred and my colleague in the Department of Health referred to it also. There will be a patient safety council announced by the Minister, which will look at the broader role of open disclosure, not just in light of the Civil Liabilities Act but the patient safety Bill that is currently being drafted.

Chairman: The Deputy has run out of time.

Deputy Marc MacSharry: That is all right. I was just going to conclude. I will come back in the afternoon.

Chairman: Absolutely.

Deputy Catherine Murphy: I accept the point that Deputy Connolly has made about the role of the Committee of Public Accounts but there are questions about some of the information given earlier on the length of time people are waiting for their slides. Mr. McCallion has given us information. I was contacted by somebody earlier in the week who gave me contrary information. I read in the *Daily Mirror* today that a solicitor who deals with some of these cases says that the State is wearing down victims. I have had three separate women on to me today. They have given me their names. They are part of the group 221+ and are telling me exactly the same thing as the information I got earlier in the week. One says that at least 50 women have been waiting since May for their slides. That contrasts starkly with the information Mr. McCallion has given the committee today. Not only does this information contrast starkly with Mr. McCallion's, but what it says is the case. There is absolutely no point in this State making apologies if it does not deal with the issue and if it adds to the stress of people who are in this situation, which is not of their own making. I need an answer today, at least in respect of those 50 women who have been waiting since May. They would have had absolutely no reason to contact me unless this had been their experience.

Mr. Damien McCallion: I have talked to many of the women who have been impacted by this so I know of the personal impact all of this has had. I assure the Deputy of that. The purpose of the process we have put in place is to get the slides from the laboratory to the laboratory the women or their solicitors have identified. They are the numbers in terms of the absolute list. I sat down with someone last night and went through and reviewed them all.

Deputy Catherine Murphy: With whom did Mr. McCallion go through them?

Mr. Damien McCallion: Our team. We have a client services team that deals with all of this. If it is helpful and if the Deputy has the details and is happy to pass them on, even over lunch, I am happy to see if there are issues because-----

Deputy Catherine Murphy: People contacted me. I will go back to them and ask if it is alright to pass on their names but I will not be passing them on unless I am given permission to do so.

Mr. Damien McCallion: Sure. I understand that.

Deputy Catherine Murphy: I have no doubt, however, about their bona fides.

Mr. Damien McCallion: I am not questioning that at all. I am saying that there is another factor, which is that we can only process a request when made on someone's behalf because we are trying to broker this in a way that makes sure we deal with the issues which were flagged earlier around guaranteeing the safety of the slide given that it is the key bit of physical evidence for the women in terms of any case they may take. In light of some of the concerns that have come in over the last four or five days we are going to write to everyone who has ever requested a record from us to confirm the process in order to make sure that there is absolutely no misunderstanding around it. To close out, a request for us is when we find out from a person's solicitors the company to which we are to transfer the slide and where the slide is to go. There may be some confusion on that.

Deputy Catherine Murphy: Can I stop Mr. McCallion here? I am being told that, with specific regard to MedLab, these requests have been made going back to May. Is there an issue with MedLab?

Mr. Damien McCallion: In terms of the requests processed, the records are spread across all the laboratories. My concern is that there may be people who are looking for their slides - I have talked to patients around this myself in recent days - when we have not yet received the name of the laboratory to which we are to send them from their solicitor. That is the point at which we trigger it. They are the numbers I gave the committee earlier.

Deputy Catherine Murphy: Do they have to have a solicitor?

Mr. Damien McCallion: Not necessarily, but we have to know which company will transport it and the location to which it is going to for review. The purpose of the process is to enable any woman to undertake a review in the majority of cases. There may be one case where-----

Deputy Catherine Murphy: Have the goalposts changed over the months, because that is what I am being told? That is the terminology that is being used, that the goalposts have been changed. One can apply but then all of a sudden one might have to go through a different process. Has there been any change?

Mr. Damien McCallion: The only issue of which I am aware that led to issues and confusion in terms of people applying was where different solicitors had different issues over the use of the protocol. We discussed this previously. Those issues were addressed. I asked that solicitors with concerns be contacted directly. Some of them wrote in and some of them were met with. I am just looking at the spreadsheet list of names. To the best of my knowledge the majority, and certainly those who have participated, are now using that protocol. The only purpose of the protocol is to protect the slide as physical evidence for the woman. That is its only purpose. From my side, we absolutely want to move those slides on as quickly as possible.

Deputy Catherine Murphy: I fully accept that the safety and integrity of the slide must be protected. That is in the women's own interest.

Mr. Damien McCallion: Yes, it is in everyone's interest.

Deputy Catherine Murphy: I completely accept that but what I cannot reconcile is that I am being told by people on the wrong side of this that they have been looking since last May and are being worn down. I cannot reconcile that with the information Mr. McCallion is giving me. I just cannot.

Mr. Damien McCallion: There are two things. I was aware of that concern over recent days from media and other sources. As I said, I talked to patients about whether we are missing something in terms of the formal requests we have received through which we are advised of the laboratory to which someone wants her slide sent. As a result, I have asked that every woman who has requested a record or slide be sent a letter setting out clearly what we need to know in case there is any confusion.

Deputy Catherine Murphy: Can I ask that the HSE work through the 221+ group, with which I know it has a relationship? Can something on that be sorted out today? There is pretty good communication. The group has a private Facebook page on which it communicates. Can Mr. McCallion do that today?

Mr. Damien McCallion: I spoke to the group yesterday.

Deputy Catherine Murphy: Can he do that today so that there will no ambiguity and no more delay on this?

Mr. Damien McCallion: I spoke to the group on that yesterday. I have also said that we will write out to every single person who has requested records but that is the group of people who will ultimately request slides. The process a woman will go through will involve, first, getting her records in order to review them and to see whether looking at her slides is warranted. What we have done there, as I have said, is to ask that client services write to everyone-----

Deputy Catherine Murphy: I have very limited time. Mr. McCallion says that the HSE will write out. That will involve 221 letters, or maybe fewer. That is how it reads. Can Mr. McCallion deal with this in the most efficient way to ensure that information gets out today to the people who need to get it in order to cut any necessary delay? I want his assurance that he will do that.

I will move on to the area of thalidomide. We have a letter from the Irish Thalidomide Association. It states: "Consequently, the SCA role in this Thalidomide litigation is to oppose the interests of the Thalidomide survivors in accordance with its charter to minimise costs, even presumably at the expense of the nation's citizens, where a moral responsibility, at the very least, exists." That is from the letter. These are not people who have had a very short-term engagement with the State; this goes back some decades. I completely accept that the State Claims Agency has a remit to make sure that claims are valid, that we minimise costs and that we cut down on the cost of litigation. We certainly want to get open disclosure in order to get to that point. This connects with some of the stuff one would see on the 6 p.m. news. For example, one might see a family coming out, not necessarily in respect of thalidomide, but where there has been a catastrophic failure and a very serious birth defect as a consequence of it. People will say that this happened nine or ten years ago. There is no doubt but that the message invariably comes across that there has been a serious contest between the person involved and the State Claims Agency. Such cases are generally taken on behalf of the person who has been damaged. What comes across is that there has been an ongoing battle. The point being made in the letter seems to be that this issue does not only apply to this group but reflects a culture in the State Claims Agency. I ask Mr. Breen to respond to that and to explain the remit of the State Claims Agency?

Mr. Ciarán Breen: As I said to Deputy MacSharry earlier, our remit is always to act within our remit, which is to manage litigation against the State, to admit liability where it should be admitted and then to move to compensate people. As I said, we should neither under-compensate or overcompensate people.

I will speak about thalidomide in a moment but I will first address the Deputy's central point that the State Claims Agency is somehow an oppressive organisation to deal with in litigation. I reassure the Deputy that we are not. The tort system pits people against each other. One has a plaintiff and a defendant and the duty on the plaintiff is to prove his or her case on the balance of probabilities test. What we do in every case is examine the case and look to establish liability and we would be failing in our statutory duty if we did not do so.

Equally, there are days when we go down to court where we have previously tried to settle either catastrophic injury cases or other cases for sums that we believe are correct and we have not been able to do so because we have been asked for sums that are multiples of what we had

offered. For example, we settled a case for €75,000, inclusive of costs, where the asking price in that case was €1.8 million and it could not be settled until we reached the steps of the court. In catastrophic injury cases, we are frequently asked for figures of between €26 million and €30 million. The State clearly cannot pay out those kind of figures. The Deputy, as a member of this committee, would scrutinise me on not paying out too much and that is what we are about. When we do that, sometimes it brings us into the kind of tensions that are naturally associated with plaintiff and defendant. We can often be mischaracterised as being difficult to deal with. We try, for example, to use mediation because it is a less adversarial process and we offer it in practically all cases of medical negligence where we know that there is a liability.

If I may refer to thalidomide for a second------

Deputy Catherine Murphy: I ask Mr. Breen to be as brief as possible.

Mr. Ciarán Breen: I will be brief. We have the product manufacturer which manufactured the product and there is a product liability if there is a product liability. It is something that happened a long time ago. When it comes to dealing with these cases we have to consider whether the State has a liability and then whether the claims are statute barred. My duty, as director of the agency and having regard to the equality provisions in the Constitution and all the rest, is that if there is a statute of limitations defence, I must put that into our defence. My duty is to ensure that we treat all our citizens, and other people living in the country who make claims, equally and that we do not do one thing for one group and something else for another. If we were not to plea the statute of limitations in these particular cases, then many other plaintiffs and groups would state that we were acting illegally and were not doing what is an equality type approach.

Deputy Catherine Murphy: I completely understand that the State Claims Agency must look at each claim. When the agency is looking at a catastrophic injury where 24-7 care will be required, an actuarial assessment would be done. Am I right to assume that such an assessment is available to solicitors taking cases on behalf of people who are making claims and that they can see it?

Mr. Ciarán Breen: The Deputy is right. Both sides would take their nursing and care experts, for example, and would then ask the actuaries to make an actuarial assessment as to the cost per hour and the future cost, assuming a life expectancy of whatever might be established. The difficulty arises that one can be absolutely sure that a plaintiff will never understate their case and will never look for less than the maximum they can possibly get. Our process is not to give plaintiffs the minimum they can get but to give them what they should get, in other words, adequate compensation. Therein lies the difference. The plaintiff will characterise their case as having a value of, for example, €26 million. I am thinking of one particular case where we settled it for €13 million after two days of trial. I think that proves the point I am making. People say we are being oppressive but if that is the case, are we to pay the €26 million or the €13 million, knowing that €13 million is the appropriate sum which will pay for care for that plaintiff for the remainder of his or her life?

Deputy Catherine Murphy: On the national incident management system, it is very helpful to have the figures-----

Chairman: There is a vótáil in the Dáil Chamber.

Deputy Catherine Murphy: I will ask this question before I leave and ask one or two more

later, if I may. Does the national incident management system capture non-medical claims?

Mr. Ciarán Breen: Yes, it does.

Deputy Catherine Murphy: Is it possible for us to have that information? It appears from the figures Mr. Breen provided that the contingent liability is €3.2 billion, most of which falls into the medical category.

Mr. Ciarán Breen: I can give the Deputy the equivalent figure on the general indemnity schemes immediately after lunch.

Deputy Catherine Murphy: I must leave to vote in the Chamber.

Chairman: Before we leave, we asked the officials from the Department of Health to provide the committee with certain documents. They have indicated they will check over lunch and liaise with us.

Sitting suspended at 1.07 p.m. and resumed at 2.20 p.m.

Chairman: We will resume our discussion with the State Claims Agency and officials from the HSE and the Department of Health. Deputy Catherine Murphy was speaking before the break.

Deputy Catherine Murphy: I will move on to another area regarding the State Claims Agency. It relates to the Air Corps. The Air Corps used to hold information in relation to health and safety. Deputy Ó Snodaigh looked for information and stated it was misplaced. Subsequently, there was a court case. There were some whistleblowers. The State Claims Agency stated that no admission was made that the defendants exposed the plaintiff to dangerous chemicals or solvents, and that is the nub of what it relates to. The State Claims Agency stated that it could confidently claim that there were no injuries due to any act or omission on its part and yet there was no documentation that could provide that confidence. Subsequently, there was a report, the O'Toole report, which stated that the records to demonstrate health and safety compliance are not readily available. In such a situation where there is the absence of information, how can the State Claims Agency state it can confidently predict or state something when records were not available?

Mr. Ciarán Breen: I apologise Chairman, I did not realise we were going to examine the general indemnity scheme. Generally, I am vaguely familiar with the particular case. While I do not have the exact facts or recollection of it, I am guessing that the reason we confidently stated what we did was either because of where the person was working or we had come to an independent view informed by the Air Corps around those liability issues. I really cannot put it further than that.

Deputy Catherine Murphy: Could Mr. Breen follow up with a note on it?

Mr. Ciarán Breen: I will certainly. Maybe afterwards, the Deputy might give me the name of the case and I will follow it up.

Deputy Catherine Murphy: It is one on which I have had correspondence.

Finally, coming back to something Deputy MacSharry raised, 98% of clinical claims are resolved through negotiated settlement. Generally, are such negotiated settlements approached by way of a thorough mediated process held in a meeting room or are they done on the steps of

the court? What percentage would be the former? It is difficult to see from the past that they all would arise from a mediated process in the strict sense of the word.

Mr. Ciarán Breen: Deputy Catherine Murphy is quite right that most of it would, in fact, be counsel-to-counsel negotiations that we would have with the plaintiff's legal team at the Law Library, which is normally where these negotiations take place, or otherwise, a minority of them, through mediation. That is where they occur.

Deputy Catherine Murphy: Is there an attempt to change that because the mediated approach is the better approach all round? The mediated approach is where the open disclosure and the reduction in legal costs etc., will likely occur. What in practice is changing in how the State Claims Agency approaches that? Is there a facility in which the State Claims Agency can do that other than the Law Library that sends a different type of a signal to what is occurring at present?

Mr. Ciarán Breen: I stated earlier that our preference in medical negligence cases generally would be to proceed by way of mediation. Of course, we have the Mediation Act 2017 now, which has come into force. That is very helpful in terms of trying to turn the pattern around from ordinary last-minute negotiations at the Law Library in the previous context, where I described that we might have tried sometimes to settle the case well in advance of that but find that we are met by an impossible demand for compensation and then it settles ultimately for the kind of figures that we would have offered previously but did not get to offer.

Deputy Catherine Murphy: They will not all fall into that category.

Mr. Ciarán Breen: Absolutely not, and I accept that. Therefore, our aim always is to try and go the mediation route and we constantly ask for that. One of the reasons though that mediation is not taken up, in my view, as much as might be, is that there are some costs implications for plaintiffs' solicitors when they engage with that process, in that they will not get the same level of costs, or, certainly, that is their view. Therefore, there is a reluctance sometimes, not always. We have some firms of plaintiffs' solicitors who are good about engaging with us in respect of mediation.

Chairman: Mr. Breen might take the public through it. When he stated only 3% are the result of court proceedings, the public probably felt the 97% were not involved in legal proceedings. What Mr. Breen meant by the 3% are those who contested to a trial in front of a judge but I ask him to take it from the beginning. Can somebody submit a case to the State Claims Agency for compensation in respect of an incident in, say, a HSE facility or elsewhere without a solicitor? How many cases does the State Claims Agency process without legal representation? From day one, is it the State Claims Agency's practise that it requires a solicitor's letter before it looks at a case? I ask Mr. Breen to talk me through it, step by step. The court is the end of it but I refer to the start.

Mr. Ciarán Breen: Normally, it is a letter of claim. That letter of claim could come from the person who is injured, a party on behalf of the person who is injured or, indeed, a solicitor.

Chairman: Would 99% of them be so?

Mr. Ciarán Breen: Almost 100% come so.

Chairman: The idea I want to impart to the public, in case there is a wrong impression going out that 97% of cases do not involve court proceedings, is that 100% involve essentially the

employment of a solicitor to start a legal process. Can Mr. Breen break this down for us? Given that 100% start with legal representation and only 3% end up in court, can he explain where the other ones are dealt with? The famous phrase the people understand is "the steps of the court". Are most of the case done at that stage? By then, the plaintiff has gone right through the whole pain and anguish and toing and froing between senior counsel, only to stop a minute short of going into the courtroom. Can Mr. Breen talk us through where each of the cases the State Claims Agency settles each year get finished in a process because there is a misunderstanding among lay-people that 97% of cases do not involve legal proceedings?

