

DÁIL ÉIREANN

AN COISTE UM CHUNTAIS PHOIBLÍ

COMMITTEE OF PUBLIC ACCOUNTS

Déardaoin, 7 Feabhra 2019

Thursday, 7 February 2019

The Committee met at 9 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 Kate O'Connell.

DEPUTY SEAN FLEMING IN THE CHAIR.

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

Business of Committee

Chairman: We have a quorum. We are joined today by the Comptroller and Auditor General, Mr. Seamus McCarthy, as a permanent witness to the committee. He is joined by Ms Maureen Mulligan, deputy director of audit. Apologies have been received from Deputies Deering and Farrell. The first item on the agenda is the minutes of the meeting of 31 January, which was our last meeting. Are those minutes agreed? Agreed.

The next item is matters arising from the minutes. I have one serious item to raise, which we will be coming back to discuss. It relates to the National Paediatric Hospital Development Board. We had an item of correspondence here the last day, reference number 1897. It was signed by Paul Quinn, chief procurement officer, Office of Government Procurement. We had written to him well before our meeting asking for information about the role of the Office of Government Procurement in respect of the national paediatric hospital. He summarises the limited role it is playing, said it was established and that there is a procurement process and a contracts committee, called the Government contracts committee for construction. He states that the hospital board commenced its engagement with this committee in May 2014 and goes on to say that it sought a derogation because of its unique nature. The Office of Government Procurement, of which Paul Quinn is the chief procurement officer, notes that the derogation was given in respect of working through that committee. Nevertheless, the contracting and sanctioning authority were responsible all the while. He addresses the use of the frameworks and of eTenders and provides a summary of the role of the Office of Government Procurement in the procurement arrangements for the national paediatric hospital. He says his office is at the disposal of the Committee of Public Accounts should we require more detailed information.

What I find totally unsatisfactory with that letter from a very senior Government official is that he makes no reference to the fact that he was a member of the board of directors. He states that the National Paediatric Hospital Development Board commenced its engagement with the Government construction contracts committee in May 2014. His office provides the chair and secretary of that committee. He was appointed as a member of the National Paediatric Hospital Development Board on 2 August 2013 and there is a clear conflict of interest between the two positions, given the derogation, his being a member of the board and his being on both sides of that debate. What I find more disturbing is that he did not inform this committee of this. He should have at least highlighted it. This level of not providing information in response to a letter from the Committee of Public Accounts is totally unsatisfactory. I accept that he had a dual role. We were entitled to be informed of that. This letter is not acceptable from a person of that office. We know there are issues in respect of that matter.

I will take comments on this issue. I propose that we write back to Paul Quinn expressing our grave disappointment that the information we would expect as a matter of courtesy and candour to be made available to the committee should have been omitted.

Deputy Catherine Connolly: Could we go back to the start of the letter?

Chairman: Yes. It is displayed on the screen. We wrote well in advance to the National Development Finance Agency and the Office of Government Procurement to ascertain their roles in respect of the National Paediatric Hospital Development Board. Depending on the

response, we were to decide whether to meet them. We had sought the information well in advance of the meeting and received this reply with no reference to the fact that Mr. Quinn was a member of the board. At a minimum, he should have referred to that. There are other issues on the work programme about the hospital board that we will deal with. I am strictly referring to this letter as a matter arising from last week's minutes.

Deputy David Cullinane: I was going to raise the issue of the national children's hospital anyway, so I think now is the best time for us to deal with it. Specifically in respect of that letter, could the Chairman remind us what roles Mr. Quinn had? He is head of the Office of Government Procurement.

Chairman: Yes.

Deputy David Cullinane: Was he a director of the board?

Chairman: The National Paediatric Hospital Development Board. He was a director since 2 August 2013. The hospital board and the Government contracts committee, of which the Office of Government Procurement provides the chair and secretary, commenced discussions on the matter in May 2014.

Deputy David Cullinane: If I remember correctly from the previous meeting, he was appointed to that board by the Minister.

Chairman: It was a ministerial appointment, yes.

Deputy David Cullinane: The last line of his letter is very helpful because he says that he is at the committee's disposal, which brings me on to my next point. I think we need the Department of Public Expenditure and Reform before us anyway. That is the logical next step for the committee. We need the Secretary General of that Department. Given that Mr. Quinn is head of public procurement and had that dual role, and that there are questions around management of conflict of interest, I think he should come before the Committee of Public Accounts. The Department should also be here if we have a further sitting. There are now questions about the relationship between the Department and the Department of Public Expenditure and Reform, and about lines of communication in terms of process, that this committee should examine. I propose that we write to the Department of Public Expenditure and Reform asking that the Secretary General come before us. Mr. Quinn says he wants to be helpful and he is at our disposal. It would be useful for him to come to that meeting as well.

Chairman: I will make one observation of which I want people to take account for a moment. We need to invite the Secretary General of the Department of Public Expenditure and Reform to discuss the management and control of major capital projects, including the children's hospital. If we write to him specifically on the children's hospital, he is utterly within his rights to say he is not the Accounting Officer in respect of that project. I do not want to write a letter to which we are guaranteed a refusal. It is not good for the committee to be making a request that we know will be refused. If we frame the request as being in respect of major Government contracts, for which he has a responsibility, we may have a better result.

Deputy David Cullinane: I would support that.

Chairman: Otherwise, he would refuse to attend this committee as he is not the Accounting Officer for that project. He has a broader responsibility and I think that is the invitation we have to extend. He should not refuse that invitation.

Deputy Catherine Murphy: When we wrote to him, we did so in a specific context. It was a piece of input that we felt would be necessary to understand the process, to understand controls and where the section he heads up in respect of procurement fits in to making sure proper controls are in place. We did not just pick this out of thin air. It was a piece of information that we required. Is there going to be any issue if he comes here saying he reports to the board? If we are going to have an engagement on this, it has to be on his role and responsibility when he was on the board. Did he report to the Minister? Was he required to report to the Minister? He was not picked out of thin air, either, to sit on that board. There was expertise being placed there. Where was that interaction? We got that reply in response to a request. We made the request so that we could look at this matter and learn how the process worked. He needs to be able to answer on that, rather than saying-----

Chairman: That he had a fiduciary duty as a director.

Deputy Catherine Murphy: Exactly. We need to be clear about that.

Chairman: Yes. There is a liaison officer between the Department of Public Expenditure and Reform and the Department of Health, who often sits here during meetings. There will be two lines of contact.

Deputy Alan Kelly: I will leave to the Chair the methodology by which the Department of Public Expenditure and Reform comes in here. It is necessary for the Secretary General of the Department to come in and I suspect he wants to come in, to one committee or another. The head of procurement, who sat on the board, should also come in. It is only through this that we can get to the bottom of where this was going.

Circular 12/2010 explicitly states the requirements of a civil servant who sits on a State board. If we go by what the Taoiseach said in the Dáil, however, all the circulars on this matter are a waste of time and not worth the paper they are written on. The requirements were also incorporated, verbatim, into the code of conduct for State boards, which was launched in August 2016 by the current Minister. His responsibility is listed in that circular, as is the responsibility of all civil servants on State boards. It states when he or she must go to the Secretary General and when he or she must immediately go to a Minister. There is a process issue here, beyond this whole topic, and that is also an issue for us on the Committee of Public Accounts. Is this circular being adhered to across the Civil Service? It is bigger than the hospital board issue.

Chairman: Correct.

Deputy Alan Kelly: Amazingly, yesterday in the health committee it was confirmed to me that the Minister was made aware of the cost overrun on 9 August. He was in a meeting with the Taoiseach at the time, coincidentally, and the Taoiseach was informed on the same day, as was the Minister for Public Expenditure and Reform, Deputy Donohoe. The steering group minutes show that there were concerns in April, May, June and all the way up. Those steering group minutes-----

Chairman: Have we got them or are they held by the health committee?

Deputy Alan Kelly: I can forward them on. Every member of the health committee has them.

Chairman: I do not think we got them.

Deputy David Cullinane: The minutes of the steering group meetings were given to the health committee and we should request them. We should also request the minutes of all meetings of the actual board.

Chairman: We have done that, in writing.

Deputy Alan Kelly: The board was reporting to the steering group, which reported to the other board, the one which had been set up by Mr. Jim Breslin. The steering group was set up in May and the other board in September. They obviously had concerns back then or they would not have put in these layers of accountability. It was confirmed to me at yesterday's health committee meeting that attempts were made throughout October, and certainly on 17 October, by the Department of Health to sit down with the Department of Public Expenditure and Reform to discuss this. The Department of Health was not able to sit down with the Department of Public Expenditure and Reform. This is the most amazing and unbelievable thing in all of this, which is why we need the Department of Public Expenditure and Reform to come before us. The budget negotiations were ongoing and the rows between the Department of Health and the Department of Public Expenditure and Reform about budget allocations and overspends were on the front page of every newspaper, but on 9 August the Taoiseach, the Minister for Public Expenditure and Reform and the Minister for Health were all aware of it. The Department of Health was trying to sit down with the Department of Public Expenditure and Reform to discuss it but it never happened.

There are multiple issues here. One of them is the fact that somebody was sitting on the board who was subject to Circular 12/2010. Another is that there was a failure to sit down and discuss the issue, despite the fact that everyone was aware that there was an overspend of at least €200 million at this stage. If that does not justify us getting information from the Department of Public Expenditure and Reform, nothing does.

Deputy Catherine Connolly: Everything has been said so I will not repeat it. I think the Department should come in as soon as possible and a director be appointed.

Chairman: We will seek clarification on these things and maybe the Comptroller and Auditor General can give that. All the circulars are out there but there is company law governing the responsibility of a director to do his or her fiduciary duty to the board of which they are a member. Does the companies legislation supersede the circulars on the role of a director? Maybe this means half of these circulars are meaningless.

Mr. Seamus McCarthy: Company law is legislation and that always trumps a circular.

Chairman: Those circulars are a waste of space.

Mr. Seamus McCarthy: That may not be quite true because company law does not necessarily apply to all public bodies.

Deputy Alan Kelly: I am glad you said that but does it not depend on the way this was set up under the legislation, and on how the board was incorporated?

Mr. Seamus McCarthy: The board is not a company so company law does not apply.

Chairman: Okay. That is good.

Deputy Alan Kelly: That is my point.

Chairman: A person's duty to the board was referred to last week.

Deputy Alan Kelly: My understanding is that this does not apply in relation to how it was incorporated. It was incorporated under health legislation.

Mr. Seamus McCarthy: That is correct.

Deputy Alan Kelly: I cannot remember the name of it.

Mr. Seamus McCarthy: I do not have it to hand either.

Deputy Alan Kelly: There is old health legislation, under which this was incorporated. Company law does not apply, which means that what the Taoiseach said, though it was probably inadvertently, was inaccurate. It would mean that this circular does apply to the board. Would that be the understanding of the Comptroller and Auditor General?

Mr. Seamus McCarthy: That is my understanding.

Chairman: Who is the best person to help the committee with a summary of this point? Would the Comptroller and Auditor General be able to do it? I assume it is relevant to his audit process.

Mr. Seamus McCarthy: We can certainly get a note. I will ask the liaison officer.

Chairman: I ask that you circulate it to members as soon as is practicable in the coming days. I was confused about that role within a company. We have covered the point for the moment and I do not want to go into the nitty-gritty of it now.

At our last meeting we cleared, noted and agreed the minutes of the meetings of 17 January, 22 January and 24 January. The meeting of 17 January was with the Department of Justice and Equality and the Prison Service. We asked the Department to respond to us, in writing, with specific information on two items and we asked the Prison Service to respond on 16 items. Three weeks later, the Committee of Public Accounts has not had any replies to any of the questions. It is not acceptable to the Committee of Public Accounts to write out to these two bodies and not receive answers. Unless we have the response by next Thursday, the same group of people will be back here again. When we write to an organisation for information, they cannot disappear into the wind and not get back to us. There has been three weeks with no communication from them. If we do not have the answers by next Tuesday evening, they will be here on Thursday to tell us why. They are now formally on notice to be here next Thursday morning at the commencement of business at 9 a.m. if we have not received replies by Tuesday evening. Can we agree to that? I propose that this is a procedure we will follow. If we ask for information, we should receive replies or else an explanation of why it is not possible. We had to do it once last year and I do not intend to start this year on the same road.

As we have noted and agreed the minutes, we will move to the next matter on the agenda, namely, correspondence received since the last meeting. Thank God the correspondence is light because we have been busy over the past few weeks.

In category A, the first items are Nos. 1913 and 1920 from the Office of the Attorney General, providing briefing material and an opening statement. They are to be noted and published.

Nos. 1914 and 1921 are from the Office of the Director of Public Prosecution, providing a briefing note and opening statement. They are to be noted and published.

Nos. 1915 and 1922 are from the Chief State Solicitor's office, providing a briefing note and opening statement. They are to be noted and published.

Nos. 1919 and 1928 are from the Department of the Taoiseach, providing a briefing note and opening statement. They are to be noted and published.

No. 1910, from Mr. Ray Mitchell, assistant national director of the HSE, was received and circulated before the last meeting but we did not note and publish it. It provides a copy of the terms of reference of the review of the escalation of costs in respect of the new children's hospital. We will seek to obtain a copy of the revised terms by the conclusion of the meeting. If they have been completed, we would like a copy. Otherwise, we should be informed. I understand that the revised terms of reference have been published and, therefore, I would like to see them.

Deputy Catherine Murphy: We also need to understand what is legally possible in regard to revised terms of reference. If the terms of reference require naming people who are culpable in respect of the overrun, that is unlikely to end up in the public domain.

Chairman: That is correct.

Deputy Catherine Murphy: We are unlikely to learn anything from the matter at the committee. Rather, the information is likely to remain available only to the two contracting parties, according to legal advice I have sought. While the Government may well be given an indication of who is liable according to the terms of reference, nobody else will, and that is entirely unsatisfactory. Whether an identification could legally be made outside of those parameters is another matter. We all know the limits of the committee. There was a referendum on foot of the Abbeylara case. Let us not just merely examine the terms of reference but instead consider what they might or might not deliver. It is not the case that we are demanding a head on a plate. It is a question of where we can fit into the system a method of accountability. Unless we learn a lesson from the matter, we will repeat the mistakes of the past. Can we do what I have outlined, as well as obtaining a copy of the terms of reference?

Chairman: Yes, when we receive the terms of reference, we intend to consider whether they will lead to the publication of a report or whether they will be written in such a way that it may not be possible to issue a report, and that is important.

Deputy Catherine Murphy: I do not meant to be political but the Taoiseach has a habit of making commitments. He did it on CervicalCheck when he said no woman would have to go to court, despite having no legal basis to make that commitment. He has done exactly the same in this regard. If it is just to bounce the issue into the future, it is wholly inadequate. If it is the case that the terms of reference will not do that, we must also consider what we need to do to fix an utterly flawed process. That may well involve inviting Mr. Robert Watt of the Department of Public Expenditure and Reform to appear before the committee.

Chairman: In summary, if the terms of reference have been made available, we want to obtain them by lunchtime. Otherwise, we should be told. The HSE has committed to reverting to the committee on the matter, after which we can discuss it later in the meeting.

Deputy Catherine Murphy: On No. 1910, I refer to the document, Design Build Equip. We have not received the Linesight report. In the document, the figure zero is quoted for the cost because it is described as part of the design team fees-----

Chairman: The Deputy is referring to No. 1918, from Ms Rhonda Evans of the National

Paediatric Hospital Development Board, which provides a note on the children's hospital costs and the list of independent and corporate reports. It is to be noted and published. The Deputy is right that there should be clarification. On the Linesight report, there is no outline of the cost attached to the schedule that was made available to the committee last week.

Deputy Catherine Murphy: That does not mean we cannot be given sight of the cost.

Chairman: What is the Deputy seeking?

Deputy Catherine Murphy: I am seeking the report.

Chairman: The report and the cost.

Deputy Catherine Murphy: I refer to the report rather than the cost because the report will take inflation into account.

Chairman: That is fine. We will move on. The next items of correspondence, category C, relate to private individuals and other correspondence. Item No. 1916, from an individual, dated 31 January 2019, concerns the selection process followed by the Department of Foreign Affairs and Trade to create a panel for election observer rosters. As we have previously noted, the subject matter is not within the remit of the committee, which remains the case, but for information purposes we can request a note from the Department on the selection process used to form the election roster, the rationale thereof and why it appears that the Department did not pursue a competitive process.

Deputy Catherine Connolly: We have asked for this-----

Chairman: Yes, the committee has addressed the matter a couple of times. The correspondent has written to the committee a number of times.

Deputy Catherine Connolly: Yes, I do not refer specifically to this item of correspondence. On the general issue of the board running over the allotted period, we wrote to the Department and sought clarification on the matter. Have we received a response?

Chairman: We will check and if there has been no response, we will write to it again.

Deputy Catherine Connolly: On the issue, because it is important.

Chairman: The issue is that the previous board was allowed to lapse without the new group being in place to take over.

Deputy Catherine Connolly: I do not know whether it was allowed to lapse or run over the allotted period.

Chairman: It was carried over its original timescale.

Deputy Catherine Connolly: When the accountable person appeared before the committee, we asked him why.

Chairman: We asked him why the roster that had been established was allowed to be run over time, and why a new one was not in place on the appointed day.

Deputy Catherine Connolly: It is a panel of observers which is selected and runs for a specific period, before the process is repeated. It is a matter of processes and accountability,

which is all we want to know about it. Given that we have written to the Department, I am just wondering why we have not received a response.

Chairman: We will return to the matter. The next item, No. 1917, from Deputy Jonathan O'Brien, dated 7 February 2019, renews a request to invite the Secretary General of the Department of Public Expenditure and Reform to appear before the committee in respect of the overrun at the national children's hospital. We note the request and we have agreed to invite the Secretary General. We will form the invitation in a manner that will require him to attend.

Deputy Catherine Connolly: On a specific date.

Chairman: Yes, we will ask for it to be as soon as possible. The next items, Nos. 1923, 1924 and 1929, are from the Ceann Comhairle and the Chairman of the Joint Committee on Justice and Equality. I propose we discuss their contents briefly in private session and provide a short summary of our observations when we return to public session.

The next item, No. 1925, from Professor Chris Fitzpatrick, consultant obstetrician, gynaecologist and master of the Coombe Women and Infants University Hospital, dated 6 February 2019, requests an opportunity to appear before the committee in respect of the financial overrun at the national children's hospital. He was in a key position because the co-location involved the Coombe Hospital, of which he was the master, and the issue was fundamental to the decision on the co-location. It was not suggested to move the hospital miles away but he suggested another site, adjacent to the current site, that would have facilitated all the issues. He said he highlighted the cost overruns. Nobody knows when the Coombe Hospital will be co-located with the new paediatric hospital. We will not invite everybody to the committee who writes to it, but we will just hold the door in this regard, while thanking him. We will not decide just yet. We may decide that he will go to the Joint Committee on Health, if it wants to see him, but his entire email to us is strictly about financial matters related to the project. He could have a useful input to make and perhaps on the day Mr. Watt is to attend the committee to discuss capital projects we might have a separate session. I would not like to dismiss it, nor would I like to accept it straight up.

Deputy Catherine Connolly: I agree with the Chairman. First, it is a serious letter from a committed person setting out issues about accountability and money. Clearly, we cannot invite everybody to appear before the committee. I agree with the Chair in that regard, but we have to decide how we will put this matter in context. Therefore, we should not say yes now, but we should certainly come back and look at the letter to see how we will deal with it. I am in favour of him coming, but I see the dilemma. There were different groups yesterday and so on. This matter has to stay on the agenda and we need to come back to it to discuss it and give it proper thought. He has gone to some trouble and, if we are about governance, certainly there are serious issues. That is my tuppence ha'penny worth for the moment.

Deputy Catherine Murphy: Is he likely to go before the Joint Committee on Health?

Chairman: We will wait and see.

Deputy Catherine Murphy: Okay. That would be an important piece of information for us in making the decision.

Chairman: We will check with the committee to ensure there is no unnecessary duplication of witnesses appearing before both committees, if they appear before either.

Deputy Catherine Connolly: The letter has a specific remit for us.

Chairman: The letter relates completely to the financial aspect. He might talk to the Joint Committee on Health about co-location and the medical issues, which is fine.

Deputy Catherine Connolly: That is separate.

Chairman: This private individual has requested to appear in public in order that he will be satisfied that his issue will be dealt with in public. We will have to make quick contact with him because of the GDPR, but I propose that we publish the correspondence. Normally, we do not publish letters from an individual, but this is different because he wants to appear in public. If we have to seek formal agreement to allow publication of the letter, so be it. If it is granted, we should publish it.

The next item of correspondence is from Deputy Jonathan O'Brien, requesting that we follow up on an item with Mr. John Pollock about various meetings and the minutes of the meetings of the finance sub-committee of the paediatric hospital board. We have asked for copies of the minutes as a result of last week's meeting and various other minutes of meetings of different groups. That matter has been dealt with.

The next item on the agenda is statements of accounts received since the last meeting. There is a large list which I will move down through quickly. The first is for the Criminal Assets Bureau which received a clear audit opinion.

The special account established under section 4 of the Hepatitis C Compensation Tribunal (Amendment) Act 2006, an insurance scheme, received a clear audit opinion, as did Pobal.

The Limerick Institute of Technology received a clear audit opinion, but non-compliant procurement to a figure of €663,000 is noted. Without going into the detail every time it arises today, the liaison officer produced for the committee a comprehensive report last autumn on the items highlighted as non-compliant in all of the accounts. I will ask for it to be brought up to date in the accounts received to the end of December. We will include a summary in our next periodic report in the section dealing with the issue of non-compliance. Much work has been done behind the scenes. When the document is updated, we will circulate and summarise it for inclusion in our next periodic report. We need to cover this issue but without delving into every specific detail as we move along. The matter is noted.

Beaumont Hospital board received a clear audit opinion. Again, the figure for non-compliant procurement is estimated at €24 million.

The Health and Social Care Professionals Council to promote standards of professional education, training and competence for health and social care professionals received a qualified audit opinion. The council accounts for the cost of retirement benefit only when it becomes available and is not in compliance with FRS 102, international standards, but it is complying with the direction of the Minister.

Mr. Seamus McCarthy: In not doing so.

Chairman: They are not the normal accounting standards.

Leopardstown Park Hospital board received a clear audit opinion. The figure for non-compliance was €799,000. We will include this topic in our periodic report.

7 February 2019

Dún Laoghaire Institute of Art, Design and Technology received a clear audit opinion, as did the Institute of Technology Tallaght.

The National Haemophilia Council which advises the Minister for Health and agencies on any matter related to haemophilia received a clear audit opinion.

Nscda (Operations) DAC which is developing and running the National Sports Campus received a clear audit opinion.

The Residential Tenancies Board, RTB, received a clear audit opinion, but non-compliant procurement is noted at a figure of €2.9 million. We have raised the matter recently with the RTB and asked for details. We will ask for the matter to be followed up.

The Office of the Data Protection Commissioner received a clear audit opinion.

The Mental Health Commission received a qualified audit opinion, again because it did not comply with international accounting standards in dealing with retirement benefits, as the Comptroller and Auditor General knows.

The Crawford Art Gallery received a clear audit opinion.

Waterford and Wexford ETB received a clear audit opinion. Again, non-compliance with procurement is noted at €3 million.

Health and Safety Authority received a clear audit opinion.

The Health Research Board received a qualified audit opinion. It is in the health area and does not meet international financial standards in dealing with retirement benefits at the direction of the Minister for Health.

The Grangegorman Development Agency received a clear audit opinion, as did the Competition and Consumer Protection Commission and Horse Racing Ireland.

The Oberstown Children's Detention Campus received a clear audit opinion. However, attention is drawn to the statement of internal control which discloses that the board did not as part of the audit carry out a review of the effectiveness of the systems of internal control for the period. This relates to its account for 2018. Has it been done since, or has the Comptroller and Auditor General had an opportunity to verify it?

Mr. Seamus McCarthy: We will not know until we finish the audit of the accounts for 2018. It is an annual requirement under the code of practice for the governance of State bodies.

Chairman: The Oberstown Children's Detention Campus did not meet it in the year under review?

Mr. Seamus McCarthy: It did not do so in 2017.

Chairman: We will include a summary of many of these issues in our periodic report.

The next item on the agenda is the work programme. Today we will be dealing with the Secretary General of the Department of the Taoiseach in considering Vote 1 - the President's Establishment and Vote 2 - Department of the Taoiseach. We will meet in private session to clear some items and then resume in public session immediately after the votes at 2 p.m. to deal with the Office of the Attorney General, the Office of the Director of Public Prosecutions and

the Office of the Chief State Solicitor.

Next week we will meet the broadband providers. We will meet representatives of BT at 10 a.m., of Eir at 11 a.m., of the Regional Internet Service Providers Association at noon, of Imagine at 2.30 p.m. and of Enet at 3.30 p.m. It will be an interesting session.

In the following week, on 21 February, we will deal with financial statements for 2015 of Kildare-Wicklow ETB. I hope it will not take all day. In the afternoon session we are proposing to deal with some of the housing issues with which we are dealing concerning the interim regulatory committee of the Irish Council for Social Housing which is the approved housing body.

On 28 February in session 1 we will be back discussing housing matters. In session 2 we will deal with the remainder of the Vote for the local government fund, the report of the Comptroller and Auditor General and central government funding for local authorities. Representatives of the Department of Housing will be here, together with representatives of the Housing Agency and the chief executives of a number of local authorities to discuss housing. The session will be of interest.

In the following week, on 7 March, we will deal with the accounts for which the Minister of Finance is responsible. We will deal with chapters 1, 2, 3 and 22 of the annual report of the Comptroller and Auditor General, the Exchequer outturn, the collection of pension contributions, the control of funding for voted services and the Irish Fiscal Advisory Council. We will also deal with the appropriation account for Vote 8 - Office of the Comptroller and Auditor General. Mr. McCarthy will let the Accounting Officer for his Department handle it.

Mr. Seamus McCarthy: That is correct.

Chairman: That is setting an example. We want to cover all Votes, whether for Áras an Uachtaráin or the Office of the Comptroller and Auditor General. Is there a Vote for the Oireachtas Commission?

Mr. Seamus McCarthy: There is. It is not a Vote but an account. However, it is in the form of a Vote.

Chairman: I am putting the Secretary General or Accounting Officer for the Oireachtas Commission on notice that he will be here to discuss its accounts. We will be comprehensive in our work as we move through the year. I put him on notice and indicate that we will set a date shortly.

On 14 March we will possibly have before the committee representatives of the Central Statistics Office. That essentially is as much as we have agreed to at this stage. We have been referring to the Department of Public Expenditure and Reform as DEPR which is confusing for the public because on the site it thinks we mean digging deeper. If we have to schedule a separate meeting to facilitate it, we will do so. We have a good schedule of work for the next couple of weeks.

I think we have covered most of the items.

Deputy Catherine Connolly: Has the GAA in County Galway responded to the correspondence it received from the committee?

Chairman: We have not yet received a response.

Deputy Catherine Connolly: I am keeping an eye on it.

