

DÁIL ÉIREANN

AN COISTE UM CHUNTAIS PHOIBLÍ

COMMITTEE OF PUBLIC ACCOUNTS

Déardaoin, 4 Iúil 2019

Thursday, 4 July 2019

The Committee met at 9 a.m.

MEMBERS PRESENT:

Deputy Peter Burke,	Deputy Marc MacSharry,
Deputy Catherine Connolly,	Deputy Catherine Murphy,
Deputy David Cullinane,	Deputy Jonathan O'Brien,
Deputy Alan Kelly,	Deputy Kate O'Connell.

DEPUTY SEAN FLEMING IN THE CHAIR.

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

Business of Committee

Chairman: We are joined by the Comptroller and Auditor General, Mr. Seamus McCarthy, who is a permanent witness to the committee. He is joined by Mr. Brian Hill, senior auditor. Apologies have been received from Deputies Deering, Farrell and Cassells.

We will hold the minutes of the previous meeting over until next week. Therefore, we will deal next week with anything in the minutes and matters arising.

There are three categories of correspondence. The first category is A, briefing documents and opening statements for today's meeting. Nos. 2293A and 2297A are from Mr. Conor O'Kelly, CEO, National Treasury Management Agency, NTMA. These are his opening statement and briefing documents. We will note and publish these. That is agreed.

No. 2296 A from the HSE, dated 3 July, is a briefing statement for today's meeting on the State Claims Agency. We will note and publish this.

The second category is B, correspondence from Accounting Officers and-or Ministers and follow-up to meetings of the committee and other items for publishing. We have held over a couple of items from the previous meeting. The first is No. 2161B from Mr. Paul O'Toole, chief executive of the Higher Education Authority, dated 10 May, enclosing a report on the review of the relationship between Cork Institute of Technology and certain named companies and entities which was undertaken by Mazars. We published this a couple of weeks ago and there was an indication that some people would like to make some observations. If anyone wants to make an observation on that, that is fine, and if not, we will circulate it. If somebody wants to bring it back up the next time under minutes or matters arising, we will do so. I would like to deal with it formally today. Is that agreed? Agreed. People can raise the matter again the next day, if they want, before the break.

No. 2277B is from Ms Mary Lawlor, communications and public affairs manager, National Asset Management Agency, NAMA, dated 26 June, responding to further information requested by the committee on the payment of €1.9 million to the Revenue Commissioners in 2018. At our meeting of 13 June we reviewed the 2018 accounts for NAMA and highlighted this payment to the Revenue Commissioners in November 2018 in respect of an underpayment of VAT on certain services received from abroad. The payment included €600,000 in respect of interests and penalties. NAMA advised that the liability arose primarily in respect of a NAMA secured asset located abroad where invoices were settled directly with debtors, by debtors or their lawyers. These invoices were processed externally and were not subject to the normal internal processes for assessing whether a reverse charge VAT obligation arises. NAMA advised that it has amended its procedures to capture in real time any reverse charge VAT liability due. We will note and publish this. NAMA has clarified the matter in full. I stress that it was a voluntary disclosure by NAMA in the first instance.

No. 2284B is from Mr. Maurice Buckley, Chairman, Office of Public Works, dated 27 June, providing an update requested by the committee on the basis of the measurement to determine the rent on Miesian Plaza in Baggot Street, which is the head office for the Department of Health. A meeting is expected in the coming weeks with the landlord. We will note and publish

this. We will get an update on that in due course as well.

No. 2291B is from Dr. Fergal Lynch, Secretary General, Department of Children and Youth Affairs, dated 1 July. Dr. Lynch is working on providing follow-up information requested at our recent meeting with the Department and has suggested a format for providing information on Pobal. The letter contains a template for how the Department proposes to provide the information. Unless any member can suggest an alternative layout in terms of the presentation of the information, I propose that we advise Dr. Lynch to proceed as suggested. The reason we have done this is because an enormous volume of information was requested at the meeting and we want to make the flow of information in some way manageable, and they want to agree a format with us. I am happy to proceed with this. When we get the information, if we want further information again thereafter, we can revisit the matter. For now we will ask them to provide the information based on the template that they have provided here today. That is agreed.

No. 2292B is from Ms Marie Mulvihill, Department of Public Expenditure and Reform, dated 28 June, providing information requested at our meeting last week on the health budget oversight group. We will note and publish this. The matter arose as a result of recent correspondence that a health budget oversight group had been established, which people might not have been aware of and we might have seen reference to it. We think it is a good thing and follows on from a previous recommendation of the Committee of Public Accounts in our last periodic report where we stated that the Department of Public Expenditure and Reform should engage directly with those Departments that have a history of a substantial requirement for Supplementary Estimates. The Department is acting on that but perhaps it was going to do so in any event. It has set up the membership of the health budget oversight committee. Officials confirmed here at the previous meeting that the group is only dealing with current expenditure and does not include capital expenditure. We would suggest that the group would also cover that. In the meantime, it is good that there is an oversight group to work on this issue. I will list the membership of the committee so that people will know its make-up: Mr. Ronnie Downes is the chairperson, and he is an assistant secretary in the Department of Public Expenditure and Reform; Mr. Colin Menton is an assistant secretary in the Department of Public Expenditure and Reform; Mr. Colm O’Riordan is a deputy secretary in the Department of Health; Mr. Colm Desmond is an assistant secretary in the Department of Health; Mr. Stephen Mulvany is the chief financial officer of the HSE; Mr. Liam Woods is the national director and chief operations officer in the HSE; and Ms Rosarii Mannion is the national director of human resources in the HSE. The secretariat is provided by the Department of Public Expenditure and Reform. I am delighted to see that there is such a group in place.

Deputy Catherine Connolly: Except for gender, the list is perfectly right.

Deputy Catherine Murphy: I noticed the gender balance as well.

Chairman: The committee is 100% male.

Deputy Catherine Connolly: Nearly, except for Ms Rosarii Mannion.

Chairman: Yes. There you go.

Deputy Catherine Connolly: It is a committee for health budget oversight.

Chairman: The majority of the people employed in the HSE are probably female.

Deputy Catherine Murphy: Yes.

Chairman: We will pass on that observation. Sometimes females can be better at minding money.

Deputy Catherine Connolly: We are here to discuss value for money.

Chairman: Yes.

Deputy Catherine Connolly: Repeated research has shown that if there is female representation on an equal basis, it produces better value for money. Mr. Kieran Lenihan, the clerk to the committee, is looking at me but I have shown this research. We will come back to the matter on another day in terms of value for money. Certainly a female look at a budget oversight is essential in terms of health.

Chairman: Yes. We will pass on that observation directly to Mr. Downes or whoever. No, it is not for the committee as they are only members. We will pass our observation on to the Minister for Public Expenditure and Reform, Deputy Donohoe, as he is the man in charge. I thank the Deputies for the observation.

The next item of correspondence is No. 2294B from the Department of Justice and Equality, dated 2 July, providing a notice on the sentence calculation review carried out on behalf of the Irish Prison Service. We will note and publish this item. It will be included in our periodic report that we will publish next week. A detailed review of that particular issue has been conducted, and we were satisfied to receive that.

No. 2295B is from William Beausang, Department of Education and Skills. He has provided an update on responses received by the Department from Waterford IT arising from matters related to the spin-out company FeedHenry. We will note and publish this item and it will feed into our periodic report. Is that agreed? Agreed.

Category C relates to private individuals and other correspondence. One item has been held over from previous meetings and I want to do a detailed note on that because we have a number of letters on this issue from this particular correspondent. It is their right to correspond with this committee. No. 2260C, dated 18 June, is further correspondence from an individual about the Social Welfare Appeals Office. We considered correspondence from this individual at our meeting on 13 June 2019. The matters raised appeared to involve a breach of legislation and it was agreed to advise the individual that the matters raised were not within the remit of the committee, but were a policy or legislation issue. In this item, the correspondent states that he intends to make a further submission to the committee. We have previously written to both the Department of Employment Affairs and Social Protection and the Revenue Commissioners on matters raised by the correspondent regarding bogus self-employment. We sent responses to the correspondent, which were received, in June 2018. The Department advised in 2018 that it had published a review of trends in, and issues arising from, the use of intermediary structures and self-employment arrangements, together with the Department of Finance and the Revenue Commissioners. The report considered the available data on employment trends, including data used in the correspondent's submission, and concluded that there was little, if any, evidence that there has been an increase in the level of what is termed "disguised or false self-employment". The report made a number of recommendations. One recommendation was to increase public awareness of the services provided by the Department of Employment Affairs and Social Protection's scope section, and a public awareness campaign about false self-employment was launched in May of last year.

I propose we inform the correspondent that our consideration of the matter is closed, in light of the fact that various State organisations have dealt with the information. Is that agreed? Agreed.

No. 2279C is from Mr. John Conway, assistant secretary of Louth Environmental Group. It is dated 27 June 2019, and is a response to correspondence we sent to the group which was received from the Office of Public Works, OPW, following inquiries made by the committee regarding a flood risk project at Bellurgan, Dundalk, County Louth. I propose to advise the group to make contact with the Local Government Audit Service as the work was carried by Louth County Council, but members may also wish to take this matter up with the OPW when it is next before the committee giving its financial statements. We will note this item. Is that agreed? Agreed.

No. 2280C is a response from an individual to our recent correspondence to him regarding salaries and allowances for Oireachtas Members. We will note this correspondence. Is that agreed? Agreed.

No. 2281C, dated 24 June 2019, is from an individual responding to our recent correspondence to him and to our discussion of his correspondence in respect of Kerry County Council. The correspondent says we misunderstood the point he was making, which was about the value for money of discretionary funds that are made available to councillors. Nonetheless, our position remains that the matters raised are not within the remit of the committee and I propose to reiterate that he should make his inquiry to the Minister for Housing, Planning and Local Government. Is that agreed? Agreed.

No. 2283C, dated 27 June 2019, is from Mr. Allen Morgan, enclosing further correspondence following our private meeting on 20 June 2019. Mr. Morgan is a retired senior official from the OPW with extensive experience, having worked in the organisation for years. We met him in private session to discuss a number of projects he wanted to highlight. In response to queries from members, Mr. Morgan has provided further documentation and, in summary, he recommends that the lessons learned from the Miesian Plaza case should be embedded in all OPW projects. On the transfer of the property remit from the OPW to a dedicated agency-type organisation, he cites the example of Coillte and other European comparator countries where there is a more commercially focused agency approach. He also recommends greater and more clearly independent oversight or scrutiny of property cases, especially while these remain within OPW's remit. Members will agree that there is merit in exploring these recommendations further. However, it is not within the remit of the committee to do so, because almost everything Mr. Morgan refers to is a policy matter for the relevant Minister. I propose that we forward this correspondence, with his permission, to the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach, as it deals with the OPW, and it is under that committee's remit to consider policy matters. We will ask for its consideration and any action it deems appropriate. Members may also wish to raise the matter in other fora. Is that agreed?

Deputy Marc MacSharry: What committee are we sending it to?

Chairman: The Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach, as that committee deals with the OPW. The OPW reports to that committee and its Estimates go through it.

Deputy Marc MacSharry: What would we ask the committee?

Chairman: We would ask it to take on board everything Mr. Morgan has said about a new agency, transfer of property, and so on. They are all policy issues for the committee.

Deputy Marc MacSharry: I understand. We will send that to Deputy McGuinness.

Chairman: Yes, as he is the chairman of that committee. The Committee of Public Accounts cannot take on what Mr. Morgan is suggesting. We accept his points about learning lessons, especially from the Miesian Plaza, and ensuring those lessons are embedded in all OPW projects in the future, but many of the points he made are major Government policy issues.

Deputy Marc MacSharry: It is good stuff.

Chairman: It is good stuff.

Deputy Marc MacSharry: For what it is worth, the MacGill Summer School has taken the lead from the Committee of Public Accounts and now has a section on the topic of the Miesian Plaza disaster.

Chairman: Very good.

Deputy Catherine Murphy: We should thank Mr. Morgan for coming in and for providing this additional material that we can all use individually as well. It is important to say that it is not falling on deaf ears. He has gone to considerable effort, and some of the principles he discussed on to how projects are approached were very useful. It re-frames one's perspective when looking at overspends on large projects, and the kinds of institutional arrangements that could be put in place to avoid them in the future.

Chairman: We will certainly thank him for the earlier correspondence, for the information and the report he provided, for attending the meeting in private session, and for the follow-up documentation we have now received. While we will send his correspondence on to the other committee, we have all learned from this process and we can all use this information in our roles in the Oireachtas, so we will thank him for that. That is agreed.

No. 2285C is from a company, dated 27 June 2019. At our meeting on 13 June, we decided to forward a number of items of correspondence in respect of this company to the OPW for a response. The secretariat routinely requests the correspondent's permission and, in this instance, the company has declined to provide consent for this purpose. The matter relates to specifications for cell windows in Garda stations and courthouses. The correspondent believes the winning tenders are not meeting the health and safety specifications set out in the tender documents. I propose to write to both the OPW and An Garda Síochána to ask if they are completely satisfied that the health and safety standards and specifications for the supply and fitting of cell windows are being met. I propose that we also ask the OPW to describe the controls in place to ensure the winning tenders deliver the specification set out in tender documents. In conversation with one of the correspondents, the clerk to the committee was given to understand that the matter has also been referred to the Health and Safety Authority, HSA. I propose we write to the HSA for an update on the matter. The company does not want us to send its correspondence on directly, but to raise the general issue of tendering so that what is in the tender document is subsequently delivered, and that the mechanisms to do that are in place.

Deputy Catherine Murphy: We should also draw the State Claims Agency's attention to it, because there is a risk assessment aspect to its work.

Chairman: Representatives from the agency will be before the committee later, so we might raise it with them then. We note that item. Is that agreed? Agreed.

No. 2289C from Deputy Catherine Murphy, dated 27 June 2019, endorsing our decision at last week's meeting to include the Irish Greyhound Board and the Department of Agriculture, Food and the Marine on our work programme, and requesting that it be scheduled for the autumn. Bord na gCon's financial statements are on the work programme for the autumn. Representatives of Bord na gCon will be before the agriculture committee next week to discuss matters to which attention was drawn in a recent RTÉ programme.

Deputy Catherine Murphy: Approximately 50% of its turnover is public money and we need to look at it. We had representatives before the committee in early 2017 and the process was quite chaotic. The Harold's Cross property has been sold in the meantime. We should have the representatives before us to look at the next set of accounts, which I presume are available.

Mr. Seamus McCarthy: Not yet. The audit has not yet been completed but it is fairly close to completion.

Chairman: We will have it for the autumn schedule.

Mr. Seamus McCarthy: Yes.

Chairman: Okay. We can include them on the work programme for the autumn schedule. The matters arising from the "RTÉ Investigates" programme will be discussed at next week's agriculture committee meeting. In any event, we will discuss all relevant issues.

Deputy Catherine Murphy: We are concerned with the finance and value-for-money aspects.

Chairman: Yes, and we deal with the funding.

Deputy Catherine Murphy: We can discuss the scale of funding relative to the amount provided to other sports, for example.

Chairman: It is agreed and it is in our work programme for the autumn. Correspondence No. 2290 is from an individual, dated 27 June, which makes some observations relating to housing subsidies. We note that item. The next item is statements of accounts received since the last meeting, of which there are four. One relates to University College Cork, UCC. There is a qualified audit opinion and the university recognises a deferred funding asset in respect of future pension liabilities. However, it has recognised €3.75 million more than is warranted for a funding agreement it entered with the Higher Education Authority. Otherwise, the financial statements give a true and fair view. On a separate point, it is noted that the university had non-compliant procurement to the value of €2.9 million in 2016 and 2017. It is unusual for the Comptroller and Auditor General to qualify an audit.