Mr. Ciarán Breen: We have two different types of case. In medical negligence cases, which are specialist in the way that they are set out, we get a letter of claim normally where the plaintiff, through his or her solicitor, sets out what he or she is claiming for. They will allege that there was something wrong with the care they received or a misdiagnosis or whatever. Immediately after that, the plaintiff begins to get expert reports to be able to give evidence on liability. We get expert reports in order to see was there, in fact, a liability. If there is a liability, we normally admit that we have a liability at that stage. From that stage on, the parties either engage each other by way of settlement, and they either can, or else it goes on and the legal proceedings go over and back between the parties.

Deputy Marc MacSharry: The State Claims Agency normally admits liability if there is liability.

Mr. Ciarán Breen: Yes.

Deputy Marc MacSharry: Will Mr. Breen repeat the percentage? He said an awful lot of cases were settled without an admission of liability.

Mr. Ciarán Breen: They are.

Chairman: For the benefit of the public, will Mr. Breen give us a detailed note on the step by step process? A person who has had an adverse finding has to obtain the goodwill of a solicitor who will take on the case on a no foal no fee basis. An ordinary person cannot take on the State; he or she has to ask a solicitor to do it. I am looking at the position from the perspective of the person making the claim. We are looking to gain the understanding of the 10,000 people who have made claims.

Mr. Ciarán Breen: If we were to engage with a claimant and wanted to give him or her a level of compensation, we would still tell him or her that he or she had a right to take legal advice and would urge him or her to do so. If we were to agree a settlement in a particular case, it would be open to the person to reopen it at a later stage on the basis of an imbalance.

Chairman: Mr. Breen has already said 99% of claimants start with the legal approach. Let us not talk about the others.

Mr. Ciarán Breen: It is not that we would not engage with somebody. I just wanted to point to the dangers.

Chairman: Let us say the first letter arrives from a solicitor and they then go and get the medical report, while the agency obtains the reports it needs. How many cases are settled without the involvement of counsel? How many court dates were there, with adjournments? Mr. Breen must know how the figure of 100% is broken down.

Mr. Ciarán Breen: I could provide the committee with a note on the matter, giving an indication of the stages at which cases were settled. We could say it was when notice of trial was served, at defence stage or whatever else.

Chairman: Please give it to us in layman's English.

Mr. Ciarán Breen: Yes.

Chairman: It is important that the lay person can understand it. Even if a large chunk of claims are settled on the steps of the court, in their own psyche the claimants effectively have gone the whole way. I do not want people to think only a tiny number of claimants go to court. A lot of them have a court date set, but I know that Mr. Breen does not have a figure off the top of his head.

Mr. Ciarán Breen: Cases of medical negligence will be settled at the stage where notice of trial has been served, although some will be settled prior to that.

Chairman: Will Mr. Breen give us separate information for clinical and general indemnity cases? There are probably two patterns.

Mr. Ciarán Breen: Yes. One would have to draw a distinction between them.

Chairman: During the break Mr. Breen said he wanted to correct something.

Mr. Ciarán Breen: I did.

Chairman: We have a note on general indemnity cases.

Mr. Ciarán Breen: On page 2 of my opening statement I give details of the two schemes. Deputy Catherine Murphy will see that the figure is €810 million for general claims as against €2.39 billion for clinical claims.

Chairman: I always thought the figure was €2.4 billion or €2.6 billion. What was the figure at the end of last year, or in the financial statements for 2016?

Mr. Ciarán Breen: I will have to look at our annual report to see exactly what the figure was.

Chairman: Does anyone have a copy of the annual report?

Mr. Seamus McCarthy: I have a note that states that, at 31 December, the estimated liabilities of delegated State authorities for claims under management were €2.662 billion. In 2016 they were €2.2 billion, of which €1.984 billion was attributable to clinical claims and €678 million to general claims.

Chairman: In which year?

Mr. Seamus McCarthy: At the end of 2017

Chairman: We are now saying that ten months ago the liabilities on behalf of the taxpayer were €2.66 billion and that today they are €3.2 billion. The figure has gone up by €600 million in the past ten months. Since 1 January 2017, it has gone up by a clear €1 billion.

Deputy Catherine Murphy: Are they not different schemes?

Chairman: No. I am giving the totals. Total liabilities today are €3.2 billion. At the end of December last year the figure was €2.66 billion, while at the end of December 2016, it was €2.2 billion. In the 22 months from 1 January 2017 to date we have gone from a figure of €2.2 billion to €3.2 billion. Can Mr. Breen understand the Committee of Public Accounts wanting to get under the bonnet to see what is happening?

Deputy David Cullinane: It would be interesting to see how many claims were in play.

Mr. Ciarán Breen: Claims volumes have increased, but we are dealing with a number of mass actions. In one example the in-cell sanitation cases ran to between 1,600 and 2,000. They start with a small number, but there is then an influx of claims. As the figures grow, there are mass actions which drive the numbers higher. There was also a change in the real rate of return where the valuation was going up. There was an adjustment in the Gill Russell case, but there was also an adjustment in all catastrophic injury cases after that, which ensures we build in the rate. There are very good reasons it is happening in this way.

Chairman: At the end of 2012, the last time we had a report, the State Claims Agency had 5,755 claims under management, with an estimated liability of €1.1 billion. Between 2012 and 2018 it has gone up by 200%, from €1.1 billion to €3.2 billion.

Mr. Seamus McCarthy: The 2012 figure is for clinical indemnity claims. The equivalent figure is €2.2 billion. Therefore, it has doubled.

Chairman: Most of the money will be found in the health budget - in the budget for building the national children's hospital or the national maternity hospital. The State Claims Agency needs to realise that the less money that comes in, the less we will have to build facilities. It may be paying €400 million, but in two years' time it may be €600 million or €700 million, which sum would take us half way in building a new hospital. I am talking about every single year. I know that they are legitimate claims and that there are catastrophic cases, but the system is letting the figures escalate. Somebody else will be sitting in this chair in a couple of years' time when the figure will be €5 billion. How many hospitals could we build with that sum? I know that it is simplistic, but it I do not believe enough is being done to manage the issue. That is why we asked for a breakdown by group. We want to put pressure on the Department of Health and the HSE to do something to stop the continuous medical incidents. Prevention is better than cure. Paying out at the end of the process is the worst of all solutions. The public should be frustrated that the figure is building each year.

Ms Mary Jackson: The Judge Meenan expert group on tort reform and the management of clinical negligence claims met for the first time on 5 September this year. It has a six-month term in which to look at how we can better manage clinical claims, from the perspective of the plaintiff but also from that of the State.

Chairman: I will ask a hard question. If there is a settlement for €1.5 million, legal and professional fees will be €500,000, or approximately one third of the total. That means that of a total of €3 billion, there will be €1 billion for the legal profession. I know there will be people giving out about me because of this, but instead of paying out on an hourly basis for the next ten years or paying daily and hourly rates every time it wants someone to read a file, would it not be better for the Department of Health to hire 50 of its own people on a salary at a fraction of the cost? While it is not within its remit and is for legislation, is it within the terms of the review that the Department of Health is doing to look at the management of the claims to reduce the cost to the taxpayer through the direct employment by the State of its own legal team on an

employee basis and on an annual salary as opposed to the hourly rate?

Ms Mary Jackson: The examination of the costs involved is part of what is being examined, but-----

Chairman: Will Ms. Jackson send the committee the terms of reference?

Ms Mary Jackson: I will, surely. The next meeting of the group is next week. I will bring this to the attention of Mr. Justice Meenan as well.

Chairman: This is a much bigger issue now. It is legal reform. The Troika tried to do it and it did not succeed.

Deputy David Cullinane: I believe it cost more on the claimants' side.

Mr. Ciarán Breen: Yes, I will clarify this for the committee. We have 23 in-house solicitors dealing with these matters. We have two legal units that defend claims on behalf of the State, one on the general side and one on the clinical side.

Chairman: The current legal system does not allow the State Claims Agency to have barristers as its own employees. They have to be brought-----

Mr. Ciarán Breen: We do have some barristers as employees, but they do not go into court and argue the cases.

Chairman: I have made the point.

Deputy Catherine Murphy: On the review that is taking place and that we would be notified when it is completed, perhaps it is a matter that we might look at and schedule for our committee at some point next year after we get it.

Chairman: Is there an estimated-----

Ms Mary Jackson: The report should be received at the beginning of February 2019. It was given a six-month term to deliver a report.

Chairman: Will Ms Jackson make a note to send it to the committee for its consideration? It is an issue that we can come back to.

I do not know whose time I am after eating into there. The next speaker is Deputy Connolly.

Deputy Catherine Connolly: Legal fees are one issue that needs to be dealt with. Prevention and minimising are the other side where governance and learning come in. On that, there is a statutory duty, is there not, to report all adverse clinical events?

Mr. Ciarán Breen: Yes.

Deputy Catherine Connolly: There is a 40% compliance rate with that, is that right, or has that gone up? That was in the chapter from the 2012 Comptroller and Auditor General report.

Mr. Ciarán Breen: That may indeed have been at the time but there has been an incremental improvement in that as a result of our upgrade of the system-----

Deputy Catherine Connolly: What is the percentage now of the reporting under a statutory obligation?

Mr. Ciarán Breen: I can tell the Deputy the number of clinical incidents and the number of general incidents that we have.

Deputy Catherine Connolly: No, I would like to know whether the health entities and health enterprises – these are the new words and all the new language, whereas I talk about hospitals - are complying with that statutory duty now, given that there is a statutory duty to report. It was down at 40%.

Mr. Ciarán Breen: They are complying to the extent that we are getting notified.

Deputy Catherine Connolly: Is the State Claims Agency receiving 100% notification of adverse clinical events?

Mr. Seamus McCarthy: From memory the figure that we reported in 2013 was looking at how many of the cases that were brought against us had been reported previously. That was the test and it is really the only way we can get a handle on the extent to which incidents that should be reported are reported.

Deputy Catherine Connolly: So what Mr. McCarthy did was to look at the number of cases where they arose and then looked back to see if an adverse clinical event had occurred and been reported.

Mr. Seamus McCarthy: Yes.

Deputy Catherine Connolly: And it was 40% of those cases.

Mr. Seamus McCarthy: That is my recollection of it.

Deputy Catherine Connolly: That is not the way I read it but I am glad Mr. McCarthy corrected it.

Mr. Ciarán Breen: We are doing a really big project in relation to exactly what the Comptroller and Auditor General has pointed out.

Deputy Catherine Connolly: I understand. I am trying to get to the essence of the questions when we are doing it. There is a statutory obligation on health enterprises to notify the State Claims Agency, is that right, or who do they notify?

Mr. Ciarán Breen: Yes, they notify us.

Deputy Catherine Connolly: When an adverse clinical event arises.

Mr. Ciarán Breen: Which in their opinion is likely to give rise to a claim.

Deputy Catherine Connolly: There is a little ambiguity there. In the sample cases, only 40% had complied with that duty. Is Mr. Breen in a position now to say what the position is?

Mr. Ciarán Breen: I know that it has increased. I can come back to the Deputy. We will look at our figures and we will be able to give her an exact figure.

Deputy Catherine Connolly: Okay. On the estimate of the future liability, and it has been clearly outlined how much it has jumped - more than double in the case of the clinical indemnity scheme - there was a 20% margin of error in the chapter going back to 2012. The State Claims Agency allowed for a 20% margin of comfort, which I can understand, and there were

certain reasons for that such as there might be complexities or the case might end up in court. The Comptroller and Auditor General's report said that it should be based on statistical probabilities. Has that been done?

Mr. Ciarán Breen: This point came up at either the previous meeting or the one before. The Comptroller and Auditor General's Office and we are happy that was proven, given the system that we are employing, which was measured by our actuaries in looking in real time at what it actually cost and what we had estimated, with the margin of prudence. We reserve by looking at similar cases. Effectively what we are doing at any one time is looking at cases that had similar facts and background, allowing for the fact that plaintiffs are different and can be differently affected-----

Deputy Catherine Connolly: I understand what the agency has said because I have read it. It was in terms of what the Comptroller and Auditor General's report was saying. Is Mr. McCarthy happy with that?

Mr. Seamus McCarthy: It is something that we keep constantly under review. The particular difficulty in 2012 was that a sample was examined by internal auditors of the State Claims Agency and they compared the estimated liability with facts that were known. They identified that in 19 out of 105 cases, the potential liability was overstated. That was our particular concern at that time. The methodology is constantly under review within the State Claims Agency and we constantly keep it under review.

Mr. Ciarán Breen: We have just undergone an audit by our own internal audit, which has just finished and which looked exactly at this. It indicated that it was satisfied that we were best practice and in line with all industry standards.

Deputy Catherine Connolly: Okay. On the Mediation Act, I understand that there is an obligation now. Actually, it is not an obligation. Will Mr. Breen clarify the obligation or what the appropriate terminology is under the Mediation Act for people?

Mr. Ciarán Breen: A judge can order mediation if he feels it is appropriate.

Deputy Catherine Connolly: Or can he take cognisance of the fact that there was no mediation?

Mr. Ciarán Breen: Yes, and that can be taken into account.

Deputy Catherine Connolly: Okay. On the Mediation Act, has Mr. Breen noticed a difference in terms of cases going to mediation? Is he in a position to quantify the effect of that Act?

Mr. Ciarán Breen: No, we have not seen yet a discernible difference, but we think we will. It will take time.

Deputy Catherine Connolly: The jury is still out on that one.

Mr. Ciarán Breen: Yes.

Deputy Catherine Connolly: Okay. I come back again to the feedback mechanism. The agency gives a report back to each hospital. They give the agency whatever percentage of the adverse clinical events, and then the agency goes back to them with a report of the total amount. Is that right?

Mr. Ciarán Breen: Yes.

Deputy Catherine Connolly: And the agency discusses that with them with a view to learning from it. Is that correct?

Mr. Ciarán Breen: Yes.

Deputy Catherine Connolly: Going back to Galway, for example, or any hospital, and independent reviews, something happens, such as an adverse clinical event, there are internal reviews - I am not talking about those – and eventually there is an external review. If we take the case of Savita Halappanavar, for example, eventually we got to an external independent review. Is that not right?

Mr. Ciarán Breen: Yes.

Deputy Catherine Connolly: Okay. I have asked a simple question on the factual position on the ground of how many reviews there were and the cost of them. That is very important leading into the State Claims Agency, because what are the hospitals learning from these reviews? Now, I am told that they have no knowledge, they have no record, of how many independent reviews there were and the cost of them. Maybe there is a misunderstanding somewhere, but that is what I am reading out to Mr. Breen. We do not have-----

Mr. Ciarán Breen: As I have said to the Deputy, that is not at all within our power-----

Deputy Catherine Connolly: I understand that.

Mr. Ciarán Breen: We have no responsibility.

Deputy Catherine Connolly: I am asking for clarification from the Department, if it is able, and from the State Claims Agency. Quite clearly the agency has no input in this, but down the road it lands on Mr. Breen's desk because cases arise out of those facts. Where is the learning process if there is no record of the facts and the review?

Mr. Ciarán Breen: If a case we manage is the subject of an adverse event review during the course of the claim and it is given to us, that has a great deal of significance for us in regard to liability, causation and what we do in the case. If an independent review looks at the case and holds that the facts are established and there has been a breach of duty, and assuming that there is also a causation element, we move to settle that case at the earliest opportunity. I can think of one case a little over a year ago where we got such a review. We did not commission any expert report ourselves, which we would normally do. We accepted the review as the expert report and immediately moved to compensating the person.

Deputy Catherine Connolly: However, if there is no record or cost analysis of the independent review, is somebody falling down somewhere? Mr. Breen cannot comment on it, but it certainly ends up on his desk because cases arise out of it.

I will finish with two final points. One concerns maternity. To clarify, there is the general indemnity scheme and the clinical indemnity scheme. The clinical scheme covers hospitals and acute hospitals, and the general indemnity scheme covers Tusla and primary care. Does the State Claims Agency, SCA, have a breakdown of these? A substantial amount of the claims arise under health, including acute hospitals, primary care and Tusla. Is that right?

Mr. Ciarán Breen: Under the clinical indemnity scheme, yes.