Chairman: We are all keeping an eye on it. The Deputy will have seen the change in the format of the minutes that we have introduced this year. There is a column on the right hand side opposite each item of correspondence in which it is indicated that we have noted and published it and that there are further items to be followed up. We have a tracking method which we use in the producing the minutes. The secretariat provides a more comprehensive sheet with all of the items we have to follow up, point by point. It is our private working document, as we could not include all of that information in the minutes. We publish summary points in dealing with correspondence.

We had indicated that we would commence the meeting with the Secretary General of the Department of the Taoiseach at 9.45 a.m.

Sitting suspended at 9.51 a.m. and resumed at 9.57 a.m.

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

Vote 1 - President's Establishment

Vote 2 - Department of the Taoiseach

Mr. Martin Fraser (*Secretary General, Department of the Taoiseach*) called and examined.

Chairman: In this session we will be examining the 2017 Appropriation Accounts for the President's Establishment, Vote 1, and the Department of the Taoiseach, Vote 2. We are joined from the Department of the Taoiseach by Mr. Martin Fraser, Secretary General; Mr. Denis Breen, head of corporate affairs; and Ms Geraldine Butler, finance officer. From the Department of Public Expenditure and Reform we are joined by Ms Victoria Cahill and Mr. Brian O'Malley.

I remind members, witnesses and those in the Visitors Gallery that all mobile phones must be switched off or switched to airplane mode. Leaving them in silent mode is not enough as they may still interfere with the recording and broadcasting systems.

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

Members are reminded of the provisions of Standing Order 186 that the committee shall refrain from inquiring into the merits of a policy or policies of the Government or a Minister of the Government or the merits of the objectives of such policy or policies.

While we expect witnesses to answer questions put to them 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.

We will take the Comptroller and Auditor General's opening statement first.

Mr. Seamus McCarthy: The 2017 Appropriation Account for the President's Establishment, Vote 1, shows gross expenditure of €3.7 million, of which expenditure under the centenarian's bounty scheme accounted for €1.13 million. The balance, totalling €2.6 million, is related to expenses of the President's Establishment. In addition to the direct charges on the Vote, other costs relating to the operation of the Presidency were charged to other Votes and to the Central Fund of the Exchequer. These amounted to an estimated €5 million in 2017. This includes €2.3 million spent by the OPW on maintaining the grounds and premises at Áras an Uachtaráin, the President's official residence. A breakdown of the net allied expenditure is given in note 1.1 of the appropriation account.

Vote 2 provides for expenditure by the Department of the Taoiseach in support of the Taoiseach and the Cabinet. Gross expenditure in 2017 totalled €28.3 million. All the expenditure related to one programme, with a breakdown given in note 3. Administration costs, including salaries, totalled €15 million and accounted for 53% of the total spend. Almost €9 million was spent on various statutory inquiries. The National Economic and Social Council, NESCC, is the only agency under the aegis of the Department of the Taoiseach. The council received €1.9 million in grants in 2017.

There was a significant underspend on the Vote in 2017, relative to the amount provided by the Oireachtas. As a result, just under €9.2 million was liable for surrender at the year end. Explanations for the variances are given in note 3.

Chairman: I now invite Mr. Fraser, as Accounting Officer for the Department of An Taoiseach and for the President's Establishment, to make his opening statement.

Mr. Martin Fraser: Good morning. I am attending at the request of the committee to assist in its examination of the 2017 appropriation accounts for the Department of the Taoiseach and the President's Establishment. As the Chairman stated, I am accompanied by my colleagues, Mr. Denis Breen, head of corporate affairs, and Ms Geraldine Butler, finance officer. The committee will have received, in advance of this meeting, briefing documents detailing the 2017 expenditure and outturn of the Department of the Taoiseach and the President's Establishment as set out in the 2017 appropriation accounts and other supporting documentation. I propose to briefly outline the role and structure of the Department of the Taoiseach and to give an overview of the Department's 2017 appropriation account as well as an overview of the President's Establishment appropriation account for 2017.

The Department of the Taoiseach's work centres on supporting the work of the Taoiseach and the Government both at home and abroad. The core functions of the Department are delivering the Executive functions of the Taoiseach and the Government, providing the Government secretariat, supporting the Taoiseach in carrying out his duties as head of Government including in relation to the Oireachtas, constitutional issues, protocol, the European Council,

the North-South Ministerial Council and the British-Irish Council, working with the Office of the President and with the Oireachtas and engaging with the formulation and implementation of Government policy mainly through the system of Cabinet committees, senior officials' groups, the programme for Government office and the parliamentary liaison unit. The Department is responsible for the office of the Taoiseach, as well as providing some support for the Tánaiste and Independent Ministers in Government. The Department is also the site for the Office of the Government Chief Whip, who also has responsibility for the Central Statistics Office. We provide support for the Ministers of State assigned to the Department who have responsibility for Defence, European Affairs and for data protection. The Department also provides the Government Information Service, provides briefing and advice to the Taoiseach on the full range of domestic policy issues and on international affairs, including through the work of the NES, to which the Comptroller and Auditor General referred earlier. The Department also supports the Government in the formulation and implementation of Ireland's EU, Northern Ireland and international policies, including co-ordination across the whole of Government. We also deliver support services through our corporate affairs division which includes human resources, finance, ICT and other services.

In 2017, changes were made to the structure of the Department following the appointment of a new Taoiseach and Government. These included new Ministers of State, responsibility for Brexit co-ordination moving to the Tánaiste and Minister for Foreign Affairs and Trade and the establishment of new Cabinet committees. The Department supported the Taoiseach's intensive engagement and negotiations with EU leaders on a wide range of issues, including Brexit. Through the Cabinet committee structure, the Department engaged with other Departments on a wide range of national policy issues, as directed by the Taoiseach, such as housing and homelessness, climate change, health and justice reform, infrastructure planning and investment, gender equality and disability, economic planning and rural development.

In addition to the existing responsibilities, the Department undertook additional preparatory work during 2017 in the areas of pensions reform, Ireland's bio-economy, the national planning framework, the national development plan, Global Ireland - Ireland's Global Footprint to 2025, and the establishment of the North East Inner City, NEIC, programme implementation board. Press and protocol support services continued to support the large programme of events including the state funeral of the late Taoiseach, Mr. Liam Cosgrave, and visits by Heads of State and senior EU officials. The Department was centrally involved in supporting the Taoiseach and the National Emergency Co-ordination Group in its response to Storm Ophelia in October 2017. Across all areas of the Department's responsibility, considerable time and effort also went into answering parliamentary questions, preparing material for use in the Oireachtas, processing freedom of information, FOI, requests, answering letters and queries from the public, organising events, preparing speeches, and responding to media queries.

The outturn for the Department of the Taoiseach in 2017 was €27.58 million against an Estimate provision of €36.74 million. This lower than anticipated expenditure resulted in €9.16 million being surrendered back to the Exchequer at the end of December 2017. The significant variations in expenditure relate primarily to programme spending. Under subhead A4 - Tribunal of Inquiry - spending was €3.5 million less than estimated due to the number of legal cost claims settled in 2017 being lower than expected. Obviously, we have no control over third-party legal costs incurred by tribunals and it is impossible to predict the timing of settlement of third party costs or the level of costs falling due at any particular time. Under subhead A5 - Commissions of Investigation - spending was €2.4 million under estimate. The commissions are independent and their expenditure levels depend on the needs and requirements of their investigations.

Subhead A1 - Administration Pay - was also under estimate due to a significant turnover of staff and delays in filling posts at some grades during the year. Just over €15.3 million was expended on pay and administration in 2017, with the balance expended on programme expenditure. As the Comptroller and Auditor General pointed out, quite a lot of our spending is on investigations.

The Department's 2017 appropriation account was audited by the Office of the Comptroller and Auditor General. In his report, the Comptroller and Auditor General noted that, in his opinion, the account properly presented the receipts and expenditure for the Department for the year ended 31 December 2017 and that it has been prepared in the form prescribed by the Minister for Public Expenditure and Reform. The Comptroller and Auditor General also stated that he had no matters to report with regard to the statement provided by me, as Accounting Officer, on internal financial control.

My role as Accounting Officer for Vote 1 is very different to that of Accounting Officers for other Votes. Generally, the Secretary General is the Accounting Officer for the Votes and also the administrative head of the Department and as such can answer for the actions of the Department. Although I am the Accounting Officer for Vote 1, I have no executive or operational responsibility for the Office of the President. This is entirely appropriate given the constitutional position of the President. As the committee is also aware, Article 13.8.1o of the Constitution states:

The President shall not be answerable to either House of the Oireachtas or to any court for the exercise and performance of the powers and functions of his office or for any act done or purporting to be done by him in the exercise and performance of these powers and functions.

As Accounting Officer, I obtain assurances that the office operates properly through my direct contact with the Secretary General to the President and from the audit performed by the Comptroller and Auditor General. The outturn for the President's Establishment for 2017 was €3.6 million against an Estimate provision of €3.9 million. This lower than anticipated expenditure resulted in €294,236 liable to surrender back to the Exchequer. The account for the President's Establishment was audited by the Office of the Comptroller and Auditor General. In his report the Comptroller and Auditor General noted that, in his opinion, the account properly presented the receipts and expenditure of the President's Establishment for the year ended 31 December 2017 and the audit evidence obtained is sufficient and appropriate to provide a basis for that opinion.

That concludes my statement to the committee.

Chairman: I thank Mr. Fraser. Before I call the first speaker, I acknowledge receipt of Mr. Fraser's opening statement, briefing note and the annual report for the Department of An Taoiseach for 2017. I also want to acknowledge receipt of information in respect of Vote 1, the President's Establishment and the opening statement in that regard. I further acknowledge receipt of the document, The Presidency in Review, 2011 - 2018, which was published towards the end of last year. That contains some financial information of which the public may not have been aware. It is welcome that its publication has been achieved. As a matter of course, the Committee of Public Accounts will be examining all Votes on a routine basis, which is what it should do. Today's meeting includes an examination of the Vote for the office of the President. Last year was the first time that we conducted such an examination but it will be a normal part of our work from now on. We also indicated earlier that we will be reviewing the accounts of

the Comptroller and Auditor General's office. I do not know if any Committee of Public Accounts has done that before but we will be doing it. We will also be reviewing the accounts of the Houses of the Oireachtas Commission. I do not know when the commission was last before the Committee of Public Accounts. Every one of the Votes will be examined by this committee at some stage and there will be no exceptions from now on. I just wanted to put that on the public record in case people think we are picking and choosing particular items. Everything is on our agenda.

Deputy Aylward is first and he will have 20 minutes. Everyone else will have ten minutes because we will have a second session this afternoon and there will be a different main speaker at that stage. Speakers will be called in the following sequence: Deputy Aylward, Deputy Cullinane, Deputy Catherine Murphy, Deputy Connolly and Deputy MacSharry.

Deputy Bobby Aylward: I welcome Mr. Fraser and all our other guests. I will begin with Vote 1, the President's Establishment. I note €3.7 million and then €2.6 million under various headings and then a sum €5 million. That comes to a total of €11.3 million in costs for the President's Establishment. Am I correct? I see €3.7 million in total gross expenditure and then on the next page, a sum of €2.6 million for allied service expenditure and then €5 million is mentioned for maintenance and other works. We are talking about a total of €11.3 million. Am I reading that correctly?

Chairman: Is it that one of the sums is part of the €5.03 million.

Deputy Bobby Aylward: Am I right?

Mr. Seamus McCarthy: No. Allied services are included in the €5 million.

Deputy Bobby Aylward: From where does the €5 million come?

Mr. Seamus McCarthy: I ask the Deputy to bear with me for a moment.

Deputy Bobby Aylward: Out of the total of €11.3 million-----

Mr. Seamus McCarthy: I think the cost of the programme in total would be about €8.7 million. There may be double counting in what the Deputy has outlined.

Chairman: We will state it correctly. We have received a summary. Net voted expenditure in 2017 was €3.609 million. Allied services expenditure, including the amount from the Central Fund, was €5.039 million, thus giving total expenditure of €8.918 million. The figure includes the salary and pension payments of the President and the particular allowance referred to previously. The total is €8.918 million for the year under review.

Mr. Seamus McCarthy: That is the gross figure.

Deputy Bobby Aylward: The figure is approximately €9 million. That clarifies the matter.

I wish to clarify the position on the discretionary fund. I was looking at the documentation and the presentation submitted last night and could not see a reference to the €317,000 discretionary fund. Why is it not included in the report of the Comptroller and Auditor General?

Mr. Seamus McCarthy: It is actually included in the figure for charges to the Central Fund. It includes the emoluments and allowances of the President. The total figure is €894,000 which includes the figure of €317,000.

Deputy Bobby Aylward: The reason I am asking the question is it was controversial at the time. It was raised during the presidential election and we were all being told that it should not be debated in the Houses because of the sensitivity of the issue and so on. Now that the election is over and we have a new President in place, I am keen to know about the funding of €317,000 and accountability for it per annum. As it accumulates, it will come to big money over five, six or seven years, or whatever the term is. Why is the figure not included? It is not explained. Perhaps Mr. Fraser might add something to explain to the public the sum of €317,000. What explanation do we have for it? I simply wish to appease minds among the general public.

Mr. Martin Fraser: The first point is that I am not the Accounting Officer for the President's Establishment, as I think the committee knows. We were before it previously. As the Comptroller and Auditor General said, it is included in the figure for the Central Fund, from which it is paid.

Chairman: I will explain it for the benefit of the public because it relates to the President's Establishment. There is a payment of €894,000 from the Central Fund to the Vote. It includes the allowances for the President, pension payments to former office holders and what is called the 1938 allowance paid under a statutory instrument.

Deputy Bobby Aylward: Does it include the figure of €317,000?

Chairman: The figure of €894,000 includes the sum of €317,000. It is important to note that it is paid from the Central Fund by the Department of Finance. The Secretary General of the Department of Finance is the Accounting Officer for the Central Fund. Am I correct in saying he is the person responsible? The Secretary General of the Department of Finance will shortly be before the committee to deal with the Vote for the Department of Finance. We will put him on notice in that regard. We will ask him to answer the question as it relates to the Central Fund. Am I correct, Mr. McCarthy?

Mr. Seamus McCarthy: He is responsible for making the payment to the President.

Chairman: The question arises of what happens after that. We will take up the matter with the Secretary General of the Department of Finance.

Mr. Seamus McCarthy: It is a separate matter.

Deputy Bobby Aylward: Is the money included in the figure of €8.9 million, about which we have spoken, or is it extra?

Mr. Seamus McCarthy: It is included in it.

Deputy Bobby Aylward: I know that I am not an auditor or anything like it - I am only a lay person - but I could not find it in the system. It should be explained to the public that the figure is included in the sum of €8.9 million.

I want to talk about the audit committee. It did not sit in 2017 and there was no chairman. That was also controversial at the time. Has the position changed? Is the audit committee now in place and has a chairman been appointed? Does it meet on a regular basis?

Mr. Martin Fraser: It does. The chairman had been appointed in advance of our last discussion on the matter.

Deputy Bobby Aylward: Who is the chairman?

Mr. Martin Fraser: The chairman is the former Secretary General of the Department that was responsible for community, rural and Gaeltacht affairs, Mr. Joe Hamill, who has been in place since well before our last conversation. I think the committee has had three or four meetings. Certainly, there were three meetings last year. That structure is in place. Committee members understand what happened before and the circumstances surrounding the chairman.

Deputy Bobby Aylward: Does the committee meet regularly? What is its role? It had no role in 2017.

Mr. Martin Fraser: The committee did have a role, but it did not meet because of certain unfortunate circumstances surrounding the chairman.

Chairman: We understand someone was incapacitated for a period.

Deputy Bobby Aylward: That is right. I remember it. I simply wish to have it clarified that the committee is now up and running and whether it meets on a regular basis.

Mr. Martin Fraser: As far as I know, it met four times, or at least three times, last year. There is an audit programme and the audit is proceeding. That was also the case the last time I was before the committee but not previously.

Deputy Bobby Aylward: I will move on to other expenditure. There was expenditure on An Garda Síochána of €197,000 and €428,000 on security and defence. The figure for the Office of Public Works is €2.3 million and the Department of Foreign Affairs and Trade, €667,000. Will Mr. Fraser explain these figures? I am especially interested in the figure for the OPW of €2.3 million and for the Department of Foreign Affairs and Trade figure of €667,000.

Mr. Martin Fraser: I am not across the details because I am not responsible for them.

Deputy Bobby Aylward: I can understand the costs for the Garda and the Army. It is a matter of security.

Mr. Martin Fraser: I hope the Deputy will bear with me while I get the accounts.

Deputy Bobby Aylward: If Mr. Fraser does not have the details, that is fine.

Mr. Martin Fraser: I had the details before me a few seconds ago. I do not know this stuff as well as I know the material for the Department of the Taoiseach. It comes under the heading of net allied services. The figure for pensions is among the main items. The biggest figure is for the OPW, as someone mentioned. The OPW does a great deal of work in the upkeep of Áras an Uachtaráin, the grounds and so on. That is the main item of expenditure. There is a little expended on shared services, of which every Department avails. The figure for An Garda Síochána is related to security. The figure for the Department of Foreign Affairs and Trade relates to foreign travel.

Deputy Bobby Aylward: Does it all relate to travel?

Mr. Martin Fraser: It relates to state visits. It is not for airplane tickets but all of the facilities the Department of Foreign Affairs and Trade provides for the President, both at home and abroad. The briefing material provided for the committee states where the President visited in 2017. It is, of course, a matter of public record, but it is included in the briefing material somewhere. There were state visits to Cuba, Australia and New Zealand. The state visit to Australia and New Zealand was nearly one month long. There were then official visits to Colombia,

Peru, Italy, Vatican City and Scotland.

Deputy Bobby Aylward: Is there a set expenditure figure every year, or does it depend on where the President wants to go? Is he asked to go? Can he ask whenever he wants to travel?

Mr. Martin Fraser: I would not like to put it like that.

Deputy Bobby Aylward: Is there any limit?

Mr. Martin Fraser: Obviously, the cost depends on where the President visits. When it comes to where the President visits, his personal wishes are important, but it is part of the diplomatic statecraft of the State. If countries offer the opportunity to make a state visit or if we offer people the opportunity to make a state visit, it is obviously based on whatever we think is in our national interests and where we want to deepen friendships. The obvious example is the President's visit to Britain a number of years ago. We see incoming and outgoing visits. Obviously, the farther away he goes, the longer he will be there and that will be reflected in the costs of the state visit. He was in Croatia and Greece last year. That would not have cost as much as visiting Africa, Australia or New Zealand. As committee members can see, the cost was a little higher in 2017 and 2016. The differences are in the region of hundreds of thousands of euro, depending on where he visited. It is included in the detail of the Department of Foreign Affairs and Trade figures. The figures for the Department Defence relate to Army services, including soldiers.

Deputy Bobby Aylward: That is self-explanatory.

Mr. Martin Fraser: There is also the Central Fund. I am keen to be helpful, Chairman, but I am not the Accounting Officer. It was mentioned that the President had published a document. I had no involvement in its preparation because, as I said, it is quite properly none of my business. He sets out in some detail in the report what he does and the fact that there are 20,000 visitors each year and 223 in-house events. I gather he will publish a report annually. I also understand he has set up an audit committee for the allowance and that he has refunded the surplus to the Exchequer. Again, these are not my responsibilities. I simply know this from my contacts with the other Accounting Officers.

Chairman: Does Mr. Fraser know whether the surplus has been received?

Mr. Martin Fraser: Yes. As it was sent, I hope it was received. I presume it was done electronically, unless it was taken by bus from the park.

Chairman: It was an electronic transfer, but it has been remitted.

Mr. Martin Fraser: It has been remitted.

Deputy Bobby Aylward: Mr. Fraser can understand why we are asking these questions. It is for the benefit of the public because it is all taxpayers' money.

Mr. Martin Fraser: I do, but as I said before, I am in a unique position because I work with the Constitution all of the time. That is why I am a little sticky on these things. I am not trying to be unhelpful.

Deputy Bobby Aylward: It has to be right that the President has taken it on board and will provide the information.

Mr. Martin Fraser: Exactly.

Deputy Bobby Aylward: Although, there were some complaints to the effect that the explanation provided was not detailed enough. I did not go there or even get into it, but there was a report in the newspapers which suggested it was not detailed enough. However, that is for someone else to decide, not me.

Mr. Martin Fraser: Anyone is entitled to criticise the President. It is simply the case that he is not answerable to the Oireachtas.

Deputy Bobby Aylward: I will move on. I wish to ask two quick questions, the first of which is about procurement. There is reference in the document to one contract for €37,555. The figures are in compliance, bar that one. What goods and services does the contract cover?

Mr. Martin Fraser: Is the Deputy referring to the President's Establishment?

Deputy Bobby Aylward: Yes, to procurement compliance. It states: "The President's Establishment complied with the guidelines with the exception of one contract to the value of €37,555". Why were the guidelines not complied with in that case?

Mr. Martin Fraser: I am not overly familiar with the details of that procurement.

Deputy Bobby Aylward: Perhaps I am asking the wrong person.

Mr. Martin Fraser: I have the answer. There were difficulties with mobile phone signals. The Áras only had one mobile phone service provider. However, it carried out a mini framework process last month and will award a contract in March. The item relates to mobile phones.

Deputy Bobby Aylward: Will the contract be subject to a public procurement process?

Mr. Martin Fraser: Yes. An Office of Government Procurement, OGP, mini framework process was carried out.

Deputy Bobby Aylward: I note that administration expenditure was overestimated by 33%. What were the reasons?

Mr. Martin Fraser: I have no involvement with the Estimates for the President's Establishment. It was 33% of a very small number.

Deputy Bobby Aylward: It was overestimated by one third.

Mr. Martin Fraser: In other words, money was saved.

Deputy Bobby Aylward: Overestimation does not mean that money was saved but, rather, that there was overspending.

Mr. Martin Fraser: That is not the case.

Deputy Bobby Aylward: I am sorry; it is the other way round. I interpreted it incorrectly.

Mr. Martin Fraser: I do not know why money was saved in that instance, but I am glad that it was.

Deputy Bobby Aylward: On Vote 2, I wish to hone in on the cost of the Government Information Service, GIS. The strategic communications unit, SCU, was established by the

Taoiseach's office and the Government and in existence for a certain period before it was disbanded. How much did it cost to establish it? How many personnel were involved? Does Mr. Fraser know why it was disbanded? The Taoiseach reverted to using the existing communications units. The SCU was the subject of much public discussion. The public should be given an explanation as to why it was established and abandoned.

Mr. Martin Fraser: It was wound down on foot of a recommendation I made which I addressed on the most recent occasion I appeared before the committee.

Deputy Bobby Aylward: Why was it established?

Mr. Martin Fraser: The SCU was established in 2017 when it spent approximately €50,000. It received an allocation of €5 million in 2018. Approximately eight extra staff were appointed to the former GIS.

Deputy Bobby Aylward: How many extra staff were appointed?

Mr. Martin Fraser: Eight.

Deputy Bobby Aylward: They were to staff the SCU.

Mr. Martin Fraser: Yes. There was then controversy over the unit. I compiled a report in March 2018 which recommended that the unit be wound down. That was done.

Deputy Bobby Aylward: Why did Mr. Fraser recommend that it be wound down?

Mr. Martin Fraser: It is a very long report, but, in summary, the SCU was taking away from the core priorities of the Department of the Taoiseach. We have many reasonably important things to do and people were talking about nothing other than the SCU. In addition, I was of the opinion that we were losing the trust of people who might need to trust the Civil Service in the future.

Deputy Bobby Aylward: Why was that trust lost? Why was the SCU established and disbanded?

Mr. Martin Fraser: I have given the two reasons it was wound down. It is not for me to say why members of the Opposition were unhappy with the unit. The Dáil voted that it be disbanded.

Deputy Bobby Aylward: I was unhappy with it.

Mr. Martin Fraser: Exactly. The Deputy must have a better idea than I do as to why he was unhappy with it.

Chairman: The Deputy walked into that one.

Mr. Martin Fraser: The unit has been disbanded.

Deputy Bobby Aylward: That is not an explanation.

Mr. Martin Fraser: I explained the reasons it was disbanded.

Chairman: It was our call.

Mr. Martin Fraser: That is probably true.

Deputy Bobby Aylward: It is always our call. What happened to the eight extra staff when the unit was disbanded? This is like drawing teeth. I cannot get any information.

Mr. Martin Fraser: The staffing number peaked at 20 or 21. It is now 16, which represents a reduction of approximately 25%. The eight staff were redeployed.

Deputy Bobby Aylward: What benefit was provided by the SCU? The Taoiseach proposed its establishment and set it up. However, things went wrong and people did not like it. The unit got a kicking and was withdrawn on the basis of public opinion. Is that the case?

Mr. Martin Fraser: I do not know if it was disbanded owing to public opinion, but it certainly got a kicking and was wound down. I gave the reasons I recommended that it be wound down.

Deputy Bobby Aylward: Mr. Fraser's recommendation was taken on board.

Mr. Martin Fraser: Yes.

Deputy Bobby Aylward: That is as good an answer as I will get on the issue.

On employee numbers, there were 228 staff at year-end in 2017 and 204 at year-end in 2016. What was the reason for the significant increase of 12% or 24 staff in 2017?

Mr. Martin Fraser: Our staff numbers may fluctuate significantly year on year. As the Deputy is aware, ours is probably the smallest or second smallest Department. The SCU was the main reason for the increase. Some staff were assigned to data protection, justice reform, the north east inner city initiative and internal records management and data protection encompassing the GDPR and so on. Five staff were assigned to various support services such as HR, finance and private offices. That accounts for the 14 extra staff. The nature of the Department is that the amount of work for which we are responsible varies.

Deputy Bobby Aylward: Are they permanent or contract staff?

Mr. Martin Fraser: They are civil servants, mainly permanent civil servants. A significant number of staff join on secondment for a few years and allow us to draw on their experience gained in other sections of the Civil Service and the public service. We have an above average percentage of staff on secondment, but they are all public servants, most of whom are civil servants. The work comes and goes. In 2018 there were changes to the Citizens' Assembly; the staffing level of the GIS was reduced and more staff were appointed to work on Brexit, justice reform and commissions of inquiry. It varies each year.

Deputy Bobby Aylward: What was the staffing level at year-end in 2018?

Mr. Martin Fraser: The number I have for 2018 is 234.

Deputy Bobby Aylward: It is still going up.

Mr. Martin Fraser: Yes. It has gone down in the past, but it is currently going up.

Deputy Bobby Aylward: It fluctuates.

Mr. Martin Fraser: Yes.

Deputy Bobby Aylward: Is Brexit the cause of the fluctuation?

Mr. Martin Fraser: We probably had more people working on Brexit in 2018. We have more commissions of inquiry and are doing some work on justice reform and reform of the Garda, for which a couple of staff are required. It has been recommended that the Department undertake several other projects in 2019 which will require more staff. It comes in phases. Sometimes we are told that it is a massive empire that needs to be cut down in size, while at other times we are told that we should take on more work.