Mr. Seamus McCarthy: It is and we do not do it lightly. This is an ongoing issue between UCC and the Department. For a number of years I was drawing attention to and qualifying its recognition of approximately €14.5 million or €15 million in respect of this specific item. An agreement was hammered out that it would do a 50/50 share of the cost associated with this specific aspect.

Chairman: With whom would it be shared?

Mr. Seamus McCarthy: It would be shared with the Department, which is the funder, effectively. In implementing it, UCC has gone for recognition of a 76/24 split. It is just not correct for it to do that.

Chairman: Is it being overly prudent?

Mr. Seamus McCarthy: It is not so much that it is being overly prudent. It is assuming it will receive more funding than the agreement indicates.

Chairman: Does the 76% refer to the Department's share?

Mr. Seamus McCarthy: Yes, rather than 50/50.

Chairman: Is the Department not talking to UCC on the matter?

Mr. Seamus McCarthy: The parties are talking about it. It is the position as it stood in the financial statements. These are the financial statements for 2016 and 2017. Trying to get a resolution to this has delayed the completion of the audit.

Chairman: The accounts for 2017 and 2018, running up to the end of September 2018, will be with the committee next spring.

Mr. Seamus McCarthy: No. The audit is due to commence in July so it will be the back end of the year before the audit is completed.

Chairman: The matter may or may not be resolved. Please keep us informed.

Mr. Seamus McCarthy: We will do so.

Deputy Catherine Murphy: In some areas we have focused on bogus self-employment. I am not saying it happens in universities but there can be fairly unorthodox employment practices with respect to the employment of tutors. I became aware of somebody recently who had spent three or four years tutoring but was finding it difficult to get contracts. That practice is kind of repeated in various universities. There was an offer to be paid in book tokens. It is quite shocking stuff. Is the type of employment practices in universities something that can be dealt with in accounts? Would tutors without a contract be identified in any way?

Mr. Seamus McCarthy: No. To an extent there is employment numbers control in universities and third level institutions general. It is really a policy matter. Salary payments should be put through as such. I cannot say I have heard of any cases where somebody is being paid in kind or in the form of book tokens. That is not something of which I am aware. If the Deputy has details of something like that, we can certainly have a look at it in the course of the process.

Chairman: Those employees may have very few rights. During last week's meeting we asked representatives of the Health Service Executive, HSE, for a breakdown of staff numbers, including those in section 38 and section 39 organisations and contract staff. In our letter seeking clarification, we asked the number of whole-time equivalents in agency staff to the HSE. I have never seen that figure and I look forward to getting it. These people could be doing full-time work on behalf of the State all the time, especially in the home help area, but they have zero rights in the HSE. The agency involved could pull them at a moment's notice. It is a broader matter that might not be relevant to this committee. It is an employment rights matter.

Deputy Catherine Connolly: Did the point come up when we asked representatives of the

universities questions on the matter? Did they give a breakdown of employee numbers and the type of contracts?

Deputy Catherine Murphy: Many of them do not have contracts.

Deputy Catherine Connolly: That was the issue. We were left asking questions about it.

Deputy Catherine Murphy: The perception is that if somebody is employed in a university, it is a good job, but some tutors find themselves drawing the dole during the summer.

Chairman: School secretaries and bus drivers may also have to do that. They now have to sign on to get the dole if they do not have permanent contracts.

Deputy Catherine Connolly: The question is how the information comes out. It is not coming out in the accounts. If the delegations from universities are before us and we ask questions, a certain amount of information could come out that can be followed up. The question is how to get openness and accountability, other than relying on people coming forward or us having to ask questions when a delegation is before us. That would be separate from the accounts process.

Chairman: We would probably be coming at it through the back door. The sectoral committee should primarily deal with such matters to an extent. If the Deputy has an issue-----

Deputy Catherine Murphy: I can write to the education committee.

Chairman: We can write to the Higher Education Authority, HEA, on foot of the Deputy's comments if she so wishes.

Deputy Catherine Murphy: Yes. I will send a note.

Chairman: The Deputy can liaise with the secretariat. We will agree in principle to write to the HEA raising these matters and rely on the Deputy to have an input in drafting the letter.

Deputy Catherine Murphy: That is okay.

Chairman: The next set of accounts relates to the Commission for Communications Regulation. It is a clear audit opinion. The utilities regulator is a different outfit.

Mr. Seamus McCarthy: Yes.

Chairman: There is a clear audit opinion for IDA Ireland. The Digital Hub Development Agency provides operating space for start-up businesses in digital media, technology and the Internet. Is it located in Dublin 8?

Mr. Seamus McCarthy: Yes. It is on Thomas Street.

Chairman: It also has a clear audit opinion. The next item is the work programme. Representatives of the Houses of the Oireachtas Service will be in next week to discuss its appropriation accounts. Is there an annual report that is separate from those accounts? We can see what we have.

Mr. Seamus McCarthy: They may be published together.

Chairman: We will have a copy of that. In the afternoon there is an informal meeting on matters relating to the Irish Banking Resolution Corporation liquidation. The witnesses are Mr.

David Hall, who is attending in person, and Professor Constantin Gurdgiev, who will attend via conference call from the United States. The outstanding matters are the appropriation accounts for the Courts Service, which we postponed a couple of weeks ago, and matters relating to the Department of Agriculture, Food and the Marine and Bord na gCon. We had two other items, including public private partnerships and something else. We will have a quick chat next week about the work programme for the commencement of the new session and its first few meetings. The Comptroller and Auditor General's report will be at the end of September. We will be able to work from that report but it will be a couple of weeks before that if we are all here. I use the word "If." Next week, we will try to line up a meeting for September or the first week of October.

Deputy Catherine Connolly: I had the Courts Service in my diary and then it was changed. What happened?

Chairman: We changed it. We brought forward the meeting with the HSE on its financial statements to last week, when the Courts Service was due to come in, with a view to swapping them but the alternative date did not suit the Courts Service so we said we would just defer it. We brought the HSE meeting forward last week-----

Deputy Catherine Connolly: Is the Courts Service on our list for autumn?

Chairman: It is on our list. We will probably-----

Deputy Catherine Connolly: Is it high up on the list?

Chairman: It is the only one left standing. We will meet Courts Service officials very soon after the recess but we will wait for the Comptroller and Auditor General's report.

Mr. Seamus McCarthy: The 2018 appropriation account for the Courts Service should be available at the end of September so it probably makes sense to bring them in in early October if they are a high priority-----

Chairman: We can have the postponed meeting and discuss the 2018 appropriation accounts together.

Mr. Seamus McCarthy: ----whereas the accounts of some of the State bodies, with which the clerk to the committee intends to schedule meetings, will be available in September for September meetings.

Chairman: We will provisionally discuss that next week before we leave.

Deputy Catherine Murphy: I am a member of the Houses of the Oireachtas Commission so I presume there is a conflict of interest for me. How was that handled previously?

Chairman: Once the Deputy declares it, it should not be an issue. It is a fact of life that conflicts of interest arise and the issue is how to deal with them. The first way for the Deputy to deal with it is to put it on the public record at the start of the meeting.

Deputy Marc MacSharry: I am a former member of the Houses of the Oireachtas Commission so I would not panic.

Chairman: The most straightforward way to handle that is to put it on the public record.

Mr. Seamus McCarthy: The Accounting Officer is the one who is responsible and account-

able for the spending.

Deputy Marc MacSharry: Who is the Accounting Officer?

Mr. Seamus McCarthy: The Clerk of Dáil Éireann.

Chairman: There will be no other meetings. We will suspend for a few minutes to allow our witnesses to take their seats.

Sitting suspended at 9.42 a.m. and resumed at 9.50 a.m.

2017 Annual Report of the Comptroller and Auditor General

Chapter 21 - Accounts of the National Treasury Management Agency

National Treasury Management Agency Financial Statements 2018

Mr. Conor O’Kelly (*Chief Executive Officer, National Treasury Management Agency*) called and examined.

Chairman: This morning we are meeting the National Treasury Management Agency, NTMA, regarding the NTMA financial statements 2018 and the Comptroller and Auditor General’s Report on the Accounts of the Public Services 2017, chapter 21 - accounts of the National Treasury Management Agency. There will be two parts or sessions to our engagement with the NTMA today. We will deal with all matters in the accounts with the exception of those relating to the State Claims Agency for the first two hours approximately. In the second part of the meeting, we will deal only with matters related to the State Claims Agency and we will be joined with representatives from the HSE and the Department of Health for that part of the meeting. I wish to remind members that we will meet in private session this afternoon to conclude discussion on our periodic report, which we will launch next Tuesday afternoon.

We are joined this morning by, from the NTMA, Mr. Conor O’Kelly, chief executive officer, Mr. Ian Black, chief financial officer and Ms Sinead Brennan, director of human resources and organisational development; and from the State Claims Agency, Mr. Ciarán Breen, director, Ms Catherine Tarrant, executive head of claims, clinical indemnity scheme, and Mr. Pat Kirwin, deputy director and head of enterprise risk. We are also joined by Mr. Eoin Dorgan, principal officer of the Department of Finance. I remind members, witnesses and those in the public gallery that all mobile phones should be switched off and not just put on silent mode as that can interfere with the recording system.

I wish to advise the witnesses that by virtue of section 17(2)(l) of the Defamation Act 2009 they are protected by absolute privilege in respect of their evidence to the committee. If they are directed by the committee to cease giving evidence on a particular matter and continue to do, they are entitled thereafter only to a qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and asked to respect the parliamentary practice to the effect that, where possible, they

should not criticise nor make charges against any person, persons 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 policies. Although we expect witnesses to answer questions asked by the committee clearly and with candour, witnesses can and should expect to be treated fairly and with respect and consideration at all times, in accordance with the witness protocol. There will be a five-minute suspension before we move to dealing with the State Claims Agency.

For the benefit of those watching the proceedings, I wish to outline the role of the NTMA. Mr. O'Kelly will also do so and all members understand it. We are dealing today with the financial statements of the National Treasury Management Agency, including its administration account, the management of the national debt of Ireland, the Post Office Savings Bank Fund, the State Claims Agency, the Dormant Accounts Fund, the Ireland Strategic Investment Fund, ISIF and the NTMA's management of the Apple escrow account. These are the type of issues that will arise.

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

Mr. Seamus McCarthy: As members are aware, the National Treasury Management Agency is a complex organisation with multiple functions that extend beyond its original and core role of managing Ireland's national debt. The set of financial statements before the committee this morning reflects the various statutory obligations of the agency in respect of its financial reporting. The NTMA's primary function is to manage borrowing on behalf of the State. The results of that borrowing activity are reported in the national debt account. At the end of 2018, the gross national debt stood at slightly more than €205 billion. This was an increase of more than €6.5 billion on the gross national debt at the end of 2017. Total debt servicing costs in 2018 amounted to €6 billion. This was 4% less than in the previous year, reflecting the impact of refinancing of debt at prevailing low interest rates.

Other key functions and services of the NTMA that are accounted for separately include management of compensation claims on behalf of certain State authorities in its capacity as the State Claims Agency, management of the Ireland Strategic Investment Fund and provision of procurement and financial advice in respect of certain public private partnerships and other large capital projects in its capacity as the National Development Finance Agency.

The financial statements of the State Claims Agency indicate claims settlements on behalf of State agencies in 2018 amounting to slightly more than €250 million, with associated expenses of €104 million. This expenditure, totalling €354 million, was recovered from the State agencies involved and represented an increase of almost 12% on the 2017 level. The agency's estimate of the value of claims liabilities outstanding at end 2018 was €3.15 billion, up 18% from the estimate of €2.66 billion at the end of 2017. As members are aware, almost three quarters of the estimated claims value outstanding relates to clinical claims.

The financial statements of the ISIF show a reduction of €3.6 billion in the value of the fund assets between the end of 2017 and the end of 2018. The loss in value that occurred in 2018 is related to a significant fall in the value of the fund's shareholdings in AIB and Bank of Ireland, which comprise a portfolio invested in by the fund at the direction of the Minister for Finance. The audit report on the ISIF financial statements draws attention to the NTMA statement on internal control, which discloses a weakness in controls relating to foreign currency hedging that resulted in a loss of €721,000 in the year. The agency has since introduced enhanced controls

in that area.

The NTMA assigns staff and provides certain other support services, on a reimbursement basis, to certain independent bodies, including the National Asset Management Agency, NAMA, the Strategic Banking Corporation of Ireland and, since 2018, Home Building Finance Ireland. These are governed by separate boards and the NTMA is not accountable for their activities. The NTMA also provides staff on secondment for the Department of Finance's banking unit, with the costs in that case being carried by the NTMA.

The NTMA's administration account shows gross expenditure on administration costs totalling €127.2 million in 2018. Of this total, €46.7 million or 37% was recovered from NAMA and the SBCI. Overall, staff costs accounted for around 79% of the expenditure in the year. All staff are employees of the NTMA, including those assigned to work for the supported agencies. As explained in note 7.3 of the administration account, the agency operated a voluntary redundancy scheme during 2018 at a cost of €2.6 million. This is separate from the voluntary redundancy and retention scheme operated for NAMA staff, which cost a further €1.8 million.

The audit report on the NTMA administration account draws attention to expenditure of €5.9 million in 2018 relating to contracts that were not publicly advertised. The NTMA's statement on internal control provides explanations for the procurement approach adopted in relation to those contracts.

Pursuant to section 28 of the National Treasury Management Agency (Amendment) Act 2000, the Minister for Finance delegated to the NTMA a range of functions in respect of the Ireland Apple escrow fund, including the production of annual financial statements, which are subject to audit by me. The first set of financial statements for the fund were prepared for the period 17 May 2018 to 31 December 2018. These are published separately from the other NTMA accounts. Between May and September 2018, Apple paid amounts totalling €14.285 billion into the escrow fund. The net assets of the fund at year end were €14.269 billion, representing a decline in value of €16 million. Operating expenses of €2 million were incurred during 2018 in respect of investment management and other fees and expenses. The remainder of the loss in value in the period of account is attributed to the current negative interest rate environment.

Chairman: I thank Mr. McCarthy and call Mr. O'Kelly to make his opening statement.

Mr. Conor O'Kelly: I thank the Chair and committee for the opportunity to present before it. The committee has received my opening statement, which I do not intend to read. We have also provided some slides which I will use only for the discussion of the national debt, if that is all right. It would probably be easier to go through that with the slides in front of us. I will give a quick overview of some of the businesses in Vote 2018, our outlook for the markets and what is informing our views of strategy and decision-making at the current time. I thank the board of the NTMA and, in particular, our former chairman, Willie Walsh, who stepped down at the end of 2018 having been there since the beginning of 2015 on the newly constructed board. I thank him for his contribution. We have seven excellent non-executives and a new chairman, Maeve Carton, former chief financial officer of CRH. We are very fortunate to have this quality of non-executives, who give us plenty of support and challenge. I also acknowledge the Committee of Public Accounts and the challenge it has given us, particularly in the areas of diversity, tobacco and fossil fuels. It is fair to say the committee has kept those issues high on our agenda over the last few years. We have made some progress there and we still have plenty to do. I wanted at the outset to acknowledge the contribution and challenge of the committee in that regard.