Deputy Catherine Connolly: Does the clinical indemnity scheme cover Tusla?

Mr. Ciarán Breen: No. The general indemnity scheme covers Tusla in respect of its public liability exposure.

Deputy Catherine Connolly: Very well.

Mr. Ciarán Breen: For example, if an allegation was made that Tusla had somehow failed its duties in the placement of a child who was then harmed-----

Deputy Catherine Connolly: I can think of such cases straight away, without mentioning them.

Mr. Ciarán Breen: -----that would be under the general indemnity scheme. It would not be a clinical issue.

Deputy Catherine Connolly: I also wish to refer to the thalidomide cases. I know this took place a long time ago but it has effects right down to the present day. There was an issue around the Statute of Limitations.

Mr. Ciarán Breen: Yes.

Deputy Catherine Connolly: One issue, which we have now clarified, concerned mediation. The other concerned the Statute of Limitations, which another member asked about. Mr. Breen said that the State Claims Agency is under a duty and is obliged to seek the protection of the Statute of Limitations.

Mr. Ciarán Breen: Yes, we are.

Deputy Catherine Connolly: I wished to clarify that. That was another cause of concern in the letter. I will finish on the point of thalidomide. I wish to understand clearly, having read the letters. A number of people suffered as a result of mothers taking thalidomide. The State comes into this because at the time there was a question as to whether it should have taken the product off the market sooner. That is where the SCA's liability comes in, is that right?

Mr. Ciarán Breen: Potential liability, yes.

Deputy Catherine Connolly: It is similar to the cervical smear cases. The State did not disclose information it had in time. The potential liability arises from the same point. Is that right?

Mr. Ciarán Breen: Yes.

Deputy Catherine Connolly: The State is potentially liable for not acting quickly enough. That is how the SCA is involved in this. It is not just the German company and the Irish distributor.

Mr. Ciarán Breen: That is right.

Deputy Catherine Connolly: I am not speaking personally, but it seems to me that the State has not covered itself in glory in how it has treated the mothers and children who have suffered as a result of this. We are discussing this in 2018. This took place in 1960 or 1961, did it not?

Mr. Ciarán Breen: It affected children born between 1958 and 1962.

Deputy Catherine Connolly: The issue concerns when it should have been taken off the shelf. How often has mediation been used in those cases?

Mr. Ciarán Breen: In thalidomide cases?

Deputy Catherine Connolly: Yes.

Mr. Ciarán Breen: I am very limited in what I can say about the mediation. I can only speak about the fact of mediation, because it is a confidential process. All sides signed a confidentiality agreement concerning what happened at the mediation. As I said previously, the mediation ran for a period of time.

Deputy Catherine Connolly: Until December 2016.

Mr. Ciarán Breen: Yes.

Deputy Catherine Connolly: I know that. Is Mr. Breen in a position to say how often mediation was used and how often cases were settled as a result of mediation?

Mr. Ciarán Breen: Does Deputy Connolly mean generally?

Deputy Catherine Connolly: No, I refer to cases concerning thalidomide.

Mr. Ciarán Breen: One must understand that all of the thalidomide plaintiffs are in a particular group. The mediation was between that group and the State. The State was the only party that agreed to the mediation, so it was between the State and the thalidomide plaintiffs. It was a single mediation, not a series of individual mediations.

Deputy Catherine Connolly: I see. It was on behalf of the group.

Mr. Ciarán Breen: Yes. I am limited to that kind of general answer.

Deputy Catherine Connolly: The final issue is maternity. I mentioned it a minute ago. We are looking at prevention. Quite a substantial part of the €3 billion is for cases arising from obstetrics and gynaecology. Is that right?

Mr. Ciarán Breen: Correct.

Deputy Catherine Connolly: What effort is being made to look at a different system for women, given the maternity strategy, women's wishes to give birth at home and so on? There are alternatives to a medical-dominated system which is leading to vast claims. What analysis has been carried out to examine alternative systems?

Mr. Ciarán Breen: That is a question for the HSE.

Deputy Catherine Connolly: Luckily there are two women here from the Department.

Dr. Colm Henry: I note that the maternity strategy envisaged alternatives to the medical model.

Deputy Catherine Connolly: I know that. These alternatives have not happened.

Dr. Colm Henry: It is to be implemented in some midwife-led units. I am not sure how that

feeds into claims or reduced claims. I was involved in the maternity strategy and this was very strongly expressed during the drafting by both women and midwife community.

Deputy Catherine Connolly: It has been expressed for a very long time in my lifetime alone. I say that as someone who chose a home birth. I am simply using the example. In my understanding and experience, nobody has ever been sued because of a home birth. It has never given rise to a High Court case. There has been a High Court case querying disciplinary proceedings, but I do not think a midwife has ever been sued because of a home birth. Obviously they are smaller in number, but we have been asking for a different system for a very long time. Look at the cost of going down the medical route.

Dr. Colm Henry: As I understand it, the great majority of cases pertain to cerebral palsy.

Deputy Catherine Connolly: Yes.

Dr. Colm Henry: As such, as the Deputy points out, it is a largely medical model-----

Deputy Catherine Connolly: Yes, and one based on intervention.

Dr. Colm Henry: As such, any cases will arise out of that. I add that this is not my area of expertise. There is a question around the likelihood of a case arising from what is currently a very small number of home births, just 0.5% of the whole, or midwife units. I am not sure if any evidence base links them to a reduction in actions. I would not like to think-----

Deputy Catherine Connolly: Dr. Henry is right at this point, but this should have been looked at a long time ago. From that small number of home births, nobody has ever been sued. I may be corrected, but I believe nobody has ever sued a midwife in regard to a home birth. There are small numbers, but we have gone in the opposite direction to what is demanded, with all the attendant consequences.

Mr. Ciarán Breen: I do not know if Deputy Connolly is aware, but there is a self-employed community midwife scheme.

Deputy Catherine Connolly: I was there. It is minimalist and difficult. Does Mr. Breen know more about it?

Mr. Ciarán Breen: There is a series of very strict clinical criteria about the type of woman who will fall into the category deemed by the scheme to be suitable for home birth. Therefore it is limiting by its nature.

Deputy Catherine Connolly: That is one aspect of it. It is also the case that it was never rolled out. I saw the pilot project in Galway. I will not go into personal details. This is an obvious way to reduce costs, empower women and go back to what should be a normal process, not a medical interventionist one with all the consequential catastrophic claims. That should be looked at as a way of bringing down costs.

Chairman: Deputy Kelly is next, followed by Deputy Aylward, Deputy Cullinane and Deputy MacSharry. I will call on them in sequence. Deputy Aylward has not spoken at all yet.

Deputy Alan Kelly: I thank the committee very much for accommodating me. I am attending another committee at the same time, so I have been in and out. I have a few quick questions. With regard to disclosure, we know the Civil Liability (Amendment) Act 2017 is in place and that the patient safety Bill will come into place. Disclosure, including mandatory disclosure,

is one of the biggest issues that arose relating to CervicalCheck. Following the Scally report, I understand the Minister wrote to the SCA on 12 September, noting with regard to open disclosure that the HSE and SCA guidelines should be revised as a matter of urgency. Will both the SCA and HSE confirm what actions have been taken to do that?

Mr. Ciarán Breen: I refer to that on page 4 of my opening statement. We wrote to the chief medical officer to indicate, with regard to the joint work on this, that we want to move to a new open disclosure system, implementing the Scally recommendations concerning the revision of that document. It has to be done on a much wider basis.

Deputy Alan Kelly: What changes does that mean from a day-to-day point of view?

Mr. Ciarán Breen: With regard to open disclosure, we are waiting for the Act-----

Deputy Alan Kelly: What is the difference for the SCA post Scally, compared with the pre-Scally report position?

Mr. Ciarán Breen: We do not have responsibility for open disclosure in the sense that it is something that we and the HSE rolled out together. We began it and partnered with the HSE. We said to the HSE in 2016 that we had done the work we could do on the roll-out, training and so on and open disclosure generally became part of the policy within the HSE. Dr. Scally then said that there were limitations with regard to the guidelines and so on. That followed from his report. We are now following up with the stakeholders to make sure that we move towards the necessary revisions of those guidelines to reflect his recommendation.

Deputy Alan Kelly: In layman's terms, there cannot actually be any change.

Mr. Ciarán Breen: It will take a while before those changes will percolate through.

Dr. Colm Henry: A couple of steps are important in this sequence. One of Dr. Scally's specific recommendations was that the current guideline be revised as a matter of urgency. That was to remove any ambiguity. I referred to this earlier but am not sure if the Deputy was present. That work has already taken place with a view to tying down what rare exceptions there would be to open disclosure if somebody was in danger of causing harm to themselves or other people. That wording has been done and has to go through a consultative process within the HSE. It will go to the leadership of the HSE in January. The next stage is that we have to bear in mind that this is a moving target. There is the Civil Liability (Amendment) Act, which involves a new type of education and awareness for our staff which is quite significant for them because it gives them protection under the Act when they engage in open disclosure. As the Deputy is aware, there is a patient safety Bill, which will bring in mandatory open disclosure for serious reported events. Through this, we have to update the existing policy, knowing that things are changing as we go. At the same time, we have to enhance and build on the training of staff, with 29,000 currently trained, and will involve an element of retraining and new education in order that they are aware of the legal protections they need and of their legal obligations.

Dr. Scally's report refers to a greater overhaul of open disclosure. I understand from the Minister's announcement some time ago that he intends to set up a national patient safety council. We will work with the Department where the overhaul is required.

Deputy Alan Kelly: Has the HSE set up an office to deal with all of the implementation of open disclosure?

Dr. Colm Henry: Dr. Scally pointed out that there was an office with relatively limited resources. We are now recruiting for and building a bigger office to deal with the considerable amount of work it will have.

Deputy Alan Kelly: The HSE will have to tick-tack with the SCA quite a bit.

Dr. Colm Henry: It will also be with colleges, the Medical Council and of course with patients themselves. The consultation will be widespread.

Deputy Alan Kelly: How many times have the HSE and SCA met on this issue since the Scally report was published?

Dr. Colm Henry: In my post, I have met with the Medical Council-----

Deputy Alan Kelly: I am specifically asking about the HSE and SCA. How many times have they met following Scally's recommendations?

Dr. Colm Henry: We have regular meetings. I am not sure if there is a particular agenda item for this.

Deputy Alan Kelly: Would it be unusual if they had not discussed it?

Dr. Colm Henry: I will have to check my records.

Ms Ann Duffy: I have met the lead in the HSE, Angela Tysall, on approximately four occasions and we are working closely with regard to the set-up of the office.

Deputy Alan Kelly: Who is that lady?

Ms Ann Duffy: Angela Tysall.

Deputy Alan Kelly: What is her title? What does she do?

Dr. Colm Henry: She is a general manager who has worked with us on open disclosure for the past seven years, around which we are enhancing the office.

Deputy Alan Kelly: That is helpful. I have a follow-up question for clarity. We spoke about colposcopy clinics which receive notifications of abnormalities. There is an obvious increase in demand. We had a lot of discussion here previously about colposcopists and we are still looking for some minutes, which we have never found, for the famous second meeting. Are there issues that we need to know about? We hear many different stories. Are they geared up or are there other issues that we need to be aware of? They are obviously under pressure.

Mr. Damien McCallion: The colposcopy clinics have seen a significant increase in normal referrals from general practice and from screening. The group the Deputy referred to under the previous Minister was a colposcopy forum. That group has met on at least three, possibly four, occasions in the last number of months. I cannot recall off-hand.

Deputy Alan Kelly: It does not matter.

Mr. Damien McCallion: We had a half-day with them one Saturday to work through the pressures. We are looking at the overall impact through our women and infants group. The colposcopy service is crucial. In any screening service, there is smear-taking, the screen, and diagnosis and treatment, where colposcopy comes in. They are getting much pressure through

increased referrals from general practice due to the throughput in screening. There is a process to assess the impact. When we move to working with HPV, there will initially be a significant increase in referrals to colposcopy which will then level off and reduce over years. We need to take a full view of that as a service. It is an important service for hospital-based terminations. We need to look at all the pressures that service is under. The process to assess it is starting through the women and infants programme because there is no question that there is a need to invest in that service to meet all the demands.

Deputy Alan Kelly: I think that needs to be dialled up. I am just getting information. We all know that we are discussing this, by and large, because of the amazing Vicky Phelan and her refusal to sign a non-disclosure agreement. Since her case, have there been issues with confidentiality or people being asked to sign non-disclosure agreements? Is that just gone?

Mr. Ciarán Breen: I indicated to the committee before that it is a very rare situation.

Deputy Alan Kelly: I just wanted to make sure it has not happened since Mr. Breen was last here.

Mr. Ciarán Breen: It has not. If we are asked for it and a plaintiff freely wants it, we will do it, otherwise we do not.

Deputy Alan Kelly: I have a final few questions. I am trying to be exhaustive. This question is for the HSE though I am not sure who wants to answer. After the Scally report, and before it in fairness, since I do not want to misrepresent him, the acting chief executive officer, John Connaghan, said that he would not be shy about looking into what Dr. Scally reported regarding internal decision-making and management procedures. What work has been done? I am not being specific on purpose. What work has been done on the obvious internal issues in the HSE? I am also on the Joint Committee on Health and we had two meetings in the space of a week, which I will not forget for the rest of my life due to the way the HSE answered questions. Dr. Scally has reported. John Connaghan obviously has the document. What has happened since? What process has there been in the HSE to deal with the consequences of the Scally report?

Mr. Damien McCallion: The Deputy is referring to two elements here, the first of which is the HR piece and work has started on looking at the scoping and outputs from the Scally report. More fundamentally, we have assigned a full-time senior person to work on the recommendations which span the Department, different parts of the HSE-----

Deputy Alan Kelly: That is the most important part. The 50 recommendations are by far the most important element of the report.

Mr. Damien McCallion: Yes and in terms of where we are at in that regard, the steering group for cervical screening met this morning. That group is based in the Department, is chaired by the CMO and has patient representation as well as representatives of the colleges and the HSE. It met this morning to go through the implementation plan.

On receipt of the report, we identified leads in each of the services in the HSE and in the Department. We have someone assigned in the HSE whose sole job is to focus on ensuring that the Scally recommendations are advanced. We have been working on what each of the recommendations means and have had sessions with Dr. Scally himself to tease through some of the specifics. The implementation plan was reviewed this morning and the intention is to provide it to Dr. Scally for review, with a view to him determining whether it is adequate or requires

further strengthening.

We have not been waiting around, however. As I mentioned, there were certain things that were self-evident during Dr. Scally's investigation such as the need for a cytopathology lead and we advertised that post while he was still mid-stream. There are other areas that he has identified that require strengthening and I met him yesterday to discuss these further. We have a full-time person in place and a steering group is in place in the HSE, chaired by the deputy director of operations. There is also the overall Department group in place which has patient representatives. A range of actions have been scoped, some of which have already started and some of which are more long term.

Deputy Alan Kelly: I am not sure that answers my question.

Chairman: Mr. McCallion referred to a steering group. Is there an implementation committee too? Is there more than one group overseeing this?

Mr. Damien McCallion: There is a steering group which encompasses the Department of Health, patient representatives and the professional bodies. It is a broader group and is looking at the whole report. Some of the recommendations-----

Chairman: Is that is chaired by the deputy director of operations?

Mr. Damien McCallion: It is chaired by the CMO in the Department of Health. Separately, within the HSE, we have our own implementation steering group. We have a person assigned full time to work on the implementation-----

Chairman: What grade is that person?

Mr. Damien McCallion: The person overseeing implementation is at a senior level, that is, a general manager or higher level. Implementation impacts on lots of areas in the HSE including open disclosure, screening, and so on.

Chairman: How much of the implementation will not be within the remit of the HSE?

Mr. Damien McCallion: My recollection is that approximately one third will be outside and two thirds inside the HSE.

Chairman: So, one third will be external, in the Department. Mr. McCallion has said there will be a steering committee and an implementation committee in the HSE-----

Mr. Damien McCallion: Yes, to make sure it happens-----

Chairman: There will be another implementation committee in the Department of Health. I am interested in the third at the Department of Health.