Deputy Bobby Aylward: Most of the staff are civil servants and still within the system. They transfer from other Departments.

Mr. Martin Fraser: Yes.

Deputy Bobby Aylward: The figure for edundancy and severance payments increased from €47,000 in 2016 to €414,000 in 2017. What was the reason for the significant increase?

Mr. Martin Fraser: There was a change of Taoiseach and a Cabinet reshuffle. Many of the staff of the former Taoiseach, Deputy Enda Kenny, received redundancy or severance payments.

Deputy Bobby Aylward: That is the reason.

Deputy Catherine Connolly: As did the former Taoiseach.

Mr. Martin Fraser: I do not know. I do not think so. He is still a Member of the Dáil.

Deputy Catherine Connolly: Yes. I beg your pardon. It was a flippant comment.

Mr. Martin Fraser: I do not think he received a redundancy payment. He certainly never thanked me for the cheque. If I am wrong about that, I will-----

Deputy Catherine Connolly: I apologise for interrupting.

Mr. Martin Fraser: I do not think he received a severance package. He is still a Member of the Dáil and working away.

Deputy Bobby Aylward: His redundancy payment is not referred to in the appropriation accounts.

Deputy Catherine Connolly: I apologise.

Deputy Bobby Aylward: The figure for pay and travel and subsistence amounted to €13.11 million out of a total administration spend of €15.32 million. There was non-compliant procurement expenditure of €698,754 in 2017. Will Mr. Fraser explain the reasons?

Mr. Martin Fraser: Is the Deputy referring to the six contracts?

Deputy Bobby Aylward: Yes.

Mr. Martin Fraser: The biggest by far is a contract with the company which designed and supplies the eCabinet system which was developed in the mid-2000s. It is proprietary software and it is the only company which can work on it. That accounts for most of the expenditure. Eir provides the switchboard in Government Buildings which is run by a couple of Eir telephonists who have been with us for a long time.

We have tendered for newspapers since, but it is very difficult to get value on them because

they cost the same wherever they are bought. We buy them from a newsagent on Leeson Street. There was a company carrying out secretarial services for the Moriarty tribunal. Obviously, we do not decide on that. The Cregan commission employed an office equipment firm. The Moriarty tribunal also employed another company. I do not know what it was doing. We have to let the two tribunals and the commission do their thing.

Deputy Bobby Aylward: My final question is on the disposal of capital assets. Does that refer to IT equipment? Why is that disposed of? Who is interested in buying it? Was that IT equipment out of date? I see that €321,000 was realised.

Ms Geraldine Butler: The lifespan of computer equipment results in a write-down every year. It depreciates.

Deputy Bobby Aylward: To whom is it sold? Does disposal mean that it is sold?

Ms Geraldine Butler: It is sent for recycling.

Deputy Bobby Aylward: It is just destroyed.

Ms Geraldine Butler: It is recycled.

Deputy Bobby Aylward: How was the €321,000 realised then?

Mr. Seamus McCarthy: The original cost of the equipment was €321,000 but it had depreciated. The net book value was very low, approximately €14,000.

Deputy Bobby Aylward: The Comptroller and Auditor General has given the Department a clean bill of health so I do not have anything else to say. I cannot find any loopholes here. The Department's representatives are free.

Deputy Catherine Murphy: The centenarians' bounty is quite a large component of the Vote relating to the President's Establishment. Approximately 400 such bounties are paid each year, although, unfortunately, there were fewer last year. How much is that bounty per individual?

Mr. Martin Fraser: It is €2,540. It started out as £2,000.

Chairman: It is £2,000 converted into euros.

Deputy Catherine Murphy: It makes up quite a sizable amount - approximately one third - of the Vote.

Mr. Martin Fraser: Yes.

Deputy Catherine Murphy: The bounty has not changed in recent years.

Mr. Martin Fraser: Is the Deputy referring to the amount?

Chairman: I will give the Deputy the background to the issue because I am uniquely placed. I chaired the committee on-----

Deputy Catherine Murphy: The Chairman is not 100, is he?

Deputy Bobby Aylward: He is looking forward to being 100.

Chairman: I am not but I chaired the Joint Committee on Finance and the Public Service when Charlie McCreevy was Minister and Deputy Noonan - another former Minister - was the main Opposition spokesperson. At that time, the bounty was £100. At the turn of the millennium, Deputy Noonan suggested that, because it was the year 2000, the bounty should be increased from £100 to £2,000. The then Minister accepted the proposal. It went through in the Finance Act and the amount has since been converted to euros. That is from where the figure came.

Deputy Catherine Murphy: Getting to 100 is a fairly significant milestone. We will have to do an actuarial assessment because it is predicted that a sizeable number of children born now will-----

Chairman: Will live longer.

Deputy Catherine Murphy: -----live to 100. That is a very positive development. The bounty comprises approximately one third of the Vote.

There was one contract that did not comply with procurement guidelines. It was a new contract awarded in 2018. Does Mr. Fraser know what that contract was for?

Mr. Martin Fraser: Is the Deputy referring to the President's Establishment?

Deputy Catherine Murphy: Yes.

Mr. Martin Fraser: It must be the one about which I was talking earlier on, namely, that relating to mobile phones.

Deputy Catherine Murphy: Was that the only non-complying contract?

Mr. Martin Fraser: As far as I know, there was only one. As I informed Deputy Aylward, I have a note from the Áras which says that it was a contract for mobile phones which has since been put out for tender.

Deputy Catherine Murphy: A sum of €37,000 is quite sizeable for a mobile phone. Would the contract have been for several mobile phones?

Mr. Martin Fraser: I imagine the contract would be for mobile phones for the entire establishment.

Deputy Catherine Murphy: I completely accept that this Vote is different in terms of Mr. Fraser's responsibility. Does the OPW Vote cover things such as marquees for garden parties or is it purely responsible for matters such as keeping the house and grounds in good condition? Does the Vote stray into that other area?

Mr. Martin Fraser: I am not absolutely certain but it probably includes infrastructure such as PA equipment and marquees relating to events held in the Áras. If I am wrong about that, I will come back to the Deputy.

Deputy Catherine Murphy: Are there people from the OPW based in the Áras? If so, are they counted as being members of the staff?

Mr. Martin Fraser: Again, I will correct myself if I am wrong, but I believe many of the staff in the Áras work for the OPW.

Mr. Seamus McCarthy: The staff number in the Vote refers to those whose salaries are charged to the Vote. These would be the administrative staff, whereas the household staff are an OPW expense and are counted on the OPW Vote rather than here. What is shown here is the charges on the OPW Vote that are associated with the costs of Áras an Uachtaráin.

Deputy Catherine Murphy: There is quite a bit of crossover in this particular office. It involves the Department of Foreign Affairs and Trade and other Departments. That is understandable. To move on to the Department of the Taoiseach's Vote, I want to explore redundancy and severance. It has always been my understanding that a job is made redundant as opposed to an individual. Is it then accurate to count it as a redundancy if someone new is recruited because there is a different officeholder? Is it actually the job that is made redundant? What I am really trying to get at is whether there is the same number of people.

Mr. Martin Fraser: There are rules and circulars around what severance and redundancy is payable. In the event that there is a change of administration those rules are applied to the individuals. The amounts can vary depending on service, salary and all sorts of things. We apply the rules. In 2016, as the Deputy can see, almost nothing was paid - €47,000. That looks to me as though one person got severance. To look at 2017, as the Deputy will know there is quite a lot of turnover when the Taoiseach changes, even if the party stays the same. Staff lose their jobs because the jobs go with the officeholder. They get paid in accordance with finance circulars.

Deputy Catherine Murphy: Nobody would dispute that should occur and that people should be treated fairly, the issue at which I am trying to get is how it is described in terms of numbers. The numbers will not decrease but the personnel will be different.

Mr. Martin Fraser: That is correct.

Deputy Catherine Murphy: Mr. Fraser already dealt with disposal of assets. I had picked some of the issues which he has already gone through. I will move onto the tribunals of inquiry. I understand that it cannot be predicted in advance but some of the legal costs arising from the Moriarty tribunal related to Deputy Lowry. Am I right on that? That was quite a long time ago. Does Mr. Fraser know the total cost of those tribunals as opposed to what is paid out each year?

Mr. Seamus McCarthy: If I might interject, the Deputy will see note 6.1 on screen. This lists the payments per inquiry in 2016 and 2017, but also gives the cumulative figure or total cost incurred to the end of 2017. The figure for "Tribunal of Inquiry (payments to Messrs Haughey and Lowry)" is €61.3 million so far.

Deputy Catherine Murphy: Are there outstanding amounts, which are perhaps with the Taxing Master, which Mr. Fraser is aware will arise? How is that predicted year-on-year?

Mr. Martin Fraser: As stated earlier, I cannot predict it. The Deputy is talking about the Moriarty tribunal. The McCracken tribunal, which was held previously, does not cost us money any more. Ultimately, we spent approximately €2 million on the Moriarty tribunal last year. That is up to €61.3 million. Although I am not aware of the details, there are outstanding claims. We have a figure in the Estimate of €4 million for this year.

Deputy Catherine Murphy: The final report relating to that tribunal was published in 2011.

Mr. Martin Fraser: It probably was.

Deputy Catherine Murphy: It was very soon after the new Government came into office and, within months, it was one of the political bumps that the latter had to overcome. It is now 2019.

Mr. Martin Fraser: The Deputy knows my views on this.

Deputy Catherine Murphy: Yes. When it estimated the €4 million for this year, the Department could fairly accurately predict what is likely to come in.

Mr. Martin Fraser: We cannot. As the Deputy knows, we gave back €9 million in the year we are talking about. It is very difficult because some of these claims are very big, and there could be a claim of several millions. The Department spend runs at €20 million a year and we then have these things hanging over us, which are nearly twice the size of the whole cost of the Department. We guessed €10 million in the 2017 Estimate and it ended up being €6.5 million. We guessed €4.5 million last year and it ended up being €2 million. There are claims out there that could be big but we do not know, and we are guessing €4 million for this year. We know who has not been paid yet, so we are guessing from there.

Deputy Catherine Murphy: Can Mr. Fraser provide an indication of how old claims can be? We can see that this dates from 2011, which is when the tribunal concluded its work. It was going on for some years before that. I will use that as an example. Can claims be outstanding for 15 or 20 years? Is there a cut-off point or a statutory limit?

Mr. Martin Fraser: The Comptroller and Auditor General might know. I write to the heads of these tribunals annually and ask them if they are nearly finished. They write back to me dutifully stating that they are not yet finished. The tribunal decides what the fees are and it goes to the Taxing Master; they sort it all out and we just get a letter saying what the amount is, and that is our only involvement. To say that I am unhappy to have this stuff on our Vote all these years-----

Chairman: Do they charge interest according to the age?

Mr. Martin Fraser: I do not think so.

Mr. Seamus McCarthy: The State Claims Agency provides a service to the commissions and they handle the legal cost processing.

Deputy Catherine Murphy: It would engage with the Taxing Master if necessary.

Mr. Seamus McCarthy: If necessary, yes, but it will also be challenging and examining the bills. I think it has been discussed by the committee on a previous occasion with the State Claims Agency. It is undoubtedly a difficulty for Accounting Officers because of the independence of commissions and tribunals to provide that level of detail. We would certainly in the past have pressed for some estimate of what is the residual cost outstanding to try to include that. However, it is a very difficult matter. It may be that certain potential claimants have not even lodged a claim yet, so one cannot begin to estimate how much of that would survive through taxing and through challenge.

Deputy Catherine Murphy: With regard to the Citizens' Assembly, the outturn was less than the estimate, so, obviously, there was some flexibility. That went on almost every week-end over 12 months and it was a forerunner to a number of successful referenda. I remember the first and second divorce referenda. Had we had something like the Citizens' Assembly in

advance, we may well have ended up saving money by virtue of the fact we were spending on a useful initiative. I was on the Constitutional Convention, which was a forerunner to the Citizens' Assembly, and a number of referenda will happen as a consequence of that.

This is an historical figure. I presume it is because it is set up under the Department of the Taoiseach that this happens.

Mr. Martin Fraser: That the money is on our Vote.

Deputy Catherine Murphy: Yes.

Mr. Martin Fraser: They operate completely independently, although the Constitutional Convention and the Citizens' Assembly were both paid for from our Vote and substantially staffed by civil servants from the Department of the Taoiseach. The secretary of the convention and the secretary of the assembly would have been assigned by me, although, after that, I do not go near them because of the nature of their work. It was effectively civil servants from the Department of the Taoiseach who designed and ran both of those.

Deputy Catherine Murphy: Would there be follow through? Is there somebody in the Department to make sure there is follow through on the reports that are received?

Mr. Martin Fraser: Yes. What happens in general is that those reports are sent to the Oireachtas and the Government, and the Government responds to them. As the Deputy knows, the convention gave rise to two or three referenda, that on marriage equality being the one people remember best and one on how old the President could be was defeated, and there may have been others. We are going to have one in October on presidential voting rights which I believe dates back to the Constitutional Convention. The Government or the Oireachtas either go with these things or they do not. The assembly dealt with some policy matters, for example, on older people and climate change, and the one that is best known is the eighth amendment, which was the hardest piece of work done.

It is an example that reflects Deputy Aylward's point. I could be asked to set up a Citizens' Assembly from scratch and I might have to find six or seven people from nowhere and they have to be quite skilled people because these are very difficult and sensitive jobs. In this case, we have run the assembly since the arrival of the last Government. It is not in place at the moment but there is talk of having another one on a few issues.

Deputy Catherine Connolly: Go raibh míle buíochas as ucht an t-eolais. I thank Mr. Fraser for all of the information. I note the Comptroller and Auditor General's report on both matters and I welcome that there are no issues arising.

In regard to the extract on the Presidency in the review on the 1938 allowance, to which the Chair referred, is that generally available and published?

Mr. Martin Fraser: Yes.

Deputy Catherine Connolly: That is fine. I welcome the clarification. We presume it comes under a separate Department.

With regard to the President's Establishment and the internal audit, Mr. Fraser has already clarified there was no change and the committee did not meet. Have provisions been put in place should a chair be sick in the future? Has it been pre-empted so it will never happen again that an audit committee will not meet?

Mr. Martin Fraser: It will not happen again. As I on the previous occasion-----

Deputy Catherine Connolly: Explain to me why it will not happen.

Mr. Martin Fraser: I will not allow it to happen again. If I found myself in the same situation, I would ask somebody to do that.

Deputy Catherine Connolly: Have procedures been put in place? Things happen, people get sick and there are accidents.

Mr. Martin Fraser: Of course. The procedure is that I appoint the committee so if I became aware of the unavailability of someone, and with hindsight-----

Deputy Catherine Connolly: Somebody else would step in.

Mr. Martin Fraser: Yes.

Deputy Catherine Connolly: How many meetings took place in 2018?

Mr. Martin Fraser: As far I know, there were three in 2018.

Deputy Catherine Connolly: Was there an internal audit in 2018?

Mr. Martin Fraser: There is an audit programme.

Deputy Catherine Connolly: It is a rolling programme.

Mr. Martin Fraser: It has an audit programme. The Comptroller and Auditor General has been auditing the Áras all along, as the Deputy knows, but-----

Deputy Catherine Connolly: Do not mind the Comptroller and Auditor General. We will leave the Comptroller and Auditor General alone and just answer the questions.

Mr. Martin Fraser: I understand. There is an audit programme.

Deputy Catherine Connolly: We all misuse the Comptroller and Auditor General on occasion to justify different things. These are specific questions about the procedures in place.

Mr. Martin Fraser: There is an audit programme. In 2018 it was looking at the centenarian bounty and this year it will look at payroll.

Deputy Catherine Connolly: In 2018 the issue it looked at was the centenarian bounty. What will it look at this year?

Mr. Martin Fraser: Payroll.

Deputy Catherine Connolly: Procurement has already been mentioned so I will not repeat that. In regard to the commemorative medals, out of interest, are they made in Ireland?

Mr. Martin Fraser: I have no idea.

Deputy Catherine Connolly: It would be interesting to know.

Mr. Martin Fraser: I would be amazed if they are not.

Deputy Catherine Connolly: I would be amazed too.

Mr. Martin Fraser: I hope they are.

Deputy Catherine Connolly: The rest of my questions have already been answered. We will move on to the Department of the Taoiseach. I am not sure if Mr. Fraser answered on the contingent liability on page 19. Did my colleague address that? Could we deal with it? It is stated that an indemnity provided by the Department may generate costs. Can Mr. Fraser clarify the position in that regard? What is the nature of the indemnity? To whom was it given? What is the status of the litigation, if any?

Mr. Martin Fraser: I was just checking with my colleague that it is what I think it is. That is an indemnity that was provided to a lawyer who conducted an inquiry. I want to be very careful. It is Sean Guerin, who conducted an inquiry into the Maurice McCabe situation. That is a subject of litigation between him and the former Minister for Justice. Anyone who has done an inquiry for the State is given an indemnity in respect of the work they do in that inquiry. That is the subject of litigation so there is every chance that it will give rise to costs, depending on the court's decision.

Deputy Catherine Connolly: Is Mr. Fraser in a position to give any idea of the level of the costs?

Mr. Martin Fraser: I am not. It depends how far they go and how many lawyers they employ.

Deputy Catherine Connolly: That is fine, I just wanted to clarify it. In respect of tribunals, these are the tribunals or commissions that come within the Department of the Taoiseach. Then there are others like the Grace inquiry and so on.

Mr. Martin Fraser: Yes.

Deputy Catherine Connolly: Is anybody in a position to tell us the cost of the tribunals to date, even that for the past 15 years? Where would we source that knowledge?

Mr. Martin Fraser: It is probably held somewhere. I used to have a figure in my head. It is hundreds of millions.

Deputy Catherine Connolly: Yes. It would be nice to know that in respect of tribunals and commissions of inquiry. At the moment, how many are outstanding? We are going back to Lowry here and the other matter. I am sorry, I do not mean to mention names.

Mr. Seamus McCarthy: Wherever there are expenses still outstanding, there should be an account of it in the relevant appropriation account. I think, though, to go back over a 15-year period, some might have existed for two or three years. They would not currently be reported. This note has been around for quite a while, at least ten years. For those who have a particular interest in it, it is possible to aggregate the figures going back through appropriation accounts for a decade, for example.

Deputy Catherine Connolly: We are not getting an overview. We are getting what is due for 2017 or what was paid out during that year. Is that right?

Mr. Seamus McCarthy: The committee is getting the total expenditure to end 2017 for the ones that are within this Vote. There would be similar notes in the justice Vote, in finance or whatever.

Deputy Catherine Connolly: Mr. Fraser said hundreds of millions.

Mr. Martin Fraser: Yes.

Deputy Catherine Connolly: All for the sake of not answering questions, generally, in various Dáil sessions.

Mr. Martin Fraser: I am not sure about that. Most of them are investigations into activities in the private sector.

Deputy Catherine Connolly: In respect of administration, I have one specific question about page 14 under subhead A1. It is stated that the underspend was due to a delay in the planned filling of vacancies due to lack of availability of panels and security vetting. Why was there a delay with security vetting?

Mr. Martin Fraser: When we get staff, some of them are serving civil servants whom we get from promotion panels. If they are from external recruitment panels it is through the Public Appointments Service, PAS. In 2017 there was a lack. In terms of security vetting, staff are vetting by the Garda.

Deputy Catherine Connolly: I understand that but why was there a delay?

Mr. Martin Fraser: I would say it was the volume of work. From memory, the recruitment ban was lifted around this time in 2017 and the reversal of pay cuts began. There was a bit of a problem with ramping up and extra people coming in. That gave rise to delays, both on panels and in security vetting. It takes a while.

Deputy David Cullinane: I thank the Accounting Officer for the comprehensive opening statement and briefing notes. There are no real issues with any of the accounts signed off on or the appropriation accounts. On the President's Vote, on page 3 of the appropriation accounts it is stated that there is one contract of €37,555 that has been rolled over for a number of years.

Mr. Seamus McCarthy: That matter was already discussed.

Deputy David Cullinane: Maybe very quickly then.

Mr. Martin Fraser: It was discussed twice.

Deputy David Cullinane: Was it?

Mr. Martin Fraser: It was a mobile phone contract. Apparently they only had one mobile phone provider so they have since tendered for it.

Deputy David Cullinane: Perfect. I will go back over the Official Report. I thank Mr. Fraser. On page 7 of the appropriation account, the figures for Vote 28, Foreign Affairs and Trade, show a marked increase in expenditure from €241,000 to €667,000. Was that dealt with?

Mr. Martin Fraser: It was but I am happy to answer on it again. It is not an enormous figure. It is a function of the extent and duration of the President's official visits. In the year in question there were quite a lot of State visits. There was one to Cuba and quite a long one to Australia and New Zealand. The further one goes and the longer one is away, the more expensive it is, including for the Department of Foreign Affairs and Trade, which has fewer people on the ground in some places. That figure fluctuates depending on the extent of diplomatic engagement.

Deputy David Cullinane: Perfect. Mr. Fraser referred earlier to the core functions of the Department of the Taoiseach and, I suppose, of the Taoiseach. One of them is engaging with the formulation and implementation of Government policy. There is a focus at the moment on the relationship between different Departments, the Minister for Public Expenditure and Reform and the Taoiseach. I think the national children's hospital overspend is an obvious case where people became aware of it whenever they did. It is a very significant problem and is very much in the public domain at the moment. What would be the Taoiseach's role in that area apart from it being raised at Cabinet level? What would the reporting structures be? If a board identifies a problem, which then goes to the Department of Health, which then goes to the Minister for Health, at what point does it get to the Taoiseach? Is it only at Cabinet level that it would be brought to the Taoiseach's attention? If his role is to formulate and implement Government policy, and it is Government policy to build the national children's hospital, what would his role be in terms of oversight?

Mr. Martin Fraser: That depends. He obviously does not engage with every single thing in Government. He can only-----

Deputy David Cullinane: This is not every single thing. This is a big issue, is it not?

Mr. Martin Fraser: I understand that, but he also can only engage with what he knows about. There is no particular role if there is no problem. The nature of our engagement tends to be the more difficult issues.

Deputy David Cullinane: When did Mr. Fraser's Department and the Taoiseach become aware of the serious overspend?

Mr. Martin Fraser: When?

Deputy David Cullinane: Yes.

Mr. Martin Fraser: This has nothing to do with the 2017 accounts whatsoever.

Deputy David Cullinane: I know that. It is to do with the role of the Department of the Taoiseach, which is in Mr. Fraser's own opening statement.

Mr. Martin Fraser: It has nothing to do with the 2017 accounts. I found about the children's hospital overrun, I think, in November, the same time as the Taoiseach did.

Deputy David Cullinane: In November.

Mr. Martin Fraser: Yes.

Deputy David Cullinane: Was that because information was being brought to Cabinet or was it before?

Mr. Martin Fraser: No. It was mentioned at a meeting in the Department of Health.

Deputy David Cullinane: It was mentioned at a meeting in the Department of Health that the Taoiseach was at?

Mr. Martin Fraser: A meeting that the Taoiseach was at, yes.

Deputy David Cullinane: That was the first time, at a meeting.

Mr. Martin Fraser: Yes.

Deputy David Cullinane: Was Mr. Fraser at the meeting as well?

Mr. Martin Fraser: Yes.

Deputy David Cullinane: Moving on to the commissions of investigation and tribunals, obviously there is a cost to the State. The various tribunals and commissions and their cost are listed on page 19. A number of them are live. The Cregan commission - is that the one into the Irish Bank Resolution Corporation, IBRC?

Mr. Martin Fraser: Yes.

Deputy David Cullinane: When was that set up?

Mr. Martin Fraser: In 2015.

Deputy David Cullinane: At the time it was set up, what were its terms of reference? What was its life span?

Mr. Martin Fraser: I cannot remember, to be honest. I think it was to finish at the end of that year.

Deputy David Cullinane: It is still sitting.

Mr. Martin Fraser: Yes.

Deputy David Cullinane: Did it have its reporting timelines changed at any stage? Can Mr. Fraser talk us through the various changes that were made to the timelines?

Mr. Martin Fraser: I do not have it to hand. The first thing to say is that we only pay for this. It is actually established by the Oireachtas. The terms of reference were set by the Oireachtas and changed by the Oireachtas. The Oireachtas legislated to give this commission of investigation extra powers. I have almost no influence over this other than that I have to pay the bills for it.

Deputy David Cullinane: Did meetings take place between party leaders?

Mr. Martin Fraser: Yes.

Deputy David Cullinane: Who convened those meetings?

Mr. Martin Fraser: The Taoiseach.

Deputy David Cullinane: Exactly. Did Mr. Fraser attend those meetings?

Mr. Martin Fraser: Some of them.

Deputy David Cullinane: There is a role for the Taoiseach's Department in this regard, which is the reason I am asking the question.

Mr. Martin Fraser: Yes, absolutely.

Deputy David Cullinane: Perhaps Mr. Fraser will answer my question regarding how often-----

Mr. Martin Fraser: I literally cannot remember. They were changed a couple of times. The Government legislated to change the powers of the commission.

Deputy David Cullinane: That is done on the basis of advice from the Department.

Mr. Martin Fraser: The Department's view of the wisdom of this is probably different from what happened.

Deputy David Cullinane: Who signs off on it?

Mr. Martin Fraser: The Deputy's party leader would have been at these meetings.

Deputy David Cullinane: I appreciate that. I also attended one of them.

Mr. Martin Fraser: Yes, the Deputy was at the last one so he will know the Department's views on this matter.

Deputy David Cullinane: I am asking the question of Mr. Fraser in the Committee of Public Accounts. I am asking questions in regard to a commission of investigation. I am not doing so to trip up anybody. I am asking fair questions in regard to a commission that has been set up. Mr. Fraser is the Accounting Officer. The Taoiseach held a number of meetings with the Opposition to brief them on what are problems in this process. This is the place where we tease out those problems in terms of cost, in my view. What is the estimated cost of this commission and how much has been spent thus far? What is the anticipated overall cost as opposed to the initial estimation? I ask Mr. Fraser to talk us through those costs.

Mr. Martin Fraser: Sure.

Deputy David Cullinane: Mr. Fraser should be sure because the purpose for which he is here is to answer those questions.

Mr. Martin Fraser: Sure, as in, "Yes". I will answer the Deputy's question.

Deputy David Cullinane: Okay.

Mr. Martin Fraser: The overall cost to date for this commission, as I have it, is €5 million. As can be seen, it was €3 million at the end of 2017. I believe it will cost north of €20 million, or more.

Deputy David Cullinane: The initial cost was €5 million.

Mr. Martin Fraser: No, the initial cost was probably less. I am sorry, I cannot remember what it was in 2015, but it is a matter of public record. It was probably in the single millions at the time.

Deputy David Cullinane: We can lay the blame for this with the Oireachtas.

Mr. Martin Fraser: I am not blaming anybody for it.

Deputy David Cullinane: I am not saying that this is the fault of any one individual but it is reasonable for us to ask the question at this point. We have a commission that was established and given terms of reference for which the budget was an estimated cost of less than €5 million. The estimated cost is now €20 million, which indicates to me that there is a problem. I attended one meeting and I can have my own perspective and others will have theirs but from Mr. Fra-

ser's perspective, as the Accounting Officer for the Department of the Taoiseach, how have we arrived at a situation where the cost has increased from less than €5 million to €20 million?