I will start with the Ireland Strategic Investment Fund, ISIF. The key fact is that for 2018, the ISIF lost 1% in value. Members will be aware that 2018 was one of the worst years for stock markets since the early 1920s. The S&P 500, the US index, was down 6% and the Irish stock market was down 22%. Virtually all asset classes lost money and were in negative territory in that year. The ISIF exposure to global equities meant that overall it lost 1% of its value. I am glad to say that markets have recovered very significantly in 2019 and all of that loss - and then some - has been recovered. In total, since the ISIF was first instituted, a total of €850 million in investment gains have been added to the value of the portfolio. That is a return of 2.3% annually on the money, which is invested across Ireland with some exposure to global markets, as that cash remains to be invested in the mandate. A 2.3% return when we are borrowing money at an average of less than 1% is pretty good business for the State to date.

One of the other key features of the ISIF is that we always co-invest in any of the investments we make. The €4.4 billion we have committed to the Irish market since inception has been matched by €8.1 billion in private investment. That means a total of €12.5 billion has been invested in the Irish economy right across all the different sectors and regions. I do not want to outline all the investments we made this year; they are listed in the annual report. Investments were made at a rate of about one every two weeks in total, with over €700 million deployed in the year. I will come back to the rate of deployment a little bit later on. Investments included MilkFlex, a fund which provides financing to dairy farmers, Shannon Airport, the Port of Cork, Green Isle Foods, Donegal Catch and Vectra, a company which uses artificial intelligence to provide cybersecurity and which has set up a Dublin office. Vectra has already employed more than 40 people following our investment. We invested across the alternative energy space in 2018, backing a fund called Temporis Capital, which is set to commit and develop alternative energy, as much as 1,000 MW, which is almost 25% of Ireland's total requirement in that space. We have also backed a solar energy company in the last 12 months. Another feature of the ISIF to which I referred springs from legislation enacted by the Oireachtas in respect of fossil fuels. The ISIF has divested of the 38 holdings it had in fossil fuel stocks and additionally has produced an exclusion list of 148 stocks in which it is precluded from investing under the Act.

The fund has had a review and tries to be adaptable to economic conditions. It was set up in 2015, when the economy was in a different position and there was more of a shortage of the kind of capital that we have. We have been adapting over those years and always look to be flexible in terms of moving with the times. We are not there to replace other capital that is available; we have to go where capital does not flow as easily as that is the purpose of the fund. That is what we call the dead weight test. If other capital is available, we will not invest. As the economy has recovered and there is a lot of capital available, we have found ourselves more in the space of tenure, meaning the term of the investment we are prepared to make. There is lots of private equity and investment capital for a term of five or seven years, but going out to ten, 12 or 15 years there is very little capital available. We find ourselves now engaged in projects that have a much longer-term horizon and focus. That is probably where the committee is going to see more of our activities over the coming year to 24 months. I also suspect we will deploy less capital than we did in the initial four years of the fund, when we deployed between €700 million and €800 million per annum. The size of the projects is beginning to decline. Many of the projects that were pent up from the crisis have come into our portfolio. As we normalise and as other capital is becoming available, I see the deployment rate declining somewhat. This is a good thing. If there is other capital available, that is good news and probably reflects where we are in the cycle. We do not have to spend the money. We are not anxious to spend it. We only want to invest the money if it is good value for the State and makes that economic impact. If the money is not invested, it is still an asset of the State and sits on the balance sheet as an asset.

There has been excess surplus in the fund, which stands at €9.4 billion now. There is €4.4 billion in Irish investments, which leaves us with €5.1 billion. As the committee is aware, €3.5 billion of that has been reallocated by the current Government, with €1.5 billion going into the rainy day fund, €750 million allocated to Home Building Finance Ireland, HBFi, and €1.25 billion to the Land Development Agency, LDA. That sum has been taken away, as it were, as excess reserve to be used elsewhere by the State, reducing the overall size of the ISIF. The €4.4 billion will already start to recycle because some of the investments are already yielding returns in the shape of dividends and even capital to the fund. The idea is that it becomes an evergreen fund and funds itself to be able to grow and invest long into the future. That is the ambition.

The National Development Finance Agency, NDFA, provides advice in respect of most big projects and particularly public-private partnerships, PPPs. We have had a lot of discussion of PPPs at this committee over the years. We had probably the most significant year of real challenge and stress in respect of the collapse of Carillion in the UK, one of the biggest liquidations of a project management construction firm in that country's history. It has had a devastating effect across many projects in the UK. Carillion was only involved in one project in Ireland, which we call "schools bundle 5". That was the building of six schools in Wicklow, Wexford and Meath. It was an interesting test of the PPP model. One of the discussions around PPPs is whether the risk transfers to the private sector; does the private sector really take the risk or, when something happens, does the State ends up picking up the tab. In this case, four of the schools are already open although they were a year delayed. The rest of the schools will open this September but there will be no additional cost to the taxpayer. That PPP contract has completely stood up and remained intact. From the taxpayer point of view, no additional cost has been incurred. The equity providers and financiers of that PPP contract have lost all their equity money and have had to take a lower return. That is the purpose of that contract when we transfer risk, and there is a cost associated with it. The idea is that in theory, when a stress event occurs, they do own the risk. It is an interesting real-life example where the PPP contract stood up. At a time when we have many projects to construct, it is worth reflecting on the robustness of that contract in that particular live situation.

I will touch on NewERA, which is in many ways the in-house corporate finance adviser to the State. It has advised on 132 different projects, acquisitions or disposals of commercial semi-State companies. NewERA tries to bring together all of the assets owned by the State under one umbrella in the context of the shareholder so that the State has consistent analysis of investment criteria, return on capital and dividend policy. NewERA brings them all to account in a similar and consistent fashion. The mandate that the team is being asked to deliver advice on continues to grow. There were 132 advisory projects done on behalf of the State for different Departments and clients this year. That figure is up from 81 in 2017.

Representatives from the State Claims Agency are with us and I know we have a separate session on that work but I will touch on it. There are 146 State bodies with more than 200,000 employees. Considerable footfall goes through there. Earlier, the Comptroller and Auditor General mentioned that the vast majority of the 1,500 claims are clinical in value terms. The provision is €3.15 billion. This is the current estimated liability and 74% of that is provided for the clinical sector.

We deal with and have dealt with many sad and difficult cases in the State Claims Agency. That is the nature of the mandate. However, we have never before had a situation like we have had in 2018. I know we are going to discuss extensive technicalities and legal positions today but it has to be seen in the light of the extraordinary devastation and grief caused to so many

women by this situation. There are no good outcomes. We and the team try to walk that line as sensitively as we can but it is not an easy task. It all pales in comparison to the grief and devastation caused to the women involved in the overall issue.

Apple has been mentioned. The first financial results for the Apple fund were announced yesterday and released by the Department of Finance. As committee members are aware, the National Treasury Management Agency was directed by the Minister to establish the escrow fund to essentially look after those funds while the legal case is going on. Apple and the NTMA jointly have an investment policy. A sum of €14.2 billion sits now in an investment account of which the NTMA and Apple have oversight. The easiest way to describe it is as a conservative cash box of sorts. The purpose of the fund is a return of capital rather than a return on capital. That is the focus of the fund. It is about capital preservation. The fund has been established and it is currently operating satisfactorily.

I will turn to the slides to discuss the debt. It might be easier to talk through from slide 16. The slides cover the positives and negatives or challenges. I will touch on each of these in turn. On the left hand side of the slide we are looking at the positives of the national debt and the servicing of the debt. Committee members can see the so-called chimneys or refinancing stacks of 2018, 2019 and 2020. We have talked about these at the committee during previous years. It is fair to say at this point, when we are exactly half-way through the refinancing period, that we can safely put the refinancing risk that has existed behind us because of what has happened. I will come to that in more detail in a moment. The debt has been smoothed out in terms of the future profile of maturities. There are no such refinancing cliffs ahead in the foreseeable future. That is important from a debt management point of view; it is important to have a smooth profile.

The interest bill continues to fall. I will come back to that again. The interest bill has fallen from €7.5 billion in 2014 to a projected €4.5 billion next year. I will come back to the reasons that saving has been so dramatic. It is largely due to the interest rate environment we are in.

I want to touch on diversification. Ireland issued its first green bond in 2018, becoming only the fourth European sovereign country to do so. I will come back to the rationale behind that as well.

The debt is still elevated though. That is still a significant issue. It is four times what it was in the 2000s before the financial crisis. We have paid a very significant amount of interest. People may have heard me say that we have paid €33 billion in interest over the past five years. This interest bill is enormous. We paid €60 billion in interest over the last decade. That compares to €20 billion in the previous decade. That is all to do with the elevated amount of debt rather than the rate of interest, which many people concentrate on. Some may suggest that since rates are so low we should borrow more etc. We have to remember that it is the stock of debt that is really significant in this regard for Ireland.

We rely on foreign capital for the largest portion, 90%, of our borrowings. That is unusual versus other European and global sovereigns. It makes us slightly more vulnerable than others to financial markets. Of course there are significant external risks on the horizons of which committee members are well aware.

Before 2018 we talked about the refinancing chimneys to the tune of €60 billion. In the first instance we repaid the International Monetary Fund and that reduced the size of the chimneys. Since then, we have repaid the 2018 bond that matured. That was a €9 billion bond and

it matured in October 2018. We have also repaid the €7 billion bond in June, some weeks ago. There is another maturity of €6 billion in October. There is a €10 billion maturity coming early next year. Then there is a final maturity of €6 billion in October 2020. That will remove the chimneys completely. However, given the cash we have already raised and the repayments we have already made of those maturities, we can say now for the first time that the refinancing risks of those chimneys is now behind us. This is because of what we have already repaid and the cash we have already raised at today's market rates. The key thing about the coupons that we have been repaying is that a total of five large bonds fell due over a short period. The range of coupons was from 4.4% to 5.9%. They are the really high coupons and they are all retiring. We are replacing them with debt that is 1% and under. That is where the big savings come from. That is why the savings really start to fall post 2020. It is why this refinancing period was so important for us. It was important for us to be able to try to lock in today's interest rate environment while we had that significant need. We can now put that risk safety behind us.

Let us consider the profile now. The debt manager normally looks three or four years ahead. We were looking at 2018, 2019 and 2020 in 2015, 2016 and 2017. Now we are looking ahead to 2022, 2023 and 2024. Committee members will see the smoother profile of maturities. That represents a far lower risk profile from the point of view of the State in terms of maturing debt over the long period and looking out to the future.

Earlier I said the interest bill was €7.5 billion and is down to €4.5 billion. There are three reasons this has occurred. First, and most important, is the interest rate environment created by the European Central Bank quantitative easing and the extraordinary low interest rate environment. Committee members do not necessarily watch financial markets in the same way that we do, but since Christine Lagarde's potential appointment as the ECB President, interest rates have fallen dramatically during the past 48 hours and there has been a dramatic move lower in bond market yields. She is considered to be a dovish ECB President potentially versus some of the alternatives. The market has reacted and moved rates even lower. The interest rate environment looks like it will remain low at least for the foreseeable future. This extraordinary low interest rate environment happened at a time when Ireland had its greatest refinancing needs and at a time when the credit rating of the country was improving. These three things came together and this environment has enabled Ireland to save so much interest. Those high coupons all fall away and get replaced by lower ones. That is why the savings are so significant. I will revert to why that will not always be the case in a moment.

Some of the Deputies are interested in the topic of the green bond. While it is good news from the point of view of leadership and ensuring that sustainable projects get delivered and identified, the NTMA has a slightly narrow way of looking at it. This is the fastest growing pool of capital in the world. We are accessing new investors by issuing green bonds. From a funding perspective, that helps to diversify the risk. One of the few ways we can diversify and mitigate our risk is to widen the investor base that owns Irish bonds. When we issued our first green bond, more than 50% of the investors who bought it and loaned us money had never invested in Ireland before. Besides the ability to finance sustainable projects, that was the attraction for us.

The next slide shows the other side of the balance sheet with the negatives and challenges. This is our gross debt, which has effectively remained unchanged since the crisis. As the Comptroller and Auditor General stated, it stands at €205 billion currently. Let us just call it over €200 billion. It is four times what it was in the 2000s. I describe this as a mountain of debt, and there is only one way to get down a mountain, that being, very slowly and carefully and without taking alternative routes or going back up the mountain. We must try to find a way

to reduce this debt over time. That will only happen slowly, but we must stick to the path and do that. The risks to the country of having very high debt levels are the risks that any of us would have as individuals, householders or businesses in the event of a downturn, in that we would obviously be more vulnerable. It is no different for a sovereign.

Regarding debt, by comparison with our European peers and other countries, we rate poorly in some of these statistics. The European average is shown at the bottom of the table. I draw members' attention to our debt-to-Government revenue figure, which is still at 251% and one of the highest in Europe. Although our interest bill has reduced as a percentage of Government revenue to 6%, it is still way higher than our European peers. Even at today's interests and with the savings we have made, that is where it still ranks among our European peers. Ireland is not in a good position from a debt point of view. We must continue to bear that in mind and be vigilant.

The next slide shows the interest bill dating back to the mid-2000s. I showed how it was falling from €7.5 billion to €4.5 billion, but that will still be three times what it was in the 2003-08 period. Even though interest rates then were 4% and are less than 1% today, our current interest bill is three times what it was in that period because of the size of our debt.

I will show how challenging that will be in future. Consider the bonds that are now going to mature. I mentioned bonds maturing with high coupon rates. One of the bonds that will mature in 2022 was issued by us in 2017 and has a 0% coupon. The chances of the NTMA refinancing that bond in 2022 at a lower interest rate are slim. That is why we will be refinancing through low-coupon bonds and unlikely to make savings in future.

The next slide shows the investors from whom we borrowed this sizeable amount of debt. They are all overseas, which is unusual. There is not a large domestic savings market for our bonds. This makes us particularly vulnerable. These investors can change their minds quickly, move away and charge us more. Our reputation, creditworthiness and positioning in the marketplace are important. Obviously, we are quite exposed.

I will not necessarily go into the challenges ahead that are listed on the next slide in any detail, although we can take some questions. Our investors are telling us that they are worried about Brexit and corporation tax changes. The financial markets are concerned and are looking at Italy and some of the challenges it faces from a debt perspective. The spreads in Italy are volatile at the moment.

That concludes my presentation. I am happy to take members' questions.

Chairman: I thank Mr. O'Kelly. Since we will have two sessions, there will be a lead speaker in the first session - Deputy Cullinane, who will have 20 minutes - and all other Deputies will have ten minutes each. In the second session, the lead speaker will also have 20 minutes and other members will have ten minutes each. Members have indicated for this session in the following sequence: Deputies Cullinane, Murphy, MacSharry and O'Connell.

Deputy David Cullinane: I will ask a quick question. When Mr. O'Kelly discussed risks, he referred to corporate taxation. Are the investors worried that some corporates are not paying enough tax?

Mr. Conor O'Kelly: That is a general concern. When investors consider Ireland, they are worried by the proportion of the tax take from corporations and whether there will be a change in the Irish economic model's approach to corporation tax.

Deputy David Cullinane: Are they worried about the sustainability of the tax base or that corporates could be taxed more?

Mr. Conor O'Kelly: They have two concerns, the first of which has to do with the increasing proportion of Government revenue that is related to corporation tax. They worry about what that would mean were anything to happen in the multinational sector.

Deputy David Cullinane: The sustainability of the tax base.

Mr. Conor O'Kelly: Correct.

Deputy David Cullinane: What is the precise figure for the mountain of debt? Mr. O'Kelly said it was €200 billion.

Mr. Conor O'Kelly: It is €205 billion.