Mr. Damien McCallion: I am not sure if Deputy Kelly has a particular concern or issue-----

Deputy Alan Kelly: Obviously I understand everything that Mr. McCallion has said but there is a requirement to figure out with why things happened as they did and "institutional failure" is just too fluffy. I am not picking on anyone when I say that. We need to find out why things happened in the way they did and Mr. McCallion said that he would do that. He possibly cannot answer my question now but I am just reminding him of the commitments made to this committee.

I have another question for the Department based on the response it has given me, which is not very comprehensive. I am not trying to catch anybody out here. I just wanted to know if the Department recommended that free smear tests be provided to all women and if so, if it would provide the relevant documentation to us. It was a simple question and if the answer is "yes", that is fine. The answer given is a bit too generic. I wanted to determine if the Department recommended it. If the Department recommended it and the Minister announced it, that is fine. I just wanted an assurance that this is exactly what happened and that the CMO was involved, in consultation with others.

According to the Department, the costs are based on take-up to date and an assessment of these costs will be made based upon the most up to date information and provided to the committee. As a former Minister, I know that one must budget for items such as this. This free testing programme has been going on for some time. We all know about the Department of Health and supplementary budgets. There must be an estimate of the projected final cost somewhere and that should be made available to this committee now. There must be a figure because this has been going on since May.

Chairman: Is there a figure?

Deputy Alan Kelly: If there is no figure, that is even more worrying.

Chairman: One would get the impression from the Department's formal response that there is no figure and that a decision was made to just go ahead and do it. I am not saying that there was not a need to deal with the issue but-----

Deputy Alan Kelly: Yes, but there must be a figure. This country is not run on the basis of just doing things and worrying about the costs later. If there is no figure available today, that is even more worrying. I must stress that I am not criticising the Minister for the commitment he gave. In fact, had any of us been in his position at the time, we would probably have made the same decision. I do not have an issue with that. The issue is with costing the commitment. There must have been some estimate of the cost of this decision. Such a decision would not have been made willy-nilly. What is the projected cost?

Chairman: Ms Jackson.

Ms Mary Jackson: When the commitment was made, the scheme would have been demand led, with women presenting to their GPs for repeat smear tests. All I have in my records is that the cost of a smear test is roughly €100, which includes the GP element and the cost of the smear analysis. I do not have any figures on the estimated number of women involved because those data have not been provided to me.

Mr. Damien McCallion: Maybe I can help a little in terms of the volumes. The total take-up of consultations is of the order of 92,000. There were two elements to this, the first of which is the consultation, for which there is a payment of €50. The second element is the smear test itself and the cost of that, as per the current contract, is €49. The most recent figures indicate that there are 92,290 claims for consultations. I do not have the exact figure for the number of smears as part of that. That may be helpful to the committee in terms of understanding the costs.

Deputy Alan Kelly: Where does this leave us?

Chairman: That is €10 million.

Mr. Damien McCallion: The 92,000 figure is for consultations, each of which costs €50 but every consultation will not lead to a repeat smear test. In some cases, women may only have wanted reassurance about what an earlier smear test meant. In that context, I do not have the exact figures for the overall cost but would expect that it-----

Chairman: Women are continuing to-----

Mr. Damien McCallion: The programme runs through to the end of the year.

Deputy Alan Kelly: I do not know where to go with this. I have asked a pretty obvious question. I am not having a go at anyone. Perhaps the witnesses could write to the committee giving more information on the costs of the programme to date.

Chairman: We need more information.

Deputy Alan Kelly: Would that be fair?

Chairman: Yes.

Deputy Alan Kelly: I do not want to be unfair.

My next question is for the Department. The Minister has made a commitment that there will be two patient advocates on boards, which is only right and proper, particularly with regard to the board of the HSE which is being reinstated. That board should never have been abolished. In my view, we need to take a different approach to finding such people. We need to ensure that there is demographic cover provided by patient advocates but that will not be possible if people do not have their wages and costs met. When one looks at the people affected by some of the scandals, one sees that many are relatively young. In order for such people to be able to sit on a board, they would have to give up work. It is not about making money but about making sure that their wages and costs are covered. We need to think outside the box in this regard. I ask Mr. McCallion to take back that message to departmental officials. In fairness, retirees and public servants are fine; we need them. However, we also need to ensure the the 34 year olds affected - women and men - will have a chance to make a contribution because in so many cases the people affected are in that tier of society, but at this time they cannot make those commitments. It is impossible for them to do so. Therefore, I ask Mr. McCallion to take that message back with him.

Mr. Damien McCallion: We have feedback from some patients who have been involved and it has been invaluable. We agree that their voluntary commitment needs to be recognised.

Deputy Alan Kelly: I thank the witnesses for their input which has been quite good.

Deputy Bobby Aylward: I apologise in advance because I might ask questions that have been asked. I had other commitments before lunch and could repeat what has been said already.

I have a few questions for Mr. Breen about the numbers affected by thalidomide, about which there is a lot of disquiet. Are people being excluded who should be included in claims? They include people affected in the 1960s. Are some of them not on the list given to me by Mr. Breen? There are 23 cases involving personal injuries in which litigation was initiated. In six cases a payment of €62,500 was accepted. There are 17 others in this cohort of litigants. On unacknowledged thalidomide survivors, the number of cases involving personal injuries in which litigation was initiated comes to ten. Are there some people who are not included in these figures?

Mr. Ciarán Breen: Some thalidomide sufferers have not taken proceedings against the State.

Deputy Bobby Aylward: Does Mr. Breen know the number?

Mr. Ciarán Breen: I do not know it offhand. I have given the number of cases in which we are engaged because our engagement is with people who have sued.

Deputy Bobby Aylward: Does Mr. Breen think there are many more? Is it two or three times that number? As public representatives, we are hearing that there are more who have expressed disquiet at not being included? Is Mr. Breen saying they have not come forward or that they have been excluded by the State?

Mr. Ciarán Breen: They have not been excluded; they have not taken proceedings against the State.

Deputy Bobby Aylward: Proceedings have not been initiated.

Ms Patsy Carr: There are 30 people who are recognised as having suffered from thalidomide. They are in receipt of-----

Deputy Bobby Aylward: Are they included in the figure?

Ms Patsy Carr: What the Deputy has is the number of 23 people who are taking cases. There are six people in receipt of payments through the Department of Health. There is one person who has not accepted payments from the Department. The unacknowledged include a total of 30 people who have not had a causation linked with thalidomide. A number of people went through the Irish Thalidomide Medical Assessment Board in 1975 but did not meet the criteria. In about 2013 the Department paid for them to travel to be assessed in Sweden where they did not meet the criteria.

Deputy Bobby Aylward: Why have the people not included not come forward? We are not talking about something that happened yesterday. We are talking about something that happened in 1975.

Ms Patsy Carr: It is not the case that they have not come forward; rather, they have not been able to link their disability with having taken thalidomide.

Deputy Bobby Aylward: Could this go on for another ten, 15 or 20 years?

Ms Patsy Carr: It is open to anybody to present in Sweden to be assessed. Where the link is made with the drug, the Department and the chairman of the Grünenthal Foundation will make payments. The Department will also provide supports-----

Chairman: Have the 30 people travelled to have the test carried out?

Ms Patsy Carr: They were assessed as children and have been in receipt of payments since 1975. Six of them accepted the payment of €62,500 in 2013.

Deputy Bobby Aylward: How was that payment reached? How was the figure decided on? Is it what is being offered to each claimant when he or she comes before the State Claims Agency?

Ms Patsy Carr: In 2010 the State publicly stated it wanted to support the survivors of

thalidomide. At that stage, it stated it wanted to look after the health needs of the individuals concerned. Similar to what had happened in other countries, it was recognised that as they aged, they would develop further disabilities. The State decided that it wanted to support them further and they received a medical card without being means-tested. If they require further adaptations or environmental controls to assist them in living independently, the Department will support them and pay for them. Between 2013 and 2018 we have paid out about €139,000 to individuals to support them-----

Deputy Bobby Aylward: Why is there such disquiet on the part of so many? Is the strong arm of the State being used to exclude people? Why are people so annoyed that they are not being recognised? What are the reasons for not recognising them?

Ms Patsy Carr: I have no idea. All I can say is the State pays a pension of between €6,000 and €13,000, depending on the level of disability. It is disregarded if somebody seeks a disability allowance and is also disregarded for the purposes of taxation. Equally, the payments made from Germany are disregarded. The State is attempting to support people, but we have no role if somebody then applies-----

Chairman: How many people who went to the Irish Thalidomide Medical Assessment Board that felt they had a case and were not accepted when they travelled to Sweden? How many did not come through the medical assessment as defined by-----

Ms Patsy Carr: It is my understanding about 100 people went through the assessment process in the early 1970s. A total of 34 were determined to fit the criteria that had been established.

Chairman: Therefore, two thirds of them did not. How many of them travelled to Sweden in more recent years to undertake the international assessment?

Ms Patsy Carr: It is my understanding six-----

Chairman: Only six of the other 60 travelled?

Ms Patsy Carr: It is my understanding that is the case, but it is open to anybody-----

Chairman: This is probably a medical issue. A total of 66 people who went to the Irish Thalidomide Medical Assessment Board must have felt they had a case, but their injuries were not defined as such. What injuries did they think were thalidomide-related but the board stated "No"?

Ms Patsy Carr: It was a medical board.

Chairman: I know that, but did people have some other condition that they said might have been related to thalidomide? Can anyone give us any concept of why the other 64 people who felt they had a thalidomide-related condition-----

Deputy Bobby Aylward: Where are their claims?

Chairman: We will probably run into some of the 64 people who believe they have a thalidomide-related condition and that the State is doing nothing for them. As they obviously did not pass the medical test, can Ms Carr tell me about this category?

Ms Patsy Carr: I have no idea. I know that the Irish Thalidomide Medical Assessment

Board was a professional board with medics who looked at the injuries and the records. It was completely independent.

Deputy Marc MacSharry: I have another way of refining the question. How many of the 30 individuals who are receiving payments, as well as the person who declined the payments approved in 1975, would pass the Swedish test?

Ms Patsy Carr: All of them.

Deputy Marc MacSharry: Is it the same test? Anecdotally - this could be totally wrong - around the bush fire there is a rumour, albeit unfounded, or it is suggested that whether someone got into the figure of 34 depended on from what side of the socioeconomic fence they had come in 1975 and that if they were less likely to be troublesome, for example, if they were not a barrister's son or first cousin, they were excluded.

Ms Patsy Carr: Absolutely not.

Deputy Marc MacSharry: I know that it sounds totally unscientific and it is but, rightly or wrongly, that is the perception of some.

Chairman: If the 64 people who believe they were victims of thalidomide-----

Deputy Marc MacSharry: And are not acknowledged, they will receive no benefits. Earlier it was mentioned that there was some process for them when there was none. They receive nothing from anybody.

Chairman: Can anyone tell us about this because the number of people involved is not large, but we have all probably bumped into a few of them in our time? They believe they receive no support. We accept that they did not meet the medical board's criteria. Can anyone explain it? Obviously, they all received letters telling them this and explaining that they did not meet the criteria.

Ms Patsy Carr: There must be a causal link with thalidomide. If they were unable to prove such a link, I assume that was why they did not meet the criteria.

Deputy Marc MacSharry: Is it the same test? Are the assessment criteria used in 1975 equal to those used today or are they different?

Chairman: Can the witness go through the records and give us a note on this issue? Those people are out there. Those 64 people-----

Deputy Marc MacSharry: In fairness, there are nine in particular who are unacknowledged and who do not get any medical care or anything else. There is no pathway for them.

Ms Patsy Carr: It is open to them to go to Sweden and be assessed. The Department has paid for a number of people to go through that process.

Chairman: Ms Carr said that six people went.

Ms Patsy Carr: Six opted to go.

Chairman: Some people just give up. Just because 60 people did not go to Sweden, it does not mean-----

Deputy Bobby Aylward: Did any of the group of nine people go to Sweden to be assessed?

Ms Patsy Carr: I do not know.

Chairman: We would not know the names.

Deputy Bobby Aylward: I do not have the names either. I am referring to the nine people referenced by Deputy MacSharry.

Chairman: When Ms Carr refers to causation, does that mean that a person has to prove that his or her mother took thalidomide? For the people watching this, what does "causation" mean?

Ms Patsy Carr: For a thalidomide survivor, it means that his or her mother ingested the drug at the time.

Chairman: By "causation", Ms Carr means that it has to be proven that the person has a disability and his or her mother took thalidomide. Ms Carr is saying some people could have a disability and their mothers might not have taken thalidomide but it is presumed they did.

Ms Patsy Carr: Yes, that is correct.

Chairman: They found out their mothers did not take thalidomide and the disability is unconnected to the drug. I am trying to get this into layman's English. From visual appearance, two people can appear to have been affected by thalidomide but Ms Carr is saying that may not be the case.

Ms Patsy Carr: Yes. There are a number of reasons that people are born with different birth defects.

Chairman: There are different defects.

Deputy Bobby Aylward: Is all of the cost being borne by the State?

Ms Patsy Carr: What is the Deputy referring to?

Deputy Bobby Aylward: I am referring to anyone who is suffering. Is the company that provided thalidomide liable for some of the costs? I refer to the German company named here.

Ms Patsy Carr: Yes. For acknowledged cases, the German foundation pays those people a pension and then we pay another pension on top of that.

Deputy Bobby Aylward: Is that a lifetime pension?

Ms Patsy Carr: Yes, it is.

Deputy Bobby Aylward: It is good to hear that anyway.

Chairman: This is an old issue that surfaces every so often. That is why we are having discussing the matter at a simple level. People come to us and state they have been affected by thalidomide but they got nothing. Perhaps we can explain this a bit better now.

Ms Patsy Carr: That is fine.

Chairman: I thank Ms Carr.

Deputy Bobby Aylward: I would like to continue. On the outsourcing and all of the controversy about it, have we got value for money? I refer to what has happened and the outcry over it. We outsourced laboratory testing to America. I wonder what would have happened if the service had been available in Ireland or across the water in in England instead of us having to go to America. Have we done comparisons? Why did we outsource this service to America instead of keeping it at home? Has any cost-benefit analysis been done as to why it was outsourced to America? If so, are we getting value for money? Could this service have been provided in Ireland? I am told a laboratory in Cork could have done much of the testing.

Mr. Damien McCallion: We have discussed this in previous committees in respect of the historical decision to outsource at the time and whether the capacity was in the country. That has been debated and that decision was made many years ago. In terms of value, what we are trying to look at now, as a result of the new opportunity with HPV, is how we balance that private-public mix. We need to be careful in that it is not unique to a country as such. In other words, we have some of the capacity here in Dublin in a private company, some in a public laboratory, some in a private laboratory and some in a UK laboratory. The key thing is that they meet the standards and the assurance.

We referred earlier to some opportunities with the new contracting arrangements. The Deputy will appreciate I cannot go into that today as we are trying to finalise those contracts to balance between the private and public system in future. The laboratories we use are all big international laboratories or part of an international group. One of our objectives is to try to balance the private-public mix with the current contracts as well as in respect of HPV testing. We also discussed that earlier. There will be an opportunity with the HPV test as well to look at how we balance that.

Deputy Bobby Aylward: Would we have the capability in Ireland to carry out the screening to the standard to which Mr. McCallion referred? Do we have the laboratories here to do that?

Mr. Damien McCallion: No, it is a significant challenge. The only laboratory working on that at the moment is the Coombe. We are working with that laboratory in trying to develop its capacity but we will have a combination of private and public. At the moment, the Coombe only does about 9%. One of the issues being identified is that cytologists, the professionals who do the screening, are starting to diminish as a profession because as we move to HPV testing we need fewer of those professionals. Every country in the world is struggling with this now. We have spoken to our colleagues in Northern Ireland, Australia, New Zealand and England. The team even went to the Netherlands to look at its HPV testing implementation. There are real challenges for people in the older system because if we are going to need 80% less of that resource down the line, professionally people are seeking to move. It would take some time to grow the capacity here in Ireland but it can be done. That is one of our objectives but we need to be careful in the sense that we will still need the private sector to support us as well. That is particularly the case with the increased demand in the programme. Our priority is to make sure we sustain the programme, and try to achieve capacity in Ireland alongside of it.

Deputy Bobby Aylward: What lessons have we learned from the fallout of this? What assurance do we have that this will not happen again? Is the system we are going to use in future foolproof? Have we learned the lessons so that we will not have this outcry again in another couple of years with something else? I know that is a hard question to answer.