Mr. Martin Fraser: Because it has taken far longer than people thought at the time and it has become far more complicated. With respect, Chairman, I am not responsible for the commission of investigation and I do not think I should comment any further on it.

Deputy David Cullinane: Mr. Fraser is responsible for the spend. The problem-----

Chairman: Perhaps, the Department of Public Expenditure and Reform has a handle on the costs.

Mr. Martin Fraser: All the decisions about this were taken by everyone in the Oireachtas.

Chairman: Yes, to set it up but the monitoring of cost is what Deputy Cullinane is asking about.

Deputy David Cullinane: I will ask my questions in a different way. If it is going to cost €20 million, who will sign the cheque?

Mr. Martin Fraser: I will have no choice but to sign it.

Deputy David Cullinane: Mr. Fraser will sign the cheque. In my view, the person who signs the cheque is the person accountable to the Committee of Public Accounts. Am I correct, Chairman?

Chairman: Mr. Fraser is the Accounting Officer.

Deputy David Cullinane: Is Mr. Fraser, as the Accounting Officer, accountable to the Committee of Public Accounts for the signing of that cheque?

Mr. Martin Fraser: Yes.

Deputy David Cullinane: Mr. Fraser is saying that he cannot give any explanation for the increase in cost from less than €5 million to €20 million because he does not think it would be helpful for him to comment.

Mr. Martin Fraser: It is because it is far larger and taking far longer than anyone expected. It is a function of how long it is taking.

Deputy David Cullinane: Surely, there has to be more to it. It cannot just be that it is taking far longer because we are talking about a cost that is four times the initial cost. I would like a little more detail as to why the cost has increased from €5 million to €20 million.

Mr. Martin Fraser: The cost of this is the cost of the people who work on it, the cost of the people who appear before it and, as they are all paid by the day, the longer it takes the more costs increase.

Deputy David Cullinane: Was any lobbying done in regard to the cost of legal fees, for example? Were any representations made to the Department in regard to the cost-----

Mr. Martin Fraser: There was a request that the legal fees be increased, which was discussed with the Opposition, including the Deputy's party.

Deputy David Cullinane: I ask Mr. Fraser to bear with me for a minute. On any issue that

comes before the Committee of Public Accounts, there will have been a lot of meetings, public commentary and Dáil proceedings. I am not asking about them. I am asking Mr. Fraser questions. Whatever was discussed at previous meetings with my party leader or any other party leader is a matter for those meetings. Mr. Fraser is here today as the Accounting Officer. My question is if any representations were made to the Department in regard to the cost of legal fees? Mr. Fraser has acknowledged such representations were made.

Mr. Martin Fraser: Yes.

Deputy David Cullinane: Who made those representations?

Mr. Martin Fraser: The tribunal was of the view that costs should be increased. This was discussed with the party leaders and it was decided not to agree to that.

Deputy David Cullinane: Leave aside party leaders because Mr. Fraser would be the first to remind me that party leaders do not make policy. Government makes policy. There can be discussions with party leaders-----

Mr. Martin Fraser: In this instance, Deputy, the policy is absolutely made by the Oireachtas.

Deputy David Cullinane: Yes.

Mr. Martin Fraser: There is no question about that.

Deputy David Cullinane: But it is not made by party leaders. Rather, it is signed off on-----

Mr. Martin Fraser: They have quite a lot of influence on what the Oireachtas does.

Deputy David Cullinane: I will put my questions through the Chair, and in a different way. The Taoiseach can consult on any matter with whomever he wants. On this issue, he consulted with party leaders and so on, but the Department and the Taoiseach sign off on any decisions that are made. That is what happens. The Taoiseach may have the consent or the support, or not, of individual members of the Opposition but that is neither here nor there. The Taoiseach's Department signs off on it.

Mr. Martin Fraser: That is not correct.

Deputy David Cullinane: What is not correct?

Mr. Martin Fraser: What the Deputy just said.

Deputy David Cullinane: Yes, but why is not correct?

Mr. Martin Fraser: Because the terms of reference are set by the Dáil.

Deputy David Cullinane: Yes. Who brings them forward?

Mr. Martin Fraser: The Government brings them forward.

Deputy David Cullinane: Yes, the Government brings them forward, not the Opposition.

Mr. Martin Fraser: Well, in this in case - this is extremely important and is very clear - they do so with the agreement of the Opposition. That has been the case all along.

Deputy David Cullinane: Okay. We are going around in circles on this particular issue. I do not accept what Mr. Fraser said. It is Government that sets the policy.

Mr. Martin Fraser: No, it is not.

Deputy David Cullinane: It is. It can be done-----

Mr. Martin Fraser: The Oireachtas sets the terms of reference.

Deputy David Cullinane: The Government brings it forward. We are dancing on the head of a pin which is unnecessary because I am not suggesting anybody is culpable or responsible. I am trying to get answers on behalf of the taxpayers who will have to foot this bill. The cost has increased from less than €5 million to €20 million. I am not saying that is the fault of the Department, the Taoiseach, the Opposition or everybody here. Rather, I am saying it has happened and cost is an ongoing issue. Is it possible the cost could go north of €20 million?

Mr. Martin Fraser: I just said it would, in my view.

Deputy David Cullinane: It will.

Mr. Martin Fraser: In my opinion, it will.

Deputy David Cullinane: In Mr. Fraser's opinion, it will but we have no idea what that figure might be.

Mr. Martin Fraser: No, and I could be wrong but that is my sense of it. I have yet to see one of these things surprise me on the downside.

Deputy David Cullinane: There is an issue here. The Oireachtas committed initially to writing a cheque for less than €5 million. The cost has now increased to €20 million. I appreciate the point that is being made by the Accounting Officer, that there has been consultation with Oireachtas Members and Opposition leaders, but people will be concerned about the fact that costs have increased from €5 million to €20 million and, possibly, €20 million plus. Mr. Fraser, as the Accounting Officer, will have to sign off on the cheque. As of yet, we have no indication of when a report will issue from this commission. Was an interim report sought?

Mr. Martin Fraser: I think several interim reports were sought, received and published, as the Deputy will recall from the meeting we had.

Deputy David Cullinane: Did they outline work actually done.

Mr. Martin Fraser: The latest - again, I am working from memory because my last engagement is the same as the Deputy's, which is the meeting we had about this - asked for a further fairly lengthy extension. Deputy Catherine Murphy probably can remember as well. It is, I think, until 2020.

Deputy David Cullinane: It is extended until March, as far as I know.

Mr. Martin Fraser: Yes, exactly. The Taoiseach decided, because no one was happy with this, to give them until March.

Deputy David Cullinane: Again, I do not know what has happened since so I am asking-----

Mr. Martin Fraser: Nor do I because the last time we discussed this was at that meeting.

Deputy David Cullinane: Am I right in saying that the extension is until March and that a further extension will be necessary?

Mr. Martin Fraser: We will see what the report says but I imagine we will have another meeting with the Opposition where we discuss all these things.

Deputy David Cullinane: To be clear, there was a meeting with the Opposition and there was agreement to an extension until March. That means it either has to be extended again or a decision has to be made to do something else. Is that Mr. Fraser's understanding?

Mr. Martin Fraser: I am not sure what else can be done but that is correct.

Deputy David Cullinane: Thank you.

Mr. Martin Fraser: To be clear, I have no knowledge - no one here has in the sense of administrative oversight of this - of what that commission is doing, nor should I. I would imagine the third party costs are going to be the largest part of the bill. Insofar as it has been going on since 2015, I would say that third party costs are fairly hefty already.

Chairman: The Department of Public Expenditure and Reform must have some idea of how the costs are going. If it has no idea, this is a bigger issue because it would mean there is a blank cheque. What information does the Department have? Someone must have some idea. If the position is that no one has any idea what the cost of the commission of investigation will be, then the commission should be stopped. Can the Department be helpful to the committee in this regard?

Mr. Brian O'Malley: I will try to assist the committee where I can. The Department of Public Expenditure and Reform arranges for an informal collection of data on costs on a quarterly basis for commissions of investigation, tribunals of inquiry, commissions to inquire into matters and various reports, for example, the Ferns report. Those are the four key headings. We write to the Departments on an administrative basis quarterly to get that information so we can see what the actual costs are.

Chairman: Which Departments now have a commission under their remit?

Mr. Brian O'Malley: If it is helpful, we will cross-check the informal data we have up to the end of December 2018 and send an updated version to the committee secretariat.

Chairman: That would be very helpful. There is a method of collecting data on how many days are logged by the different legal representatives.

Mr. Brian O'Malley: It is the overall cost. We have the cumulative costs, the name of the commission, the topic of investigation, the status of the investigation - whether it is ongoing or if the tribunal or commission has concluded its work - and the cumulative costs to date. Where possible, we try to break that information down between administrative costs, legal costs and third party costs. If the Chairman will allow us to check the information, we will look to send it on to the secretariat.

Chairman: Yes, please refine it.

Mr. Brian O'Malley: To be clear, the data we have are from 2007 up to the end of Decem-

ber 2018.

Chairman: Does that cover all tribunals that have been in existence for the last 12 years?

Mr. Brian O'Malley: Some are beyond that, but the data are from 2007. The Moriarty tribunal, for example, is from 1997 so some of them go back beyond 2007. The data we have are the costs from 2007 up to the end of December 2018, if that is helpful for the committee.

Chairman: It will be very helpful.

Mr. Brian O'Malley: The Chairman might allow us to check the information and then we can forward it.

Chairman: We would be worried if there was no mechanism in place. I understand that the Department cannot estimate the third party costs until some of the figures come in, but there are daily rates and legal costs. In advance of this afternoon's session, will the witness indicate who sets the daily rate or who agrees the hourly rate on behalf of the State? Is the Department involved in that?

Mr. Brian O'Malley: We have no direct role in that.

Chairman: Given that we have an afternoon session with the three legal offices, will the witnesses indicate who sets the rates? Is it the Office of the Attorney General, the Office of the Chief State Solicitor or the State Claims Agency? Who clears or signs off on the rates?

Mr. Brian O'Malley: There are guidelines established with each particular commission and the guidelines would set out rates. With the Fennelly commission, for example, the guidelines would have set out the rates for senior counsel, junior counsel and solicitors.

Chairman: Did the Department of Public Expenditure and Reform approve those rates?

Mr. Brian O'Malley: Sorry?

Chairman: Was it Mr. O'Malley's Department that approved those rates?

Mr. Brian O'Malley: No. It would have been the relevant Department. In that case, it was the Department of Justice and Equality and the Minister would have looked for those rates to be approved.

Deputy David Cullinane: Who signed off on the hourly rates for the Cregan commission?

Mr. Brian O'Malley: It would be the relevant Department.

Deputy David Cullinane: Which Department was that?

Mr. Brian O'Malley: The Department of the Taoiseach. The Departments would write in to us. If it is helpful, we will try to get that list for the committee. We will send in an updated list.

Chairman: The Department has offered to provide very helpful, useful and informative information which all members are looking for. We will give it time to prepare that.

Deputy Catherine Murphy: May I ask a small supplementary question?

Chairman: Yes.

Deputy Catherine Murphy: Has the Department of Public Expenditure and Reform sought to have a standing commission or commission of inquiry established? Have other methods of doing inquiries been considered? Inquiries will always be needed. Have alternative means of inquiring, for example, those used in other countries, been considered that would achieve the same results without incurring the same costs?

Mr. Brian O'Malley: The commissions and tribunals are established and their terms of reference set by the Oireachtas. As Mr. Fraser said earlier and previously, we have looked at commissions of investigation as being a speedier and more cost-effective mechanism for dealing with these issues than the previous tribunals of inquiry might have previously been. As the Deputy will see, some of the costs referenced here are significantly lower for commissions of investigation *vis-à-vis* tribunals of inquiry. That mechanism is one that is being implemented going forward. Just to be clear, the Department's role in this process is to collate the data from the relevant Departments on a quarterly basis. We will try to furnish the committee with that information if we can.

Chairman: Mr. O'Malley might also give us the provisional estimate for each of the Departments for 2019. The Department obviously had the figures, even if they may not have been approved. I am asking for the most up-to-date figures. I accept the 2019 figure will be an estimate. At this stage, we can park this issue and consider it again when we receive that information.

Deputy Marc MacSharry: I see in the accounts that in 2017 there were 228 staff in the Department of the Taoiseach. How many are there now?

Mr. Martin Fraser: I would say the figure is roughly the same, about 230.

Deputy Marc MacSharry: It went up from 204 to 228 between 2016 and 2017.

Mr. Martin Fraser: Yes.

Deputy Marc MacSharry: It is roughly the same today.

Mr. Martin Fraser: It may be one or two higher.

Deputy Marc MacSharry: Has the Taoiseach completely disbanded the strategic communications unit?

Mr. Martin Fraser: All of the things that we said we would do have been done. Yes.

Deputy Marc MacSharry: Where did all of those people go?

Mr. Martin Fraser: As I said when Deputy Aylward asked the question, I think we are down one quarter of the staff there and they were redeployed, generally speaking.

Deputy Marc MacSharry: Were they redeployed within the Department?

Mr. Martin Fraser: From memory, that was generally speaking not the case.

Deputy Marc MacSharry: We need Mr. Fraser to do a little bit more than speak generally because we focused heavily on this matter the last time. The unit was to be disbanded and according to various media reports, it has not really been disbanded. Mr. Fraser believes staff numbers are higher than in 2016 and, presumably, we had procured additional people to look after the strategic communications unit. What is going on?

Mr. Martin Fraser: The strategic communications unit is a small part of the Department.

Deputy Marc MacSharry: It is the area I am focusing on at the moment and a pretty big part of our last focus.

Mr. Martin Fraser: It was. I had a note in case the subject came up. The recommendations were that the unit should be wound down, which it has done, and that we should revert to-----

Deputy Marc MacSharry: What day was the effective date of its completion?

Mr. Martin Fraser: I believe it was in July of last year.

Deputy Marc MacSharry: It ceased to exist in July 2017.

Mr. Martin Fraser: It was wound down, yes.

Deputy Marc MacSharry: Did the wind-down begin in July or was it completed in July?

Mr. Martin Fraser: Completed.

Deputy Marc MacSharry: How many people worked in the unit at that stage?

Mr. Martin Fraser: We had 21 people and it was back down at 16 or 17 people by August. That is about a 25% reduction.

Deputy Bobby Aylward: Mr. Fraser told me there were eight staff.

Mr. Martin Fraser: It was up by eight staff.

Deputy Marc MacSharry: "It" being?

Mr. Martin Fraser: The staff went up by-----

Deputy Marc MacSharry: Mr. Fraser said "it" was now down to 16 or 17. What is "it"?

Mr. Martin Fraser: The number of staff in the SCU, the Government Information Service, GIS, press and that whole area. We went over 20 but now it is down.

Deputy Marc MacSharry: We no longer use the term "strategic communications unit" but in essence we have four fewer people doing the same work. Is that the case?

Mr. Martin Fraser: No. I will have to go through this, just to be clear.

Deputy Marc MacSharry: That is what we are here for.

Mr. Martin Fraser: I know. The recommendations were that the unit should be wound down, which it was; the traditional GIS should take over some of its functions while others should be devolved to line Departments; there should be a transition period that ended in July, which it did; the budget should be reduced by 50%, which it was. In fact, we reduced the Estimate in the Revised Estimates.

Deputy Marc MacSharry: There was, therefore, only a 50% reduction in the €5 million figure? Was €2.5 million kept?

Mr. Martin Fraser: In the end, we only spent €2 million and this year, it is well less than €1 million. Obviously we incurred a lot of-----

Deputy Marc MacSharry: What was the budget in the Estimates for this year?

Mr. Martin Fraser: It does not even have its own budget because it is just part of administration expenditure.

Deputy Marc MacSharry: What is the GIS budget for this year?

Mr. Martin Fraser: Again, GIS does not have a specified budget. It is well less than-----

Deputy Marc MacSharry: What does it come under then?

Mr. Martin Fraser: It is pay and administration, like any other section in the Department.

Deputy Marc MacSharry: Does it come out of the pay or administration Estimate?

Mr. Martin Fraser: The pay of the staff comes out of the A1 subhead.

Deputy Marc MacSharry: Is it reasonable to say that we had 21 people devoted to communications before July 2017 and we now have 16?

Mr. Martin Fraser: Before July 2018. Now we are down to 17. The Deputy asked about 2018.

Deputy Marc MacSharry: We no longer use the term “strategic communications unit”. It only spent €2 million out of a potential €5 million, which was cut from €5 million to €2.5 million. There is no specific budget this year and, instead of 21 people, there are only 16 or 17 people devoted to communications.

Mr. Martin Fraser: Yes.

Deputy Marc MacSharry: Is it not kind of smoke and mirrors without the budget?

Mr. Martin Fraser: No.

Deputy Marc MacSharry: Then what do the 16 or 17 people do? What do they not do now that they used to do up to last July?

Mr. Martin Fraser: To continue with the recommendations, surplus staff were to be redeployed either within the Department or elsewhere. That was done.

Deputy Marc MacSharry: Only four were deployed.

Mr. Martin Fraser: It was recommended that the staff be put under the management of the assistant secretary for corporate affairs, which was done. There should be no new national campaigns run by the unit. Where expenditure was committed but not yet spent, it should be redirected to non-contentious campaigns like Healthy Ireland or Brexit preparation, which has been done. The Government Information Service, GIS, should continue to have a co-ordinating and supporting role for national cross-government communications, as has always been the case, but campaigns should be led and funded by the relevant line Departments, which is being done. Project Ireland 2040 should be the responsibility of the Project Ireland 2040 delivery board, which is outside our Department. That was done. International communications - Global Ireland, the Security Council campaign and the diaspora work - should be led by the Department of Foreign Affairs and Trade. All other activities should continue as before, including www.merrionstreet.ie, central support services, providing services to the media, managing media

events and producing communication material across all platforms.

The committee endorsed these recommendations, which also called for us to continue the streamlining work, the capacity building work, the continuing professional development work, the single Government identity project, which members will see being rolled out, the *www.gov.ie* project, which we are doing, and efficiency measures, for example, rationalisation and consolidated buying. It was also recommended that the research survey proceed, but that has not gone ahead yet. All my recommendations, which the committee endorsed, have happened.

Deputy Marc MacSharry: How many people were brought in before the unit was established?

Mr. Martin Fraser: There were 13, 14 or 15 people there, and I think eight-----

Deputy Marc MacSharry: No. How many were brought in when it was established?

Mr. Martin Fraser: I think it was approximately eight to ten. I cannot remember off the top of my head.

Deputy Marc MacSharry: Of those eight to ten, at least six of them are left.

Mr. Martin Fraser: Four or five. It is a 25% reduction. The rest are still there doing that work.

Deputy Marc MacSharry: They are devoted exclusively to communications within the Department of the Taoiseach.

Mr. Martin Fraser: Communications across the Government.

Deputy Marc MacSharry: Communications across the Government is a grey area.

Mr. Martin Fraser: For example-----

Deputy Marc MacSharry: It does not seem clear to me. Let me move on, as this is obscure and I do not believe we will get the kind of breakdown we are seeking. There are still many people involved in communications in the Department.

Mr. Martin Fraser: Yes.

Deputy Marc MacSharry: The €5 million of this year's budget has been distributed elsewhere.

Mr. Martin Fraser: No. It was cut from our budget.

Deputy Marc MacSharry: In terms of this year's budget.

Mr. Martin Fraser: It was not distributed. It was cut.

Deputy Marc MacSharry: That is what I said. It was spent. It is not lying around in an account.

Mr. Martin Fraser: No.

Deputy Marc MacSharry: I mean the Exchequer funds. It is not in the Department's budget. Therefore, we are using it somewhere else.

Mr. Martin Fraser: It could be unspent.

Deputy Marc MacSharry: Okay. It is in a credit union account. How many journalists and PR people were taken on by the Department of the Taoiseach in the past year?

Mr. Martin Fraser: I do not think any were. I do not remember any.

Deputy Marc MacSharry: I think there were about six.

Mr. Martin Fraser: Does the Deputy still mean journalists and PR people?

Deputy Marc MacSharry: Yes. Over the past year.

Mr. Martin Fraser: If the Deputy knows who they are, I would be happy to discuss the issue with him, but it is not ringing a bell with me.

Deputy Bobby Aylward: Deputy MacSharry must have a good source of information.

Mr. Martin Fraser: He must.

Deputy Marc MacSharry: Was anyone recruited on the communication side in the past year?

Mr. Martin Fraser: We saw a reduction in numbers.

Deputy Marc MacSharry: By four or five.

Mr. Martin Fraser: Yes.

Deputy Marc MacSharry: There would still be current expenditure relating to the pay bill for the eight to ten people who came in as part of the strategic communications unit.

Mr. Martin Fraser: The budget was €5 million. It was cut to €2.5 million. We spent €2 million and will now spend less than €1 million. That is the scale of the reduction.

Deputy Marc MacSharry: It is less than €1 million for the whole GIS.

Mr. Martin Fraser: Yes, although I am open to correction on what it includes.

Deputy Marc MacSharry: It has no involvement in other Departments. Mr. Fraser stated that the strategic communications unit covered other programmes and so on and that they have been pushed back to their line Departments.

Mr. Martin Fraser: Yes.

Deputy Marc MacSharry: What Government communications are there, then? If the Government wants to say something, this is confusing. It looks like smoke and mirrors. The same people are involved, they are not allowed to speak about X and they should speak about Y. They comprise the Government communications unit, yet there will be no more communications. The perception is that, while the €5 million might be gone, this unit still exists and all communication is being streamlined through it, with many of its people still on staff.

Mr. Martin Fraser: Some of whom are still on staff to do the work I outlined, which the committee endorsed.

Deputy Marc MacSharry: Which committee?

Mr. Martin Fraser: The GIS has existed for decades.

Deputy Marc MacSharry: I know all that, but we seem to have beefed it up a good bit.

Mr. Martin Fraser: There is far more work to do.

Deputy Marc MacSharry: While we got rid of the name, we still have a lot of the people around.

Mr. Martin Fraser: We do not really. I have explained what they are all doing. They do much more work than they would have done in previous years.

Deputy Marc MacSharry: What do they do?

Mr. Martin Fraser: I just told the Deputy what they did. All the things-----

Deputy Marc MacSharry: I thought that was work that had been farmed out to other Departments.

Mr. Martin Fraser: No. What we-----

Deputy Marc MacSharry: Do not read it out again, as I do not have time.

Mr. Martin Fraser: Okay.

Deputy Marc MacSharry: It will be on the record and I can check. Will Mr. Fraser provide a breakdown of everyone involved in communications, including when they were employed and the salary scales appropriate to them? He can send that information to the committee at another time.

Chairman: Does Mr. Fraser have those numbers?

Deputy Marc MacSharry: He was unsure of whether the figure was four, five, eight or ten, how many were gone and how many had been redeployed.

Mr. Martin Fraser: I do not have the numbers on me, but I will get them for the committee.

Chairman: In writing.

Deputy Marc MacSharry: Give us a specific breakdown of what those people do. The term "Government communications" is very general. If Department X wants to put a good spin on something but feels it is a bit light on the communications side, can it lift the phone to the GIS and ask how the something can be turned into a Government of Ireland announcement? The perception out there is that nothing has changed.

Mr. Martin Fraser: I do not agree with the Deputy.

Deputy Marc MacSharry: I appreciate that, so what I want is the proof, as Mr. Fraser has not been convincing. He has told us that there were eight, six, four or five, he was not sure, he does not know and, generally speaking-----

Mr. Martin Fraser: I have detailed every single recommendation that I made. This committee endorsed those recommendations.

Deputy Marc MacSharry: I do not remember endorsing anything.

Mr. Martin Fraser: Well, the committee did.

Deputy Marc MacSharry: It must have been buried in some document or other.

I will address the President's Establishment. The audit committee is now meeting. How were its members recruited? I noticed in the accounts that the audit function for the Department of the Taoiseach is the same audit function for the President's Establishment.

Mr. Martin Fraser: That is right.

Deputy Marc MacSharry: Is it the same committee?

Mr. Martin Fraser: No.

Deputy Marc MacSharry: We have a new chair. I was watching on the monitor when Mr. Fraser stated that the committee had met several times and was going through everything in question. Was the 1938 Act specific in excluding the President's Establishment from being audited by the Comptroller and Auditor General?

Mr. Seamus McCarthy: I do not recall off hand. I would have to check.

Deputy Marc MacSharry: Could we check that? Presumably, it does. If it does not, Mr. McCarthy might supply a note on why the Establishment is excluded from his obligation to audit.

Mr. Seamus McCarthy: I have not examined that Act recently.

Deputy Marc MacSharry: Mr. McCarthy might also supply a note on what would need to happen if the Oireachtas decided to include it. Would it require a statutory instrument, an amendment to the primary legislation or just political will, for want of a better expression?

Mr. Seamus McCarthy: There is a constitutional provision, and my not having an audit role specifically in respect of the emoluments and remuneration of the President is probably consistent with that principle.

Deputy Marc MacSharry: Probably. If Mr. McCarthy supplies a note on it, we will know for certain. No one is saying anything about misappropriation or the like and did not the last time we discussed this matter either, but it is appropriate that moneys be audited. We learned that these moneys had not been audited. How this Vote is laid out is general. There are broad headings, which probably do not provide the level of explanation that people expect or to which they are entitled. Obviously, there are costs involved in running the Presidency. That is important, as no one wants him to be cycling a bike or staying in a Best Western. Does the €317,000 include wardrobe, for example?

Mr. Martin Fraser: I discussed this matter earlier. I am not the Accounting Officer for the Vote.

Deputy Marc MacSharry: I know that, but Mr. Fraser is the closest thing to an Accounting Officer that we can get today.

Mr. Martin Fraser: That does not mean I know.

The President has published a full account in the expenditure report.

Deputy Marc MacSharry: He did not, actually, with respect to him.

Mr. Martin Fraser: Now, Chairman, we are really commenting on the President of Ireland.

Deputy Marc MacSharry: Mr. Fraser brought up the President.

Mr. Martin Fraser: No.

Deputy Marc MacSharry: I am talking about the President's Establishment. Mr. Fraser mentioned the word "President". There was an account published, which is not an audited account and which is not a detailed explanation of what the breakdown is. This is not about the current President. For the record, I voted for the President and my party campaigned for him. However, just because it is the President, do not drag an individual into what is taxpayers' money and the expenditure of it. There may need to be adjustments. I have asked for an explanation for the 1938 Act. Perhaps the President should be given more money in terms of this allowance. A refund was given, which is great, but it is about appropriate oversight. I am just asking a basic question, which is whether it includes wardrobe.

Mr. Martin Fraser: And I am telling the Deputy, I-----

Deputy Marc MacSharry: That is grand. What I am most respectfully asking Mr. Fraser is whether he can give us a breakdown, without the amounts necessarily, because it is perfectly legitimate that it might include wardrobe. Mr. Fraser might inquire from the Accounting Officer, with whom he obviously has a relationship. If it is the same audit function between one and the other, I am sure it is not rocket science to ask the question. Can we get a broader list of what kind of things it includes and whether it includes things like wardrobe? I am just interested to know. It is perfectly appropriate that it might. I just want to know and the public might be entitled to that too.