Deputy David Cullinane: How does that break down? I imagine that some of it is legacy debt from before the crash. Then there was the bank recapitalisation. We also had to borrow money for day-to-day revenue spending during the austerity years. Even in broad terms, does Mr. O'Kelly have a breakdown of what constitutes the €205 billion? How much of it is the legacy of the austerity years as opposed to the crash?

Mr. Conor O'Kelly: I will talk in very broad brush terms. The Comptroller and Auditor General has done a great deal of work on this matter, so the precise numbers are available. Going from €40 billion to €200 billion in terms of the debt size, the banking crisis probably accounted for €60 billion originally, although one would have to net off the value that we got from any bank sale, which would probably bring that figure down towards €30 billion. The rest of the €100 billion incorporates interest that we are paying on our borrowings from the very long time when we were funding deficits. When the crisis happened, the majority of the difficulty came from the gap between our revenue and our Government cost. We ran very large gaps for-----

Deputy David Cullinane: Before the crash, was the debt approximately €40 billion? It is now €205 billion.

Mr. Conor O'Kelly: Correct.

Deputy David Cullinane: The vast majority of it is crash or austerity era related either through bank recapitalisation or servicing State expenditure.

Mr. Conor O'Kelly: Yes. It was mostly due to Government expenditure.

Deputy David Cullinane: When revenues collapsed. Is that correct?

Mr. Conor O'Kelly: Yes.

Deputy David Cullinane: Mr. O'Kelly mentioned the banks. Two banks that received a great deal of taxpayers' money were Bank of Ireland and AIB. How much went into both? Is there a breakdown of how much went into each or does Mr. O'Kelly only have the figure for what went into the banks overall?

Mr. Conor O'Kelly: The figure I have in my head is €60 billion, with €30 billion returned. The money that went into Anglo Irish Bank and Irish Nationwide amounted to €30 billion, which we will never get back. The other €30 billion-----

Deputy David Cullinane: In terms of Bank of Ireland and AIB, we got a return in shares.

Mr. Conor O'Kelly: Yes.

Deputy David Cullinane: How much did we put in and what have we got back in share value?

Mr. Ian Black: It is shown on page 27 of the annual report. That table provides a breakdown of what was invested, what was received and what was the 2018 end-of-year value in respect of Bank of Ireland and AIB.

Deputy David Cullinane: What is the figure? I am sorry, as it is not up on the screen yet.

Mr. Ian Black: Bank of Ireland's figure was €4.7 billion. The year end 2018 value is €700 million. AIB's figure is €16 billion. The year end valuation figure is €7.1 billion.

Deputy David Cullinane: What is our total share value in both banks?

Mr. Ian Black: That is shown on the right. It is approximately 13.9% or 14% in Bank of Ireland and 71% in AIB.

Deputy David Cullinane: What about in monetary terms?

Mr. Ian Black: The monetary amounts in Bank of Ireland and AIB at the end of 2018 were €700 million and €7.1 billion, respectively.

Deputy David Cullinane: Was there a drop in the share values of AIB and Bank of Ireland in the last year?

Mr. Ian Black: Yes, a significant drop.

Deputy David Cullinane: By how much did it reduce our-----

Mr. Ian Black: By €3.5 billion.

Deputy David Cullinane: We put all of this money into the banks and got shares back, but in one year alone the value of the State's shareholding has dropped by over €3 billion.

Mr. Ian Black: Correct. It reflects the market, not just Irish banks but banks.

Deputy David Cullinane: It might reflect the market, but it also reflects the fact that the taxpayer lost €3 billion because these companies' share prices dropped. In current value terms, is the State potentially down €3 billion because the share prices of both banks dropped?

Mr. Ian Black: When the State owns shares, it is exposed to the equity markets.

Deputy David Cullinane: I understand that; I am just saying in plain and simple terms that we are down €3 billion because the share prices dropped.

Mr. Ian Black: Yes, the shares are worth less today than they were then.

Deputy David Cullinane: There is now a concern about bank stabilisation in other countries. We are hearing stories about the possibility that banks in other countries will need to be recapitalised again. Has the Comptroller and Auditor General done any work on the issue of bank stabilisation to look at this area, in particular, and what the State put into the banks and

then at whether the share value has gone up or down? In essence, what people want to know, having put in X amount to get Y amount back at the end, is whether we will get back more than we put in, the same amount or less? Is that something at which Mr. McCarthy has looked?

Mr. Seamus McCarthy: I reported on that issue in 2014 and 2016. I am working on a chapter for inclusion in this year's annual report which will outline the position at the end of 2018. I reported on the issue previously and have the report here. As it looked at the end of 2016, the picture was that, overall, banking stabilisation had cost us €40 billion. As Mr. O'Kelly said, Irish banks-----

Deputy David Cullinane: Does that figure include the interest we are paying back?

Mr. Seamus McCarthy: It does.

Deputy David Cullinane: It is the net figure.

Mr. Seamus McCarthy: There is a cost of capital with the investment we made and it is reflected in the interest rate for borrowings. As long as we have borrowing associated with banking stabilisation, we will have an ongoing cost. For the individual banks, our analysis at the end of 2016 which I realise is a bit out of date was that approximately €35.8 billion was the cost for the IBRC. The cost for AIB was approximately €8 billion and for Permanent TSB, approximately €1 billion. For Bank of Ireland, it is looking kind of positive, to the tune of approximately €1.8 billion. I will be updating the figures to the end of 2018.

Deputy David Cullinane: It is a restatement of what we already know, that Anglo Irish Bank was the noose around the State's neck when it was nationalised. Obviously, it came at a big cost. If the overall figure of what it is going to cost us in terms of what we put into the banks is €40 billion-----

Mr. Seamus McCarthy: Give or take.

Deputy David Cullinane: -----the interest we are paying over five years is €33 billion. I do not need a response, but when people hear these figures, it sounds like Monopoly money. However, €33 billion is a huge amount of money when one considers how many hospitals and schools we need and the investment needed in and the pressures on public services. It is extraordinary that we have gone through that mountain of debt, but that is the legacy of the crash.

I will move on because I think I only have ten minutes today. The time has been reduced.

Chairman: The Deputy has 20 minutes as the lead speaker.

Deputy David Cullinane: We received a briefing note from the Department of Finance on the Apple escrow account. The NTMA's presentation was excellent across all of the key areas. The Apple escrow account lost €16 million in value up to December 2018. While it might seem like a small figure in the context of the total sum of €14.269 billion in the fund, how did the loss occur?

Mr. Conor O'Kelly: The investment policy is to invest in conservative assets. That has been agreed to by Apple and Ireland. As such, 80% of the fund will be in Government bonds, all of which will be AA-rated or higher, while 20% will be in high grade corporate credits which are A-rated or higher. The maximum maturity period in the portfolio is five years, while the average maturity period is three years. Even if one looks at the Irish sovereign bond market today, there is a negative yield to five years, with negative interest rates. We are in a negative interest

rate environment and the portfolio, as constructed, in theory, will probably return a figure of -0.5% per annum. That is the expectation.

Deputy David Cullinane: There are only two potential outcomes. There is an appeal against the Commission's decision in the first instance. If the Commission sustains its original decision, the State will get the €14.269 billion and the question will be how it should spend it. If the Government wins and the taxpayer loses, I take it that Apple will get its money back. Will it only get what is in the fund? As such, does it share the risk?

Mr. Conor O'Kelly: Correct. We are both sharing; the pot is the pot. The decision to be made at the outset is whether more of a risk should be taken with the money. One can increase one's risk appetite and go further out with maturities or into equities to try to get a return on the fund. However, one would have to take a significant risk. We have just talked about taking a market risk and how it can turn against us. One can lose money very quickly.

Deputy David Cullinane: Does the NTMA have any sense of how long the process will take before a decision is made? I imagine it will impact on the type of investments to be made, will it not?

Mr. Conor O'Kelly: Absolutely.

Deputy David Cullinane: Has the NTMA been given any indication? Is it anything like "How long is a piece of rope"?

Mr. Conor O'Kelly: It is really, but we have made some assumptions which suggest a maximum period of five years and an average of three. That informs our guess as to how long it will take, but we do not know. I do not know whether the Department has a view on the matter. We are to manage the money and decided that was the basis on which we would start. An average life of three years is the way we have constructed it. If things change, we can adjust the policy.

Mr. Eoin Dorgan: It can take many years for the legal process to conclude in the European courts. Based on precedent, it can easily take up to a decade in some cases. We are very much at the mercy of the courts.

Deputy David Cullinane: I refer to the voluntary redundancy scheme that operates within the NTMA. It is not something that is generally available in the public sector. My understanding - I might be wrong - is that one of the few other semi-State or Government agencies to run a similar scheme is NAMA, but there may be others. Why is there a voluntary redundancy scheme in place? It seems to be a very attractive scheme and obviously is very good for the staff. Why is it in place in the NTMA and not across the public sector generally?

Mr. Conor O'Kelly: I will ask Dr. Brennan to take that question.

Deputy David Cullinane: What does it entail?

Dr. Sinead Brennan: The terms of the redundancy scheme are the same as the terms of the Department of Public Expenditure and Reform. We offer three weeks' pay per year of service, plus two weeks' statutory pay, capped at €600. We opened a redundancy scheme in 2018. The organisation was going through significant change and we wanted to ensure we would have the right skill sets for the future. There were 33 participants in the scheme, at an overall cost of €2.5 million. As for the return, one third of the people who have left will not be replaced, one third are being replaced at a reduced cost, while one third are being replaced at a similar cost.

Overall, we will recover the cost of the scheme in a two and a half year period.

Deputy David Cullinane: I ask the Comptroller and Auditor General whether this is something at which he would look. If it is unique to the NTMA and not available to others across the public service, would the Comptroller and Auditor General comment on it in his report?

Mr. Seamus McCarthy: I draw attention to it because it is not a standard feature. One does not see it in many-----

Deputy David Cullinane: When Mr. McCarthy says “draw attention to it”, what does he mean? Is it simply to draw attention to it?

Mr. Seamus McCarthy: I am drawing the attention of the committee to it as in “You may be interested in this.” I am not commenting one way or the other on whether there should be a scheme.

Deputy David Cullinane: Okay. Given that attention has been drawn to it, what is Mr. O’Kelly’s view of the scheme, given that it is not in place across the public service? What is the logic in having it available in the NTMA? Was it sought by it?

Mr. Conor O’Kelly: The NTMA is a bit of a hybrid. It sits slightly outside of the public sector pay system. We do not have increments and are not subject to the usual public sector pay conditions. This was part of the legislation that established the NTMA. Contracts are drawn up individually. We have more flexibility than is available in the rest of the public sector. Our board agreed to put the scheme in place. It is about having mobility throughout the organisation and ensuring that we always have the right skill set. Obviously it must represent value for money. Under the Department of Public Expenditure and Reform’s terms, three weeks per year of service is considered reasonable provided it can be demonstrated to a board - and our own board is very challenging in this regard - that it makes economic sense and that it will result in a return. That is why, as Ms Brennan pointed out, it made sense for us in this case. We refresh the organisation, we add new skills, people move on and we save money.

Deputy David Cullinane: I do not necessarily think it is a bad thing to have. It is something that could be looked at across the public service. It is included in the financial statement but perhaps we could get a more detailed note on how it works. That may be useful for us, given that our attention has been drawn to it. It seems to be unique although I believe NAMA and others operate similar schemes. Is that correct?

Mr. Seamus McCarthy: Yes. The committee has previously discussed the need for the scheme with NAMA. The need to retain people and to have incentives through a voluntary redundancy and retention scheme is recognised because of the time limit on NAMA’s activities.

Chairman: That note can be sent to the Deputy through the committee.

Deputy David Cullinane: The note the committee got shows that in 2018, €13.4 million was spent on fit-out costs and professional fees relating to the new office accommodation at 1 Dublin Landings, North Wall Quay. We discussed this when the NTMA was before the committee previously. I estimate that, between 2018 and 2019, the fit-out costs are likely to exceed €25 million. Are those figures correct? It seems to be a lot of money to fit out a premises. Will Mr. O’Kelly talk me through the reasons for this expenditure? What is the background to this?

Mr. Conor O’Kelly: We are in the process of moving out of our current premises as we

speak. As many members will know, we moved into Treasury Building in 1991. We signed a 25-year lease for the building at that time. We took up some more space over subsequent years. Those leases have been coming to an end. In light of that, a few years ago we began thinking about finding a new home. We could either renew the lease on Treasury Building or look at other options. The board decided to look at other options. We received 18 submissions under an open procurement process. We ended up looking at four particular buildings in some detail. We ended up moving to North Wall Quay at a cost of €49 per square foot. Rent in the area of Treasury Building is in excess of €60 per square foot. The north docks is one of the cheaper areas of Dublin from the point of view of economic value. We decided to move beside the Central Bank. The cost for fit-out was budgeted at €30 million and is coming in at approximately €25 million in total.

Deputy David Cullinane: Is there a breakdown of the total between fit-out costs and professional fees?

Mr. Conor O’Kelly: Is the Deputy referring to professional fees included in the total fit-out costs?

Deputy David Cullinane: Yes.

Mr. Ian Black: They are coming in at approximately €3 million.

Mr. Conor O’Kelly: Every part of the fit-out has to be publicly procured. It is a high-specification building. The NTMA has some fairly sophisticated mandates. To put it in context, \$1 trillion went through the NTMA’s settlement system and treasury system in 2018 alone. There is significant cabling infrastructure to be put in place. It is reasonable value. The budget is set and a project board is in place which includes non-executives. We have remained on budget. The Comptroller and Auditor General has been looking at the numbers very carefully.

Deputy David Cullinane: We can all rightly be angry at the mountain of debt we have and at the massive social cost for citizens associated with it but it is also important to point out that we do not often have Accounting Officers before the committee who give us the level and quality of detail we have got today. The quality of the work of the NTMA is recognised across the political divide and outside it. It is very professional. It has managed our assets very well and has managed our debt as well as is possible. I put on record my appreciation of that work. The mountain of debt is of concern.

I may elaborate on my final point. Towards the end of his presentation, Mr. O’Kelly talked about risks. One was corporate tax but the other was Brexit. Will he talk us through the risks presented by Brexit in respect of the debt and the other elements of the NTMA’s remit? What solutions are being put in place by the organisation to mitigate these risks and protect the State from Brexit as best it can?

Mr. Conor O’Kelly: I do not mean to say this glibly but whether the issue is Brexit, Italy, corporate tax or some other challenge, Ireland is a small open economy which is heavily indebted and which relies on international investors for 90% of its borrowings, so Ireland has to be in the business of permanent contingency with regard to our debt. Something will end up hitting us. It may be Brexit, Italy or, more than likely, something which we cannot even think of today. People talk about whether the bond market or some other group is predicting a recession. I will give my prediction for a recession. The chance of a recession in Ireland is 100%. We cannot afford not to have a contingency in place. We have to remain vigilant to that and we

do this by maintaining significant cash buffers at all times and by smoothing out the profile of the debt to minimise refinancing risks in the future.

Deputy David Cullinane: Does the NTMA have any oversight over the so-called rainy day fund?

Mr. Conor O’Kelly: Yes.

Deputy David Cullinane: It does. There is nothing in it at the moment but there will be €500 million going in this year.

Mr. Conor O’Kelly: Under the legislation currently going through, €1.5 billion will be allocated to the rainy day fund. After that, we have already positioned-----

Deputy David Cullinane: Is this one of the buffers about which Mr. O’Kelly was talking?

Mr. Conor O’Kelly: Yes.