Mr. Damien McCallion: There are many lessons, it is fair to say, from the CervicalCheck

crisis from a whole range of perspectives - in terms of patients, laboratories, governance etc. The one thing we do have is the report from Dr. Scally. It has set out 50 recommendations for improvement. It is critical that we move on, push on and implement those as quickly as possible. Deputy Aylward may have been out of the room when we were talking earlier about the implementation. I will not go back over it-----

Deputy Bobby Aylward: I probably was.

Mr. Damien McCallion: Significant resources are being assigned to oversee and ensure we move some of those recommendations forward. I also mentioned that, even during Dr. Scally's investigation, it became clear to us that there were certain things we could tackle very early and we have tried to move on some of those as well. Having said that, his report is extensive. There are some very small specific things we need to do and do quickly and there are other things that are much broader and will happen over a period of time.

Deputy Bobby Aylward: I hope we have learned our lessons. I will move on to potential liability. According to the Comptroller and Auditor General's report from 31 December, there is an estimated liability of €2.2 billion. Is that just an estimate? What does "estimate of payments" mean? I should know this but is this €2.2 billion taxpayers' money? Is there any insurance to cover liabilities on claims?

Mr. Ciarán Breen: It is a pay-as-you-go scheme.

Deputy Bobby Aylward: Is it taxpayers' money?

Mr. Ciarán Breen: Yes, it is.

Deputy Bobby Aylward: There is no insurance to cover something like this?

Mr. Ciarán Breen: There is not.

Deputy Bobby Aylward: I just wanted to be clear. On the estimate of €2.2 billion on 31 December, why is it an estimate? Is that what the State Claims Agency thinks it is going to cost? Why is the word "estimate" used? Is it because it is not actually known?

Mr. Ciarán Breen: We do that because when we get in a claim, and as the claim begins to go through its life cycle, when we begin to know more about it and get more medical evidence about it, one of our skills, which I hope we have, is that we are able to put a value on the case and say that in our view the damages in the case are going to cost "X" amount. Then we will say that costs will be plus "Y". The estimated liability, therefore, is the "X" and "Y" multiplied by the number of cases we believe will settle within that range.

Deputy Bobby Aylward: How would we compare internationally? Are we above or below average on claims? Would this be the norm in every country in the western world? How do we compare with our counterparts in Europe?

Mr. Ciarán Breen: The Personal Injuries Commission has just issued its report. On whiplash, for example, it has indicated we have 4.4 times the level of damages of-----

Deputy Bobby Aylward: I will finish with the issue of whiplash. I think I saw that in the UK the average payment is £4,500 whereas in Ireland it is €18,000 to €20,000. I could be wrong with the figures.

Mr. Ciarán Breen: They are right.

Deputy Bobby Aylward: Why is compensation for whiplash four times higher here than across the water in the UK?

Mr. Ciarán Breen: The Personal Injuries Commission tried to look at that and see why that was. One of the reasons was that doctors assess compensation differently. A doctor could look at a soft tissue injury and decide it is severe and another doctor from the defendant's side could say that it is mild or moderate. Ultimately, judges set the standard in respect of damages and awards and then people settle.

Deputy Bobby Aylward: Why do we set it at four times that of our neighbours? Are we a generous nation?

Mr. Ciarán Breen: We seem to be.

Deputy Bobby Aylward: Should it not be looked at? If it needs legislation, this House should come forward with it. Why should we pay out 400% more than our neighbours for the same claims?

Mr. Ciarán Breen: The cost of insurance working group, which is chaired by the Minister of State at the Department of Finance, Deputy Michael D'Arcy, is going through various modules and looking at different aspects of this, including damages awards. It will look at how damages are assessed and whether there are opportunities for judges to have a book of quantum, so that people can understand what the level of damages is for different injuries. There is complexity in the fact that one injury might affect one man in one way and another man in a different way.

Deputy Bobby Aylward: What about false claims and people using the system to get money? Are there false claims or is this just speculation?

Mr. Ciarán Breen: Generally, we do not come across fraud or anything like that but we have had some section 26 applications where people grossly exaggerated their injuries. In one example, a person indicated that they were very badly injured but the evidence we obtained showed that they were not. It is open to a judge to dismiss a case if that happens.

Deputy Bobby Aylward: I asked how the €2.2 billion compared with other countries. Are we average, below average or above average? If we pay 400% more than our neighbour for whiplash, we must be way above the average on a *per capita* basis.

Mr. Ciarán Breen: The UK pays more than we do in respect of the upper level of catastrophic injuries but some cases are not as severe as others. There is a big difference between whiplash and catastrophic injuries.

Deputy Bobby Aylward: The estimate was from 31 December 2016. What is the estimate for 31 December 2018? Will the liabilities go up to €3 billion, or €4 billion?

Mr. Ciarán Breen: In the general indemnities scheme, which is for non-clinical negligence, it is €810 million and for the clinical indemnity scheme it is €2.39 billion, giving a total of €3.2 billion.

Deputy Bobby Aylward: I see that 98% of clinical claims are resolved through negotiated settlements or mediation without recourse to the courts. Why, then, are associated legal costs

per claim five times greater than for general claims?

Mr. Ciarán Breen: Deputy Cullinane asked the same question. As I said to Deputy Cullinane, these cases tend to be more complex, with more time spent on them and requiring more expert evaluations. Plaintiffs' lawyers argue that a distinct set of legal skills are needed for such cases so they charge more.

Deputy Bobby Aylward: Litigation costs a great deal. I see here that there are costs of €27 million but that there was a saving of 45% on a total of €49 million claimed. That is an extraordinary result. Could it be improved on?

Mr. Ciarán Breen: We do our very best all the time. Ultimately, if parties want to tax something the taxation system is available to them.

Chairman: We will move on from the next main item in the note, the chapter on 2012 which is now six years old and is just a bit of history.

Deputy David Cullinane: I wish to ask three questions. The first relates to process and I believe there is something of a pushback from some civil servants on this, as they try to put the blame or the responsibility back onto politicians rather than take responsibility themselves. When the helpline was first set up to support the women affected by the CervicalCheck scandal, what issues emerged in calls to the line? What demands were women making?

Mr. Damien McCallion: There were a variety of things, from general concerns to specific concerns over smear test results.

Deputy David Cullinane: Was retesting one of the demands?

Mr. Damien McCallion: Yes. People wanted reassurance, through another smear or the retesting of an original smear.

Deputy David Cullinane: They did not want a simple rereading of an original smear. I spoke to the Minister of Health directly on this and I know that among the demands of women who contacted the system was a demand for a new smear. Is that not correct?

Dr. Colm Henry: It is correct.

Deputy David Cullinane: GPs called for this as well. They would have had very distressed women come before them who needed to be supported, comforted and reassured. They contacted the Minister and the Department to tell them we needed to do something, following which the decision was made to give them free screening. That was the right decision and resources had to be put in. Huge pressure was put on the system but one of the consequences was that more people went for the test, which was a positive outcome. There seems to be a bit of a pushback now from some commentators to the effect that it was wrong and that there had been an overreaction from politicians. Is it not the case, however, that the demand for this came from women themselves?

Mr. Damien McCallion: Yes. In total there were 38,000 calls to the helpline over the period and a variety of issues were raised, one of which was to look for assurances around the smear, whether through the smear being retested or another smear taken.

Dr. Colm Henry: I understand how these decisions were made. From a medical perspective, any screening programme involves a balance of risks and benefits. The benefits are that

something is picked up at pre-cancer stage and there is intervention. The risks involve false negatives and false positives, whereby something is found and someone is subjected to further investigation and treatment but it subsequently turns out to be insignificant.

Deputy David Cullinane: My point is that this was not an overreaction by politicians or a panicked response. This view feeds into the notion that the women were hysterical and it amounts to blaming them. We should not blame the women who contacted the hotline to be reassured, following which a political decision was made. There are very few occasions on which I would support the Minister for Health but I support him on this one. There were consequences in the shape of pressures on the system but women wanted to be reassured and comforted. I am asking Dr. Henry to say if he agrees that this was the reason for the decision.

Dr. Colm Henry: Yes, and our job as doctors is to respond to people's concerns and reassure them as best we can.

Deputy David Cullinane: I want to come back to the issue of procurement, though I will not go over the issue of contracts being destroyed. I raised this issue because Dr. Scally found that there were problems with procurement. On page 77 of the Scally report, under a section on the analysis of key issues, he states that there appears to have been an overemphasis on obtaining the lowest cost from suppliers. Does that mean that, when outsourcing this, the HSE was more concerned with costs than patient safety and quality of treatment? I asked Mr. McCallion earlier if he supported the Scally report and what is contained in it. Dr Scally goes on to state that there was not an equivalent emphasis on other quality and service-level measures. Does the HSE accept that?

Mr. Damien McCallion: I do not know the history of what happened in respect of the decision that was made at the time. We are looking back at that procurement piece. There was a multi-disciplinary team involved of both clinicians, procurement specialists and so on. Dr. Scally refers to it later as well in the importance of having a suitable set of metrics and measures around it. We have accepted the entire report, to be clear on that. What we are simply trying to do now is to work through, as mentioned earlier, various meetings to explore exactly the detail-----

Deputy David Cullinane: I am going to come to the metrics in a moment but my very deliberate question was: Does Mr. McCallion accept what Dr. Scally is saying is that lower costs seem to trump quality?

Mr. Damien McCallion: I cannot answer the specifics of that. We have a process started to look back through the tenders-----

Deputy David Cullinane: That is what he said.

Mr. Damien McCallion: We are accepting his report but all I am saying is-----

Deputy David Cullinane: One can accept somebody's report - with respect, this is part of the problem - but one does not necessarily then say that one accepts the proposition that he has put in the report. The report in its general terms is accepted. That is fine. Specifically here he is talking about procurement. He is saying that costs seem to be the biggest issue for the HSE, not quality. I am asking if that is accepted by the HSE.

Mr. Damien McCallion: What I am saying is that as a result of Dr. Scally's commentary and recommendations we are looking back through that process to see what specific learning-----

Deputy David Cullinane: The HSE does not know yet.

Mr. Damien McCallion: No, we have someone going back through that to see what, through the tenders that are there-----

Deputy David Cullinane: When the HSE is looking back will there be documents that will not be there?

Mr. Damien McCallion: All of the contract evaluation documents are there. They are not-----

Deputy David Cullinane: The text states that the request for proposal, RFP, documentation for each primary tender consistently underspecified quality and service level expectations.

Mr. Damien McCallion: Going forward again, looking at this as to future tenders as we are moving to HPV testing, we will ensure that whatever quality measures are needed are put in place. We have already undertaken visits to Holland and England and have made conference calls to Australia and New Zealand and there is a meeting with Northern Ireland next week, all of whom are looking at this, because that will be the next tender in a screening context as well.

Deputy David Cullinane: The part that troubles me from a public accounts committee perspective is one we seem to be coming across this time and again. When we look at procurement the issue arises as to whether sufficient metrics are in place to allow the Committee of Public Accounts to evaluate whether or not what has been set out as the objective has actually been met. We have seen this not just in procurement but generally. I believe that putting in those benchmarks is good for public service. When they are put in there they protect the HSE as well. The witness goes on to say that there was and is - which concerns me more because he is talking about the here and now - "no comprehensive and measurable suite of service delivery metrics to ensure that the bidders delivered across the breadth of the contract". The staggering failure, from my perspective, was that those metrics were not there. Whatever about the past, if it is still the case that they are not there, it troubles me even more. Is it the case that they are still not there?

Mr. Damien McCallion: On the metrics around the delivery, there are a couple of observations in the report. One was the emphasis on time and to ensure that was strengthened up by quality metrics.

Dr. Scally continues in the report to talk about strengthening the quality assurance, QA, piece. I mentioned earlier that we have put a process in place to strengthen the QA process. That is not a simple switch-on process, one has to look at the QA around the laboratories. In future contracts that are put in place with laboratories, we will be addressing that in a much more substantial way. There are metrics there and there is a need, as Dr. Scally said, to enhance these. It also links in the whole way through in terms of quality assurance.

Deputy David Cullinane: I am looking at what is in front of me in the report and I am not trying to put words into anyone's mouth. There are other issues that are not in the report that we could comment on which were maybe not covered. Mr. McCallion says that there were some issues he could not cover because he did not have the information. He says very clearly here there was and is - he went out of his way to say "and is" - "no comprehensive and measurable suite of service delivery metrics". Mr. McCallion is saying that there are some metrics in place.

Mr. Damien McCallion: Yes.

Deputy David Cullinane: He is obviously saying that they are not comprehensive enough and that the measurable suite of service delivery metrics - in other words what he or the Comptroller and Auditor General or we in the Committee of Public Accounts can use as a benchmark - are not there. What I am saying to Mr. McCallion is that this is not good for public servants. That is why there is a call for people to be held to account because, if mistakes are made and the metrics are not there, public servants are put in a very difficult position in my view, and we are not protecting them. That is a serious problem.

He goes on to say: " No contract governance controls appear to have been defined within the tender process and as a result there is limited ability to govern the service during delivery."

Mr. Damien McCallion: Dr. Scally was commenting retrospectively. On the processes that are in place, there are regular meetings now with the laboratories on performance and clearly in light of the current pressures that is even more important.

On contract governance, those measures were put in place during the process of Dr. Scally's review. Dr. Scally at a later point in the report in some of the recommendations on laboratories has made a number of other recommendations which we are working through with his laboratory specialist to try to ensure that we put those in place going forward.

All I am flagging is that these are not simple switches that can be switched on. They involve having a laboratory lead in the programme. I mentioned earlier that we have advertised for that and are trying to recruit for that internationally.

We will put those into place and strengthen those elements. It will take time to do some of them.

Deputy David Cullinane: I want to deal with management issues as well but to finish on procurement because this has come up in other areas. There seems to be a pattern where Dr. Scally says that: "There has been over-reliance on contract extensions."

We have had that before and one of the reasons we were given is that not enough time was given over to looking at putting out new tenders and it might have been easier to roll over contracts. He goes on to say that:"No documentation has been made available to the Scoping Inquiry which suggests that the NSS has attempted to test the wider supply market (outside of the incumbent suppliers) since 2012."

What Dr. Scally is saying is that the documentation was not there or was not provided to him to really satisfy him as to why these contracts were extended or rolled over. Is that Mr. McCallion 's understanding of what he is saying?

Mr. Damien McCallion: That is my understanding of what he is saying.

Deputy David Cullinane: Is that a failure on the part of the HSE?

Mr. Damien McCallion: Not to sidestep the question again but effectively I have asked that we look back through procurement on the market analysis of what was undertaken on benchmarking, as there was some done at the time. More fundamentally - going back to the point of Deputy Aylward on lessons learned - even in the current negotiations, we did a market assessment - in a very intensive concentrated way given the pressures we were under - where we looked at the international market to see what we were paying, what we were getting, albeit we were not in a position to go out to seek a re-tender given where we are at.

Deputy David Cullinane: Okay, when I say "okay" I am saying however that there are a great many problems in that area of procurement that need to be addressed. I am still concerned that they are not being properly addressed but we will hopefully come back to look at this in the future. This is one of the areas we should follow up on.

Dr. Scally also talked about the management issues and possible structural oversight problems as well stating:

> ...there continues to be a somewhat negative relationship and clear disconnect described by the programs between themselves and the HSE chain of command. Issues of isolation, suspicion, lack of trust or support and poor or non-existent communication were cited.

He also says that: "A key weakness in the governance structures within the HSE in relation to CervicalCheck and the NSS is how risks are identified, communicated, and managed, and in particular the processes by which serious risks can be communicated to the appropriate senior HSE management levels, and, if necessary, to the Department of Health."

Mr. Damien McCallion: What page is the Deputy on?

Deputy David Cullinane: Page 34.

Mr. Damien McCallion: There are a number of recommendations in Dr. Scally's report in that section-----

Deputy David Cullinane: Identifying and the ability to identify risks is very important. He is basically saying here that there were governance issues and key weaknesses that he has identified. We are looking back and are seeing these. We want them corrected so that they do not happen again. To be corrected they have to be accepted and acknowledged. Are they accepted and acknowledged? Can Mr. McCallion see on page 34 where we are?

Mr. Damien McCallion: I have moved on. I know the areas the Deputy is talking about from the report, I can assure him, it is well read.