Chairman: I am going to ask the Comptroller and Auditor General to help as we are on unusual ground. The payment of €318,000 is paid from the Central Fund and the person responsible for the Central Fund is the Secretary General of the Department of Finance. Am I correct so far?

Mr. Seamus McCarthy: For the payment of the moneys to the President.

Chairman: The payment out is under the functions of the Secretary General of the Department of Finance and not of Mr. Fraser. The Department of Finance will be here in a couple of weeks and is on notice that we will ask about this payment being made from the Central Fund, as other payments from the Central Fund get made. We can ask that Secretary General whether there is a mechanism for accounting for that onward payment. That is something we will tease out. The public sees it very simply. There was expenditure at June 2017 of €8.648 million for the President's Establishment and most of it was Voted expenditure while €317,000 was not. The public will ask why, if the Comptroller and Auditor General can audit €8.3 million of the €8.6 million, someone cannot audit the other €317,000. Of the fund, 95% is audited by the Comptroller and Auditor General. From a layperson's point of view, it is not unreasonable to ask why that is not 100%. That is another day's work and probably a matter for policy or legislation.

Mr. Martin Fraser: It is.

Chairman: We are not asking Mr. Fraser to answer.

Mr. Martin Fraser: I recall what I said earlier. The President has set up an audit committee and is going to report on it anyway. The committee should bear that in mind.

Deputy Marc MacSharry: An audit committee and an audit are two different things.

Mr. Martin Fraser: I cannot talk about the President anymore.

Deputy Marc MacSharry: I am not talking about the President at all. I am talking about public funds. I have an issue with things being misrepresented and the phrase “We can’t talk about that because...”. I am sorry, but we can. The people’s representatives can talk about the people’s money - end of story. Some of it is not audited and the Chairman has quite reasonably said that some of us think that perhaps it could be. As I have said *ad nauseam*, nobody is saying anything about misrepresentation or anything like that.

Chairman: It is an issue that the committee will consider as part of our next periodic report.

Deputy Marc MacSharry: Is there a risk register in the Department of the Taoiseach?

Mr. Martin Fraser: Yes.

Deputy Marc MacSharry: Is reputational damage on it?

Mr. Martin Fraser: Reputational damage to-----

Deputy Marc MacSharry: On a normal risk register, it is usually one of the top ten. Is it in the Department of the Taoiseach?

Mr. Martin Fraser: I cannot remember. We have a national risk assessment which we do for the whole country, which is more important to me.

Deputy Marc MacSharry: I appreciate that. I am just talking about the Department now.

Mr. Martin Fraser: I cannot recall.

Deputy Marc MacSharry: Can we get a copy of the risk register?

Mr. Martin Fraser: I will see if I can get the committee a copy.

Deputy Marc MacSharry: Does anyone else know if reputational damage is one of the items on the risk register?

Mr. Denis Breen: It is definitely mentioned.

Chairman: Can we be sent a copy of the risk register?

Mr. Martin Fraser: We will get the committee a copy.

Deputy Marc MacSharry: Can we define what reputational damage would include in the context of the Department of the Taoiseach?

Mr. Martin Fraser: I would have to have a look. The danger of reputational damage is extreme in all areas.

Deputy Marc MacSharry: That is why I am asking the question.

Mr. Martin Fraser: I know.

Deputy Marc MacSharry: I am just interested to know. Reputational damage for Kellogg's is "Our food is bad". I am just interested to know how we define reputational damage in the Department of the Taoiseach.

Mr. Martin Fraser: We are involved in so many things.

Deputy Marc MacSharry: Also, what grading is it given? Usually, it is between one and three.

Mr. Martin Fraser: I will check it out for the Deputy. I am much more concerned about the risks of Brexit going wrong or really serious stuff but I will certainly get the register.

Deputy Marc MacSharry: That is Mr. Fraser's concern. The risk register is something else. I am interested in a definition.

Mr. Martin Fraser: The national risk register is important.

Deputy Marc MacSharry: Of course, Brexit is a risk. If there was a new risk register for the next six months, it would be the first item on the agenda of every Department.

Mr. Martin Fraser: We have a risk register for the country which we work on and that is more important in many ways, but I will get the Deputy the internal one.

Deputy Marc MacSharry: It does not matter what is important. We are talking about a Vote today.

Mr. Martin Fraser: It does matter.

Deputy Marc MacSharry: Mr. Fraser cannot be in answering on the Vote on the one hand and then deflect it by saying "A matter for the whole country that is more important". We are here to talk about the Vote.

Mr. Martin Fraser: It is a matter for the Taoiseach's Department. We do the national risk assessment.

Deputy Marc MacSharry: That is great. I am interested to see if reputational damage for the Department itself is on its own risk register, the rating it is given from one to three and how it is defined in the context of the Department itself.

Mr. Martin Fraser: I will have a look at the risk register and send the committee a copy of it.

Deputy Marc MacSharry: And the definition. That is it.

Chairman: I ask the Comptroller and Auditor General whether each Department has a risk register.

Mr. Seamus McCarthy: Yes.

Chairman: Every Department has one. Are they updated every quarter?

Mr. Seamus McCarthy: Certainly, they are monitored on a routine basis and are definitely updated annually.

Chairman: It is annual updates.

Mr. Seamus McCarthy: Obviously, one looks for emerging risks as one goes through the year.

Chairman: It is every Department. We have had the HSE give us its quarterly risk. It does a quarterly update and it is voluminous. The HSE is the biggest State body out there. Every Department has a risk register and all we are asking for is a copy of the most recent one. When we see that, we will see what is in it. It is probably subject to freedom of information, if it comes to that.

Mr. Martin Fraser: I will give it to the committee. That is no problem.

Chairman: Just send it on to us and it will probably answer the questions. If we have queries on it, we can come back.

Mr. Martin Fraser: No problem.

Chairman: I will conclude this part of the meeting. I thank Mr. Fraser and staff from the Department of the Taoiseach and the Department of Public Expenditure and Reform. Before they leave, are any of Mr. O'Malley's colleagues here this afternoon with the other three organisations?

Mr. Brian O'Malley: No, not this afternoon.

Chairman: I want Mr. O'Malley to take them the message that the Committee of Public Expenditure expects to have representatives from the Department of Public Expenditure and Reform here when it is talking about Votes. That is normal. We are dealing with three Votes this afternoon and no representative from the Department will be present to answer any questions. Take the message back.

Mr. Brian O'Malley: I will, certainly. We have raised with the secretariat before that there are difficulties.

Chairman: That is why I am aware of it.

Mr. Brian O'Malley: There are 42 Votes in the system.

Chairman: I am disappointed to hear that we do not have representatives. Mr. O'Malley was helpful today on the issue we spoke about. His intervention was helpful today but this afternoon no one from the Department will be here to help. Take that message back. At 2 p.m., we will resume in public session to deal with the Votes of the Office of the Attorney General, the Office of the Director of Public Prosecutions and the Office of the Chief State Solicitor. We will allow the witnesses to exit the room but the members should remain for the private session now.

The witnesses withdrew.

Sitting suspended at 11.39 p.m., resumed in private session at 11.41 p.m., suspended at 12.30 p.m. and resumed in public session at 2 p.m.

Business of Committee (Resumed)

Chairman: We will resume in public session. We are joined this afternoon by the Comptroller and Auditor General, Mr. Seamus McCarthy, and he is accompanied by Ms Maureen Mulligan, deputy director of audit.

Before we get into the afternoon's business, I want to comment on the private session we had before the break. Two items came up in the private session and I want to put the result of that on the public record.

The first item dealt with correspondence Nos. 1923, 1924 and 1929. One was from the Chairman of the Joint Committee on Justice and Equality, and the other two were from the Ceann Comhairle's office in respect of the same letter. The Joint Committee on Justice and Equality wrote to us saying that they believed we went outside our remit in our discussions on the Vote for the Irish Prison Service three weeks ago. I informed the committee that I had spoken to the Ceann Comhairle yesterday evening on the matter. The Ceann Comhairle has indicated that the matter is being considered by the Committee on Procedure and Privileges, CPP, I think next week. I am satisfied, as Chairman, that we were within our brief and remit when we discussed the Vote. Without further discussion, and to inform people, I expect the CPP to deal with the matter appropriately and that the Committee of Public Accounts will continue its work within its remit, as we always do.

I shall move on to the next item. We had legal advice from the Office of the Parliamentary Legal Advisor, OPLA, in Leinster House. On 28 November 2018, the committee agreed to seek a briefing from the office in respect of section 172 of the National Asset Management Agency Act 2009, following the committee's discussion in respect of NAMA's correspondence on the topic regarding Project Nantes. We had a detailed briefing. This follows on from the letter from NAMA, No. 1761, which we published last December. Essentially, the parliamentary legal advisor advised us that she agrees with the interpretation of section 172, as outlined in the NAMA letter before Christmas. We received a detailed briefing but that is strictly privileged so I am not in a position to publish or distribute that. A clear distinction was made between when NAMA sells property over which it has a charge and when it can separately sell a loan or a loan book. The parliamentary legal advisor said section 172 applies to where NAMA sells a property over which it has a charge but does not apply in respect of a loan sale. I will ask the Comptroller and Auditor General to correct me if I say anything wrong on this because he is familiar with this issue. A section 172 declaration is not required in respect of a loan sale even though NAMA has been seeking one in many situations. It was not legally required, however. It was probably an extra element of assurance for NAMA but it was not legally required. It is another day's work but not for this committee. The legislation did not specifically deal with the sale of loans. Only the sale of property was dealt with when the NAMA legislation was being established, all of ten years ago. The legal advice to us stated a director of a company that was involved in purchasing a property or even a loan book from NAMA is not necessarily a connected person. A person is only a connected person under the strict criteria laid down in the Act. In layman's English, that is if one is an associated debtor, or if the organisation buying is a corporate body, a subsidiary or a related company, or if the person is a nominee of the debtor. A director of a company can be a director of a company that is involved in these transactions that may not be a nominee of the original debtor. There was a presumption because a director was involved in this that it was in contravention of the NAMA legislation. NAMA is satisfied it was not and the parliamentary legal advisor has confirmed that view to us today. I am just putting this on the public record because many people have been asking us for the up-to-date position on it. This committee accepts the position as set out by NAMA and as now confirmed by the OPLA.

2017 Annual Report of the Comptroller and Auditor General and Appropriation Accounts (Resumed)

Vote 3 - Office of the Attorney General

Vote 5 - Office of the Director of Public Prosecutions

Vote 6 - Office of the Chief State Solicitor

Mr. Damien Moloney (*Director General, Office of the Attorney General*), **Ms Maria Browne** (*Chief State Solicitor, Office of the Chief State Solicitor*), and **Mr. Barry Donoghue** (*Deputy Director General, Office of the Director of Public Prosecutions*) called and examined.

Chairman: We shall now move on to the afternoon business. We are examining the Appropriation Accounts for 2017: Vote 3 - Office of the Attorney General; Vote 5 - Office of the Director Public Prosecutions; and Vote 6 - Office of the Chief State Solicitor. In case the public thinks otherwise, the witnesses present are not the Attorney General, Director of Public Prosecutions, DPP, and Chief State Solicitor, but the Accounting Officers who are responsible. They are not necessarily the legal people involved. We are joined from the Office of the Attorney General by Mr. Damien Moloney, director general, Ms Lynda O'Regan and Mr. David Donnelly. We are joined from the Office of the Director Public Prosecutions by Mr. Barry Donoghue, deputy director of public prosecutions and Accounting Officer, Ms Elizabeth Howlin, Ms Helena Kiely and Mr. Declan Hoban. From the Office of the Chief State Solicitor, we are joined by Ms Maria Browne, Chief State Solicitor. I did not realise until now that she was present. She is joined by Mr. Owen Wilson and Mr. Michael Fallon. It is a bit unusual to have three Accounting Officers here together but they are all in the legal sphere. To help the committee, we decided to have the three groups together. The committee wants to deal with each of the 40 Votes as voted expenditure. We do not have 40 separate meetings so we have to combine some groups.

I remind members, witnesses and those in the Visitors Gallery that all mobile phones must be switched off or switched to airplane mode. Leaving them in silent mode can interfere with the recording system.

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

We shall start with the opening statement of the Comptroller and Auditor General. I propose that we take the three opening statements together and then move on to questions from members. We will try to deal with this as a group meeting. Since members are not all legal experts, their questions might sometimes stray across two offices. The witnesses know their demarcation lines and can assist us when it comes to answering questions.

Mr. Seamus McCarthy: I will deal briefly with each of the Votes. The 2017 Appropriation Account for Vote 3 - Office of the Attorney General shows gross expenditure of just over €14.5 million in respect of the programme for the provision of legal advice to the Government, Departments and offices, and for legislative drafting services. The expenditure included Exchequer funding of €2.2 million for the Law Reform Commission, LRC. Appropriations-in-aid totalled €668,000 for the year, almost all of which related to retained pension-related deductions from staff salaries. A net surplus of just over €1 million was due for surrender at the end of 2017.

The Office of the Chief State Solicitor also provides legal services to central government Departments and offices, including representing their interests in actions taken on behalf of, or against, the State. This office does not charge for its services.

The 2017 Appropriation Account for the office's Vote records gross expenditure of €33.1 million. This mainly comprised administration costs of €18.3 million and payments of fees to counsel totalling €13.6 million. Appropriations-in-aid totalled €1.1 million. The surplus for surrender at the year's end was €349,000.

At the end of 2017, the accumulated value of taxed costs awarded to the State but not yet recovered totalled €9.6 million. This was marginally up on the comparable position in 2016. Receipts in 2017 totalled €397,000, representing only about 4% of the 2017 year-end figure.

In my report on the Appropriation Account for Vote 6, I drew attention to a material level of non-compliance with EU and national procurement rules in respect of contracts operated by the Office of the Chief State Solicitor in 2017. This is explained by the Accounting Officer in the statement on internal financial control.

The DPP is the State's chief prosecutor in alleged criminal cases, and is independent in the exercise of her functions.

The 2017 Appropriation Account for Vote 5, for the office of the director, records total gross expenditure of €41.7 million, charged to a single programme. Administration costs, including salaries, amounted to €16.8 million. Payments to State solicitors, who act outside the Dublin region on behalf of the director, amounted to €6.6 million. Fees paid to counsel retained by the director totalled €16.4 million in 2017. The original voted provision for this area of spending was €14.5 million. The additional expenditure of €1.9 million was attributed to a greater than expected level of activity in certain courts. To accommodate the additional spending on fees, a Supplementary Estimate was voted. This allocated expected savings on other subheads to meet the additional fees, and increased the resources available to the director by a net €418,000. At the year end, the net outturn on the Vote was a surplus of just under €190,000, which was due for surrender to the Exchequer.

Mr. Damien Moloney: On the Chairman's point about four offices and one body with three Accounting Officer Votes, I apologise for the structure. The Attorney General's Office has three of those constituent offices but has two Accounting Officers. I hope that will all become appar-

ent in the opening statements.

I thank the Chairman and committee for the invitation to discuss the 2017 Appropriation Account of the Office of the Attorney General and the 2017 annual report of the Comptroller and Auditor General. I am pleased to report that the office did not feature in the annual report. I am joined by my colleagues Ms Lynda O'Regan and Mr. David Donnelly.

I will commence by touching on the work of the Office of the Attorney General. Our primary function is to support the Attorney General in discharging his functions as legal adviser to the Government. In that regard, the office provides two main services to our clients - legal advice and legislative drafting. The scope and variety of the legal work is broad, with new areas of work being added continuously. The advisory section of the office is organised into five specialist groups covering all major legal specialisms. This set-up allows the members of the group to become expert in the areas to which they are assigned and to provide a high level of expertise to clients. To develop the expertise of the legal advisory staff further and to encourage close collaboration with Departments, the office has been running a secondment programme since 2006 whereby advisory counsel from the office are recruited and placed as legal advisers within Departments. At the end of 2017, the office had 24 legal advisers seconded across 14 Departments and offices. The office also assigns an advisory counsel as legal counsellor to the permanent representative in Brussels. In March 2017, a second advisory counsel was seconded to the permanent representative to deal with Brexit in particular. The office had two advisory counsel working as seconded national experts in the European Commission and another in the European Parliament.

The legislative drafting service is provided through the Office of the Parliamentary Counsel. That is a constituent office, organised into four groups, each serving a number of specific Departments. This enables the drafters to build up a high level of familiarity with the work of the client Department, which in turn facilitates drafting on complex topics. Much of the work of the office, particularly the Office of the Parliamentary Counsel, is primarily driven by the Government's legislative programme. Both the advisory and drafting sides of the office hold meetings and are in regular contact with client Departments to allow for ongoing review of the services being provided.

The administration side of the office provides administrative support to both the advisory and drafting sides. It is organised into a number of business units covering human resources, finance, library and knowledge management, information technology, change management, training and development, corporate services and registry. Senior management from the administration side participates in the office's management committee, currently called the management committee and previously a management advisory committee. There is also a joint Chief State Solicitor's office-Attorney General's office management committee, which meets less frequently but acts as an umbrella for the constituent offices.

The office constantly re-assesses the need to provide legal services to its wide range of clients and so seeks to ensure that its lawyers are fully trained and resourced. This involves making sure that legal staff are fully expert in their areas of legal work and have at their disposal all resources to do their work to the highest standard required by Government. Knowledge management and information sharing is a central feature of how we operate. Precedents, procedures and practices are recorded and made available as appropriate to staff.

With regard to the 2017 appropriation account, the office operated an administrative gross budget of €15.66 million of which the outturn was €14.54 million. A significant proportion,

€11.26 million, close to 72%, of our budget was allocated to salaries. This high proportion reflects the fact that the office is a legal professional organisation providing legal services to the Government and Departments and does not have expenditure programmes as such. The next largest allocation is the €2.24 million, 14.3% of our budget, for the Law Reform Commission, the sole office under our aegis. That money is channelled through our Vote as a grant-in-aid. The remaining €2.16 million, 14% of the budget, is allocated to training, IT, premises, telecoms and so on. During 2017, the office had savings in excess of €1 million. The majority of that excess, approximately €800,000, arose in subhead A1, salaries. Some €156,000 arose in A2, due to reduced dependence on contract legal expertise. Some €52,000 was from our subhead concerning the Law Reform Commission.

The savings in salaries arose due to delays in the planned filling of vacancies due to the lack of availability of panels and security vetting. The savings in A2 arose due to lesser reliance on contract drafting expertise from outside the office. The savings on the Law Reform Commission were due mainly to staff changes. In all areas of expenditure, the office closely monitors and controls expenditure to ensure appropriate use of funds and maximum value. Each month, the office's management committee is briefed on the office's financial position including such issues as the formulation of annual budgets and measures required to meet savings or staffing targets imposed by the Department of Public Expenditure and Reform.

The office operates a financial management system which greatly assists me and also informs the monthly presentation on financial matters to the members of management committee. There is ongoing development of an interface with the financial management system and the case records management system, ACME, to allow for the development of costing as well as enhanced financial and non-financial management reports.

The Chief State Solicitor's office has a separate Accounting Officer but we work closely with it through our constituent office of the Attorney General's office. We have a joint Attorney General's office-Chief State Solicitor's office management advisory committee which meets a number of times throughout the year. In addition, we share a number of IT systems and knowledge management initiatives to ensure efficiencies and expertise are shared. In conjunction with the Chief State Solicitor's office, the office has an audit committee which includes three external members, one of whom acts as chair. Each year, the committee agrees a programme of audits and the resulting reports and recommendations are presented to the local management committees and made available to the Comptroller and Auditor General.

The committee will be aware of the Government's extensive legislative programme which places heavy demands on the office, both in the formulation of advice on legislative provisions as well as their actual drafting. The increasing pace in the delivery of Government services means that much of the advice has to be provided and the drafting carried out in a way that meets that increasing pace, at relatively short notice. There is an increasing demand for advisory and drafting services. Government amendments should be pointed out specifically. Almost 300 Private Member's Bills have been introduced since 2016. The nature of the UK's withdrawal from the European Union has yet to be determined. However, Brexit has resulted in increased requests for advisory and drafting services, often at short notice.

The law is constantly changing, through case law, new legislation and the way it is interpreted or reinterpreted. New developments of law emerge continually, including through the actions of the European Union and its Court of Justice as well as the European Court of Human Rights and changes in international law. Our main challenge will be continuing to adapt to ensure we meet the demands of our clients, including Departments and the needs of the Govern-

ment. I thank the Chairman and committee members for their attention. If members have any questions, I am at their disposal.

Chairman: I ask for the opening statement from the Accounting Officer of the Office of the Chief State Solicitor.

Ms Maria Browne: I thank the committee for the invitation to attend to assist the committee with its examination of the office's 2017 audited appropriation account, which was published by the Comptroller and Auditor General in September 2017. I am joined by my colleagues, Mr. Owen Wilson, assistant chief State solicitor, and Mr. Michael Fallon, head of corporate services. I am pleased to be in a position to say that my office does not feature in the annual report of the Comptroller and Auditor General for 2017. As requested, I have provided the committee with details of expenditure in 2017 and an update on expenditure in 2018.

As members will have seen from the briefing material, my office deals with a very wide range of legal work on behalf of the State. The office is a constituent part of the Office of the Attorney General and the legal services we provide range from litigation, to commercial, to advisory, to property and other transactional services. The office has five legal divisions, each headed by an assistant chief State solicitor and organised by area of law, and a corporate services division. Legal divisions are further organised into sections dealing with specific types of legal matters. The corporate services division provides organisational and management services which support the legal work of the office. The two main areas of spend for my office in 2017 were payroll and counsel fees.

Within the administration subheads, payroll is by far the largest expenditure at €15.7 million in 2017. This equates to 47.4% of the entire expenditure from the Vote for 2017. The authorised staffing number for 2019 is 275 and we are in the process of filling a number of vacancies. The ability to recruit in a timely manner and retain specialist staff, both legal and administrative, is an ongoing challenge. Expenditure on the remaining administrative subheads, such as staff training and development, library and information services, knowledge management, utilities, building maintenance, photocopying and document preparation, telephone and postal services, and ICT facilities, amounted to €2.6 million or 7.8% of total expenditure in 2017.

The provision of legal services is spread across five legal divisions, each headed by an assistant chief State solicitor, which is equivalent to assistant secretary. These divisions are the administrative law division; the advisory, commercial and employment law division; the constitutional and State litigation division; the justice division; and the State property division.

With regard to challenges, we are a demand-led office and there is a direct and pronounced correlation between our clients' issues and the services we provide to them. Aside from our transactional work, by and large it is difficult to forecast with any degree of certainty the exact scale and extent of litigation which may be taken against the State in any given year. Some of the work can arise at very short notice and outside of normal office hours. Specialist work requires the ongoing development and maintenance of the appropriate expertise, and the ability to respond to new developments in the law is a continuing requirement.

Expenditure on legal services includes counsel fees, general law expenses and external legal services, and accounted for 44.8% of overall expenditure in 2017. The main area of expenditure under this heading is on fees paid to counsel, which in 2017 accounted for 41% of the entire expenditure of the office.

The bulk of the expenditure on counsel fees is, to a large extent, dependent on the level of activity in the courts at any given time and so is always difficult to forecast accurately. Recent years have seen an increase in the level of complexity of the work being handled by the office in areas such as judicial review, immigration and asylum law, environmental law, and commercial and EU litigation, and this has resulted in increased spend on counsel, including senior counsel. The management of expenditure on counsel fees is a key activity for my office, and there are significant controls in place to manage this expenditure.

In terms of oversight and risk, as my colleague mentioned, the office maintains an audit committee jointly with the Office of the Attorney General. The committee includes three external representatives, all of whom, including the chair, are from the private sector. It has been in place for a number of years and meets regularly. Internal audit services are tendered externally and our current auditors were engaged following a joint Attorney General's office-Chief State Solicitor's office, AGO-CSSO, competitive tendering process in 2017.

The office maintains a risk register which is reviewed every six months. Progress is monitored by the office's management board, together with a number of joint AGO-CSSO committees, including the risk management committee and the audit committee.

I will do my best to assist the committee in its consideration of the 2017 account for my office. In the event that I do not have the information available to me here today, I will do my best to provide any outstanding material within two weeks.

Chairman: I thank Ms Browne. Can we have Mr. Donoghue's opening statement as Accounting Officer for the Office of the Director of Public Prosecutions?

Mr. Barry Donoghue: I thank the Chairman. I am accompanied by Ms Liz Howlin, who is the head of our directing division, Ms Helena Kiely, who is the chief prosecution solicitor in charge of the solicitors' division, and Mr. Declan Hoban, who is head of administration. It had been stated to me informally that, perhaps because my opening statement was overly long, it might be better if I speak to it rather than read it.

Chairman: We are happy with that. We will note and publish the full statement and Mr. Donoghue will speak to it.

Mr. Barry Donoghue: Exactly, yes. I will highlight some points from the opening statement that might be of assistance to the committee.

The number of files received during the year 2017 was approximately 13,600, which was 500 up on the previous year, but I make the point that the sheer number of files coming into the office does not represent the extent of work required in those cases. Particularly in the area of white-collar crime, there is a tendency for these files to be very large. For example, I understand the data on our system for those files that we dealt with relating to the banking cases amounted to 388 GB. I am not technically minded but those of the members who are technically minded will appreciate that amounts to a lot of data. Some of these files can be very large. That is also reflected in other areas. For example, in murder cases, sometimes gangland cases, a very large amount of data comes into our office and has to be assessed and analysed. That affects the amount of work that is required in those cases and affects the throughput.

Another factor I will highlight is that, as the Chief State Solicitor said, sometimes we are required to follow what others do. The number of court cases and court sittings can affect the amount of work we do and the amount of fees paid. There has been an increase, from four to

six, in the number of judges sitting continually in the Central Criminal Court. That increases the number of cases being processed by the courts and increases pressure on the fee area. Similarly, since I last appeared before this committee, in 2015, there are now two Special Criminal Courts sitting simultaneously and that increases the number of cases being processed by that court and the fees payable.

Regarding developments since I last appeared before the committee, I will mention a number of issues. First, on victims of crime, the Criminal Justice (Victims of Crime) Bill 2016 has been passed by the Oireachtas. We set up a small unit in July 2015, called the victims liaison unit, to ensure that the office complies with its requirements relating to victims and their families. That unit has been very proactive and has engaged with outside agencies, ensuring training and so forth for gardaí.

We also receive, through that unit, requests from victims for reasons for decisions not to prosecute. Looking at a three-year period from 2016 to 2018, we received approximately 1,800 requests for reasons from victims. We also received requests for reviews of decisions because, under the victims directive and under the Criminal Justice (Victims of Crime) Act 2017, a victim is entitled to ask us to reconsider a decision not to prosecute. Over that same period, we received 637 requests for reviews. Approximately 40% of those cases relate to sexual offence complaints, and in a small number of cases we have reversed the decision not to prosecute and instituted a prosecution. In terms of our requirements for victims' rights, this also has an effect on court processes. We have to ensure that prosecutors, whether solicitors or counsel, are fully in a position to meet the requirements of victims under the directive.