Deputy David Cullinane: What other buffers are in place?

Mr. Conor O’Kelly: One is the cash that we hold. We currently hold €20 billion but, because of the maturities coming up, we have significantly more cash than we normally would. I estimate that we would normally have approximately €10 billion in cash. We do not like to talk in these terms any more but in the old days people used to talk during the crisis about how much funding we had in terms such as a year’s funding, 18 months’ funding, or nine months’ funding. These days our access to markets is not an issue; it is just a question of the price of that access. We do not anticipate Ireland having difficulty accessing the market, we just worry about the cost involved because that will change. The interest investors will charge changes depending on their assessment of our profile.

Deputy David Cullinane: I thank Mr. O’Kelly.

Deputy Catherine Murphy: I will pick up on the €33 billion. Housing is included as an area for investment but over five years, if one considers an average house price to be €300,000, this would build something like 33,000 houses. It puts in context the extent of what we cannot do, that is, the opportunity cost. Billions get confused with millions these days. It really does show the magnitude of the debt.

Mr. O’Kelly told us earlier that the two highest rates on our bonds at 4.4% and 5.9%, yet we see an interest rate of 6%. Am I reading that right?

Mr. Conor O’Kelly: Where is that figure?

Deputy Catherine Murphy: It is in the league table captioned “Despite progress, debt & interest remain elevated” in the NTMA’s written submission to the committee.

Mr. Seamus McCarthy: This 6% relates to revenue. It is the cost of interest as a percentage of the revenue raised in the year. It is not the cost on capital.

Deputy Catherine Murphy: I misread that. The NTMA also says that the amount of debt is largely unchanged since 2014. On a previous occasion we were told that some bilateral debts had been paid off and we obviously have paid off some others. There has been borrowing in the meantime. Does Mr. O’Kelly have a figure for which is residual debt and which is new? We need to take on debt if we are to invest in capital and, with inflation, it makes sense for us to do

some of those things. Is there a separation?

Mr. Conor O’Kelly: Not really. We are focused on what would be a primary surplus and an actual surplus. The primary surplus is the surplus of the Government’s revenue over expenditure, not including interest cost. We have been running a primary surplus for quite some time, which is why debt is stable. When one goes into actual surplus, then one’s debt starts to fall. The first time that Ireland went into actual surplus was 2018. That would be the first time when the debt started to fall in nominal terms. The Government could use sales of assets such as bank shares for a once-off payment. They would be the exception rather than the rule. Ultimately, for debt to fall, the Government has to run a budget surplus. There are significant capital expenditure and revenues to consider and that is a matter for the Government.

Deputy Catherine Murphy: With regard to the former Irish Bank Resolution Corporation, the bonds are being worked through. I do not know what the terminology is but the NTMA is changing them from promissory notes into-----

Mr. Conor O’Kelly: Regular debt.

Deputy Catherine Murphy: Exactly, if we just use layperson’s language. What is the profile of that from 2018 onwards?

Mr. Conor O’Kelly: It is down from €25 billion originally to below €10 billion. We are retiring and exchanging those promissory notes, which are held by the Central Bank, to which we pay floating rate interest, and exchanging them for debt on the open market. A timetable was agreed with the Central Bank and European Central Bank to do that when the notes were originally issued. We would accelerate that because interest rates are so low. By doing that a bit faster, we lock in today’s very low rates.

Deputy Catherine Murphy: How far ahead of schedule is the NTMA?

Mr. Conor O’Kelly: We are well ahead. We may be proceeding four or five times faster than the original schedule.

Deputy Catherine Murphy: Will Mr. O’Kelly provide a note on that?

Mr. Conor O’Kelly: I will.

Deputy Catherine Murphy: The promissory notes were essentially an IOU. They have been turned into money. The NTMA is turning them into bonds and is trying to do it at the cheapest price possible.

Mr. Conor O’Kelly: That is correct.

Deputy Catherine Murphy: In the examples of the 2018 investment highlights, there are a couple of areas where one would think that tariffs would pose a risk in the future, such as in the context of Irish whiskey and the China-Ireland technology growth fund. Why does that not show up as a risk with the possibility of trade wars and State security issues with some of the technology that is coming from China?

Mr. Conor O’Kelly: That is a live question for today. Whiskey was added to the list of tariffs that I saw overnight. We are included in tariffs which will potentially be imposed on Europe by the US. That is a risk and we will have to look at any other exposure that we might have. If there were to be issues with the China-Ireland fund, they are small venture capital companies

and the amount of money involved is probably relatively low. Our exposure is €50 million in that fund along with China. It is a very early stage venture capital fund. It is not substantial exposure compared to the €9.1 billion of the ISIF. That is probably why it is not appearing at the top of our risk register. The Deputy is right that it is an escalating risk and we will have to look at it across the portfolio.

Deputy Catherine Murphy: It may well show up as a risk in the future, particularly if trade wars happen.

Mr. Conor O’Kelly: Absolutely.

Deputy Catherine Murphy: I want to focus on the investment strategy. The NTMA invests in specific areas and that sits as a State asset. Is the asset the item invested in or the return on the investment?

Mr. Conor O’Kelly: The asset is the valuation of that investment. It can change. It is marked to market every year. Everything that is returned is an asset.

Deputy Catherine Murphy: I will focus on one thing that was purchased, the concessionary agreements for Enet. Did the ISIF purchase that in 2017?

Mr. Conor O’Kelly: No. The Irish Infrastructure Fund made an investment in Enet. That is a fund that ISIF is a passive investor in and it ultimately invested in Enet. That investment in the Irish Infrastructure Fund is a legacy investment from the national pensions reserve fund from 2012. It is an investment that we plan to examine to determine whether it is still appropriate.

Deputy Catherine Murphy: Is that under the remit of the NTMA?

Mr. Conor O’Kelly: No.

Deputy Catherine Murphy: When one looks at the challenges and the extent of the external risk, it would make one weep. Italy is noted as a risk. Is Italy’s debt not almost exclusively internal?

Mr. Conor O’Kelly: It is. I am pointing to Italy as a risk that investors are talking about in the context of the debt markets and the cost of debt. My final slide compares Italy with Germany. The Deputy can see where the cost of debt spiked in early 2018 due to investors changing their perception of Italy as a creditor. Italy’s growth is slowing and its debt-to-GDP ratio has started to rise towards 130%, which is higher than our ratio. Its banks own 20% of sovereign debt, its growth is slowing, its debt-to-GDP ratio is rising and the investors are suddenly charging it much more money for debt. That kind of environment can come about quite quickly.

Deputy Catherine Murphy: We know that outside influences, such as what happened in the United States, had a significant bearing on us. This could have exactly the same kind of bearing.

Mr. Conor O’Kelly: That is exactly the point.

Deputy Catherine Murphy: How would the NTMA see that playing out if it was to become more than a risk?

Mr. Conor O’Kelly: The cost of our borrowings would start to rise. We are currently rated

as a semi-core country against Germany. If the Italian scenario turned into a full-blown crisis, people's attitude towards many European sovereign entities would start to change. Anything that could suddenly affect the interest rate that we pay in the marketplace is a risk for us as a debt manager. That is why we are watching the bond market so closely.

Deputy Catherine Murphy: It is new borrowings as opposed to ones that the NTMA has already.

Mr. Conor O'Kelly: Correct. With our debt being so elevated, we will be borrowing for a long time. If the cost of that borrowing and our debt on the market starts to rise, it will have to come out of other spending. As the Deputy mentioned, there is also opportunity cost due to what it could be spent on.

Deputy Marc MacSharry: I welcome our guests and thank them for the presentation. I have a few questions. Anybody looking in who, like me, has a basic understanding of these matters will require the Ladybird explanation in respect of some points. Deputy Catherine Murphy mentioned that the Italian borrowing is primarily internal. The yields on Italian debt are approximately 3.5% or 4%.

Mr. Conor O'Kelly: Correct.

Deputy Marc MacSharry: We are at 0.5%. Is it Mr. O'Kelly's sense of the market that a major crash is anticipated in Italy?

Mr. Conor O'Kelly: I am just pointing out that investors can change their minds. Investor sentiment changes quickly.

Deputy Marc MacSharry: Investor sentiment is saying to us that things are not good in Italy.

Mr. Conor O'Kelly: That is what investors are saying about their Italian exposure.

Deputy Marc MacSharry: There is nothing we can do about that and, in the European context, there is very little the EU can do.

Mr. Conor O'Kelly: Correct.

Deputy Marc MacSharry: People have to manage their own contingency as best they can. The NTMA carries on average €10 billion of forward funding, but it is €20 billion at the moment because maturities are coming up.

What happens if the wheels come off post Brexit? What if there is a major problem and something manifests itself in Italy or Portugal or elsewhere? How is the State fixed then? I recall the days when we were fully funded for the year ahead. Are we in danger of the markets drying up for us or is it just the case that yields will go up and it will be more expensive for us?

Mr. Conor O'Kelly: I think it is the latter. Ireland has strong growth, creditworthiness and resilience, and a strong position and economy across the board. Obviously we could get a significant shock from Brexit; we can see that certain sectors will be significantly affected. In the overall context, it probably will not be viewed as material from a bond market point of view when it comes to access to markets. However, they could easily change the price that they charge us, and that is where we need to have contingency built in.

Debt managers want to be in the position where they do not have to go to the market but can choose their timing and what part of the market and yield curve to go to. When there is big refinancing risk and they have to go to the market at a time that does not suit - perhaps it is very volatile or conditions are very poor - there will be a charge for borrowing in those circumstances. Debt managers want the freedom and flexibility not to have to go when the conditions are very poor. The cash buffer gives control over the timing and can allow them to wait it out and come up with a more efficient and economic strategy.

Deputy Marc MacSharry: For people watching at home, the understanding generally is that our debt is at €205 billion but we are not borrowing any more or adding to that. Is that correct?

Mr. Conor O’Kelly: Correct.

Deputy Marc MacSharry: When Mr. O’Kelly said the State will be borrowing for a very long time into the future, he was referring to refinancing, managing maturities and making sure that if the market improves, we can diversify our debt for better interest rates. We are not borrowing at the moment. There is speculation in the media and in some ministerial announcements that there is the potential for two budgets in the year ahead: the Boris Johnson budget and the other budget. If there was a crash-out and a very bad Brexit, we might be looking at a €5 billion deficit next year. How is that calculated? Does the Government lift the phone to the NTMA and ask it to prepare for a debt of €5 billion next year? What kind of preparation is done? What is the process or is that built in?

Mr. Conor O’Kelly: We feed in our assumptions to the Department in the form of economic statements and projections of the cost of the debt and of financing. We get forecast estimates of the Exchequer surplus or deficit for the years ahead. As those change, we have to adjust our strategy. That is the way it works. The Government is in charge of economic policy and if it wants our advice, we give it when asked.

Deputy Marc MacSharry: We do not want to comment on policy anyway. Policy aside, the economic statement published a few weeks ago indicates that there is €2.8 billion of fiscal space with €2.2 billion committed. If things go bad for the HSE in the next period, that €2.8 billion will be gone and there will be no money. Is the NTMA preparing for the fact that we might need a few extra euros around next year?

Mr. Conor O’Kelly: As I said earlier, we are always prepared because we have to be, and whoever is managing the national debt will have to be for a very long time. Our debt is significant and we do not know what could happen; things could happen very quickly to blow us out of the water.

Deputy Marc MacSharry: If we go back to borrowing-----

Mr. Conor O’Kelly: We manage independently of events. We cannot predict the future and we do not know what is going to happen, so we manage on a permanent contingency basis. We believe that is the most prudent thing to do. We have told the Minister and the Department that we are comfortable that, irrespective of the scenarios that will play out in respect of Brexit, from a debt management point of view everything is under control for the time being.

Deputy Marc MacSharry: In the event that things do not play out particularly well and the Oireachtas decides to pass a budget involving a €5 billion deficit in current expenditure next year, what would be the likely impact on yields available to the NTMA to raise money?

Mr. Conor O’Kelly: Investors would make their own assessments, so I cannot speak to that.

Deputy Marc MacSharry: Based on the NTMA’s experience, what would the impact be? We are down to a bond yield of 0.5%; it was a very high a number of years back but, thankfully, bond yields have recovered since. Would it be a major statement to the markets if Ireland was not just debt managing but borrowing €5 billion as a Brexit contingency? I know we are talking about hypotheticals but what rate of increase could we expect on yields?

Mr. Conor O’Kelly: What are investors interested in? They are interested in getting paid back and in the State being able to pay their interest.

Deputy Marc MacSharry: They are also opportunistic, in the sense that if they can sell something for €10 billion, they will, rather than taking €5 billion. Will preparations for a hard-Brexit budget - one of the two that is being prepared at the moment - have an impact on yields on an opportunistic basis? People know that they will be paid back because Ireland is not Venezuela. Might it be used as an opportunity for people to charge 1%, 2% or 5% instead of 0.5%?

Mr. Conor O’Kelly: Investors will look at the long-term economic impact, what the money is being spent on and why it is being spent. I imagine that if it were for a temporary blow such as Brexit, where the Government is trying to fix a problem and insulate itself, investors would look through that. As to whether debt managers would be charged a premium when they are in the market actively auctioning, it is very likely. If a little bit more needs to be borrowed, the markets would estimate that; it is supply and demand. However, I think it would be modest.

Deputy Marc MacSharry: It would be reasonable to expect a modest spike for a short period.

Mr. Conor O’Kelly: Correct.

Deputy Marc MacSharry: Why is the NTMA not buying its new offices?

Mr. Conor O’Kelly: Government policy is not to buy for agencies such as ours or allow them to purchase property. That is probably for the purposes of precedent. It would probably cost €150 million to buy the building; even if we thought it was a good thing to do, if we spend €150 million on a building, that is €150 million that cannot be spent somewhere else. That is why we will not buy the building. I presume that if we owned the building, we would probably never sell it, so is there real value in buying it? We negotiated lower rents because of the type of lease and the Government covenant. That is probably the best way to extract value.

Deputy Marc MacSharry: Is it important to be on the North Dock?

Mr. Conor O’Kelly: It is.

Deputy Marc MacSharry: If the office was in Kildare, say, would that matter?

Mr. Conor O’Kelly: There is an argument for both. Access to the airport makes it easier for international investors and we have a lot of traffic coming through. Staying close to the Central Bank and the financial district probably makes sense at the margin. That is my view and I know other people have different views.

Deputy Marc MacSharry: Rent is just dead money though. It is just a personal view, but the NTMA is not going to close down any time soon and it would make better sense to purchase

or build a building or to take over a State-owned building, rather than dishing out money. Is a lease on Treasury Building being broken to facilitate the move?

Mr. Conor O’Kelly: No. All our leases are expiring and some of them have expired already. We are managing that process and we can sublet.

Deputy Marc MacSharry: NAMA is there as well.

Mr. Conor O’Kelly: NAMA is coming down to the dock.

Deputy Marc MacSharry: Will it be there for whatever period it has left?

Mr. Conor O’Kelly: All our sister companies are coming with us.

Deputy Marc MacSharry: What is the post office savings bank fund?

Mr. Ian Black: It is part of retail savings. It is a savings book.

Deputy Marc MacSharry: The old-fashioned book, that we all had our 50p in. The NTMA is given that money and it manages that fund.

Mr. Ian Black: Correct. It is the agent of the NTMA for that fund.

Deputy Marc MacSharry: The NTMA takes that money and manages and invests it.