On the recommendations as they pertain to page 34 and that section, page 41 sets out Dr. Scally's recommendations on strengthening governance within the programme and addressing those issues. It states that the national screening committee should be strategically linked in more closely, as there was a sense that the screening service was too far down in the governance structure. My role, while an interim one, is to report directly to the director general.

There are a number of other pieces about strengthening public health and an organisational approach to risk management. For example, we are advertising for a director of public health for the programme in order to strengthen that and we are making an interim appointment while that recruitment process is under way. That person will be starting in the next few weeks.

We are dealing with the recommendations as set out by Dr. Scally.

Deputy David Cullinane: Here is what Dr. Scally said and this is my final question. I then want to make an observation.

Dr. Scally goes on to say "the risk of women being harmed by systemic failures does not appear, from the information that the Scoping Inquiry has seen, to have been given due consideration". That statement will trouble many of the women affected and I saw much of their commentary. This statement was an acknowledgement by Dr. Scally that this was the case.

Does the HSE also accept that was the case?

Mr. Damien McCallion: As I said, we fully accept that, leaving aside the report itself. The focus we have is on dealing with the recommendations that address the observations, assessments and, if one likes, diagnosis that Dr. Scally has made in the report. As I mentioned earlier, our focus is on ensuring we implement these recommendations because that is what will address the underlying problems.

Deputy David Cullinane: Mr. McCallion can comment on my next point at the end. Dr. Scally looked at CervicalCheck and found issues with procurement and auditing. There was the obvious issue of non-disclosure. There were issues in relation to risk management. There were issues in relation to whether proper performance management was in place or proper metrics to measure success were in place, etc. Risks with communication were also identified. I could go on but a litany of failures or what Dr. Scally called "gross systemic failures" were identified. Those related to CervicalCheck but there are other screening services. Is the National Screening Service taking what it can see and what Dr. Scally found in respect of CervicalCheck and seeking to identify if similar problems exist in the other two areas?

Mr. Damien McCallion: Dr. Scally actually looked at the other programmes and there is a section in the report on the other programmes. Where any of the recommendations apply across all of the programmes, they will be applied across all four programmes, namely, the three cancer programmes and the diabetic retinopathy programme. Deputy Cullinane is correct that there is a much broader implication for some of those. However, as I say, Dr. Scally's report has a section on the other screening programmes in which he looked at those and where they are applicable. Some of the overall governance pieces clearly are applicable. The recommendations will also be applied and implemented across all four programmes.

Deputy David Cullinane: Maybe we can get a note on this. I want to find out what specific actions have been taken and what practical measures have been put in place by the HSE since the Scally report in relation to the three screening services, specifically CervicalCheck, which is under the spotlight, but also the other two. What practical steps have been and will be taken across all those areas?

Mr. Damien McCallion: I draw the Deputy's attention to section 13 of the Scally report which, from pages 132 to 140, sets out the recommendations as they apply to all of the other screening programmes from his analysis.

Deputy David Cullinane: Those are Dr. Scally's recommendations.

Mr. Damien McCallion: That is right.

Deputy David Cullinane: What I am looking for from Mr. McCallion is what the HSE has done. Recommendations from Dr. Scally are no good if they are not implemented. It would be useful if the committee could get a note on what changes have been made.

Mr. Damien McCallion: Sure.

Deputy David Cullinane: Hopefully, there will be learnings. I would make the final observation that often we put public servants, especially in middle management, in a difficult position if processes are not in place to protect people - the service users as much as those who oversee the service. Senior management have to take responsibility for that. Someone recently described the process as a train crash. I will not mention any names but that is exactly what it

was. It was a train crash and the people at the top have to take responsibility for that. I hope the learnings Mr. McCallion is talking about will be implemented quickly.

Mr. Damien McCallion: I recognise and accept that, apart from that section, there may be other elements within the report - we have had these discussions with Dr. Scally and his team - that apply. The implementation plan that has been developed with patients, the Department, the various colleges and so on reflects that across all the programmes. I understand that implementation plan will be published as well.

Deputy David Cullinane: I thank Mr. McCallion.

Chairman: I will make one small point we touched on earlier. The HSE has a steering group, which was mentioned, and an implementation group. Mr. McCallion stated one third of the recommendations fall outside the scope of the HSE and within the scope of, for example, the Department. Who is overseeing the implementation of these recommendations where they impinge on the Department rather than the HSE?

Ms Mary Jackson: The steering group that is jointly chaired by the chief medical officer and the assistant secretary for acute hospitals is overseeing the implementation. There was agreement at the MAC.

Chairman: In other words, it is a steering committee-----

Ms Mary Jackson: Of the full 50 recommendations in the report.

Chairman: -----that is specifically dealing with the recommendations relating to the Department of Health whereas the HSE has its own implementation committee.

Ms Mary Jackson: Yes, it is for the HSE elements of the recommendations.

Chairman: Is it a so-called subsidiary?

Ms Mary Jackson: Yes. A subgroup of the recommendations deals with the establishment of the HSE board, etc.

Chairman: Dr. Scally is helping in that regard. When will the HSE have the implementation plan?

Mr. Damien McCallion: The meeting taking place today is actually going through that. It is the overall steering group with patients, the colleges, the HSE and the Department.

Chairman: Is it weeks away?

Mr. Damien McCallion: My understanding is Dr. Scally has been commissioned to come back and review that plan and say whether he feels it is adequate, where it needs to be strengthened and so on. It will then be published.

Chairman: Is it only after Dr. Scally has given the plan the okay or made his observations that we will see the implementation plan?

Mr. Damien McCallion: Yes, the assumptions will be published.

Chairman: In other words, Dr. Scally will give it his *imprimatur* or otherwise.

Mr. Damien McCallion: Yes, or there will be issues, I presume, that he will say need to be

strengthened.

Chairman: These will be issues that he wants added.

Mr. Damien McCallion: Yes, he may offer advice.

Chairman: Will that be done before Christmas?

Mr. Damien McCallion: That is my understanding. It will be very close to that but I am not sure. Certainly, the process that is going on today on that will conclude over the coming weeks but in terms of Dr. Scally's time, I cannot speak for him in that sense.

Chairman: The only observation I will make is that the committee is regularly told recommendations have been made and there is an implementation plan. In the case of other organisations, we have found 12 months later that 70% of the recommendations have been implemented and several have not been implemented. The issue is the follow through. The HSE has accepted the report. This morning, members went through recommendations the committee made to various Departments last year. We made approximately 50 recommendations, of which 90% were accepted, but the issue is whether the Departments will do anything about them. It is easy to say a report or recommendations have been accepted. The follow through is the major issue. Who should appear before the committee on 1 July next year and demonstrate what has been implemented? Who is that person? Is it the chief medical officer?

Ms Mary Jackson: The chief medical officer is chairing that group.

Chairman: I put him on notice that in six months or when the time comes he will be before us to explain implementation.

Deputy Marc MacSharry: The Chairman upset my train of thought before lunch when he wanted Deputy Catherine Murphy to contribute.

Chairman: I apologise for that.

Deputy Marc MacSharry: It is not a problem. I lost track and went from one issue to the other. I want to go back to Mr. Breen. I did not particularly enjoy asking him a question about senior counsel and barristers on the thalidomide case. We established that they were Mr. McCullough SC, Mr. Healy SC and Mr. Seamus Breen BL. To provide clarity for everybody, did I understand Mr. Ciarán Breen correctly that the panel of barristers was a list and it was not the case that people matched criteria to get onto it?

Mr. Ciarán Breen: If I could explain that-----

Deputy Marc MacSharry: I do not want to get into-----

Mr. Ciarán Breen: No, it is a simple explanation.

Deputy Marc MacSharry: Okay.

Mr. Ciarán Breen: When we were established in 2001, we had to set up panels of barristers who would service our work. That panel changed over time, up to when we formally procured, which I indicated to the Deputy was in 2013.

Deputy Marc MacSharry: There was an original panel done-----

Mr. Ciarán Breen: Yes.

Deputy Marc MacSharry: -----because it had to be done on the hoof. There was not time for a procurement process because the State Claims Agency had to get up and running.

Mr. Ciarán Breen: Exactly.

Deputy Marc MacSharry: At that time, Mr. Seamus Breen was on the panel.

Mr. Ciarán Breen: He was on the original panel. He was picked because of the fact that in the first instance he had been a devil to one of our existing barristers and as time when on, he did more and more work for the agency.

Deputy Marc MacSharry: Did he devil for Mr. Healy?

Mr. Ciarán Breen: No, he did not.

Deputy Marc MacSharry: Mr. Healy was dealing with the thalidomide case. Is that right?

Mr. Ciarán Breen: Mr. Healy had been the junior counsel but he took silk.

Deputy Marc MacSharry: He took silk and moved up. On the date on which that happened, had the new panel been procured?

Mr. Ciarán Breen: When Mr. Healy took over?

Deputy Marc MacSharry: No. When Mr. Healy silked up or whatever the phrase is, is it correct that at that stage the procured panel was in place?

Mr. Ciarán Breen: In 2013.

Deputy Marc MacSharry: I do not know. On what date was the panel procured?

Mr. Ciarán Breen: It was roughly around 2013 - sometime around that year.

Deputy Marc MacSharry: On what date was Mr. Seamus Breen appointed?

Mr. Ciarán Breen: I would have to go back and look at the dates.

Deputy Marc MacSharry: It is something the witness may wish to clarify. I have no doubt Mr. Seamus Breen is eminently qualified and doing a fantastic job. The witness stated that Mr. Seamus Breen works for the Attorney General and others and that is fine. While researching for this meeting, it was suggested to me that, from a governance perspective, the *ad hoc* panel, for want of a better expression, expired once a new procured panel was established and, as Mr. Breen pointed out, it was after that date that Mr. Healy silked up and Mr. Seamus Breen was appointed. In other words, Mr. Seamus Breen was appointed after the procured panel that he was not on was established. That has been suggested in the course of my research so that is something the witness might like to clarify. If Mr. Breen is not familiar with the dates today he could drop us a note. It might be good to clarify that in terms of everybody's standing and integrity.

To return to the thread we were on regarding thalidomide, my understanding is that 105 cases were assessed in the 1970s. I assume those numbers are correct. Of these, 34 were accepted under whatever criteria were employed by the 1975 board and the other 66 were not accepted. An issue arises with nine of this group of 66 cases. The term "unacknowledged" has been used to describe them. Is that the term we are using?

Ms Patsy Carr: Yes.

Deputy Marc MacSharry: If the information is not available to us today, I would like it to be made available. What I am interested in is finding out whether the assessment criteria employed in 1975 by the then board are precisely equivalent to those used in Sweden. If they are not, we are not comparing like with like. That would be an issue because, assuming everybody is alive, all 105 cases would possibly need to be reassessed.

Mr. Breen mentioned that no costs were involved in those cases yet and gave an estimated figure of approximately €750,000. Surely the solicitors and barrister would have had to be paid?

Mr. Ciarán Breen: In fact, I said to the Chairman that I wanted to clarify that.

Chairman: Mr. Breen can do so on the record now.

Mr. Ciarán Breen: No payments have been made to the barristers in the case, but when I looked at the figures, they include some payments made to our solicitors who dealt with the ongoing case management applications before the court.

Deputy Marc MacSharry: How much have they been paid so far?

Mr. Ciarán Breen: I do not have that figure.

Deputy Marc MacSharry: Would they in turn pay the barristers? Is that how it works?

Mr. Ciarán Breen: No.

Deputy Marc MacSharry: In that case, the barristers have not received a penny.

Mr. Ciarán Breen: No.

Deputy Marc MacSharry: I will move on to a completely different issue. While I appreciate-----

Chairman: Before Deputy MacSharry moves on, what information does he want regarding the tests? Will Ms Carr reply now or will she send a written reply?

Ms Patsy Carr: I will answer it in part if that is all right. My understanding is that Deputy MacSharry is correct that there were 105 applicants. To correct what I said, I said six people went to Sweden in 2008 but it was actually five. I understand that the injuries of one person were deemed to be attributable to thalidomide. My understanding is that the number of persons who met the criteria back in 1973 was 33. Two individuals died and, more recently, one person passed the assessment process.

I am afraid I do not know the detail of the criteria that were used back in 1973 by the thalidomide board. My understanding is that the system in Sweden is open to people worldwide. Anybody at any stage can present to it and if he or she meets the assessment criteria, he or she is accepted by the Contergan Foundation in Germany and gets payments from it. We recognise anybody who is recognised through that system and we will ensure that payments follow from the State, which has at all times sought to support survivors of thalidomide and to provide for their health needs.

Chairman: Is Ms Carr saying that of those whose cases were not accepted by the thalido-

mide board in Ireland, five went to Sweden and only one was accepted?

Ms Patsy Carr: Yes.

Chairman: Does that answer Deputy MacSharry's questions?

Deputy Marc MacSharry: No. I would like more detail. People of a certain age have a full driver's licence which allows them to drive an articulated truck, but these days we all do a test. This means that people of 80 years of age were grandfathered in, whereas I have to jump through the hoops. I wonder what the position was in 1973 and what it is today. Were they equally robust? If not, given that we are not talking about a large number of people, perhaps the same assessment criteria should be applied to each. It is not a huge amount of money and clearly this is causing a huge amount of distress. To my knowledge we are only talking about nine people.

Ms Patsy Carr: I will get the terms of reference and criteria that were used by the thalidomide board.

Chairman: Could Ms Carr also get what is used in Sweden as well?

Ms Patsy Carr: That is internationally recognised.

Deputy Marc MacSharry: I have no doubt that is the standard today but there are 34 beneficiaries of whatever we are giving and I am guessing that the criteria were different back then. It may have been refined. There is the 1973 version and today's version includes whatever advances have been made since. It is a small number of people and from speaking to some of the them, it is clearly causing significant distress. I think we are only talking about nine people. That is the reason I want to get a full picture.

I am not finished yet, as I will go on to something else.

Chairman: Ms Carr will send on to the committee the terms of reference and the criteria that were used. Could she have a medical person look at it in order to highlight the differences rather than have us wade through two sets of terms of reference?

Ms Patsy Carr: Yes.

Deputy Marc MacSharry: I know how the replies to parliamentary questions are sometimes phrased. I have no doubt the test in Sweden is the gold standard and that it is the test that should be used but what about the other 33 lucky winners back in 1973?

Ms Patsy Carr: As I said, it is open to anybody to go to Sweden.

Deputy Marc MacSharry: I appreciate that it is open to everyone but I doubt the 33 who are already in receipt of it will go over to do the test again. If nine people were excluded then----

Chairman: Only five of the 63 who did not pass the Irish test went to Sweden.

Deputy Marc MacSharry: Six went to Sweden but there are nine in total.

Chairman: Will Ms Carr get the information and send it to us?

Ms Patsy Carr: Yes, absolutely.

Deputy Marc MacSharry: How many cases related to Pandemrix is the State Claims Agency dealing with?

Mr. Ciarán Breen: In total we have 80.

Deputy Marc MacSharry: There is no such thing as class actions in this country so is it the case that they are all individual cases?

Mr. Ciarán Breen: Yes, they are all individual cases.

Deputy Marc MacSharry: Is the same legal team on the side of the plaintiffs?

Mr. Ciarán Breen: One legal team has most of the cases and a couple of other firms are involved.

Deputy Marc MacSharry: How much has it cost the State so far?

Mr. Ciarán Breen: I do not have those figures to hand because I did not know Pandemrix was being examined today. We have settled only one case, which is not in respect of Pandemrix or narcolepsy. It was a case involving Celvapan, which was the other H1N1 vaccine.