The work of the office in the area of international matters falls into two parts. The first is extradition, where we seek the return of someone from another country to stand trial in Ireland. The second area relates to mutual assistance requests where we are looking for evidence in another country. I mention in my opening statement that the area of mutual assistance has grown quite heavily, and over the period from 2015 to 2017, the number of requests for mutual assistance doubled. That was largely driven by requests for information in the area of electronic evidence. Many requests go to America seeking electronic evidence from the large service providers there.

As part of the response to the banking crisis, we established a small special financial unit which dealt with all the banking cases over the years. Since the conclusion of those cases, the unit still operates and deals with other white-collar crime cases in close liaison with the Garda National Economic Crime Bureau.

In my opening statement, I mentioned issues to do with information and communications technology. I will highlight two of those. In some of those, we are proactively involved with others in the area, which is obviously very important in the modern world. One of the matters which we piloted is the electronic transmission of disclosure material to both prosecution counsel and defence solicitors. The Chairman and committee may be aware that in prosecution cases an important part of the work is to ensure there is disclosure to the defence on matters which may assist to undermine the prosecution case or enhance the defence case. A lot of that material can be quite sensitive and we have put in place a secure electronic transfer system with defence solicitors and counsel. That is operating at present in the Central Criminal Court and will be extended into the Circuit Court later this year.

We are also heavily involved, through Ms Helena Kiely, in the so-called criminal justice operational hub, which is a very important project from the point of view of the criminal justice

system generally. It will allow data to be shared from the beginning of a case right through, from the Garda to ourselves, to the courts system, to the probation service and prison service. In due course it will be able to produce statistics, which is a problem in the criminal justice area because everybody assesses cases on a different basis, which means statistics do not match from one agency to another.

In terms of the expenditure for 2017, as the Comptroller and Auditor General has said, the largest area of cost is fees to counsel, which came to €16.4 million. As I stated, that is largely driven by the number of trials which are set by the courts. Any increase in business will affect the amount of fees paid to counsel. Extra sittings of the Central Criminal Court and of the Dublin Circuit Criminal Court, which have happened, and the new Court of Appeal are all matters which generate further court work and extra pressure on the fees side.

I will end with two issues that are challenges for the future. The obvious one is Brexit in terms of the criminal justice system. From our point of view, we are working with the Department of Justice and Equality in terms of contingency measures. We are involved in two groups looking at mutual assistance, extradition and data protection. On extradition, at some point at the end of March, it seems that we will be working under a different system with the United Kingdom. Most of our extradition arrangements are with it. We have been working with the people there on the basis of the European arrest warrant, which is a slimmed down version of extradition which works quite well. We will have to move into another area, which will be challenging.

The Commission on the Future of Policing in Ireland is a very important part of Government policy. One aspect of that commission's report referred to the role of gardaí in terms of prosecution work. The Chairman may be aware that the Garda has a heavy role in prosecution work. In most cases in the District Court outside Dublin and in Dublin, the Garda decides whether there should be a prosecution and conducts that prosecution. It is an unusual model from that point of view. The issue was looked at 20 years ago or so by the Nally group, which did not recommend any change. If we were to move away from the present system where the Garda essentially prosecutes cases in court, there would need to be an important analysis of what that would involve. It seems to me a considerable cost would be involved in replacing inspectors and superintendents in courts with lawyers. That is something that I think we will be working on with the Department of Justice and Equality and Garda, in terms of working out some method to see how that recommendation can be implemented. I think that is going to be an important challenge for the prosecution service.

Chairman: I thank Mr. Donoghue. Members have indicated in the following sequence: Deputy O'Connell who has 20 minutes, followed by Deputies Connolly and Cullinane who will have ten minutes each.

Deputy Kate O'Connell: I thank the witnesses for coming in. It is refreshing to have 66% women on the committee. We have a nice 50:50 balance in the witnesses today, which is very unusual in the Committee of Public Accounts and in these Houses in general.

I will start with the Vote for the Office of the Attorney General. There is a contract for €147,096 for services. I ask for detail on that contract and why it did not comply with procurement rules. The money was spent on parliamentary services.

Mr. Damien Moloney: I just want to know where the Deputy is reading it from.

Deputy Kate O’Connell: I will need to go through the folder to find it.

Mr. Damien Moloney: This is the issue of the reliance of the office to some extent on external contract drafting. We do not tender for those specific services because the market is so limited in terms of what we would get. One is not going to find that many foreign contract drafters who are expert in Irish constitutional law, as well as having the drafting skill. I might add that if I was just looking for an expert drafter without the experience in Irish constitutional law, I would still have problems but I would have additional difficulty with the double set of skill sets.

Deputy Kate O’Connell: I can understand that.

Mr. Damien Moloney: The drafters we use are in a unique position that they have worked in the jurisdiction.

Deputy Kate O’Connell: With regard to the pool within which the office is fishing in the Irish context, are people getting a fair crack of the whip here? Are we fishing within the one pool? I can understand why there is a limited number of people who can do this but I am trying to ensure there is no advantage to a particular person or group.

Mr. Damien Moloney: I do not believe there is an advantage to a particular person or group. There is a situation where we find ourselves in that we know will soften over time as more and more domestic drafters retire or move out of the service where we might have a wider available pool of drafters with the skill sets we are looking for to draw on.

Deputy Kate O’Connell: Is Mr. Moloney saying that when the regular guys retire from the Office of the Attorney General, he can contract them in afterwards?

Mr. Damien Moloney: I am saying there is a theoretical possibility of widening the pool, which I am being asked about, but at the moment there is no possibility, as we see it, of widening the pool because one is looking at a unique subset of drafters who have experience of the domestic scene, while also having this drafting experience or qualification.

We do look at it periodically and in 2015 when we last looked it in a serious way, we got ourselves up to two drafters briefly, but the second drafter fell away. They just do not last. We have a drafter who is unique in that he is living outside the jurisdiction and has managed to stay with us, but even that arrangement will not last. We are looking at something that is transient here.

Deputy Kate O’Connell: Would the fish within the pool feel the same as Mr. Moloney does? Would the people on the opposite side who are looking to get this work agree with his statement?

Mr. Damien Moloney: My expectation is that there is no market out there with this external foreign expertise that can claim a knowledge of an Irish constitutional base. We even have drafters, ourselves, who wish to work abroad. I imagine with time that could change, but I do not see it as changing from year to year.

Deputy Kate O’Connell: As I know it is Mr. Moloney’s first time to appear before the committee, I do not want to give him any great difficulty. There was a contractor, an auditor, who withdrew midway through a process. It states that there was an internal audit function for the office and it was in place in 2017. A contracted provider withdrew from the contract at the end of September 2017. They seem to have gone off and somebody else came in for a new contract. I ask Mr. Moloney to elaborate on that.

Mr. Damien Moloney: We have to have an internal audit function. We have an option where we could carry out the internal audit function ourselves. We have an internal accountant. We have opted instead to have an external audit for reasons of probity and perhaps also even more so because it is a small office. Having had that option, we had a contract with a particular supplier. That supplier has left this particular segment of the market. Having left this particular segment of the market, it did not stop business; it just left this segment of the market that provided this audit service to smaller outfits like ourselves. So we had to go back out to the market and seek a new supplier and tender for that. In the meantime we have obtained a new agent providing this service. Those reports are commissioned by the audit committee with the three outside members.

Deputy Kate O'Connell: They were doing the work and they just went on and did something else.

Mr. Damien Moloney: They left the market.

Deputy Kate O'Connell: Now the office has somebody else.

Mr. Damien Moloney: They left this particular segment of the marketplace; they are still in business.

Deputy Kate O'Connell: When they withdrew, they had not been paid for any work they had not done. The office had not paid for a contract in advance before they withdrew or anything like that. It was a nice clean-----

Mr. Damien Moloney: It was a reasonably clean break. They did not leave us in the lurch. They gave us a bit of notice and they left us. Some of the longer-term promise contracts, obviously, either were not delivered on or paid for.

Deputy Kate O'Connell: I thank Mr. Moloney.

I now come to the Office of the Chief State Solicitor. On the financial position, some €9.6 million is due in and receipts are €397,000. As I read it there is an outstanding €9.6 million in costs due to the office. I ask Ms Browne to elaborate on this €9.6 million that is sitting there. When does that balance out?

Ms Maria Browne: It is in respect of where there are court cases where the State receives an order for costs and then it is the pursuit of those costs. They go back a number of years. I can give the profile of the range. We have a cost-recovery unit and a lot of work is put into recovering costs. Obviously, depending on the times it is a difficult process, but where costs are awarded we pursue them where appropriate. There is a high-level meeting that takes place regularly to decide whether costs will be pursued against particular individuals based on the circumstances of the case.

In terms of the age, some of them have been going back for quite a while.

Deputy Kate O'Connell: What is quite a while?

Ms Maria Browne: The oldest case goes back to the early 2000s. In some cases we have agreed repayment plans with individuals and in other ones we are pursuing. We get in a certain amount every year. A certain amount comes in by regular payments. However, we take all steps that we feel are necessary in order to recover. We go to the sheriff. We put a judgment mortgage on property if there is property involved. We have not gone so far as to actually sell

anybody's property because with a lot of these it could be family homes or that, which in fact-----

Deputy Kate O'Connell: Ms Browne mentioned "where appropriate". This is where that comes in.

Ms Maria Browne: Indeed.

Deputy Kate O'Connell: The office makes the decision as to whether it is right to pursue these costs, bearing in mind it might leave family destitute.

Ms Maria Browne: It is one of the things we take into account, but also the level of the income of the individual. In some cases there is an examination of the debtor's means. Really it depends on whether they are a mark for costs as to how far we can get in the case. On the €9 million, about €5.4 million of that represents one debt. It is an ongoing case that has been there for a while, which we are pursuing. It is in litigation in that there has been-----

Deputy Kate O'Connell: Of the €9.6 million, €5.4 million is one case and €4.2 million is everything else. How many cases does the €4.2 million account for? Give us a ballpark figure.

Ms Maria Browne: There are 204 in total.

Deputy Kate O'Connell: We have 204 cases representing less than half of the amount.

On writing off debt, at any point does the Office of the Chief State Solicitor just draw a line through it and give up?

Ms Maria Browne: No, we do not do that. In situations where we feel that the party is not a mark for costs, we maintain a database of the debt and then we review it periodically to see have circumstances changed because it could be the case that an individual takes further proceedings against the State and there may be an opportunity to use that debt as set-off, if the State is unsuccessful in that case because sometimes there are recurrent cases.

Deputy Kate O'Connell: Does the Office of the Chief State Solicitor subcontract this cost recovery unit out to somebody else or is it within the office?

Ms Maria Browne: It is within the justice division in the office. There was a period when we outsourced a certain element of cost recovery to a Dublin firm but that has ceased quite a while ago. It still has carriage of some of the cases from a number of years ago but that was when there were reduced resources in that particular unit.

Deputy Kate O'Connell: What does it cost per year to run the cost recovery unit? I am trying to get at whether it is worthwhile at all if the Office of the Chief State Solicitor is only getting in €397,000 so how much is it costing to run that unit? I am not suggesting we just let everybody off but I am just wondering about that.

Ms Maria Browne: I do not have a breakdown of that.

Deputy Kate O'Connell: Could we get it? There is no urgency.

Ms Maria Browne: I can get that to the Deputy. That is something we also consider in terms of the time and effort involved in pursuing the debt in terms of our staff's time and in employing taxation and cost accountants for that purpose. I should correct myself in that sense when I said that cost recovery is done in-house. In more recent times, with the transfer of man-

agement of costs against the State having passed to the National Treasury Management Agency and the State Claims Agency since last year, cost accountants are involved in taxing costs so that is another cost. That is one of the things we would take into account in assessing overall whether it is worthwhile pursuing.

Deputy Kate O'Connell: In terms of the bodies which are using external drafting people, I assume this relates to the locum of the situation. In terms of costs, when somebody external is being brought in to draft legislation when there is a capacity issue, does it cost more in net terms to bring in an external person or is it cheaper to have it done in-house, if the staff was there theoretically? Is there an added expense to bringing in drafters? Do they get more per hour than the person who works in the office every day?

Mr. Damien Moloney: I assume that is being directed at myself.

Deputy Kate O'Connell: Yes.

Mr. Damien Moloney: It is an interesting question. The arrangement has changed over the years so in about 2001, the arrangement was that they got paid the equivalent of an assistant secretary's salary and they were located within the premises. They have not been located on the premises for quite a while with the effluxion of time and Revenue practice and so on. The current incumbent lives abroad and he is paid on a daily rate and in net terms the daily rate works out at about a couple of hundred days each year. It varies depending on workload because he is piecemeal and he gets paid a daily rate. That daily rate still comes in at more or less the equivalent of an assistant secretary salary if he worked the complement of 200 days.

Deputy Kate O'Connell: So the Office of the Attorney General is contracting out to him?

Mr. Damien Moloney: Yes, he is an independent contractor.

Deputy Kate O'Connell: Is his pay his pay or are there pension benefits if he is on a long term contract?

Mr. Damien Moloney: There are no pension benefits but there is withholding tax. He is paid as an independent contractor.

Deputy Kate O'Connell: I will turn to Mr. Donoghue and the victims of crime. He mentioned the 1,800 requests for reasons not to prosecute. I am assuming that the Office of the Director of Public Prosecutions decides not to prosecute and people phone up or send in a letter asking why it did not prosecute. Maybe I picked it up wrong. Was it that 40% of the cases in that 1,800 are sexual offences cases? Did I pick him up correctly?

Mr. Barry Donoghue: Yes, that has consistently been the pattern since the directive came in.

Deputy Kate O'Connell: Did Mr. Donoghue say that in those cases the Office of the Director of Public Prosecutions often reverses or is it in all cases?

Mr. Barry Donoghue: No, the reversal is just a general figure for all of the cases in which a request for review is made.

Deputy Kate O'Connell: Out of 1,800, about 40% are sexual offences but are reversals across the board in terms of case type?

Mr. Barry Donoghue: Yes, it is in various cases.

Deputy Kate O'Connell: I thank Mr. Donoghue, I had just misinterpreted that.

Somebody mentioned sharing of IT systems across the groups that are here today. Are we compliant with general data protection regulations, GDPR?

Mr. Barry Donoghue: I mentioned it in the context of the criminal justice hub-----

Deputy Kate O'Connell: Yes.

Mr. Barry Donoghue: -----and Ms Kiely, who is our chief prosecution solicitor, is on that group and is our expert on data protection. That is a key element of it.

Deputy Kate O'Connell: She might speak to that.

Ms Helena Kiely: I can say that the programme is a criminal justice hub involving the Department of Justice and Equality, the Attorney General, the Director of Public Prosecutions, the Probation Service and the Legal Aid Board with a view to having information at the centre that can be both statistical and can be a real-time account of the status of a person who is before the courts or in prison. GDPR is a huge part of this and agreements have been made with all of the agencies to allow for the data modelling. We are at the modelling stage of how this would work in practice. There is an overreaching data sharing agreement that is being drafted at the moment. We are not at a stage where live data are being shared or the projects are up and running but the two projects that it will focus on to begin with are charge sheets and court outcomes, so that information can be at the centre for all agencies with relevant information. It is looking to emulate the Causeway system, which has been in operation in Northern Ireland for some time and which has been a great success in having real-time information for all agencies. That is also useful as a predictive measure for Departments on where resources will be needed.

Deputy Kate O'Connell: On workload, reference was made to 300 Private Members' Bills coming through since 2016, the increased pace and an extensive legislative programme. In bedding this down for the future, do the witnesses consider this to be just a blip in terms of a minority Government or a confidence and supply Government with the make up of the Dáil? If the workload seems to have been constantly increasing, would it not be better to try to crystallise some of the staff into permanent positions, rather than constantly relying on external people to come in for continuity in the office? Mr. Moloney might address that.

Mr. Damien Moloney: I will take that question. The structures have changed in response to where we are. The structures do not necessarily anticipate political decisions made by the electorate or elsewhere but the structures have changed. In a manner of speaking, we have become more responsive to the needs of Government in terms of drafting Committee Stage amendments to a greater number of Private Members' Bills. We obviously do not do so for all 300 because the system would have ground to a halt had we been doing so, but we do it for the amendments to Bills the Government shows an active interest in, which is a smaller subset. The structures have changed in the sense that the public law expertise used to just vest in the Office of the Attorney General. To the extent that the Attorney General offers any assistance or support to the Oireachtas, it was that every Government Bill that arrived on the floor of the Houses of the Oireachtas, was accompanied by a warranty from the Attorney General of the day that the Bill was constitutional and legally sound. Clearly, if there are many Private Members' Bills, an equivalent is needed to make that operable on the side of the Oireachtas, and while the Attorney General supports the Oireachtas in that respect, he is the adviser to the Government.

The structural changes have been around the Office of the Parliamentary Legal Adviser, the elevation in the rank of the legal adviser, the increasing of the numbers of staff in the Office of the Parliamentary Legal Adviser and the creating of the public law expertise. I have a very good working relationship with the parliamentary legal adviser and that is important. It is important to both branches of Government to make sure that in a co-operative sense, the public law expertise the State has is shared in an equitable way, so that the State does not find itself funding two separate services that do not co-operate where it is possible for them to co-operate. I could answer further but I do not want to take up all of the Deputy's time.

Deputy Kate O'Connell: That is fine. I thank Mr. Moloney.

Deputy Catherine Connolly: I thank the witnesses for all the information. It was helpful and educational. On the withdrawal of services, is it the case that the Office of the Chief State Solicitor and the Office of the Attorney General are sister offices and that they work closely together?

Mr. Damien Moloney: I am the director general of three offices, namely, the Office of the Parliamentary Counsel to the Government, which is a mouthful, the Attorney General's office in Merrion Street and the Chief State Solicitor's office, but I do not do all that on my own. I am Accounting Officer for only two of those offices, namely, the two in Merrion Street, the Office of the Parliamentary Counsel and the Attorney General's advisory office.

Deputy Catherine Connolly: My question was only in the context of the note about the withdrawal. My colleague, Deputy O'Connell, asked about the withdrawal of the provider and Mr. Moloney has given an explanation. The same explanation is given for both offices, including the Office of the Attorney General. Was it the same contract?

Mr. Damien Moloney: We share the internal audit function across both offices and we used the external audit facility for that. In the same way, we share IT services.

Deputy Catherine Connolly: So that explanation applies to both offices. It is the same provider for both offices.

Mr. Damien Moloney: Yes, because the three offices are like the three leaves of the shamrock in a manner of speaking, we are the one office. We are the Attorney General's office and we have a constitutional office as well.

Deputy Catherine Connolly: Mr. Moloney said it was a positive withdrawal - that the offices were not left in the lurch, as it were.

Mr. Damien Moloney: I do not believe so.

Deputy Catherine Connolly: Were there no penalties or costs?

Mr. Damien Moloney: They wished to withdraw so I suppose we would have been the one to impose penalties. It was, in the language of the day, an orderly withdrawal. We knew they were leaving for commercial reasons and that they were withdrawing from that section of the market. They were not withdrawing from the marketplace, just that section of the market. We knew that we needed to find a replacement.

Deputy Kate O'Connell: The board is enlarged now.

Deputy Catherine Connolly: I have a practical question on the LRC. Who do the accounts

come to first?

Mr. Seamus McCarthy: I audit them.

Deputy Catherine Connolly: Is it behind in giving its accounts? What is the position in terms of the 2018 accounts?

Mr. Seamus McCarthy: The 2017 accounts were certified in December. They may have been presented and they may have been noted but I just cannot recall at the moment.

Deputy Catherine Connolly: Someone might just check that.

Mr. Seamus McCarthy: Yes.

Deputy Catherine Connolly: Is a service level agreement in place between the offices and how does that work with LRC?

Mr. Damien Moloney: The commission receive its funding via us, through a grant-in-aid, but it maintains separate accounts in relation to that funding. We maintain the financial-----

Deputy Catherine Connolly: Is there an agreement between the offices on the services or is that set out elsewhere? How does that work?

Mr. Damien Moloney: It is an independent office with its own set of functions and responsibilities under its own bespoke legislation, but we have arrangements with the office in terms of the financial control element of it and it reports to us on a monthly basis seeking its grant-in-aid. In recent years, the Comptroller and Auditor General has been inquiring about that with us in terms of our processes and one of the things we did was we converted an informal meeting with the LRC into a more formal one, so it was a structured meeting process, and that is an added check or control. Basically, it prepares its own accounts and, for reasons that are statutory in origin, the Minister for Public Expenditure and Reform presents its accounts and the Taoiseach presents our accounts.

Deputy Catherine Connolly: The LRC is a good organisation, which produces wonderful reports. I was just interested in the processes and accountability but the situation has been formalised with a regular formal meeting.

Mr. Damien Moloney: Yes.

Deputy Catherine Connolly: Is there no service level agreement?

Mr. Damien Moloney: We do not have a formal written service level agreement but we have processes that are formal and the commission reports to us in writing on a monthly basis to draw down the grants. I sign off each month on a regular statement from the commission about what it has done and what it needs to do for the coming month in terms of the drawdown for the grant. I get to see closely what it is doing and when there are new programmes involving finance or expenditure it meets with us. That is what I meant about the informal element; we have a lot of informal meetings because the commission has a lot of plans but there are formal structures in place. I do what I refer to as “walk the land” where I visit Departments or outlets – we have secondees in Departments as well – and I do that with the LRC. The visits are a form out outreach but we have formalised that more so it is not just a case of dropping in.

Deputy Catherine Connolly: I looked through the document in respect of the Chief State

Solicitor's office. It appears staffing is an ongoing challenge. Could Ms Browne please elaborate on that? There was a delay, which came up this morning as well, in vetting by the Garda. Is this a difficulty? How is the office coping with the ongoing challenges, because that is a risk to the provision of the service?

Ms Maria Browne: The challenge is on both sides of the house, legal and administrative. The legal position has improved somewhat over the years but we had serious difficulty a number of years ago when we had a number of vacancies.

Deputy Catherine Connolly: What is the current number of vacancies?

Ms Maria Browne: Currently, it is a large number but only because we are creating additional posts. There are 30 vacancies, but 15 of them are new positions that are being created in corporate services and other areas.

Deputy Catherine Connolly: So there are 30 vacancies in the Chief State Solicitor's office, 15 of which are new. How long have the positions that are not new been vacant?

Ms Maria Browne: Not that long. Some of the vacancies were caused by people leaving in the past year.

Deputy Catherine Connolly: Can Ms Browne give us a breakdown of the numbers?

Ms Maria Browne: I can.

Deputy Catherine Connolly: Why do the positions remain vacant?

Ms Maria Browne: This is to do with the lead-in time for recruitment.

Deputy Catherine Connolly: Are some of the positions be vacant for between two and four years?

Ms Maria Browne: Not at present.

Deputy Catherine Connolly: Are any of them be vacant for that length?

Ms Maria Browne: I do not believe any of them are currently on either side.

Deputy Catherine Connolly: Ms Browne might confirm that for us.

Ms Maria Browne: I will. In terms of incoming staff, the Public Appointments Service, PAS, does external competitions for us and we do a number of our own competitions as well. We do specialist competitions in certain areas of the legal stream. We find, for example, that is difficult to get staff in IT and we are going to the market again to fill those positions. It is difficult to source IT expertise from within the service. Another issue is the periods of notice people in the private sector have to give before they can come in, which could be three months plus. We had a situation where we were waiting a considerable time for somebody to come in. It is a combination of the time to do the competitions, the time that it takes people to come in through vetting but also the speed with which some people can leave the office. Following the mobility that was introduced across the Civil Service, we have a lot of people who are from outside Dublin and they take the opportunity to move, which adds to the situation in terms of the throughput.

Deputy Catherine Connolly: My final question on these accounts relates to fees to coun-

sel. How does that work in terms of choosing counsel? Are there panels or competitions?

Ms Maria Browne: The nominations of counsel are done by the Attorney General so I will pass that question to Mr. Moloney.

Mr. Damien Moloney: The Deputy mentioned fees.

Deputy Catherine Connolly: I am looking at fees to counsel in 2017 on page 14 under the provision of legal services. Generally, how are counsel chosen? What is the procedure?

Mr. Damien Moloney: If the question is how counsel are nominated, the Attorney General is the constitutional office holder and gets to have the final say in determining which counsel he wishes to have represent the State.

Deputy Catherine Connolly: He gets the final say, but after what process?

Mr. Damien Moloney: With the assistance of the office, he puts a number of processes in place around creating panels of counsel so that he can meet his statutory obligation to provide suitable counsel under the Prosecution of Offences Act 1974.

Deputy Catherine Connolly: Is there a process in place to allow barristers to come forward? Qualifications and experience are required and they go onto a panel. Is that correct?

Mr. Damien Moloney: Yes, counsel indicate if they are available and there is a process for indicating one's interest in being briefed by the Attorney General's office.

Deputy Catherine Connolly: They are on a panel and then it is up to them.

Mr. Damien Moloney: They are on a broader list and we look at the list and we put suitable counsel onto a panel. Officials recommend suggested names to the Attorney General but the final arbiter and say is with the Attorney General of the day. The reason for that is the personal nature of the advisory service under the Constitution that the Attorney General offers to Departments and offices of the Government.

Deputy Catherine Connolly: In that context, subhead A3 on page 13 of Vote 5 is fees to counsel from the Office of the DPP. This is something over which the Office of the DPP has no control.

Mr. Barry Donoghue: That related to an increase in the number of cases being processed by the courts. There was a number of very large cases that were expensive and resulted in the requirement for a Supplementary Estimate.

Deputy Catherine Connolly: Is that what happened?

Mr. Barry Donoghue: Yes.

Deputy Catherine Connolly: The victims' directive is welcome. Is the office adequately resourced to deal with it? It was a long time coming.

Mr. Barry Donoghue: It was indeed.

Deputy Catherine Connolly: Is the office adequately resourced to implement the directive?

Mr. Barry Donoghue: It certainly causes pressures and we are coping with them as best

we can. We got sanction from the Department of Public Expenditure and Reform to create a number of extra posts and we now have three lawyers working on it. The work is sometimes spread to other sections because the effect of the victims' directive applies in court cases. It is not just a matter for the victims' unit.

Deputy Catherine Connolly: Will Mr. Donoghue clarify what assessment was done to allow the office to fulfil its obligation under the victims' directive? How does the office assess whether it is doing so, particularly with regard to resources?

Mr. Barry Donoghue: One of the purposes of the victims' liaison unit is to assess how we are complying with the directive and to ensure we, the Garda and others in the courts are doing-----

Deputy Catherine Connolly: How is this being done? Is there ongoing assessment? I acknowledge it is relatively new.