Mr. Ian Black: The post office savings bank fund is separate to State savings but is all managed under the one brand. Legislatively speaking, the post office savings bank fund was set up separately. The State savings bonds or certificates go directly onto the NTMA’s remit.

Deputy Marc MacSharry: When Joe and Mary Bloggs lodge their money there, the NTMA manages it.

Mr. Conor O’Kelly: Yes.

Deputy Marc MacSharry: Is it managed in liquid form or is it invested for them?

Mr. Conor O’Kelly: We allocate it as part of our cash.

Deputy Marc MacSharry: Does it pay NTMA a dividend for doing that or does it do it for free as part of its role?

Mr. Ian Black: They are our agents so we pay them a fee for their services.

Deputy Marc MacSharry: They gather the money for NTMA and NTMA pays them a fee.

I have a final question. It goes back to Deputy Cullinane’s question about the escrow account. What does it mean if we are in negative interest in the context of the Apple money? Is it that we are putting in money and getting no return or losing some of the principle over the period?

Mr. Conor O’Kelly: A negative interest rate means getting back less than was put in at the beginning.

Deputy Marc MacSharry: I know we agreed with Apple what we were going into, that there would be a three to five-year period and so on, but why would we not invest it where the

principle was guaranteed and there was less risk?

Mr. Conor O’Kelly: If the Deputy can give us some examples of where to invest where the capital is guaranteed and the counter-party risk of that is -----

Deputy Marc MacSharry: The NTMA could put it into the post office saving fund, could it not?

Mr. Conor O’Kelly: Apple would probably take Ireland as a risk, it is a single A credit, and €14.2 billion would be quite an exposure.

Deputy Marc MacSharry: If it goes on for ten years and we lose €16 million a year, that would be €160 million.

Mr. Conor O’Kelly: The Deputy should probably talk to the former Governor of the Central Bank about all that. The purpose of that policy is to force people out of the risk curve and to take more risks and put money into the economy. This fund does not have that appetite.

Deputy Marc MacSharry: And, of course, we may be in better shape in respect of it in five years. Who is managing the fund?

Mr. Conor O’Kelly: The money has been put out to three investment managers, namely, BlackRock, Goldman Sachs and Amundi.

Deputy Marc MacSharry: Was the contract put out to tender?

Mr. Conor O’Kelly: There was a full open EU procurement process. The position was similar in the case of our escrow agent and custodian, Bank of New York Mellon. That is the custodian and there are three investment managers. We can monitor their performance, which we do daily, and can change the manager if necessary but all were done on open procurement basis.

Deputy Marc MacSharry: Are they paid by the NTMA, Apple or the fund?

Mr. Conor O’Kelly: They are paid by the fund. The fees paid to the escrow agent and the investment managers all come out of the fund’s expenses.

Deputy Marc MacSharry: That is all done on pre-negotiated rates as per the contract and so on.

Mr. Conor O’Kelly: Yes.

Deputy Marc MacSharry: That is great. I thank Mr. O’Kelly.

Deputy Catherine Connolly: I welcome our guests from the NTMA and thank them for all the information provided. I cannot say that I understand all of it but I have tried to read it. They have provided the information and it is up to us to ask the questions.

I am seeking clarity on matters relating to rent, which I raised on the previous occasion. I refer to pages 111 and 113. The NTMA indicated that there were no breaks in the leases but according to what is stated on page. 113, the leases go on until 2026 and 2027. Is there parallel leasing? We are going into a new building. Will Mr. O’Kelly give me the details and cost of that? In parallel, the NTMA is retaining the old building because it has leases right up to 2027. What is the cost of that? Do some of those buildings remain empty? Does the NTMA plan to

sublet some of them?

Mr. Conor O’Kelly: Mr. Black can talk more on the detail but we are moving out. There are leases on some of the floors because we took different floors at various times. We can sublet that and we are comfortable with the demand on that. We are also talking to the OPW on that. There are lots of possibilities in that regard.

Deputy Catherine Connolly: I find Mr. Kelly very straight so I will keep questioning him. I refer to the NTMA’s commitments which states that in 1991, 2007 and 2012, the agency entered into lease agreements of varying duration until 2017, 2026 and 2027. The NTMA is in the process of moving. Is it paying parallel rents?

Mr. Conor O’Kelly: No, we will be subletting.

Deputy Catherine Connolly: I might be using the wrong word. At present, the NTMA is renting one building and another.

Mr. Conor O’Kelly: While we are moving, yes.

Deputy Catherine Connolly: Then the NTMA will sublet.

Mr. Conor O’Kelly: Yes.

Deputy Catherine Connolly: What is NTMA paying? The amount was approximately €1 million per floor when our guests were previously before us. How many floors was that?

Mr. Ian Black: Yes. We have two floors.

Deputy Catherine Connolly: Does that include NAMA?

Mr. Conor O’Kelly: This does not include NAMA. It has its own lease.

Deputy Catherine Connolly: So that is two floors and does not include NAMA. What else does it not include that comes under the NTMA’s remit?

Mr. Conor O’Kelly: Nothing.

Deputy Catherine Connolly: The rent is €2 million in the current building. What is the cost of the new building?

Mr. Conor O’Kelly: The rent is €49 per square foot.

Mr. Ian Black: It is €7 million per annum but we do not occupy the full space. We occupy approximately two thirds of the space, so we pay about €4.6 million of the €7 million.

Deputy Catherine Connolly: That is going from €2 million plus NAMA.

Mr. Ian Black: No. While NAMA has two floors, the State Claims Agency occupies one of those. As NAMA has wound down, we have grown into its space. From the State’s perspective, it made sense not to use its space.

Deputy Catherine Connolly: I am stuck and it would be helpful if I could get a note on exactly what the NTMA has been paying, what it will pay and how long the premises will remain empty before it is sublet. I would like it spelled out in the same manner in which the NTMA have spelled out everything.

Mr. Conor O’Kelly: That is fair enough, absolutely.

Deputy Catherine Connolly: I also want this for NTMA’s sister companies. The NTMA’s spending has gone from €2 million - €1 million per floor - to €7 million, but there are reasons for this and the NTMA is going to supply details in that regard.

Mr. Conor O’Kelly: The bottom line is that it is a like-for-like basis. The rent will be significantly cheaper than the rent we would have had to pay.

Deputy Catherine Connolly: That may well be by square foot, but what about for the overall cost? A figure of €150 million was thrown out in the context of buying a new building. My view is that we should either build or acquire buildings. It is absolute madness and the State is part of the problem in the market. In this case, we need the details.

There was no breaking of leases. Was NTMA given the option to break the leases?

Mr. Ian Black: We have an option to either surrender the leases or to sublet them.

Deputy Catherine Connolly: If they are surrendered, is there a penalty clause?

Mr. Ian Black: Yes. Both parties have to agree so there would be an option unless the party did not agree.

Deputy Catherine Connolly: I think of Galway and the daftness that went on there in renting. There was one appalling building at a cost of €1 million per year and when the lease was broken, a payment of over €1 million had to be made. There are penalty clauses if a lease is broken.

Mr. Conor O’Kelly: We are not going to-----

Deputy Catherine Connolly: The NTMA is not going to break the lease. It will keep it and sublet. That is okay. We would like details of that. I turn to the financial statements and the weakness of financial controls that is referred to on pages 70 and 147. I refer to page 147 and the figure of €721,000.

Mr. Seamus McCarthy: The audit report on page 147 relates to ISIF. There is one statement on internal control and this can be found between pages 68 and 70.

Deputy Catherine Connolly: A weakness was identified in the context of internal controls. Was there an actual loss of €721,000 there?

Mr. Conor O’Kelly: It is regrettable.

Deputy Catherine Connolly: The question was whether there was a loss. I am trying to get to simple language on it.

Mr. Conor O’Kelly: The gains on the fund are lower because of this mistake.

Deputy Catherine Connolly: I see. The gains are lower to the value of €721,000.

Mr. Conor O’Kelly: That is correct. In ISIF terms, if the €850 million in total gains since inception are €750,000 lower because of this mistake of not hedging foreign exchange exposure that should have been hedged. Had that been done, the fund returns would be €750,000 more.

Deputy Catherine Connolly: How did that happen and what has been done to prevent it

from happening again?

Mr. Conor O’Kelly: It is unfortunate that it happened. Our policy invariably is to hedge our exposure outside the euro. We bought a fund which was in dollars, but it was not designated or marked on one of the spreadsheets as such; rather, it looked like it was a euro fund. We discovered the mistake and brought it to the attention of the Comptroller and Auditor General. When we discovered it and went to put the hedge in place, the dollar exchange rate had moved against us, unfortunately, and it cost us €750,000. Had we done it at the time, the investment returns would be €750,000 more. We have since closed the gap in that process, which essentially resulted from human error and a process that had a weakness. We fixed the weakness and are confident that such a situation could not arise again.

Deputy Catherine Connolly: Mr. O’Kelly set out the situation in regard to the divestment fund in his opening statement. The NTMA continues to consider it. While researching this issue, I realised the Government had initiated a Nuclear Weapons (Prohibition of Investments) Bill in 2012. I had not been familiar with it previously. It was introduced but not enacted. It was an excellent Bill which was somewhat similar to the Fossil Fuel Divestment Act. Has the NTMA given consideration to in what it is investing such as nuclear weapons? Has it considered its policy in that regard?

Mr. Conor O’Kelly: We cannot invest in armaments or munitions.

Deputy Catherine Connolly: It is a separate matter and specific to cluster munitions.

Mr. Conor O’Kelly: That is right.

Deputy Catherine Connolly: I am referring to nuclear weapons.

Mr. Conor O’Kelly: I will look into that matter further. I am hopeful we do not invest in nuclear weapons.

Deputy Catherine Connolly: It is a matter for the Dáil to consider. I refer to the NTMA’s ethical policy in the light of the military parade to take place in Washington today. The mind boggles.

Mr. Conor O’Kelly: I will look into it and revert to the committee.

Deputy Catherine Connolly: On NTMA investment, I note and welcome that it has five strands this year, of which housing and regional development are two. On regional development, the map Mr. O’Kelly showed the committee detailing regional investment is not very positive for the west. I presume it will be a top pillar of the five.

Mr. Conor O’Kelly: We recently held a big conference in Sligo at which we presented to a great group of potential investors, entrepreneurs and local authorities. We are hopeful we will be able to attract more investment in all regions, including the west.

Deputy Catherine Connolly: I cannot find the map, but it struck me that-----

Mr. Conor O’Kelly: It is on page 23.

Deputy Catherine Connolly: I thank Mr. O’Kelly. One can see that the figures for Connaught are 5%, 6% and 4%, while the figures for Ulster are also quite low. Munster, Leinster and Dublin receive the majority of investment.

Mr. Conor O’Kelly: I would love if there were more opportunities in Connacht. That would be fantastic.

Deputy Catherine Connolly: I would love it too, but I would like to see more practicality in the plans.

Mr. Conor O’Kelly: We need proposals. We make an open call to anybody who is listening that we are open for business and would love to see-----

Deputy Catherine Connolly: The NTMA is open to proposals and investment.

Mr. Conor O’Kelly: Absolutely.

Deputy Catherine Connolly: One of the big risks is that all of the investors are from outside the country. The NTMA made that point publicly and Mr. O’Kelly made it to the committee. What is its plan in that regard in terms of Irish savings and the potential here, given that there is that big risk.

Mr. Conor O’Kelly: We have the State savings market, to which reference was made. There is approximately €20 billion in State savings, which are retail State savings. To what we are referring in that regard is the institutional investment market. Ireland is not a big institutional investment centre. It does not have the pension fund and insurance industry that exists globally. The fact is that the financial centres are Frankfurt, Paris, London, Tokyo and New York. That is where the capital is. We travel a lot. Ours is a planes, trains and automobiles job selling Ireland and making sure people are informed and aware of the credit and risks.

Deputy Catherine Connolly: Would it be possible to get investors in Ireland or is it too small an economy for that to happen?

Mr. Conor O’Kelly: I think the economy is too small. Various factors such as the IFSC and attracting that financial sector are part of it and will help a little, but even if companies have their headquarters here, it is still international capital and their original savings, investors and funders are probably in other jurisdictions. The savings must come from somewhere and the economy is too small to generate the savings we would need to fund that level of investment.

Deputy Catherine Connolly: Mr. O’Kelly highlighted that as a risk. What steps can the NTMA take to alleviate the risk if it is outside its control and it cannot do anything within Ireland?

Mr. Conor O’Kelly: There are several things that can be done. First, one ensures there is plenty of cash available. Second, one ensures the investor base is diversified. One must be aware of the risk of an event happening in the United States or the United Kingdom which would lead to that investor base shutting down. We ensure we are diversified geographically and by type, which is why we have the green bond, the inflation bond and other types of bond. Having different pools of investor in terms of type and geographical location means that one is unlikely to be shut out of any market at one time or, if one market starts to decline, one can look elsewhere for capital. Diversification is probably the key mitigation measure as an issuer, with holding some cash on the balance sheet.

Deputy Catherine Connolly: I thank Mr. O’Kelly.

Chairman: We are dealing with the National Treasury Management Agency’s accounts separate from those of the State Claims Agency, with which we will soon deal in a separate ses-

sion. We will take a five-minute break between sessions.

I have some questions for the witnesses based on the information provided. I thank them for the very professional and helpful presentation. On the Apple escrow account, the three fund managers involved - Amundi, BlackRock and Goldman Sachs - are based in Paris and London. If one of them underperforms, are there criteria to reduce its involvement? How long are the contracts?

Mr. Conor O’Kelly: We have given them equal amounts for the time being. They are active managers and we watch them closely. We can switch the money at any time based on their performance.

Chairman: The NTMA can switch the money from one to another.

Mr. Conor O’Kelly: Absolutely.

Chairman: Has it done so?

Mr. Conor O’Kelly: No.

Chairman: On the escrow account, the agent and custodian is the Bank of New York Mellon which is based in London. Some €14.285 billion was put into the fund by Apple Sales International. The Comptroller and Auditor General carried out an audit on behalf of the Minister for Finance and the State. Presumably, Apple Sales International carried out an independent audit of the fund at the end of last year. Does Apple accept the NTMA audit or does it carry out its own?

Mr. Conor O’Kelly: It does whatever it needs. What it does is its own business. It is a publicly quoted company which reports quarterly results and its process is its own.

Chairman: The fund of €14 billion was deposited in an escrow account by Apple Sales International to be held for it and the State. The NTMA looks after the fund for the Minister for Finance and the Comptroller and Auditor General audits it to provide reassurance for the Minister and the committee that everything is okay. I presume Apple has done the same. Was there a joint audit? There must be some detail on an audit of the fund at the end of each calendar year in the tomes of contracts that were signed. I am looking for a copy of the audited accounts produced for Apple Sales International to make sure it tallies with what I have in front of me.

Mr. Ian Black: The custodian provides the information for us and Apple to allow it to produce its accounts. We produce our accounts based on the same information Apple receives directly from the custodian. In a sense, it is for Apple to deliver. It allows it to monitor the fund and produce whatever financial report it has to provide for the Securities and Exchange Commission.

Chairman: What is the line of communication between Apple Sales International and the NTMA? Is there a line of communication?

Mr. Ian Black: No, the money was put into the fund. It is managed jointly-----

Chairman: So the NTMA communicates with the Bank of New York Mellon?

Mr. Ian Black: No, there is an Ireland-Apple committee with three members for Apple and three members for Ireland that oversees the management of that fund.

Chairman: I am hearing something that I have not heard before. Who are those six people?

Mr. Conor O’Kelly: There are three members of the Apple team and three members from the NTMA.