Deputy Marc MacSharry: The one I am interested in asking about is Pandemrix and narcolepsy. I want to put a couple of things on record to give context. On 19 May 2009, Dr. Brendan Corcoran, on behalf of the State, signed a contract for the provision of Pandemrix. In October or November 2009, the State distributed leaflets to patients and a different one to health professionals which claimed that Pandemrix was as safe as the ordinary flu vaccine and that it was clinically tested. From my research, that statement appears to have been false and has been accepted as false since. In 2012, Dr. Darina O'Flanagan, the then director of the Health Protection Surveillance Centre, at the request of the Government, produced a report which found that there was a thirteenfold higher risk of narcolepsy in vaccinated children compared with unvaccinated children, in particular between the ages of five and 19. The then Minister for Health and now Senator James Reilly stated: "This report is a start in understanding the association between the vaccine and narcolepsy. However, our main focus is on the people affected and their families." Last year, the Minister for Health, Deputy Harris, alluded to the fact that his officials were looking at a compensation scheme for side effects from important vaccines. The origin of that statement is the steering group on vaccines which goes back to 2001. The health committee recommended certain things, and the vaccine damage steering group was set up in 2007 and reported in 2009. Then, as I said, the Minister, Deputy Harris, was saying in 2017 that he was looking at a compensation scheme. Again, anecdotal evidence would suggest, and I will ask both the Department of Health and perhaps Mr. Breen to answer this, that in some of these 80 cases there has been a delay in discovery of up to two years and that State money in defending that discovery has run to more than €2 million. Does Mr. Breen concur with that?

Mr. Ciarán Breen: Again, I am very limited as to what I can say about these cases because they are before a judge of the High Court for case management who is managing the discovery-----

Deputy Marc MacSharry: Funnily enough, I note that that order for discovery was given in November 2016 and was most recently missed this week. Is it the Department of Health or the State Claims Agency or who is in charge of the management of our reply as a State, bearing in mind everything I have just put on the record concerning the State's position? I will read out again what the then Minister, now Senator Reilly, said at the time: "Our main focus is on the

people affected and their families." It would seem to me that that is not really our main focus.

Mr. Ciarán Breen: I will give our response to the Deputy's comments. We are dealing with group litigation in the sense that the allegation is that there are a group of people who are similarly affected by the administration of a vaccine. We have to deal with them entirely within the terms of the litigation, according to which the plaintiffs have to prove their case. As part of proving their case, one of the things they are entitled to do is to seek discovery, which they have done against the HSE and against the Department. It was a massive discovery. The HSE discovery has been completed and was handed over some time ago. The Department discovery proved particularly problematic. There was a problem with the system at one stage in terms of the collection of some of the data but we have been working through that. I think roughly 12 to 13 documentary counsel have been working on the case, and there is an IT platform, such is the size of the documentation-----

Deputy Marc MacSharry: Would I be right in saying the cost of the defence of discovery, in other words, our side of that, would be about €2.1 million?

Mr. Ciarán Breen: It is certainly very costly. I do not know the precise figure but yes, it is a large figure.

Deputy Marc MacSharry: It would not be less than that anyway. Mr. Breen could send us the figure, could he not?

Mr. Ciarán Breen: Which figure? For discovery? It is not-----

Deputy Marc MacSharry: So far.

Mr. Ciarán Breen: -----complete yet.

Deputy Marc MacSharry: I know that, but Mr. Breen could tell us what has been spent so far, could he not?

Mr. Ciarán Breen: Yes.

Deputy Marc MacSharry: If the Ministers' and the State's position, true to their word, is backed up by Dr. O'Flanagan in terms of the 13-fold higher risk, it would seem to me, without having any medical or legal knowledge, that the common-sense approach would be for us to mediate these 80 cases. Then, fine, there might be somebody who is being too greedy based on his or her illness or whatever and is looking for an amount that the State Claims Agency feels is unreasonable and that case could be let proceed. It occurs to me, however, that instead of dishing out money on discovery for something for which we are probably going to end up writing a cheque one way or another, why would we not try mediation before we spend a fortune on a complex list of discovery?

Mr. Ciarán Breen: The plaintiffs' lawyers sought the discovery and, once they did so-----

Deputy Marc MacSharry: There is nothing to stop the State Claims Agency, though. I know how this works. Unfortunately, I have been through the courts on commercial and domestic matters and so on so I know what can happen. Is it the Chief State Solicitor or are we using a firm?

Mr. Ciarán Breen: We are using a firm.

Deputy Marc MacSharry: What is the firm in this case?

Mr. Ciarán Breen: Hayes solicitors.

Deputy Marc MacSharry: Hayes again. Hayes lifts the phone to Marc MacSharry solicitors or whoever it is on the other side and asks, "Can we do business, can we mediate, can we talk, can we save the State €2 million and your clients money for their distress?"

Mr. Ciarán Breen: The Deputy is assuming in such a circumstance that there is a liability on the part of the State.

Deputy Marc MacSharry: Equally, I put it to Mr. Breen that he is assuming that there is not. Surely if we mediated this and had a chat about it, we would know pretty quickly whether they are going to proceed to court and proceedings and trial-----

Mr. Ciarán Breen: It is not as simple as that, though, because it is up to the plaintiffs to prove the case and there is a significant causation issue in these cases.

Deputy Marc MacSharry: This is the issue. It is up to the plaintiffs to prove the case.

Mr. Ciarán Breen: Yes, because they are in litigation.

Deputy Marc MacSharry: What was the Minister talking about, then, when he said the following?

> This report is a start in understanding the association [the established association, as found by Dr. Darina O'Flanagan, the then director of the Health Protection Surveillance Agency, now retired] between the vaccine and narcolepsy. However, our main focus is on the people affected and their families.

What he should have added, Mr. Breen is telling me, is "provided they can prove their case".

Mr. Ciarán Breen: No, I am not saying that because I know for a fact, and the Deputy is probably aware of this, that the HSE advocacy service has engaged with the families and with SOUND and is regularly providing supports to affected children and their families, for example, the cost of university accommodation and various other associated issues. The Minister is absolutely-----

Deputy Marc MacSharry: Of the 80 people who Mr. Breen says are taking cases, then, available to each of the families concerned are various financial supports by way of the cost of a flat if they are in NUI Galway or-----

Mr. Ciarán Breen: I am familiar with one of the cases at least in which accommodation costs have been paid, for example, on an ex gratia basis. Other supports are being provided, by the way, not just confined to university accommodation.

Deputy Marc MacSharry: Like what? Will Mr. Breen give me a list?

Mr. Ciarán Breen: I do not have a full listing here, but the HSE advocacy unit would have such a listing as to what supports it has provided and the costs of those supports.

Deputy Marc MacSharry: What if there is a link between narcolepsy and the vaccine, as Dr. Darina O'Flanagan, not I, says? It seems to accord with Swedish and Finnish reports because that is where the same vaccine was used. We know it was not clinically tested and that

it was not the same as the regular flu vaccine, even though it was stated otherwise in a leaflet. The State also indemnified the company so it had no comeback, and the State Claims Agency indemnified all the GPs and the other people administering the vaccine. We knew there was a huge risk and that there was not adequate risk analysis. The Minister of the day was rightly focused on the families. The director of the Health Protection Surveillance Centre did a professional report, which found there was a 13-fold increase in risk. What we are doing, however, is telling the 80 or 100 families or however many it is, because I do not know because some probably have not taken cases, might not have the means to go to a solicitor or might not have thought to do so yet, that they should get into the queue and that we are interested in saving the State money and not in providing care to them.

Mr. Ciarán Breen: I can only say to the Deputy that, from a legal point of view, in the examination of these cases there is clearly a temporal link between the administration of the vaccine and the development of the health issues.

Deputy Marc MacSharry: What does "temporal link" mean?

Mr. Ciarán Breen: I mean that the vaccine was administered at a particular time and the person went on to develop the condition at a later time, which seems to have an-----

Deputy Marc MacSharry: No, I think Dr. Darina O'Flanagan went a bit further than that.

Mr. Ciarán Breen: As part of the management of these cases, I went to a conference held in Brussels last year by all the world experts, who created a couple of workshops on the day and who were considering whether there is an established pharmaco-vigilance type causal link between the administration of the vaccine and the development of the condition. At that conference nobody could prove what that causal link, if any, was. They said it was very complex and not amenable to an answer. That is factually my position on liability and causation in these cases. I think-----

Deputy Marc MacSharry: What was the title of that conference?

Mr. Ciarán Breen: I can give the Deputy the name of it another time. I cannot remember it just off-----

Deputy Marc MacSharry: Who organised it?

Mr. Ciarán Breen: It was organised by-----

Deputy Marc MacSharry: GSK? Hopefully not.

Mr. Ciarán Breen: No, it was not. It was organised by the experts themselves and was under-----

Deputy Marc MacSharry: Are we looking for experts to give us an out or are we looking to do what the then Minister said, that is, focus on the people affected and their families?

Mr. Ciarán Breen: I go back to-----

Deputy Marc MacSharry: If our angle here is that Hayes has told us we can win this case, is that our focus or is it to look after the families?

Mr. Ciarán Breen: As I said this morning, my remit is to ensure that in any case or group of cases where I have carried out all that would be required of me to do-----

Deputy Marc MacSharry: I am not doubting that. If Mr. Breen is my solicitor, I expect him to win for me-----

Mr. Ciarán Breen: Yes.

Deputy Marc MacSharry: -----but we are the State and we are also interested in our citizens. Perhaps the definition of Mr. Breen's remit does not sufficiently have to embrace the kind of compassion that we, as public representatives, have to embrace.

Mr. Ciarán Breen: It is not that we are without compassion. There are children, some of whom have now gone into adulthood, who have been affected here and everybody, including me, recognises that they have had difficult, diminished lives.

Deputy Marc MacSharry: What is the problem with the likes of Hayes ringing the solicitors on the other side to suggest a sit-down and an exchange of views to identify a pathway that keeps everybody happy? My main concern is reducing the effects on the children, who are clearly suffering, but why are we throwing good money after bad? I refer to the €2 million on discovery-----

Mr. Ciarán Breen: I keep coming back to this point-----

Deputy Marc MacSharry: -----or on obstructing discovery, if one had a particular point of view?

Mr. Ciarán Breen: We are certainly not obstructing discovery.

Deputy Marc MacSharry: I am not saying Mr. Breen is doing that. He is only as good as the people feeding him the information in the Department of Health, the HSE or wherever.

Mr. Ciarán Breen: Yes, and there is no suggestion they are obstructing. It is a huge discovery. I come back to the point that this committee would require of me that I exercise all the ordinary inquiries I should make in any individual case. I have to treat this group of unfortunate plaintiffs because of an unfortunate narcolepsy condition the same as I would any person making a claim, which is that I have to be sure, before the State pays out, that the State is liable and that the causation requirements are fulfilled. The kind of conversation the Deputy is saying we should have, or that our solicitors on our instructions should have-----

Deputy Marc MacSharry: They do it every day with the simple phrase "without prejudice". When the agency settles cases, it is often without admission of liability in any event. What is the problem in doing what the Minister said at the time, namely, put the children and the families first?

Mr. Ciarán Breen: I am making the point to the Deputy that when we make that kind of call, we do it when we have all the information required to make that kind of assessment to make the call.

Deputy Marc MacSharry: How much do we need?

Mr. Ciarán Breen: I can tell the Deputy-----

Deputy Marc MacSharry: We accepted the fact that there was so much risk at the beginning, we indemnified the country. We accepted the fact that there was so much risk, we indemnified the GPs, the nurses or whoever was administering it. We got one of our top medical sur-

veillance people to do a report who found what we thought might be found, namely, a 13-fold higher risk in those vaccinated. Why are we still pursuing it? It is because we are looking for an angle to get out the gap.

Mr. Ciarán Breen: No.

Deputy Marc MacSharry: These children will be adults, but they will have missed their education by the time there is any recourse for them. Whoever is on the Committee of Public Accounts in 30 years will be saying, like the case of those affected by thalidomide, that it went through the process, they found a gap, they got out and those 80 children missed out on their lives. All I am asking is that we be a little more proactive and push the bounds of what is legal practice in the interests of the State.

Mr. Ciarán Breen: I have to abide by-----

Deputy Marc MacSharry: There are Department of Health people present, and while I appreciate that they might not be directly involved in this case, I hope they could take it back because we are not talking about somebody who ran their car into the back of another who is looking for €2,000 or €3,000. It is about whether somebody will have the mental age of a 15 year old when they reach 25 because they had narcolepsy, the supports were not in place for them, and nobody linked that to the reason they got it, which was a vaccine that GSK was advising, from November 2010, under European regulations, had severe adverse effects.

Mr. Ciarán Breen: The Deputy says there is a causal link but my duty-----

Deputy Marc MacSharry: I am sorry. I am quoting the then director of the health protection surveillance centre, Dr. Darina O'Flanagan, who stated there was a 13-fold higher risk of narcolepsy in the vaccinated compared with the unvaccinated. We all know pharmaceutical companies around the world have a great deal of money. I have a British Medical Journal article in front of me on the futility of pharma vigilance if it is not acted upon. The information was coming in. GSK would not provide the product without the agency indemnifying it because it did not know. When we got it in November 2009, or whenever it was, and started to vaccinate, information was coming from GSK to this State within two months telling us it was noting side effects. That was up to 2012. That is not Marc MacSharry or somebody who has an axe to grind to facilitate the payment of State funds to 80 families who is saying that. Dr. Darina O'Flanagan said there was a 13-fold higher risk of narcolepsy in vaccinated compared with unvaccinated.

If we are looking for an angle legally just to get out the gap, I would say we would find it, but if the then Minister, former Deputy and now Senator Reilly, meant what he said back in the day, we should focus on the people affected and their families. The agency does a great job in ensuring the minimum possible payout or whatever in the interests of the State, and I accept the State cannot be seen as a soft touch, but we are not talking about fraudulent whiplash claims here. We are talking about real people with real issues about whom we are superficially saying that we care about the families and we are compassionate. The reality is that we do not because we are tying them up in the discovery process. Did the discovery process take as long for the cervical cancer cases? Absolutely not. Nobody is hanging around two years for that issue to be resolved because it was all over the newspapers and television programmes. This issue was not.

Chairman: Does Mr. Breen have a timescale by which the discovery process will be completed to allow him come to a conclusion?

Mr. Ciarán Breen: Discovery is expected to be completed by the end of the year.

Chairman: Following that, somebody has to assess the discovery and come to a conclusion on how the agency will deal with the case. How long will it take, approximately, before Mr. Breen knows where he will go with the case?

Mr. Ciarán Breen: In terms of what happens, we give all the relevant documents to the plaintiff's solicitor. He and, presumably, his barristers then evaluate what has been given to them. Obviously, they will be trying to establish whether this will make or augment their case or whatever. Meanwhile, we are gathering our expert evidence, as I have to do, and, ultimately, it will play out within the litigation.

Chairman: When Mr. Breen has completed discovery for the layperson, he will send that to the other side and will engage his own experts then to examine what he has discovered to advise him on whether there is a causal effect, etc.

Mr. Ciarán Breen: Exactly.

Chairman: When does Mr. Breen believe we will be at the end of that process, after discovery and after his experts have given him firm advice on it?

Mr. Ciarán Breen: I estimate that within, say, the first quarter of next year we will have a very clear view of our case.

Chairman: However, Mr. Breen is saying that he cannot do that today.

Mr. Ciarán Breen: No, I cannot. Discovery-----

Chairman: I understand what Deputy MacSharry was saying, but Mr. Breen is saying we have a bit to go yet.

Mr. Ciarán Breen: Discovery is going on. We are obliged to fulfil discovery, and that is what we are doing.

Deputy Marc MacSharry: Why did discovery not take as long in the cervical cancer cases?

Mr. Ciarán Breen: To give the Deputy an idea of the scale of this, the documents in the cervical cancer case are very limited. In the case we are talking about, millions of documents required examination.

Deputy Marc MacSharry: I put the details on the record at the beginning. We issued patient information leaflets and told people that this vaccine was as safe as the flu vaccine and that it was clinically tested, but it was not. As Mr. Breen said, it might not be as simple as I am putting it, but equally, it is not as grave as he is putting it back to me in response. We are talking about a finite number of children who will be adults, at the pace we are going, before they will see any recourse, regardless of whether they win in court. If the State Claims Agency was a little more proactive, it would save money on legal costs and potentially reduce the cost to the State over-----

Chairman: Mr. Breen might inform this committee, as a matter of courtesy, when he has completed the discovery and passed that milestone. Is he allowed do that?

Mr. Ciarán Breen: The difficulty about that is that-----

Chairman: It is before the courts.

Mr. Ciarán Breen: -----effectively, the committee would be managing my management of the cases. The Chairman will appreciate that that would be very difficult for me to do.

Chairman: Right.