Mr. Barry Donoghue: Some parts of it are new but others are not. That a victim can seek a review of a decision not to prosecute is a long-standing practice of our office, going back many years. A victim has always had the right to seek a review. What this has done is make it clear to victims in every case. I will explain the process briefly. When we issue a direction to the Garda stating we will not prosecute a case we enclose a short form to be given to the victim that allows him or her to ask for reasons and, ultimately, to seek a review. There is a process in place to ensure victims in every case know of their rights to seek-----

Deputy Catherine Connolly: Sergeant McCabe's case springs to mind, when reasons were given but not communicated well, which had nothing to do with the Office of the DPP.

Mr. Barry Donoghue: It is always a challenge. Communication is key in all of this, so that victims do understand-----

Deputy Catherine Connolly: My question is on how the office is coping with this challenge. What processes does it have in place to ensure it is working? What additional resources, if any, does it need?

Mr. Barry Donoghue: We have obtained some extra resources-----

Deputy Catherine Connolly: What did the office get?

Mr. Barry Donoghue: -----and we may be looking for more.

Deputy Catherine Connolly: Okay but what extra resources did the office get?

Mr. Barry Donoghue: We got some extra lawyers from the Department of Public Expenditure and Reform and that-----

Deputy Catherine Connolly: How many?

Mr. Barry Donoghue: It was two or three. I cannot recall. We sought the resources back in-----

Deputy Catherine Connolly: Mr. Donoghue might confirm that.

Mr. Barry Donoghue: I can certainly provide the details. We looked for an extra senior post to lead the unit, part of which deals with victims. We recently filled the post and that was

a big change.

Deputy Catherine Connolly: When did that happen?

Mr. Barry Donoghue: It was filled last year. It was something we looked for earlier but it did not come immediately. It came through and it is an important part of the process.

Deputy Catherine Connolly: I am reading that the legal staff complement recently increased from two to three lawyers. What is the capacity required by the office? Does Mr. Donoghue understand the point I am making?

Mr. Barry Donoghue: The victims' unit does not do all of the work because dealing with the victims' directive applies in every court case. All of the solicitors in the solicitors' division, led by Ms Kiely, must be up to speed on victims' rights.

Deputy Catherine Connolly: Absolutely.

Mr. Barry Donoghue: There is a lot of training involved, which is essential. The Garda and the Courts Service-----

Deputy Catherine Connolly: Is the training ongoing?

Mr. Barry Donoghue: It is, yes.

Mr. Barry Donoghue: Will Mr. Donoghue elaborate on the training?

Ms Helena Kiely: I was involved in establishing the unit in July 2015. We did a lot of training with superintendents throughout the country. We did a number of sessions in Templemore so gardaí were aware of their obligations. We do ongoing training with State solicitors throughout the country. This year we will do four sessions with prosecution counsels and State solicitors to examine certain aspects.

In the court system, there are reasons and reviews but we have rights with regard to the assessment of victims and their vulnerability. A lot of the training we will do this year will be on ensuring vulnerable victims are assessed at an appropriate time and supports for giving evidence are put in place in the courts. They may have learning or speech difficulties or other difficulties. We have done an element of training with State solicitors. At a conference 18 months ago, a speech and language therapist spoke to the prosecutors in our office and to State solicitors about language difficulties. Last week, at a State solicitors' conference, a talk was given to all of our prosecutors on how to assess victims.

There is ongoing training in conjunction with the Garda protective services tasked with dealing with vulnerable clients throughout the country, in particular victims of sexual and domestic violence. We do quite a bit of work with them. They are establishing specialist units throughout Ireland to improve-----

Deputy Catherine Connolly: How many have been established?

Ms Helena Kiely: I cannot speak for the Garda but I know two were established in Dublin and one each in Cork and Dundalk. There is a plan to open four more this year-----

Deputy Catherine Connolly: To roll them out.

Ms Helena Kiely: To roll them out.

Deputy Catherine Connolly: Specialist units throughout the country.

Ms Helena Kiely: Yes. The Garda would speak on this better. We have ongoing liaison on it. The European Commission will look at this. I believe it will do an assessment at the end of this year on victims and it will seek statistics from Ireland generally across the board-----

Deputy Catherine Connolly: Will there be feedback into that system?

Ms Helena Kiely: Yes, there will be feedback on training and compliance with the Act later in the year.

Deputy Catherine Connolly: A wide range of services is being provided. I will zone in on commercial. Did the office give advice on the children's hospital? From where did the advice come? Did it fall under the remit of the witnesses? Were they involved in the children's hospital project at any stage?

Mr. Damien Moloney: I suppose I should take this question given the fact the Office of the Attorney General advises-----

Deputy Catherine Connolly: I am trying to find out what Department-----

Mr. Damien Moloney: The Deputy knows the client Department was the Department of Health. Where advice is sought on a board being established for a project with specific needs, it starts with the board and not the client Department. To the extent we advise the client Department, I am not in a position to speak about it.

Deputy Catherine Connolly: The Office of the Attorney General would advise any client Department on-----

Mr. Damien Moloney: The responsibilities of the Office of the Attorney General are to advise the Government. That is the constitutional mandate. This includes Departments and offices so that is where the responsibility lies.

Deputy Catherine Connolly: That includes the Department of Health regarding establishing the board for the children's hospital.

Mr. Damien Moloney: It includes the Department of Health-----

Deputy Catherine Connolly: Okay, just-----

Mr. Damien Moloney: I am not in a position to talk about what the Department and the board do.

Deputy Catherine Connolly: An issue that comes up regularly is directors on boards coming from a Department or being public interest directors. They are not public interest directors because once they go on the board, they report back. Their fiduciary duty is to the board. Is this something the office has thought about with regard to how we protect public interest generally?

Mr. Damien Moloney: I will take the general issue rather than the specific one. The issue of the fiduciary and common law duties of directors to their boards is a commonly recognised legal issue. Both strands, the fiduciary trust duty and the common law legal duty, are of-----

Deputy Catherine Connolly: Just one second because I will be stopped by the Chairman. Appointments are something that have come up repeatedly in my life and in the life of many

politicians. To be local and parochial, in Galway various local authority members were appointed to a ports authority but their duty was to the authority even though they were on it as a member of the city council. This is a problem. It is a very live issue.

Mr. Damien Moloney: May I identify the issue as opposed to speaking about the specifics? Whether we are speaking about a private individual nominated by a significant shareholder to a board, or a civil servant nominated to a board-----

Deputy Catherine Connolly: Absolutely.

Mr. Damien Moloney: -----I would say that despite the public-private distinction being made, their responsibilities and the issues that arise are similar. From practice we are familiar with having civil servants on boards on occasion.

Deputy Catherine Connolly: Yes.

Mr. Damien Moloney: We are familiar with the practice that we have private individuals nominated to boards. It is not always the shareholders voting people onto boards. We are familiar with the idea of nominated directors.

Deputy Catherine Connolly: Will Mr. Moloney use simpler language because I am trying to get my head around this with regard to nominations by an Minister to a board in any capacity? I used Galway as a parochial example. With regard to somebody who goes on a board in the public interest, I know he does not want to discuss one particular project, namely, the children's hospital, but I am asking generally whether it is something the office has looked at.

Mr. Damien Moloney: I am aware of the issue, the issue being the nominated director to a board, which creates issues about how to identify the common law and fiduciary duties that that director has to the board in circumstances where he or she has been nominated-----

Deputy Catherine Connolly: When did the Office of the Attorney General start looking at this as an issue?

Mr. Damien Moloney: Well, in my personal experience, I did a dissertation on it in a paper for a course in UCD and I am familiar with it as a general issue. It has been around for a long time, this issue.

Deputy Catherine Connolly: Does Mr. Moloney see it as an issue that should be elaborated on within his office in terms of advice to a Government? Very often, we are told a person has been nominated by the Government. Has Mr. Moloney thought about what role that person has or how he or she can best fulfil that role in the public interest, no matter whether it is the board of the national children's hospital or some other board?

Mr. Damien Moloney: I agree that it is an interesting issue and it is one that is regularly looked at by Government.

Deputy Catherine Connolly: It is a lot more than an interesting issue because the Committee of Public Accounts looks at value for money, governance and reporting mechanisms so that we know that the public purse is protected.

Mr. Damien Moloney: I cannot comment on the policy point. The reason we have directors on boards, be that a nominee, private sector shareholder or the State, is because there is a value in that, but that value is hard to define because of the obligations of the director to the

board as well as to the shareholder, leaving the director in a very difficult situation. I would imagine, for any director in that situation, there are challenges. We see value in it as well so there remain civil servants on boards.

Deputy Catherine Connolly: It is a huge issue that should be considered by the Office of the Attorney General in terms of how to protect the public purse and have a process of accountability.

Mr. Damien Moloney: Again, Deputy, I am happy to engage with the issue at a high level of principle. My responsibilities, in turning up today, are about the general administration of the office. Clearly, the issue of directors on boards, and the advice and instruction that might be needed around it, is a wider policy issue that I am not at liberty to comment on.

Deputy Catherine Connolly: No, but the Office of the Attorney General is the legal adviser to the Government and gives a huge range of advice on all sorts of things ranging from commercial contracts to procurement and so on. Is that right?

Mr. Damien Moloney: The Deputy raises an interesting issue.

Deputy Catherine Connolly: “The Deputy raises an interesting issue” brings to mind “Yes, Minister”. Go raibh míle maith agat.

Deputy David Cullinane: I wish to pick up on something that was raised earlier by Teachta Connolly. Mr. Moloney, referenced challenges in his opening statement and cited the legislative programme as an issue that has added to the workload of his office. Please talk me through that. There is a constitutional provision that the office can only give advice to Government. I mean the role of the Attorney General is to formulate advice on the provisions of a Bill and advice in terms of drafting Bills. Is that the constitutional position? Is that what Mr. Moloney was saying?

Mr. Damien Moloney: The constitutional position is that the Attorney General is the adviser to the Government in all matters of law and opinion. The drafting of legislation, and the provision of legislation, I would say, is included in the scriptor advice.

Deputy David Cullinane: Good. That is why I want Mr. Moloney to talk me through exactly what he does and his role. He said “both in the formulation of advice on legislative provisions as well as their actual drafting”. What is the specific role of the Office of the Attorney General in those areas?

Mr. Damien Moloney: The Department provides instructions around policy initiatives that it wishes to develop. In a way, the Government is Departments and their Ministers. So the Attorney, in a way, in his constitutional role advises the Minister, when the Minister has a glint of an idea in his or her head.

Deputy David Cullinane: At what stage does that happen? Is it at a stage before any work is done on the Bill? Would it be like heads of Bill? At what point does the Office of the Attorney General come into it?

Mr. Damien Moloney: Our office-----

Deputy David Cullinane: Is it before, during and after?

Mr. Damien Moloney: Yes. Our office becomes involved when it is an idea in the Minis-

ter's head that is reflected, by the Department, in a draft general scheme and our office gets to advise on the legal issues that are raised.

Deputy David Cullinane: If an idea comes into a Minister's head and he or she says he or she wants it to become a Bill, is it at that point that the office becomes involved?

Mr. Damien Moloney: It would be because the Minister, through the Department, will seek advice.

Deputy David Cullinane: Yes.

Mr. Damien Moloney: My point is that it is not Government policy at that point. It is an idea of the Minister's.

Deputy David Cullinane: I understand that.

Mr. Damien Moloney: So the Attorney's responsibility there is to advise the Minister.

Deputy David Cullinane: Which is why I have specifically asked Mr. Moloney to outline the role of his office.

Mr. Damien Moloney: The role there is to advise the Minister and the Department on policy options that the Minister is considering. Then there is another role when the Minister brings his proposal to Government seeking for it to become Government policy.

Deputy David Cullinane: I have that. Who-----

Mr. Damien Moloney: The Minister advises Government.

Deputy David Cullinane: When the Bill is then drafted, is the Office of the Attorney General given copies of the Bill-----

Mr. Damien Moloney: We are given copies.

Deputy David Cullinane: -----to give advice on the Bill itself?

Mr. Damien Moloney: We are brought in to advise, formally, in any instance where the Minister seeks, or intends to seek, a decision of the Government to draft-----

Deputy David Cullinane: That is only at their discretion. The Office of the Attorney General does not have an automatic role.

Mr. Damien Moloney: No, that is Cabinet handbook procedures. That is a trigger for the Department to come and seek legal advice, if it has not done so already, on ideas around policy that it is formulating. That is the earliest we would get to see it. Then the drafters, once there is a decision to draft, will commence drafting.

Deputy David Cullinane: Mr. Moloney said in his opening statement that the workload of his office has increased further due to Opposition, Private Members', Bills, of which there have been 300. I take it the work of his office involves giving advice on amendments to Bills, brought forward by the Opposition, when they reach Committee Stage. Is that right?

Mr. Damien Moloney: No. I do not think they could be construed as narrowly as that. In respect of those Private Members' Bills, Governments have to form a decision at the earliest stage about their attitude to the Bill that is to be published, particularly on Second Stage. So the

Government will need advice about what to do or what approach it might take.

Deputy David Cullinane: Would that be for every Private Members' Bill?

Mr. Damien Moloney: They do not always come to us for advice on every Private Members' Bill. That must be stated.

Deputy David Cullinane: That is what I was saying.

Mr. Damien Moloney: So it might depend on the detail in the Private-----

Deputy David Cullinane: Mr. Moloney, that is why I am trying to understand the process. Is it the case with a Private Members' Bill that the Department or the Minister decide they may need the advice of the Attorney General and then it goes to Mr. Moloney? Does the Attorney General have to automatically give advice on every single one?

Mr. Damien Moloney: I would agree with that. My own statement would be that in many cases we would be asked for a review but that would not necessarily be the case-----

Deputy David Cullinane: Of those 300 Private Members' Bills-----

Mr. Damien Moloney: -----in terms of process.

Deputy David Cullinane: We are all in opposition, there is nobody from the Government here.

Deputy David Cullinane: How many of the 300 Private Members' Bills have made it into law?

Mr. Damien Moloney: Well, again, I would have to supply the Deputy with figures. The last time I looked it was six or seven.

Deputy David Cullinane: If only six or seven out of 300 Bills became law then what level of work was done by the office in terms of giving advice to Government?

Mr. Damien Moloney: There are six or seven-----

Deputy David Cullinane: If only six or seven are counted.

Mr. Damien Moloney: What are we counting here, the six or seven Bills that became law or are we counting the ones that the Government took over and became Government Bills like the coroners Bill, for example? I am not sure what we are counting here. But the six or seven in their own right that became law-----

Deputy David Cullinane: Sorry, Mr. Moloney, bear with me for one second.

Mr. Damien Moloney: Yes, sorry.

Deputy David Cullinane: I am reading from Mr. Moloney's opening statement. If I am missing anything, feel free to correct me if I am wrong.

Mr. Damien Moloney: I have not mentioned the number of private Bills passed in my opening statement but if I have I will certainly check.

Deputy David Cullinane: Mr. Moloney mentioned that in his response to a question that I

asked. What he references, in his opening statement, is the 300 Private Members' Bills.

Mr. Damien Moloney: Yes, that is the volume of work.

Deputy David Cullinane: Yes.

Mr. Damien Moloney: Yes

Deputy David Cullinane: Mr. Moloney has said that as part of his increasing workload that he has to give advice to Government on some of those Bills.

Mr. Damien Moloney: Yes.

Deputy David Cullinane: Giving that advice does not happen automatically, it only happens for some of those Bills and, primarily, when they get to Committee Stage. I asked Mr. Moloney how many of the 300 Private Members' Bills had made it into law and he said it was six. If the number is more than that because the Government took some of those Bills and made them their own then that is fine. If Mr. Moloney lumps that in as well, how many of the 300 Bills have made it into law?

Mr. Damien Moloney: Yes, I do not have that figure to hand and I am not sure that my office would; the Houses of the Oireachtas, I imagine, would be a better source for that information.

Deputy David Cullinane: I am trying to understand the workload. One of the issues for the Opposition is that most of their Bills do not go anywhere and are stuck. Who advises on attaching a money Bill to those Bills? Is it the Office of the Attorney General?

Mr. Damien Moloney: The actual decision about a money Bill, under the Constitution, is that of Government, albeit that the money Bill, technically, is signed by the Taoiseach.

Deputy David Cullinane: Would the Office of the Attorney General give advice on that? Is that one of the areas where the Office of the Attorney General would give advice?

Mr. Damien Moloney: As I understand it, as a matter of course, the Department of Public Expenditure and Reform would be consulted, along with the Department of the Taoiseach and on occasion - I am not saying on every occasion - we would be asked for advice in terms of a process. As with all advice one does not have to be asked for advice on everything.

Deputy David Cullinane: I do not want to ask the witness to provide any information-----

Mr. Damien Moloney: I will not be providing any information about when I give advice or do not give advice.

Deputy David Cullinane: I did not ask.

Mr. Damien Moloney: That is fine.

Deputy David Cullinane: Wait until I ask the question. I do not want to ask Mr. Moloney to do something he cannot. If there are 300 Private Members' Bills in which the office has had some role, could the witness at least provide us with the information on how many Bills the office has given advice?

Mr. Damien Moloney: I am sorry but I am not in a position to provide advice or details about the advice I give. I can certainly discuss the process with the Deputies, as I have been

doing.

Deputy David Cullinane: I am not sure if I am being unclear. I thought I was very clear that I was not asking for what advice the office gave.

Mr. Damien Moloney: The Deputy wants to know the number of times I gave advice but it is not within my capacity to give that information to him because it is not general administration.

Deputy David Cullinane: The witness was able to give a figure of 300. He stated there were over 300 Private Members' Bills-----

Mr. Damien Moloney: It is a publicly stated piece of information that there are, as I understand it, 300-----

Deputy David Cullinane: Never mind the advice the advice given by Mr. Moloney's office, which is fair enough, as it is advice to the Government. The witness is not even able to tell us in broad terms how many of those 300 Bills had any involvement of the Office of the Attorney General.

Mr. Damien Moloney: That is in the same way as if I advised the Deputy in a private capacity, I would not tell other people how many times I advised him.

Deputy David Cullinane: Okay. I find that extraordinary. It is part of the problem as we in the Opposition come up against advice given by the Office of the Attorney General. That is the position.

Teachta Connolly dealt with an issue in Mr. Donoghue's opening statement. He spoke about the largest single area of the €40.9 million cost being €16.4 million arising from the fees paid to counsel who prosecute cases on behalf of the director. He states the establishment of the new Court of Appeal in 2014 and the Special Criminal Court in 2015 have contributed to a steady rise in fees in counsel expenditure in recent years. Is the increased expenditure down to an increase in volume, in cost to counsel or both?

Mr. Barry Donoghue: It is primarily down to the increase in the number of cases being dealt with by the courts. In other words, a lengthy trial will cost much money and some of these cases are quite lengthy. If the Special Criminal Court is dealing with lengthy cases and there are two courts sitting, there would simply be a greater volume of cases going through the courts. Similarly, if there is an extra one or two judges sitting in the Central Criminal Court, the throughput of cases is just higher. That is the primary reason for the increase in fees.

Deputy David Cullinane: Okay. Has there been an increase in counsel fees as well? What cost controls are in place to ensure we get value for money with counsel fees? The witness indicated the single largest area of cost was €16.4 million arising from fees paid to counsel to prosecute cases. How are those fees determined and what cost control mechanisms are in place to ensure we manage those costs?

Mr. Barry Donoghue: Most of the fees we pay to counsel are what we call standard fees. They have been set over the years and they are available as published figures.

Deputy David Cullinane: Who sets the standard fee and on what is it based?

Mr. Barry Donoghue: We set the standard fee and it is an assessment by us as to what is

appropriate.

Deputy David Cullinane: That is what I am talking about. With respect to cost controls, a standard fee is set and then there is an assessment process. How is the fee assessed and what is the cost control process?

Mr. Barry Donoghue: As I said, most of the fees are standard and they have been set on the basis of what is a reasonable fee for the case. If it goes outside that, a senior person in the office would assess the higher fee, if necessary. If it goes beyond that, we must seek sanction from the Department of Public Expenditure and Reform for a higher fee. There are limits beyond which we must seek sanction from the Department of Public Expenditure and Reform.

Deputy David Cullinane: Are those standard fees based on a day's work, per case or research? On what are they based?

Mr. Barry Donoghue: On the first day of an ordinary case, counsel is paid a brief fee, representing the first day on the case and the preparatory work that must be put in. The standard fee for a murder case is just over €7,000 for senior counsel. That would involve all the preparation work that counsel would have to put into that case and the first day of the case. With respect to value for money, those fees have been cut heavily as part of the general cutting of fees. They were reduced on two occasions by 8%. An additional 10% was taken off those fees across the board in 2011. The Bar Council has made a reasonable case that the 10% cut was not reflected in other cuts to professional fees and so forth. The fees have been cut back quite a bit. The increase in fees reflects the throughput of cases in the courts because of more court sittings and more cases being processed.

Deputy David Cullinane: Will the witness provide the committee with some further breakdown of those standard fees? Will he give us some history of how they have decreased, as he mentioned cuts, or increased in some areas?

Mr. Barry Donoghue: Yes.

Deputy David Cullinane: We can have a look at the standard fees now and compare them with levels two years, five years and ten years ago.

Mr. Barry Donoghue: Certainly.

Deputy David Cullinane: Could we get some more information on the cost control element?

Mr. Barry Donoghue: We can certainly provide that.

Deputy Catherine Connolly: I have a question and I probably will not get an answer because it may be inappropriate. An office advises on various commercial activities and contracts, including the children's hospital. Is that right? Would projects of that nature go before some of the witnesses for advice with respect to tender, procurement and contracts?

Mr. Damien Moloney: That must be directed towards me.

Deputy Catherine Connolly: I am sorry, I should have said it was a question for Mr. Moloney.

Mr. Damien Moloney: I thought the Deputy was looking at Mr. Donoghue.

Deputy Catherine Connolly: I was just thinking about something I will speak to later but I just wanted to ask the question before I left.

Mr. Damien Moloney: No offence taken. I withdraw from the specifics of the question but say that this office advises Departments on ranges of matters. Depending on how appropriate it would be, given our level of commercial expertise, it would include commercial matters. Deputies should bear in mind that with commercial matters, a bit like complicated specialist fields in which particular firms engage in that we would not necessarily, as a process point that advice is not always internal to the Office of the Attorney General. We would not necessarily have some of the skill sets to the degree required for certain things.

Chairman: I have a few general questions. How would we find out the total in legal fees paid to counsel and solicitors by Departments? Would the witnesses know it? I am talking about all commercial and prosecution services. What is the total amount spent through voted expenditure on legal fees?

Mr. Damien Moloney: There are four offices here today but with respect to the three offices on the side of the Attorney General, we could certainly give a figure for what we spend. Departments might also contract in expertise in particular matters, and they do. We do not have the figures available to us for Departments and what they do.

Chairman: Okay. I understand. How would this Parliament's Committee of Public Accounts go about getting that figure?

Mr. Damien Moloney: It would ask each Department-----

Chairman: The cost of legal fees.

Mr. Damien Moloney: If the question is how much do Departments and offices spend, the committee would ask each Department and office that question. In our case we could certainly answer for the three constituent offices of the Office of the Attorney General. That is as much as I would say.

Chairman: Has the Comptroller and Auditor General ever looked at this or how would we go about putting a full figure on it?

Mr. Seamus McCarthy: It would be a question of gathering information.

Chairman: That would come from each Department.

Mr. Seamus McCarthy: In most appropriation accounts there would be a subhead in the administration area dealing with legal expenses. Some of that would perhaps be where a case was lost and there would be recoupment through the State Claims Agency and so on. In general, the costs on the State side are paid through the Office of the Chief State Solicitor.

Chairman: What about the State Claims Agency?

Mr. Seamus McCarthy: Where there might be legal advice on very specific matters, such as a contract, there may be additional legal expenses incurred by Departments. It would be a job of assembly of information and questioning of individual Departments.

Chairman: One could start by way of parliamentary questions, PQs, or whatever else. That is another day's work.

We have had key legal offices here. Who else can prosecute a person or an entity in the Irish courts other than whomever is impacted, from the State's point of view? I am not talking about private litigation.

Mr. Barry Donoghue: There are a whole range of agencies, a surprisingly large number, that can prosecute.

Chairman: I can think of a few. That is why I ask.

Mr. Barry Donoghue: We were looking at the implication of data protection for our side in dealing with law enforcement, and the number of agencies that can prosecute under legislation and subsidiary legislation is quite large. Many summary offences can be prosecuted by a number of agencies. I do not know the precise number but I would say it is quite large. Any case in the District Court can be taken by a Minister or an agency entitled to prosecute.

Chairman: It could be a local fisheries board if someone is fishing where he or she should not be.

Mr. Barry Donoghue: Yes, exactly.

Chairman: I am thinking about the Office of the Director of Public Prosecutions or the Criminal Assets Bureau, CAB, or some of these other bodies. We will start with national agencies like that. Can those two organisations prosecute directly?

Mr. Barry Donoghue: Which two agencies?

Chairman: I mentioned the Office of the Director of Corporate Enforcement.

Mr. Barry Donoghue: Yes, it can prosecute summary cases itself. It is given the power to prosecute summarily.

Chairman: The Office of the Director of Public Prosecutions has looked at this issue. Does Mr. Donoghue have a list he could give us? From the point of view of the Committee of Public Accounts, it might be useful that there be a level of subsidiarity such that things can be done at local level. Could Mr. Donoghue give us an overall picture in this regard?

Mr. Barry Donoghue: I know that when the Department of Justice and Equality was drafting the Data Protection Act it looked at this and, I think, pulled together a list. It may not be comprehensive, but if we have it we can certainly supply it to the committee.

Chairman: Will the Office of the Director of Public Prosecutions give us its best stab at it?

Mr. Barry Donoghue: Yes.

Chairman: We will ask the office to send that to the committee.

Mr. Barry Donoghue: Certainly.

Chairman: Then we see the scale of what is involved, or the number of cases, that is, legal fees paid by the State. We must fish around, as they say. Perhaps the witnesses will help us with others who have legal powers to prosecute in their own right.

The next question I want to ask Mr. Donoghue I will put simply. I am looking at the DPP's annual report. There is lots of good information in it, and I know that An Garda Síochána does

a lot of prosecution work in the District Court. I think it is mentioned somewhere in the report that this issue was being looked at, or there is some reference to it. What was the reference?

Mr. Barry Donoghue: Yes. The Commission on the Future of Policing's report in a short passage recommended that essentially gardaí be pulled out of criminal cases in the District Court and that some other system be put in their place, either a national prosecution service or an extended State solicitor service. It is a very short passage, and teasing it out would be difficult. It might be of interest to the committee that when this was looked at 20 years or so ago by the Nally group, it said 400 more lawyers would be needed to replace gardaí in the courts, so it does not come at no cost.

Chairman: The reason I hone in on this is that at a previous Committee of Public Accounts meeting - it might have been with the Department of Justice and Equality on the Garda Síochána Vote - we remarked that, say, an inspector could in any district have 40 cases a day before him and have ten private solicitors. I think we understood that that inspector gets an additional allowance of something like €5,000 a year for doing court prosecutions. The Committee of Public Accounts members on the day were amazed by the outstanding value for money. We felt that if those thousands of cases that are dealt with for a minimal cost of €5,000 per prosecuting inspector, as the case may be, in a number of courts around the country, they would cost multiples of multiples of that if there were to be a State agency or legal people doing the prosecution. In all my time here it seemed the best value for money the State had achieved in anything. From the point of view of the Committee of Public Accounts, then, we would want a costing on that.