Chairman: Who are they?

Mr. Conor O’Kelly: They are Frank O’Connor, Kieran Bristow and Dave McEvoy.

Chairman: Are they staff of the NTMA?

Mr. Conor O’Kelly: Yes.

Chairman: How often do they meet?

Mr. Conor O’Kelly: They meet quarterly.

Chairman: Are there minutes of those meetings?

Mr. Conor O’Kelly: There are minutes of those investment meetings.

Chairman: Who is the chairperson of that group?

Mr. Conor O’Kelly: Frank O’Connor from the NTMA is the chairman.

Chairman: The amount of money is so large that the Committee of Public Accounts could do with reassurance from the Apple-Ireland committee that it has seen the audit report from both sides. We presume they are identical but we would like to verify that.

Mr. Conor O’Kelly: Would the Chairman like to see how it is reported in Apple’s accounts?

Chairman: No, Apple must have done an audit on this escrow account.

Mr. Conor O’Kelly: It has not.

Chairman: Apple has not done an audit.

Mr. Conor O’Kelly: No, not as of yet.

Chairman: How does Mr. O’Kelly know that? Is it from the work of the joint committee?

Mr. Conor O’Kelly: Yes.

Chairman: Does Apple plan to do an audit?

Mr. Seamus McCarthy: I imagine that when Apple is doing its financial statements it may or may not have a reference in them as required for the companies that contribute to the fund. It may be recognised as a contingent asset but presumably the value information would be standard and it would be accepting of it.

Chairman: Is it possible for the NTMA to use its good offices to get us a note on-----

Mr. Conor O’Kelly: We can get a note on how Apple is recording the fund for value.

Chairman: We do not want to hear in two years’ time that Apple is not satisfied with something after the NTMA has said everything was in order. Apple may have a different view,

although I presume it takes a view that is identical to that of the NTMA.

Mr. Conor O’Kelly: It does.

Chairman: We want to have that verified in a transparent manner. That is all I am asking.

Mr. Conor O’Kelly: That is understood.

Deputy Catherine Connolly: I am laughing at the symbolism of the apple and Eve comes to mind but there is not a sign of a woman on the committee. It might be appropriate to tell Apple about what women suffered as a result of the apple symbolism.

Mr. Conor O’Kelly: Eileen Fitzpatrick was the chairperson of the committee but she stepped down.

Chairman: I have a question about the Strategic Banking Corporation of Ireland. Page 17 of the NTMA’s financial statements notes that its investment has supported 32,000 jobs in Ireland. Does the NTMA make funds available to the Strategic Banking Corporation of Ireland?

Mr. Conor O’Kelly: Yes, it does.

Chairman: The SBCI is a separate organisation.

Mr. Conor O’Kelly: Yes, that is done on the direction of the Minister.

Chairman: The SBCI, in its financial statements, states that it is supporting 40,000 jobs or whatever the case may be.

Mr. Conor O’Kelly: They are not the same jobs. They are different jobs. These are the jobs supported by the ISIF direct investments in companies in Ireland.

Chairman: That includes the NTMA’s investment in the Irish Strategic Banking Corporation.

Mr. Conor O’Kelly: No, we do not attach any jobs to that. It employs 20 people but we do not include that.

Chairman: Can the NTMA give us a breakdown on the 32,000 jobs it supports? Are they organisations? To give an example, IDA Ireland often states how many jobs it supports. It may give a small grant to an organisation that employs 500 people and then say it is supporting 500 jobs. Can the NTMA give us a breakdown of these 32,000 jobs? Would we not have those jobs without the NTMA?

Mr. Conor O’Kelly: It is not just about jobs for us.

Chairman: I know but I am only asking about that bit.

Mr. Conor O’Kelly: As an impact and as a measure, yes.

Chairman: Employment is a big aspect of the Irish economy.

Mr. Conor O’Kelly: It is a measure of economic impact.

Chairman: It is highlighted here so I ask the NTMA to provide a breakdown of these 32,000 jobs, whether by category, region or companies employing under 500 people, over 50

people, or whatever the NTMA thinks is reasonable.

Mr. Conor O’Kelly: We will do all of that.

Chairman: Did the National Development Finance Agency have a separate account before? Where is it in the NTMA’s financial statements? Is there a separate account in there?

Mr. Seamus McCarthy: There was a separate account up to 2014. The NTMA was then reorganised and it became a reporting function that was not done separately.

Chairman: Where are the NDFA’s figures?

Mr. Ian Black: They are included in the administration accounts because in a sense its costs are included as part of the NTMA’s administration costs.

Chairman: Does the NTMA have a separate cost centre for what we would call NDFA’s function?

Mr. Ian Black: Yes.

Chairman: Can the NTMA send us a note on that or is it shown separately?

Mr. Ian Black: It is shown in the administration accounts. It is broken down by cost centre.

Chairman: I was wondering where the NDFA went and if its role has been diminished.

Mr. Ian Black: On page 104, the expenses of the agency are broken down by function.

Chairman: A sum of €11 million is attributed to the NDFA. I ask the NTMA to send us a note on the NDFA’s main activities. We have a note stating that the NDFA delivered public private partnership, PPP, projects in education, health and justice with an estimated total capital cost of €1.7 billion and it mentions the schools bundle. Will the NTMA send us an information note on the activity or is it provided here?

Mr. Ian Black: It is on page 29. There is a chapter on it.

Chairman: That is good. I have not read every single one of the more than 200 pages in the report in detail.

Mr. Conor O’Kelly: There is a full section on the NDFA and all of its activity.

Chairman: Is that its activity in 2018?

Mr. Conor O’Kelly: Yes.

Chairman: That is fine. We have touched on the banks already, as detailed on page 27. The NTMA says it lost €3.5 billion on the investment in the banks last year due to the market.

Mr. Conor O’Kelly: We did not lose it.

Chairman: The taxpayer did.

Mr. Conor O’Kelly: The value in the banks is not----

Chairman: The NTMA is our agent. It lost that money on our behalf. I should have specified that I meant the taxpayer lost the money.

Deputy Catherine Murphy: Did the NTMA have a choice on that investment?

Mr. Conor O’Kelly: We did not have a choice.

Chairman: It is a directed fund from the Minister. We understand that.

Mr. Conor O’Kelly: It is a directed investment. There is no discretion.

Chairman: We will not get into the politics of blaming the Minister for that one.

Deputy Catherine Connolly: The terms of a direction are authoritative.

Chairman: Yes, it is a long-standing direction so it might go back a number of years or cover various Ministers. That is fine.

Mr. Seamus McCarthy: There was no new direction in relation to it in 2018.

Chairman: When was the sale of the AIB shares? Was that the previous year?

Mr. Seamus McCarthy: That was in 2017.

Chairman: The fall in value had nothing to do with the disposal of those shares.

Mr. Conor O’Kelly: No, that was done at a higher price.

Chairman: On page 27, there is what looks like a simple chart with small figures but there is a lot behind it. Is it correct that €4.7 billion was invested in Bank of Ireland, the State has already received €4.2 billion in return and the value of the investment at the end of the year was €700 million? That would indicate that in respect of the €4.7 billion the State invested in Bank of Ireland, between cash received and the balance of the 13.9% of shares at the end of December, the State and the taxpayer are slightly up.

Mr. Conor O’Kelly: That is correct.

Chairman: When it comes to Bank of Ireland, of the €4.7 billion invested in it, the taxpayer has received €4.2 billion back to date in cash terms and the shares are worth €700 million, even at the reduced value. That means there is a €200 million surplus on the State’s cash injection into Bank of Ireland to date.

Mr. Conor O’Kelly: That is correct.

Chairman: The State is in surplus as a result of the Bank of Ireland bailout.

Mr. Conor O’Kelly: That is correct.

Chairman: I will move on to Allied Irish Banks in which the State invested €16 billion. Is that correct?

Mr. Conor O’Kelly: Yes.

Chairman: The value of the shares at the end of 2018 was €7.1 billion and we have received €6.1 billion in the meantime. That amounts to €13.2 billion, which indicates we are down about €2.2 billion on that investment.

Mr. Conor O’Kelly: The Comptroller and Auditor General will probably have something

to say about that because there are other charges and there is interest.

Chairman: When we come to that I will let the Comptroller and Auditor General in. We all know the big black hole was caused primarily by the IBRC, that is, Anglo Irish Bank and Irish Nationwide. I ask the Comptroller and Auditor General to flesh out the figures for the other banks. The black hole is concentrated within those two banks: IBRC which includes Irish Nationwide Building Society and Anglo Irish Bank. The other two, to a significant extent, have been repaying the original investment to the State. I want to indicate that pen picture.

Mr. Seamus McCarthy: The cash figure at which the Chairman is looking is the position for the fund. The position for the State is different because we had to borrow and pay the interest.

Chairman: It had to finance it.

Mr. Seamus McCarthy: The opportunities for investing it in something else were forgone when a return could have been generated.

Chairman: I understand that.

Mr. Seamus McCarthy: I will provide a chapter on the updated position as at the end of 2018. When I reported on the matter in 2016 - the figures are broadly in the same space - the big loss concerned IBRC. There is a loss on AIB which is relatively significant. In the case of PTSB and Bank of Ireland, one is slightly under and one is slightly over, but that does not take account of any surplus that will be eventually generated from NAMA. When one takes it into account, all in all-----

Chairman: As we all know, the ultimate value of the shares when they are sold could be up or down. On the payments that had to be made under the bank guarantee, what does “cash received” consist of?

Mr. Seamus McCarthy: Is the Chairman referring to the “cash received” in the fund?

Chairman: Yes, Bank of Ireland-----

Mr. Seamus McCarthy: It represents dividends and share sales.

Chairman: The banks were paying a significant fee to the State during the period of the bank guarantee. Has it been factored in in the figures?

Mr. Seamus McCarthy: No, but it will be factored in in the chapter I will produce.

Chairman: It was significant in its own right.

Mr. Seamus McCarthy: There are many elements to it. On the retiring of the IBRC debt that the Central Bank is carrying, while it is a cost to the NTMA, it is generating a surplus for the Central Bank which will come back to the Exchequer. It will all be laid out in the chapter.

Chairman: It will come back by way of a dividend.

I am handing over to Deputy O’Connell, although I have a few more questions to ask, but it is not fair of me to take up too much time.

On page 7 of the NTMA’s financial statement it is indicated that we owe €205 billion, while

the interest paid on the national debt last year was €5.8 billion. On average, a figure of 2.8% was paid on debts last year. Much of it is now coming in at 0%. Can the NTMA give the committee a breakdown of the €205 billion in terms of how much is at a negative interest rate, or below zero; between zero and 1%; between 1% and 2%; between 2% and 3% and all of the way up? What is the most expensive debt still in the NTMA's portfolio?

Mr. Conor O'Kelly: It is a 5.9% coupon to be paid in October next year.

Chairman: We have no debt which carries an interest rate of over 6%. I know that there are 200 pages, but they are the figures I want to see.

Mr. Conor O'Kelly: We will come back to the Chairman with the breakdown.

Chairman: I am sure Mr. O'Kelly knows it off the top of his head.

Deputy Catherine Murphy: It also relates to the amounts of money involved because an interest rate of 5.9% might be charged for a very small or a very large amount of money.

Chairman: I want the NTMA to break down the figure of €205 billion by money amounts.

Deputy Catherine Connolly: And by time.

Deputy Catherine Murphy: By duration.

Chairman: We want the amounts of money and the matching interest rates.

Mr. Conor O'Kelly: We and absolutely and totally understand.

Chairman: On the charts we were given it was indicated that a figure of 29% of the national debt was sourced in the United Kingdom. Was much of it moved in 2018?

Mr. Conor O'Kelly: London is still a big financial centre. It is the average for our last eight or nine auctions. That is where the investors are-----

Chairman: It is necessarily in sterling.

Mr. Conor O'Kelly: No.

Chairman: Is it included and I am sure Mr. Black will show me the exact note. Can we have a breakdown of the sum of €205 billion by currency?

Mr. Conor O'Kelly: It is all in euro. There is no other currency.

Chairman: When the accounts refer to the United Kingdom, from the NTMA's point of view, the public might assume it is in sterling.

Mr. Conor O'Kelly: I understand that. All of our borrowings are in euro, bar a sum of €1 billion to €1.5 billion.

Chairman: That amounts to about 99%. It is important to clarify the matter as people might have misunderstood.

I have two other minor questions. On page 81 of the accounts there is a reference to the EU-IMF funding programme, under which we still owe €45 billion. There is a figure of €18 billion for the European Stability Fund; €25 billion for the European Financial Stability Mechanism;

and €4 billion for the UK Treasury. At what interest rate is the money owed? Why can we not get out of it?

Mr. Conor O’Kelly: The rates are more attractive and lower than at what we can invest. The entities borrow in the market and the debt sits in our accounts. The credit terms are better and they can borrow at better rates than we can on a regular basis.

Chairman: They are at a lower rate. That is fine.

My last question which always interests some relates to the dormant accounts mentioned on page 136. There are charts, but and I am a little confused. I have the impression from what is included on page 140 that the NTMA holds a sum of €477 million from dormant bank accounts and €100 million from dormant unclaimed insurance policies. There is a figure for the escheated State fund of €4.4 billion. Can it be explained?

Mr. Conor O’Kelly: That last figure is in millions.

Chairman: Yes, it is €103 million.

Mr. Ian Black: The overall figure received from banks and life assurance companies to the end of December 2018 was €585 million. That is money that was received and not reclaimed.

Chairman: A sum of €500 million was not claimed.

Mr. Ian Black: What is left and has not been disbursed is represented on page 138. The fund is €289.8 million. They are funds that have been received and not disbursed.

Chairman: In broad terms, €300 million has been disbursed-----

Mr. Ian Black: Yes.

Chairman: -----out of a total of €600 million approximately. We are left with half of that sum. That leads me to page 142 on which it is indicated that €27 million went last year to different Departments. Who decides where the money is to be disbursed? Is it by ministerial direction? Who made the decision that the Department of Rural and Community Development was to receive €9.7 million and the Department of Transport, Tourism and Sport, €5 million?

Mr. Ian Black: We act under instructions and disburse to the relevant Department. There is a disbursement plan which is co-ordinated by Pobal but approved by the Minister for Rural and Community Development.

Mr. Seamus McCarthy: It is all included in the Votes for the various Departments.

Chairman: When representatives from Pobal attended and we looked at the dormant account funds in the Department, we found that it was one of the most mismanaged funds. It had been moved from one Department to another. I am not talking about NTMA’s administration of the fund, but there were things that had been approved and never happened. Some of the projects were a mirage. Will the NTMA send us a note on the method by which the funds are-----

Mr. Conor O’Kelly: All we do is operate on instructions and send money back and forth. We are not part of the decision-making process.

Chairman: Is it by ministerial or departmental-----

Mr. Seamus McCarthy: The Department of Rural and Community Affairs has overall responsibility.

Chairman: The Department sends a letter requesting the sum of €9.7 billion and the NTMA sends the money to it. We can take up this issue with the line Department.

Mr. Seamus McCarthy: It can be seen that this is cash that has been recouped from the NTMA; therefore, it has to have been spent. One can see the figure going from €15 million to €28 million. It is a significant step up from on what we reported previously.

Chairman: We were not happy with the amount of money claimed, money Pobal-----

Mr. Seamus McCarthy: It is money that was provided but not drawn down.

Chairman: That is the only reason I have raised the issue because it has crossed our desks before.

Deputy Kate O'Connell: On what page is the chart to which the Chairman referred which indicates the investment in Bank of Ireland?