Deputy Marc MacSharry: Our interest is money. I am only applying common sense. I see the potential for liability. Mr. Breen says it is timelines only and that it is not medical. Our own medical physician says there was a 13-fold increase in cases. Mr. Breen went to a conference and he reckons he got good enough angles to mount a defence to state there is no proven link and, therefore, the agency is not obliged to pay anything. The reality on the ground, however, is that people are sick. I do not need to wrap up Mr. Breen in too much science in respect of a 13-fold increase in terms of vaccinated versus unvaccinated. I just apply basic common sense-----

Mr. Ciarán Breen: Could I qualify what the Deputy said? He said that I said something that I did not quite say.

Deputy Marc MacSharry: I am sorry, what did Mr. Breen say?

Mr. Ciarán Breen: I said I went to a conference and all the experts in the world were at that conference, looking at this causation link.

Deputy Marc MacSharry: Yes.

Mr. Ciarán Breen: I simply said that, between them, they could not establish what the precise causation link is, that it bedevilled the causation argument. We know there is a genetic marker associated with it, so that if one had a particular genetic marker, it might trigger a quiescent narcolepsy condition. How that happened and what triggered it is a matter that is beyond the experts at this stage. In the management of any claim or class of claim, I am obliged, before I commit the State to payment, and by the way, the payments in these cases in terms of overall value will possibly be large, to go through the rigours of establishing if there is a liability or a causative link. Let us say, for example, that I came to the view that there was a causative link, in the ordinary course of events-----

Deputy Marc MacSharry: Is that Mr. Breen's decision to make alone, based on the evidence?

Mr. Ciarán Breen: It would be my decision, together with the legal team and our experts. It is an informed decision, in other words.

Deputy Marc MacSharry: Am I right in saying Mr. Breen is retiring in the not too distant future?

Mr. Ciarán Breen: I do not want to answer that question. That is a very personal question to ask me.

Deputy Marc MacSharry: I did not mean to be in any way personal and Mr. Breen is entitled to work as long as he wants and retire when he wishes. I am interested in the context of what we are talking about, the continuity of somebody else upskilling if discovery is not done until next June or sometime.

Mr. Ciarán Breen: I can assure the Deputy that, if I am not involved in these cases at any time in the future, there are a number of very well-informed colleagues who can deal with this.

Deputy Marc MacSharry: I asked earlier was there ever toing and froing, as a client would have. Would the Department of Health speak to Mr. Breen about a case and suggest what should be done? Would it be in the competency of the Department of Health, or the Minister, to make contact and recommend being more proactive on a case, or to look at mediation, or look at a conversation? Is that within the competency of the Department of Health, or the Secretary General of the Department, or the chief medical officer, CMO, or the director general of the HSE, or the Minister? Is it within their competency to contact Mr. Breen and ask him to run a case differently?

Mr. Ciarán Breen: The State Claims Agency very rarely gets any kind of interference by-----

Deputy Marc MacSharry: I would not call it interference.

Mr. Ciarán Breen: -----a Department or a Minister telling us to do something that they believe might be the agency not acting properly. If I am audited in relation to that group of cases, by the Officer of the Comptroller and Auditor General or by our internal auditors or whoever, they will expect me to have followed a standard and process and that is what I am doing. I am following what are acknowledged classic claims and litigations standards and procedures. I am also in contact with the Department and I keep it informed, but what the Department does not do is interfere with my decision-making.

Deputy Marc MacSharry: I appreciate that is the practice. I am asking if there is a competency to do that if the Minister wished.

Mr. Ciarán Breen: When the Deputy says a competency-----

Deputy Marc MacSharry: Authority.

Mr. Ciarán Breen: To direct me to do something?

Deputy Marc MacSharry: Yes.

Mr. Ciarán Breen: I can only receive a direction on a claim from the Attorney General.

Deputy Marc MacSharry: From the Attorney General?

Mr. Ciarán Breen: Yes.

Deputy Marc MacSharry: Okay, so the Attorney General could tell Mr. Breen he or she wants to horse-trade with these people.

Mr. Ciarán Breen: We have never-----

Deputy Marc MacSharry: While I appreciate it has never happened, and it is not the practice, the authority does exist in the Office of the Attorney General.

Mr. Ciarán Breen: When I say the Attorney General can give us a direction, it is not a direction in that form that the Deputy anticipates. It can relate to a group of cases or a particular case to do something or not to do something, but it would be in line with best legal policy, and we are following best legal policy.

Deputy Marc MacSharry: While I appreciate it has never happened, but let us say hypothetically the Attorney General and the Government were so inclined, presumably on the back of discussions, to contact the State Claims Agency and say they would like to withdraw their defence, is that possible? I appreciate it is not the practice and that, if it were, it would be very bad practice, but it is possible, is it not?

Mr. Ciarán Breen: I do not know how it would be possible in the particular cases.

Deputy Marc MacSharry: What law prohibits it, as a matter of interest?

Mr. Ciarán Breen: Prohibits?

Deputy Marc MacSharry: What I just suggested.

Mr. Ciarán Breen: The fact that, for example, we have not even completed our expert reports and so on and so forth.

Deputy Marc MacSharry: There is no law that prohibits what I just suggested, sure there is not? It just has never happened.

Mr. Ciarán Breen: Does the Deputy mean as a law?

Deputy Marc MacSharry: What I am saying is, if, on discussion with the Government, the Attorney General decided to make direct contact with the agency and say he would like to withdraw his defence to those cases and enter negotiations for mediation, that would be possible, would it not? Albeit that Mr. Breen may advise against it, that it is not best practice and that it has never been done before, it would be possible, would it not?

Mr. Ciarán Breen: I do not know, to be honest, because this has never arisen.

Deputy Marc MacSharry: Does Mr. Breen know any reason it could not happen? I appreciate it is not best practice and has never happened before.

Mr. Ciarán Breen: I cannot imagine that the Attorney General or his office would ever give us a direction to do something that would quite clearly mean we treat a plaintiff or a group of plaintiffs differently than we would any other plaintiff or group of plaintiffs in civil actions. That would be an unequal treatment of one class as opposed to all other classes of plaintiffs or individual plaintiffs.

Deputy Marc MacSharry: Returning to CervicalCheck, has the agency changed its approach from before the crisis broke to the one it is employing today?

Mr. Ciarán Breen: We have never changed our approach from this point. Sorry. When we had the first case, the issue against the State was an issue of non-disclosure only. We have continued to deal with all of the cases-----

Deputy Marc MacSharry: Everything exactly the same?

Mr. Ciarán Breen: Well, except-----

Deputy Marc MacSharry: I do not want to go back into CervicalCheck. I just want to say Mr. Breen is saying that-----

Mr. Ciarán Breen: Except this, that we tried to get into mediation.

Deputy Marc MacSharry: All right.

Mr. Ciarán Breen: Yes.

Deputy Marc MacSharry: We could do the same, could we not?

Mr. Ciarán Breen: In this class of cases, ultimately, yes, that is a possibility.

Deputy Marc MacSharry: "Ultimately" is an awfully long time when we are looking at discovery of this length.

Mr. Ciarán Breen: No, it is not. As I have outlined to the Deputy, it was a difficult and very expansive discovery. It will come to an end and the agency will pass over the papers. In the meanwhile, we, the State, through our agency, gathers together all of the information that we require on liability and causation. We have senior counsel advising us.

Deputy Marc MacSharry: Is it six years since there was a statement of claim?

Mr. Ciarán Breen: In these cases?

Deputy Marc MacSharry: Yes.

Mr. Ciarán Breen: I do not know the exact period. I would say most of them were probably two years later, so I think it was 2010 when we saw the first claims come in and then others came in over a period up to 2012.

Deputy Marc MacSharry: So it is eight years for some of the claims?

Mr. Ciarán Breen: By the way, for a long time-----

Deputy Marc MacSharry: Nearly nine.

Mr. Ciarán Breen: -----there was just a protective writ and nothing more.

Deputy Marc MacSharry: I appreciate the difficulties of Mr. Breen's position but certain cases demand a more compassionate approach and, while I appreciate that is not his decision, I appeal to the higher beings in the Office of the Attorney General and the Government, perhaps in the interests of the affected children and the fact that, as they are growing and developing, they are entitled to the same opportunities which lengthy discovery and other processes do not permit, notwithstanding it being best practice from where Mr. Breen sits.

Mr. Ciarán Breen: I assure the Deputy that we do exercise compassion in our dealings with plaintiffs but we have to balance against that what is required of us.

Deputy Marc MacSharry: I appreciate that there is established practice and normal procedures, but sometimes procedures ought to and should be adjusted. I suppose that is why people like those in the Office of the Attorney General and the Government have authority. I would hope they would exercise it in cases like this.

Chairman: Mr. Breen mentioned earlier that if he had information about an independent review of a case he is dealing with, he would use the work that was obtained as part of an independent review and that perhaps would prevent him from having to second-guess or redo it. How many of those cases have happened? We have asked who did the independent reviews. I know the Minister for Health can request independent reviews by HIQA or whoever, but they

are quite rare. What category of an independent review was Mr. Breen talking about when he said that?

Mr. Ciarán Breen: Deputy Connolly mentioned that, after Savita Halappanavar died, there was an inquiry.

Chairman: By the Minister?

Mr. Ciarán Breen: Yes.

Chairman: And in the case of Portlaoise, the Minister had the report-----

Mr. Ciarán Breen: Yes, but I want to go on to say that there were other ones where the HSE had such an inquiry carried out. For example, a committee of three clinicians might be appointed to look into what happened but they tend to be more egregious cases.

Chairman: They would be non-statutory. In the cases of Savita Halappanavar and Portlaoise, the Minister set up the inquiries under a specific section of legislation. They had a statutory basis. I am not diminishing it, but Mr. Breen is talking about an in-house thing. Would there be many of them?

Mr. Ciarán Breen: I do not know the exact number.

Chairman: What is the ballpark figure? Is it ten or 100?

Mr. Ciarán Breen: I have certainly seen about two dozen or more of those in individual cases.

Chairman: Would you know why the HSE would involve the agency? It sounds like a good thing that somebody would, but why would the HSE be going there?

Mr. Damien McCallion: It would be part of the HSE's serious incident management policy in terms of a review. There would be a process around that in terms of initiating an investigation.

Chairman: Mr. McCallion would be aware there would be cases with the State Claims Agency at the same time?

Mr. Damien McCallion: Potentially, but it is back to the point about learning and the point of the review is always to look for learning. Anyone is entitled to take their legal case, but we would still be obliged to ensure we take the learning from whatever the incident is that has happened.

Chairman: That is fine. The HSE is not doing it solely because there was a case-----

Mr. Damien McCallion: No, purely in terms of the learning.

Chairman: Inevitably it would always be-----

Mr. Damien McCallion: Not always. In some cases it will and in some cases, in my former roles, a family would seek a review or an investigation of an incident and may or may not decide-----

Chairman: I was just trying to establish whether it is a handful of cases or if there are hundreds. Mr. McCallion said a couple of dozen.

Mr. Ciarán Breen: They are not into the hundreds.

Chairman: A couple of dozen?

Mr. Ciarán Breen: Yes.

Chairman: Small numbers but they are significant.

Mr. Ciarán Breen: Yes, and they are quite independent of us. They take place and we are normally given a copy of the report at the same time the family is given a copy of the report, for example.

Chairman: That is fine. If there has been a public settlement, Mr. McCallion should have no problem answering this. What has been the largest case in terms of monetary settlement to date?

Mr. Ciarán Breen: It was in or around €19 million.

Chairman: Was that announced in court? Is that public?

Mr. Ciarán Breen: It is on the public record.

Chairman: What was it?

Mr. Ciarán Breen: It was a cerebral palsy case, a brain injury involving a long life expectancy where the person would need a level of care that was at the highest level.

Chairman: I have a different question, and maybe Mr. Breen cannot answer it. In a case of a person like that, would he or she in some cases end up a ward of the court?

Mr. Ciarán Breen: Almost always, where there is a brain injury and it is an infant, they would be made a ward of court.

Chairman: We are not going to open that box this evening. I recently encountered a case where the family was arguing. There was a case ongoing, it was before the court and it was obviously a serious case. Even their own legal adviser said there was an application for ward of court. The family members, who were the people closest to the individual, were not happy, but the HSE and the legal team were saying it should be made a ward of court. That ultimately happened. That is fine. Let us say that €19 million is handed over to the ward of court fund to manage for that person.

Mr. Ciarán Breen: It is paid straight into the accountant of the courts of justice and it goes into a fund for management.

Chairman: Mr. Breen and I do not need to go there, but we have had many discussions at this committee about management of funds of a ward of court and the Committee on Justice and Equality has done a separate report on that. Are most of the agency's big cases ultimately being paid into the accountant of the ward of court fund, or whatever you call it?

Mr. Ciarán Breen: Yes.

Chairman: Will Mr. Breen give us information on that? The agency knows to whom it pays this money and, if it is paying it into the court, will Mr. Breen send the committee some notes as to the value of cases? There is going to be a Dáil debate on this issue on the sums being man-

aged by the ward of court and it would be interesting to know from the State Claims Agency in how many cases there have been payments into the ward of court fund and the volume of money for each of the past few years. I presume Mr. Breen can obtain that, and Mr. McCarthy might come in on that in a minute.

The committee spoke about the issue of wards of court before Mr. Breen came in and there is going to be a Dáil debate on the management of that fund. It is legislation and some people might feel it is a policy issue and maybe such a fund might be better managed by the NTMA or through the agency. There is a financial expertise in your full organisation. The wards of court are judges who appoint professional advisers to advise them on investment policy, and if there is a lot of money going from the State over to that fund, I am querying, as Chairman of the Committee of Public Accounts, whether it would not make more sense to have the best experts we have managing these funds, instead of the court. I accept it involves changes in legislation and the independence of the court, but maybe they do not need to be doing this job anymore. It is a financial management job and it is a bigger issue that none of us can answer. Given that there is going to be a Dáil debate on this issue in the near future, will Mr. Breen send on the information I am looking for?

Mr. Ciarán Breen: For three years, is it?

Chairman: I will ask Mr. McCarthy.

Mr. Seamus McCarthy: It strikes me that if Mr. Breen was able to get the quantum that is paid to the courts in respect of wards for each of the past three years-----

Chairman: And the number of cases.

Mr. Seamus McCarthy: -----and maybe the number of cases, while that might be more difficult, that would be quick enough, I would say.

Mr. Ciarán Breen: We will definitely look at it. The payments are normally made to the accountant of the courts of justice so therefore we should be able to look at those on a transactional basis and be able to tell the committee. We will give the committee the gross amount for each year and the number of cases in each year.

Chairman: Mr. Breen does not need to say one case was €19 million and another was €7 million.

Mr. Ciarán Breen: Sure. The cumulative.

Chairman: Give us the total amount and the number of cases. People can take an average if they like. It is opportune that this came up at the end. Before you came in, the committee said it is aware that there is going to be a Dáil debate on this exact topic, the wards of court management and fund. We were informally of the view that maybe you might be better equipped to deal with the ongoing management of funds.

Mr. Ciarán Breen: We will certainly look at those figures.

Chairman: That is a policy issue for the Government. It is not going to happen today or tomorrow, but that information would be a useful contribution to the state of knowledge when Members participate in the debate in the Chamber when that comes up shortly.

I thank the witnesses for that. The day did go a bit longer than I expected. We slow down

a little bit as the day goes on. We are completed and I thank the people from the HSE, the Department of Health, the State Claims Agency and the Comptroller and Auditor General for their attendance today.

To the people who are here regarding CervicalCheck, I think we had it pencilled in, and we mentioned earlier in relation to the hepatitis C report in the Comptroller and Auditor General's annual report that is due for discussion on Thursday, 22 November that we might have an update on CervicalCheck. I think we have gone as far as we can go on that issue today. That is my view, but I will have to get the committee to accept that at our next meeting. There is no one here to agree it, but I am of the view that the ground has been covered today and it would be pointless to ask the witnesses to come back on the same topic in two weeks. we will put that to the committee next week.

The meeting is adjourned until Thursday, 15 November when we will be meeting the Office of the Revenue Commissioners on following matters: from the Comptroller and Auditor General's report - chapter 17, Revenue's progress in tackling tobacco smuggling; and chapter 18, the management of high wealth individuals' tax liability; and the Vote for the Revenue Commissioners.

The witnesses withdrew.

The committee adjourned at 4.58 p.m. until 9 a.m. on Thursday, 15 November 2018.