Mr. Barry Donoghue: Yes.

Chairman: It is a beautiful proposal to free up the gardaí from going into court to do prosecutions, but I think the costs to the State could be phenomenal if we were to replace the current system. I have no scientific evidence for this claim but I think the cost of what they are being paid relative to what it could otherwise be is very minimal.

Turning to the number of prosecutions received, the volume of work, the throughput, the cost and the staff, I am looking at chapter 2.1, page 14, of the DPP's annual report. Mr. Donoghue will be familiar with the report.

Mr. Barry Donoghue: Yes.

Chairman: It is the DPP's Annual Report 2017. It looks as if the number of cases, "Total Prosecution Files Received", in the DPP's office has been declining. It was 13,666 last year but was up at 15,000 and 16,000 six, seven and eight years ago. There seems to be a reduction.

Mr. Barry Donoghue: Yes.

Chairman: Is there less crime out there or-----

Mr. Barry Donoghue: I do not think there is less crime, but-----

Chairman: I ask Mr. Donoghue to explain this decrease to me.

Mr. Barry Donoghue: Partly, as far as we can gauge, I think it is caused by two factors. First, I think that when there was a reduction in the number of gardaí on the beat, there were simply fewer cases going to court. This is reflected in the cases coming to us. Also-----

Chairman: I ask Mr. Donoghue to say that again because the public will be amazed that

the reduction in the number of gardaí led to fewer prosecutions. Does Mr. Donoghue feel there is-----

Mr. Barry Donoghue: I think that will be reflected in the Courts Service's figures as well. If there are fewer gardaí on the beat, there will be fewer public order cases coming-----

Chairman: There is a real connection there.

Mr. Barry Donoghue: Yes. The second thing I will say is that during that period we-----

Chairman: People often think that to be the case but Mr. Donoghue is proving it now.

Mr. Barry Donoghue: Yes.

Chairman: That is great.

Mr. Barry Donoghue: During that period we delegated more cases to the Garda. In other words, most of the cases going to the District Court are dealt with by the Garda, so there is a framework of delegation. Over time, we had discussions with Garda headquarters and we delegated more cases which we were happy it could make a decision on. During that period, therefore, we delegated more cases to the Garda so it would not have to send the files to us, and this affects the number of files coming to us.

Chairman: Can Mr. Donoghue give us the details of the numbers of cases delegated? I think I read in the report that the DPP can still give instructions in the District Court. In other words, whatever happens of a Friday night, what kinds of cases used to go to the DPP's office that no longer need to go to it for prosecution in the District Court?

Mr. Barry Donoghue: This is a historical matter, so I would have to go back over the delegations and see which cases were let out and which were brought in. There was a change in the practice of letting cases out. It is called a general direction and it changes from time to time. The details are on our website. From time to time we change it and let more cases go back into the system without reference to us in discussions-----

Chairman: Mr. Donoghue has no idea of the number of cases. It is 1,000, 2,000, 5,000?

Mr. Barry Donoghue: It is very hard to gauge because there are more than 200,000 cases in the District Court up and down every year, so our percentage-----

Chairman: How many of them are adjournments, though?

Mr. Barry Donoghue: They are all new cases.

Ms Elizabeth Howlin: They are original summonses.

Mr. Barry Donoghue: Yes, so the number of cases coming to us is a small proportion-----

Chairman: Where would we get-----

Mr. Barry Donoghue: The Courts Service figures show, I think, 220,000 summonses, new cases, in the last year we looked at going to the District Court.

Chairman: Are some of those parking and traffic cases, though?

Mr. Barry Donoghue: Some of them are minor and some are not.

Chairman: Do they need to come to the DPP?

Mr. Barry Donoghue: No.

Chairman: To be helpful, Mr. Donoghue might send to the committee the list of cases in respect of which the DPP has delegated authority to the Garda such that they do not need to come to the DPP's office.

Mr. Barry Donoghue: Exactly. I can send that to the committee.

Chairman: I am more concerned about the assaults and robberies and where there are difficulties like that. Have those cases been delegated?

Mr. Barry Donoghue: Yes. The Garda can deal with cases of assault causing harm, which is a straightforward assault charge, without reference to us.

Chairman: Mr. Donoghue might-----

Mr. Barry Donoghue: I will send that material to the committee.

Chairman: None of us is really a legal person.

Mr. Barry Donoghue: Of course.

Chairman: I ask that Mr. Donoghue give us that so we know what is going through the DPP's office-----

Mr. Barry Donoghue: Sure.

Chairman: -----versus what is going through the Garda and whether it is possible for anyone to deal with it.

I am just reading through the DPP's annual report and I see details of the main reasons for a direction not to prosecute. Really, in 80% of cases the reason is insufficient evidence.

Mr. Barry Donoghue: Yes.

Chairman: That is the most common reason the DPP gives for not prosecuting. That is fair enough. One needs evidence.

I am interested in page 22, "Case Results - Prosecutions on Indictment". The conviction rate in 2014, according to page 22, if I am reading the chart right, was 77%.

Mr. Barry Donoghue: Yes.

Chairman: In 2015 it was 75%, and in 2016 it was 66%. The DPP's conviction rate on indictment seems to be declining. Why is this?

Mr. Barry Donoghue: No. This is the difficulty with some of these figures. They are a snapshot in time.

Chairman: Yes. They are a full year.

Mr. Barry Donoghue: Yes. Many of those cases have yet to be determined. If one were to look at those figures in perhaps a year's time or so, one would find that the conviction rate had

actually increased.

Chairman: Mr. Donoghue is saying the figures for 2016 are for cases just at the end of 2016, even though some of them might have been successfully convicted in 2017.

Mr. Barry Donoghue: We refer to the year in which we get the file. They are the files received in 2014, 2015 and 2016. If the Chairman looks at the figure of 26% of cases unheard in 2016, it compares to 16% and 11% in the previous two years. That amount declines and affects the conviction rate.

Chairman: Has Mr. Donoghue a figure, then, for cases concluded in each of the years? That is probably the rate we are really interested in - not cases that commenced, but cases that concluded. People are more interested in the outcome of a court case, not day one of the case.

Mr. Barry Donoghue: If the Chairman looks at the figures, the conviction rate overall is about 94%.

Chairman: None of those figures would indicate a figure of anything like that.

Mr. Barry Donoghue: They are in respect of cases which are contested, as far as I can see.

Chairman: This is Mr. Donoghue's annual report. I ask him to explain it to me.

Mr. Barry Donoghue: I think the conviction rate overall, including pleas of guilty, is about 94%.

Chairman: Can Mr. Donoghue come back and give a reconciliation between that figure and this chart?

Mr. Barry Donoghue: Absolutely.

Chairman: That chart does not give me a figure of anything like that. That is all I am saying.

Mr. Barry Donoghue: I think the number of cases that are unheard affects it. I think 11% of cases in 2014 have yet to be heard.

Chairman: The fees paid to counsel are on page 51, which have been discussed. Almost half the figure, 47%, is for Circuit Court work.

Mr. Barry Donoghue: Yes.

Chairman: Would that be the standard rule of thumb?

Mr. Barry Donoghue: Yes.

Chairman: I see from page 62 that 60% of that would be in the Dublin District Court.

Mr. Barry Donoghue: Yes.

Chairman: Quite a proportion of the legal fees paid by Mr. Donoghue's office would be at Circuit Court level in the Dublin region.

Mr. Barry Donoghue: Yes.

Chairman: I have a simple question, although I do not know if the answer will be simple. What is the office's success rate in the courts? Is the conviction rate 94%? Is that at District Court level? Will Mr. Donoghue give us a breakdown of the office's success rate in the District Court, Circuit Court and so on? The office must have statistics on that.

Mr. Barry Donoghue: We do not have statistics for the District Court. To explain briefly, if we decide to prosecute somebody in the District Court, the case is usually dealt with by the Garda. It prosecutes the case and it does not give us a return necessarily in all those cases. We do not have the statistics. Our statistics are purely on indictable cases so cases in the Circuit Court, Central Criminal Court and Special Criminal Court.

Chairman: In terms of the volume of cases going before the courts, Mr. Donoghue said 200,000 cases go before the District Court each year.

Mr. Barry Donoghue: It is 220,000, yes.

Chairman: Approximately how many cases go before all the other courts?

Mr. Barry Donoghue: I would have to add up the figures.

Chairman: What is the approximate figure?

Ms Helena Kiely: Every case starts in the District Court so even if it is a murder or a rape case, it will continue on.

Chairman: It is referred on day one.

Ms Helena Kiely: The figure of 220,000 for the District Court will include cases that go on to the trial court.

Chairman: We are interested in outcomes, not of individual cases but the office's overall success rate. I know everything starts in the District Court. I presume the office's success rate is quite high.

Mr. Barry Donoghue: There are two things. First, after the director's forward, there is "2017 AT A GLANCE". That is where the figure of 94% conviction on indictment comes in.

Chairman: That is on page 7.

Mr. Barry Donoghue: It is immediately after-----

Chairman: The mission statement.

Mr. Barry Donoghue: It is page 7. That is the 94% figure I mentioned.

Chairman: Can Mr. Donoghue give us a breakdown of that in terms of the different courts?

Mr. Barry Donoghue: I can certainly do that. On page 17, under "Prosecute on Indictment", this includes all of the indictable courts and the Chairman can see the figures directed in each year. In 2017, the current year we are looking at, 3,576 cases were directed on indictment. That would include all the indictable courts - the Central Criminal Court, the Circuit Court and the Special Criminal Court.

Chairman: How did Mr. Donoghue arrive at an overall conviction rate of 94% given that he said a few minutes ago that he does not have figures for what happens in the District Court?

Mr. Barry Donoghue: It says “on Indictment”.

Chairman: I am looking at the 94% figure on page 7.

Mr. Barry Donoghue: Yes.

Chairman: That figure does not refer to all cases.

Mr. Barry Donoghue: It just refers to indictment. It is just at a glance. It is a ready reckoner.

Chairman: I thought that was 95% in all courts, but that is not the case.

Mr. Barry Donoghue: I do not know if anybody has statistics about the conviction rate in the District Court.

Chairman: Whether it is the Courts Service or-----

Mr. Barry Donoghue: I am not sure the Courts Service has it.

Chairman: It would be a very useful statistic for the State to have.

Mr. Barry Donoghue: Absolutely, but as my colleague, Ms Kiely, said, this justice hub will be able to produce those figures automatically once all of the agencies-----

Chairman: To whom did Mr. Donoghue refer?

Mr. Barry Donoghue: My colleague, Helena Kiely, was on this group looking at developing a hub with all the data coming together. That will produce the statistics we should have but do not have.

Chairman: When might that be?

Ms Helena Kiely: As I mentioned, on the first two projects, it is a message exchange between different agencies. The Court Service’s outcomes, which will be a conviction or an acquittal, is one of the first messages they want to put into the centre so that agencies like ours will be able to get accurate statistics at District Court, Circuit Court and Central Criminal Court levels. The project, which is called the criminal justice hub, is mirroring what is available in Northern Ireland. It is trying to automate messages from different criminal justice agencies into a central hub. They are collated so that we will have an accurate position on individual accused but also in respect of statistics, that is, the number of incidents, the number of offences directed, the number of convictions and the number of people who are likely to serve sentences this year. It will provide a statistical analysis of figures that every agency will know is accurate and can refer to going forward.

Chairman: Which is the lead Department in that?

Ms Helena Kiely: The Department of Justice and Equality. It is the sponsoring Department.

Chairman: Is there an indication of when that might happen? We have all heard about the trouble the Central Statistics Office, CSO, has with Garda figures. We are starting from a situation that the CSO cannot stand over. Is the CSO on this group to clarify the statistics?

Ms Helena Kiely: I know there is a statistician from the Department of Justice and Equality. There may be some engagement with the CSO that I would not know of, as just being an agency

sitting on it. I know there is a statistician working on this group who is a member of the board.

Chairman: I will make a suggestion to the Department of Justice and Equality. If it does not have somebody from the CSO on this group, it should get one.

Ms Helena Kiely: It may have.

Chairman: If not, it should because we do not want all of this work to be done and then to find the CSO has a problem with the way it is designed. We will only believe figures when they come out of the CSO. That is all I am saying at this stage.

Ms Helena Kiely: It might be worth mentioning that one of the first projects in this hub business plan is to look at court outcomes and have an accurate assessment of outcomes because that is something all agencies are anxious would be done as a priority. In terms of the outcomes of District Court, Circuit Court, Central Criminal Court and Special Criminal Court cases-----

Chairman: The committee might write to the Department of Justice and Equality to get an indicative timescale for this project. We will write separately to the Department as a result of what Ms Kiely has said.

I raise an issue that has always interested me. When somebody is prosecuted and has to engage counsel at their own cost, who pays the defence costs if the case does not stand up in court?

Mr. Barry Donoghue: It is a matter for the trial judge. The judge has the discretion to award costs against the director. There is case law on it in terms of how judges should approach that. Most cases are legally aided in the courts but where a person is not legally aided-----

Chairman: By and large, there is no great means test for legal aid in the Circuit Court. There is in the District Court because if one has a bit of an income, one will not get legal aid.

Mr. Barry Donoghue: Yes, because of the cost involved in defending the case oneself. To answer the question, the trial judge will have a discretion and in some cases will order costs to be paid by the director.

Chairman: In which courts?

Mr. Barry Donoghue: That will be mainly in Circuit Court cases.

Chairman: That is in spite of the fact that the person may have had the benefit of free legal aid.

Mr. Barry Donoghue: No. That is only in cases where people are not legal aided. If they are on legal aid, their defence is being paid for by the taxpayer.

Chairman: That is in the Circuit Court, the High Court or the Supreme Court.

Mr. Barry Donoghue: Yes.

Chairman: Why would they not get legal aid in the Circuit Court, the High Court or the Supreme Court?

Mr. Barry Donoghue: Presumably, their means are such that they could not get legal aid.

Chairman: Members of this House have got free legal aid in the Circuit Court because their

salary was not deemed adequate to meet the costs that can be incurred in the Circuit Court. One would want to be very wealthy not to get one's costs in the Circuit Court or free legal aid. Does Mr. Donoghue know how many people are not covered by free legal aid? Who would know the answer to that question?

Mr. Seamus McCarthy: The Legal Aid Board would be where the Chairman should address that query.

Chairman: That is another letter we will send to get that information. It seems to be difficult not to get it in the----

Mr. Barry Donoghue: I would say very few cases are not legally aided.

Chairman: That is the picture I am trying to drag out.

Mr. Seamus McCarthy: My understanding is that the means testing is a little bit different from what it might be in, say, social protection. Account would be taken of expenses and commitments somebody would have in the determination by the court.

Chairman: I have a few questions for the Office of the Attorney General. As individual Deputies, we often receive complaints about local sports club being unable to get lottery grant approval because it has been held up in the Chief State Solicitor's office. What is the story on that?

Ms Maria Browne: I will answer that because my office deals with that work. I would say that is not an accurate representation of the position because these cases are dealt with in as speedy a timeframe as possible. As the process involves the State taking charge of property, it can be the case that the title may not be complete, rectification may need to be done and the constitution of the group that is applying may not be in order. Issues can arise during the case so that would obviously prolong it. In a standard-----

Chairman: Do many of these cases come before the Chief State Solicitor's office each year? There must be an indication because I am sure parliamentary questions are frequently tabled on the matter, given that grants are being paid again.

Ms Maria Browne: I have the numbers but I am not sure whether I have them to hand. I can send a copy of them to the committee.

Chairman: Yes, please send them in writing in the next week. I do not need it now but it is a recurring issue.

What kind of advice is given to Government bodies on acquiring commercial leases, licences and so on? Which office does that?

Ms Maria Browne: In the cases of Departments, it is my office.

Chairman: A Department might have an issue with an important transaction involving, for example, the acquisition of leasehold interests for office space. Does the Chief State Solicitor's office advise many Departments on that sort of matter, and which Departments has the office advised in that regard?

Ms Maria Browne: Primarily, if it is office accommodation, it would be the Office of Public Works, OPW, that we would advise.

Chairman: The Chief State Solicitor's office provided legal advice to the OPW on the Miesian Plaza, for example, rather than the OPW procuring its own independent legal advice.

Ms Maria Browne: Yes.

Chairman: Has the CSSO advised the State on the Apple case at the European Court of Justice?

Ms Maria Browne: We are handling it as an agent.

Chairman: Which office handles it legally from the State's point of view?

Mr. Damien Moloney: The legal team comprises the instructing solicitors, the State legal's service, the Chief State Solicitor's office, while the advisory piece is in the Office of the Attorney General through the attorney. We are also assisted by a team of external counsel, mostly within-----

Chairman: Which office is the lead in the legal case on behalf of Ireland?

Mr. Damien Moloney: I would say the Attorney General is the lead but the lead counsel is a former Attorney General, as the committee will probably know.

Chairman: I do not need to know the name. I just want to know which office is leading the case.

Mr. Damien Moloney: For the purposes of the committee, I would say the Attorney General is advising the Government and directing strategy.

Chairman: Does it also advise the Government in cases such as the North East Pylon Pressure Campaign limited and Anor v. An Bord Pleanála, where the case was referred to the European Court of Justice in respect of environmental proceedings?

Mr. Damien Moloney: That is another case where the Attorney General is the lead adviser.

Chairman: Is the case involving a person appealing extradition to Poland because he did not regard the judiciary in Poland as independent under the remit of the Attorney General?

Mr. Damien Moloney: As the committee will be aware, that case is under appeal but again that would be the Attorney General is advising the Department in terms of process.

Chairman: The Attorney General is the lead, therefore, in all the types of cases I mentioned. In that case, the office is the lead and does a substantial amount of advising of Government bodies in relation to commercial interests and those types of cases.

Mr. Damien Moloney: We do not advise commercial bodies or semi-State bodies but we certainly advise bodies under the aegis of Departments, where appropriate.

Chairman: Yes, I meant that the office advises the OPW on commercial leases.

Mr. Damien Moloney: Yes, we certainly do.

Chairman: One matter that has troubled the committee for the past number of years is that of the State redress scheme and the various transfers of assets from religious institutions to the HSE. Perhaps the State should call on the Attorney General's advice in that regard or perhaps it is already involved. The matter regularly appears on the committee's agenda. There were

agreements in 2002 and 2009. I acknowledge that this primarily concerns the Department of Education and Skills. Some of the properties are being transferred to the HSE, while others are still caught up in the process. Approximately 15 years later, the State has been unable to complete the transfer to which it committed. We are receiving quarterly reports because we are not satisfied that it has received the attention it deserves to fulfil the commitment. Given that the Office of the Attorney General advises Departments on commercial issues, leases, trusts and so on, is it involved in this matter?

Ms Maria Browne: My office is involved in the matter. Under the first redress scheme, I believe five properties are outstanding, although we are dealing with only two of them. The other three are being taken by the HSE and we do not act for the HSE.

Chairman: The Chief State Solicitor's office is advising the Department of Education and Skills only.

Ms Maria Browne: Yes. The cases are ongoing.

Chairman: Yes, the committee received a report last month. Why is the office not advising the Department of Health or the HSE? Why is the advice being split?

Mr. Seamus McCarthy: The HSE has its own legal advisers.

Ms Maria Browne: Yes, and the HSE is the acquiring body. It is only if it is a Minister-----

Chairman: In that case, the Chief State Solicitor's office would advise the Department of Health but not the HSE.

Ms Maria Browne: Yes.

Chairman: I am a little confused because I thought the HSE is now under the remit of the Department of Health.

Mr. Seamus McCarthy: The money for the HSE goes through the health Vote, which is the Department's responsibility. Once the money is given to the HSE, however, as it is a State agency, the HSE seeks its own legal advice.

Chairman: Okay. I listed those examples because it is probably no harm for people to understand some of the matters in which the Chief State Solicitor's office is involved. I identified them from its annual report and they are some of the issues I wanted to be addressed. Does Deputy O'Connell wish to contribute?

Deputy Kate O'Connell: Yes. Did somebody ask about European arrest warrants and extradition in my absence?

Chairman: I just mentioned a case involving Poland.

Deputy Kate O'Connell: Was anything other than that discussed?

Chairman: No, I did not mention anything else.

Deputy Kate O'Connell: Mr. Donoghue referred to challenges in the light of Brexit. Will he elaborate on our preparedness for a no-deal scenario? How will it affect the office's relationships and its preparation to deal with prosecutions? Mr. Donoghue made reference to Brexit earlier and when I left the meeting to have a cup of coffee, I thought a bit more about it.

Mr. Damien Moloney: I should probably answer that question-----

Deputy Kate O'Connell: I do not mind who answers it.

Mr. Damien Moloney: -----even though the answer may not please the committee. The policy piece in terms of responding will be the Department's. The structural piece in terms of providing the advice will, of course, involve the Office of the Attorney General. To that extent, we have processes and people in place advising.

Deputy Kate O'Connell: That was a compact answer.

Mr. Damien Moloney: I wonder if I could make two points-----

Deputy Kate O'Connell: I am trying to be helpful.

Mr. Damien Moloney: -----without taking the Deputy's time. The question about Garda vetting was put to the Chief State Solicitor's office but I should say the vetting process for the Office of the Attorney General, the Department of the Taoiseach and a number of other central Departments are twice as long as the six-week process which was mentioned because there are more requirements for some Departments than others, which the committee may not have been aware of.

Chairman: Is that for Garda vetting?

Mr. Damien Moloney: Yes. The committee may not have been aware that there are layers of Garda vetting but there are.

Chairman: Will Mr. Moloney explain that because we are not experts on the matter?

Mr. Damien Moloney: As I understand it, there are layers.

Chairman: Depending on the level of responsibility.

Mr. Damien Moloney: For instance, an officer who will serve in my office will undergo a more elaborate vetting process. As a result, there is a time delay. I thought I should mention that in the interest of candour.

On prosecuting in one's own right, I should mention that I may have to move from the Office of the Attorney General but the committee may receive a list from my colleagues in the Office of the Director of Public Prosecutions. There are some legacy fishery prosecutions.

Deputy Kate O'Connell: Will Mr. Donoghue elaborate on the challenges he mentioned, or has Mr. Moloney answered that question?

Mr. Damien Moloney: Is the Deputy referring to the European challenges?

Deputy Kate O'Connell: Yes, Mr. Donoghue referred to challenges in his commentary. If it is helpful for the committee, will he outline some of the challenges he anticipates?

Mr. Barry Donoghue: Much is unknown about the matter and we are trying to feel our way through it. The point I was making was that we are moving from a system of extradition, with which we are familiar and which has been tried and tested with the UK since 2003 - the European arrest warrant - to something which is different. That is the challenge essentially, that we will have to deal with an entirely different system. Without being too complicated about it,

if somebody is being extradited from the United Kingdom to the United States, it will be under a particular type of system. We are going to go into that same system so we will have to be assured that we know what the courts require in that different system. My main point was that the European arrest warrant was designed to be a streamlined system for Europe.

Deputy Kate O'Connell: This is where the issue of alignment comes into play.

Mr. Barry Donoghue: Yes.

Deputy Kate O'Connell: As I cannot see the witness's name, I cannot refer to her directly, but she referred a couple of times to the causeway system in Northern Ireland in reference to the justice hub. The Chairman mentioned the Central Statistics Office, CSO, and that we did not want to see a situation to arise where the work was done and the CSO might complain about the form the statistics took. As mentioned, the same applies to the GDPR. Can we be confident that when the justice hub is completed - I would like to hear the projected finishing date - we will not find ourselves in a situation where concerns will be raised that the enterprise is in breach of it in dealing with people's personal data? We want to make sure it is not a waste of time and money.

Ms Helena Kiely: Data protection has been a massive part of the project. While people talk about the GDPR, justice agencies operate under the law enforcement directive which is Part 5 of the Data Protection Act. Getting that right, even before the data modelling was completed, was a big part of the design. We want to ensure the protections and obligations of all of the criminal justice agencies under Part 5 of the Act and the law enforcement directive are all accounted for at a very early stage. A data protection sub-committee is working as one of a number of sub-committees under the public board. I sit on the board, while our data protection officer is a member of the data protection sub-group. Data protection agreements were in place before any data modelling was done. Therefore, any member of the technical project team would know that we were data protection compliant. The legal office is obviously in tune with data protection requirements. Much of the data we possess is sensitive and we have obligations in that respect. The data protection directive and implementation of the Act have been a big project within our office. As there was heightened awareness of the issue last year, it was very much at the forefront of our mind in starting the project to ensure the data protection aspects would be correct.

Deputy Kate O'Connell: Is there a projected finishing date for the project?

Ms Helena Kiely: I am a member of the board, but I am not from the sponsoring Department. There is no finishing date as such. The system entails the development of a series of messages between agencies that in time will become more detailed. A number of projects that have to be completed very quickly have been identified, including recording court outcomes for statistical purposes and which many agencies require. We are planning to roll out that aspect in the latter part of the year. I am told by the IT and technical people that when it is rolled out, there will be near-time accuracy. In time, as we ensure the data are correct and of high quality, they will become real time data. There is a process which involves many of these projects to ensure the data will be of the correct quality.

Chairman: For the information of Deputy O'Connell, we have spoken about that matter and agreed to write to the Department of Justice and Equality which is the lead Department for the project for the timetable for its completion. The agencies are only part of the group; the Department of Justice and Equality is taking the lead in dealing with the issue.

Deputy Kate O’Connell: Ms Kiely mentioned sensitive data. Even if the hub is established perfectly and working in real time, it is worth noting that there have recently been data breaches within the HSE related to the termination of pregnancies. We were warned that that would probably happen; I just want to flag that there are people who are very fond of accessing everybody’s information. If information in the hub was to get into the wrong hands, it would obviously be a very serious matter.

Ms Helena Kiely: We hold a lot of data, but evidence or material of that nature will not be in the hub which will contain court outcomes or charge sheets. There will be access levels in terms of those who will need to see particular information and when they will need to see it. That is an essential part of what is being agreed to. Most of the information held by every agency will not go to the centre. There will only be access to the messages people need to consume and what they generally need to know.

Chairman: I thank all of the witnesses, including the staff from the Office of the Attorney General, the Office of the Director of Public Prosecution and the Office of the Chief State Solicitor, for their attendance and the material they have provided for the committee. I also thank the Comptroller and Auditor General. It is agreed that the clerk will request any follow-up information sought and carry out any agreed action. We look forward to receiving the information mentioned within the next two weeks.

Our next public meeting will be held on Thursday, 14 February, when we will meet broadband providers which will assist the committee in its examination of the 2017 appropriation accounts, specifically Vote 29 for the Department of Communication, Climate Action and the Environment. The broadband providers which will attend are BT, Eir, the Regional Internet Service Providers Association, Imagine and Enet.

The witnesses withdrew.

The committee adjourned at 4.45 p.m. until 9 a.m. on Thursday, 14 February 2019.