Mr. Seamus McCarthy: Is it on page 27?

Deputy Kate O'Connell: If we look at this example, there is almost an inference that the return received represented good value or was a good idea. When did we give it the money during the bail-out? Was it eight or ten years ago? There is a surplus of €200 million after an eight or ten-year investment period. It does not seem like good value for money or a good return for the country. The Comptroller and Auditor General referred to the opportunity cost. That money could have been invested in other things, like people's lives. I do not think it is true to say that ending up with over €200 million on that investment was a good idea. It was essential but in terms of a return for the taxpayer, it does not seem like a very good one. AIB's is much less.

Is the reference to the 100% chance of a recession in respect of the present time or 31 October stuff? Can I assume that if we have a hard Brexit looking at a contraction of 8% to 10%, we really will be in an extremely precarious position as a country? Would it be fair to say that?

Mr. Conor O'Kelly: No, I was just making a general point in respect of the long term, that at some point-----

Deputy Kate O'Connell: It always happens, the cycle.

Mr. Conor O'Kelly: Correct.

Deputy Kate O'Connell: Okay. If we are in this precarious position, which we clearly are as we are carrying that mountain of debt, and if there is a hard Brexit, we really could be in the depths of a recession worse than we were in ten years ago. Would that be true to say? If there is a 100% chance today and then we have a likely contraction of 10%, that does not seem ideal. Would it be true to say we need to brace ourselves?

Mr. Conor O'Kelly: We have to be vigilant and ready. Our debt makes us more vulnerable than we would have been.

Deputy Kate O'Connell: If the interest rates had not been so favourable, we would be in a far more precarious position, would we not?

Mr. Conor O’Kelly: We would be. In 2014, the forecast for our interest bill today was actually €10 billion. They were official forecasts. We are going to be coming in at €5 billion. That is because of the interest rate environment.

Deputy Kate O’Connell: It is purely interest rates.

Mr. Conor O’Kelly: Yes. It would have been extremely difficult for us to manage without the interest rate environment that has existed.

Deputy Kate O’Connell: We have been lucky.

Mr. Conor O’Kelly: We have been.

Deputy Kate O’Connell: We might not necessarily be as lucky into the future and we have to be very conscious of that.

Mr. Conor O’Kelly: Correct.

Deputy Kate O’Connell: Perhaps this is outside the remit of the meeting but we have significant pay pressure coming on because there is an affordability issue. I am assuming people like Mr. O’Kelly are very concerned about this in terms of an inflationary set-up taking off. It is quite concerning, especially when we have been lucky with interest rates and given the threat of Brexit. Has Mr. O’Kelly any view on that himself or is it outside his area?

Mr. Conor O’Kelly: I think I will pass on that, if it is okay with the Deputy.

Deputy Kate O’Connell: The appointment of Ms Lagarde is positive, as Mr. O’Kelly mentioned.

Mr. Conor O’Kelly: I think so, yes.

Deputy Kate O’Connell: I know I discussed the NTMA building with Mr. O’Kelly - is it a year since he was here? Time goes very quickly.

Mr. Conor O’Kelly: I remember it well.

Deputy Kate O’Connell: I am still waiting for my invite although I know the NTMA is not in the building yet. Mr. O’Kelly mentioned ethical investments. I see whiskey on the list and Deputy Catherine Murphy referred to Mercosur and the effects that deal might have. Who determines what is ethical in terms of NTMA investment? We have had a lot of conversation here about minimum unit pricing of alcohol and all of that. Is there an ethics committee or how is it decided?

Mr. Conor O’Kelly: We do. We sign up to the international guidelines in respect of environment and sustainability governance, ESG, principles. A member of our investment team sits on that and is very active. She is in charge of driving our investment process around issues of what is green and ethical, in respect of fossil fuels and so on.

Deputy Kate O’Connell: In terms of the booze element and our issues as a country with alcohol, which is a psychoactive substance, is it ethical for the NTMA to be investing in a product like that?

Mr. Conor O’Kelly: I would prefer to think that it is for the Oireachtas and elected officials to make decisions like that. We will take our guidance from the Deputies and Senators in that

regard. The Deputy would not want people in the NTMA making discretionary investment decisions about what is ethical and what is not.

Deputy Kate O’Connell: That direction has to come from on high.

Mr. Conor O’Kelly: Probably. When the Oireachtas made a decision on fossil fuels we took it on board immediately and divested. If it made a similar decision, obviously we would follow suit.

Deputy Kate O’Connell: Has the NTMA investigated any investments in the global movement that is cannabis production? Is that on the radar as something that is a good return?

Mr. Conor O’Kelly: It is not.

Deputy Kate O’Connell: I will not make as much out of the building as I did last year. The new rate was €49 per square foot, was it not?

Mr. Conor O’Kelly: Yes.

Deputy Kate O’Connell: The NTMA would have had to do up the original building, is that right?

Mr. Conor O’Kelly: We would have. Whoever moves into that building is going to have to do an awful lot of work.

Deputy Kate O’Connell: Mr. O’Kelly mentioned the turnover with reference to the price of doing up the building. Is it the L’Oreal approach of “We’re worth it”? What difference does the amount the NTMA turns over make to the cost per square foot of its office?

Mr. Conor O’Kelly: I was making the point that the kind of equipment, cabling and infrastructure that is required for-----

Deputy Kate O’Connell: Cabling seems to be an issue everywhere. We had it going around the children’s hospital five times.

Mr. Conor O’Kelly: It is a high-spec building for a lot of financial services and it needs to be right up to spec. It is expensive infrastructure in that regard but I think it is reasonably valued. It has been tested and openly procured for every single element.

Deputy Kate O’Connell: How long is the lease on that building?

Mr. Conor O’Kelly: It is 25 years.

Deputy Kate O’Connell: Regarding the voluntary redundancy scheme that was set up in 2018, each contract at the NTMA is individual to the person, so why would it need a voluntary redundancy scheme? Let us say I was employed there and my contract said I would do X, Y and Z. If I was no longer fulfilling those criteria, surely the NTMA could get rid of me. Why would it need to pay me off? Some 33 people were made redundant. Did I hear right that it is at a cost of €33 million or did I just write that down?

Mr. Conor O’Kelly: No.

Dr. Sinead Brennan: No, it is €2.5 million.

Deputy Kate O’Connell: Jeepers, that is very lucrative. A third gone, a third at reduced

cost and a third-----

Dr. Sinead Brennan: At same cost.

Deputy Kate O'Connell: That individual contract did not really hold any water.

Dr. Sinead Brennan: All of the NTMA employees are on permanent contracts. It is an individually negotiated contract in the context of the terms and conditions of that individual. We do not have pay bands, increments or scales such as one would typically find within the rest of the Civil Service. That is what we mean when we refer to individually negotiated contracts. At the same time, all of our employees are still protected by the normal employment legislation.

Deputy Kate O'Connell: What about their pension rights? Would getting this voluntary redundancy affect an individual's pension rights going forward?

Dr. Sinead Brennan: He or she becomes a deferred member of the pension scheme and gets it at the normal retirement age.

Deputy Kate O'Connell: Is the pension similar to the public sector pension in respect of being aligned with the Department of Public Expenditure and Reform situation?

Dr. Sinead Brennan: We have our own career average defined benefit pension scheme. It is similar to the single scheme in the Civil Service in that it is a career average scheme.

Deputy Kate O'Connell: It is a fairly lucrative scheme, like a Civil Service pension.

Dr. Sinead Brennan: Yes, it is like the more recent scheme that has been introduced into the Civil Service since 2013.

Deputy Kate O'Connell: Under each individual contract, were people's pensions negotiated?

Dr. Sinead Brennan: No. There is one pension scheme.

Deputy Catherine Murphy: I do not understand something. According to the chart, the gross debt is largely unchanged since 2011. We had the IBRC legislation to turn it into sovereign debt in 2013, I think. When did it go on the balance sheet? Were the promissory notes always on the balance sheets?

Mr. Conor O'Kelly: The promissory notes were always there.

Deputy Catherine Murphy: So that really would have been from 2010.

Mr. Seamus McCarthy: They were not part of the national debt but they were part of the general government debt.

Deputy Catherine Murphy: Okay.

Deputy Kate O'Connell: Is the IMF €45 billion included in the €200 billion? Is that on top of it? The cheap money.

Mr. Conor O'Kelly: That has been repaid in total.

Deputy Kate O'Connell: The one the Chair was asking about, at the bottom.

Mr. Conor O’Kelly: The other Europeans. That is part of the €200 billion. The €40 billion.

Chairman: Okay. We are going to suspend for five minutes at this stage-----

Deputy Catherine Connolly: Can Mr. O’Kelly just clarify the figures for the national debt and the general government debt? The Comptroller and Auditor General will give us a note on that, or somebody will.

Mr. Seamus McCarthy: I would prefer-----

Mr. Conor O’Kelly: The Department of Finance will provide a note on the difference between national debt and general Government debt.

Chairman: I would appreciate that as the public gets confused as to the difference between the two. We will suspend and, when we return, we will still be dealing with the NTMA but, specifically, the State Claims Agency.

Sitting suspended at 12 noon and resumed at 12.18 p.m.

Chairman: We are continuing our consideration of the NTMA financial statements for 2018. In this session, we are dealing specifically with the State Claims Agency, which is part of the overall NTMA. I welcome the new witnesses, who are Mr. Greg Dempsey, deputy Secretary General, governance and performance, in the Department of Health; from the HSE Mr. Patrick Lynch, national director, quality assurance and verification; and Ms Mairéad Dolan, assistant chief financial officer.

I wish to advise the witnesses that by virtue of section 17(2)(I) of the Defamation Act 2009 they are protected by absolute privilege in respect of their evidence to the committee. If they are directed by the committee to cease giving evidence on a particular matter and continue to do so, they are entitled thereafter only to a qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and asked to respect the parliamentary practice to the effect that, where possible, they should not criticise nor make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable. It is not a formal script but we touched on the matter in the opening remarks this morning. Mr. Breen might give us a two-minute pen picture of the overall number and value of claims from last year to this year. We are not looking for a lot; just a two-minute pen picture of where the agency is at and then we will take questions.

Mr. Ciarán Breen: Absolutely, Chairman. We have 10,658 outstanding claims that we are managing at a potential cost of €3.15 billion. Clinical claims amount to 3,196, which is a €2.33 billion estimated liability. That is 30% by volume terms, in terms of the number of claims, and yet representing 74% of the potential cost. On the general side, we have 7,462 claims that are active at a cost of €820 million. They are the employers and public liability and property damage claims against the State.

Our total transactional expenditure is the amount of money that we spend in a particular calendar year across both schemes, that is, the clinical indemnity scheme and the general indemnity scheme. In 2017, that was €303 million and in 2018, it went up to €347 million. One reason that has climbed in the way it has is due to things like claims inflation and the factoring in of the Gill Russell case, which is the case dealing with the discount rate and the calculation of special damages. In addition, we are setting and resolving more claims as well.

Our clinical claims resolved in the year 2018 came to approximately €247 million, compared with €134 million in the previous year. If I could explain the €92 million gap, about which members might wonder, we have set it out in our annual report that it is due to the Gill Russell uplifts. These were cases that we had settled on the basis of the higher discount rate and when the Court of Appeal gave its judgment, we had to pay at the lower rate. Consequently, there were differences to be paid on some claims that we had settled and that amounted to €65 million. The awards over €1 million jumped from 20 in 2017 to 56 in 2018 and then we had other awards and settlements; we just simply had at a higher number, up from 42 to 59. That is probably the overall pen picture of the statistics.

Chairman: Please explain the discount rate. Mr. Breen said that it was paid at a higher rate and the settlement was at a lower rate, so people will think that means the amount payable went down. Please explain that for the people watching.

Mr. Ciarán Breen: It has all to do with the calculation of what we call special damages. So this is the cost of future care, the cost of things like aids and appliances and so on. It almost sounds counter-intuitive but the lower the rate, the higher the amount of damages and the higher the rate, the smaller the amount of damages. It used to be at 3%. The Gill Russell case, which we handled, was a catastrophic injury case to an infant in which the rate was reduced based on economic advice that was available to the court at the time. To give a contrast with that, Chairman, in the UK the current rate is - 0.75% and they link the rate to index-linked Government securities and how they trade, and the rates. That is why we are getting higher damages the lower the discount rate.

Chairman: Some people will still not get that. The problem is this is counter-intuitive. The people watching will hear that a lower rate is more expensive and will not get that. Please explain it again for the people watching.

Mr. Seamus McCarthy: It is counter-intuitive. I think it turns on discount rates and how one values moneys one would receive in the future and how one values them now. Or, if one has to spend money in the future, how much would one have to pay now to avoid having to pay that in the future? So I think that is the principle on which this operates.

Chairman: On the lower, what Mr. McCarthy called the discount-----

Mr. Seamus McCarthy: Think of it in terms of you paying a lump sum now.

Chairman: Let us say €1 million.

Mr. Seamus McCarthy: Yes. If you were to invest that, you would only get 1% on it and therefore, the yield it would give you into the future is a smaller sum.

Chairman: Only 1%.

Mr. Seamus McCarthy: If you fix that and decide this is how much I need to get in the future then you have to increase the capital sum paid at this point in time.

Chairman: Okay. The Comptroller and Auditor General has helped to explain this from the public's point of view. The discount rate is something that you manage and it is what you are going to earn. People when they hear about the discount rate think it is the interest rate. That may sound strange. For the public watching, the State Claims Agency is looking at this from its point of view and using the terminology, which we understand. Somebody watching who

hears that the discount rate goes down will not get it. The rate goes down from the perspective of the State Claims Agency.

Mr. Ciarán Breen: Yes.

Chairman: The State Claims Agency has to provide more-----

Mr. Ciarán Breen: Correct.

Chairman: -----but it does not affect the people on the other-----

Mr. Ciarán Breen: Yes, and it has a dramatic effect, Chairman. I think that is the point to make.

Chairman: Can that change in the future?

Mr. Ciarán Breen: We simply do not know.

Chairman: At this stage Deputies Connolly, Catherine Murphy, MacSharry and O'Connell have indicated. This debate is a continuation of a topic that we discussed here last year. We did not to complete it because there was so much information being sought from the HSE on the number and category of claims. We sought information for the public watching by hospital in an effort to see whether hospitals had a higher risk. There was an assessment from the agency that were such a league to be published, then it could potentially be misleading or unfairly damaging to some hospitals just because of the number of people presenting. We agreed to not go into that detail because it could have other knock-on consequences. We then mentioned hospital groups as an issue. When the agency was here on the last day, we had quite a bit of information to receive on an ongoing basis thereafter and we said we would come back to it again this year. We are really only in a follow-through mode, somewhere along the line, from the HSE.

I have a question for our colleagues in the Department of Health and the HSE, more so than the State Claims Agency. What is being done to reduce the amount of medical negligence cases in the health service? We are here having this meeting not because the State Claims Agency has a cost of €3 billion but because of medical negligence in hospitals and other HSE footings. Really the question should start and begin with the Department and the HSE because that is the source of where all of the issues have happened. We have talked about this over the past year and we have been given a report today for today's meeting. Can somebody talk to me from the HSE's perspective on the proactive measures that have been taken? We heard here the last time that an incident can happen in a hospital, a report is compiled locally, which is not a ministerial one, but there is no proper mechanism to share the lessons and so on beyond that hospital in some cases. Sometimes it might have been the group. Sometimes, if a more serious event is being examined, the results might be circulated to all of the hospital managers but nobody seems to know whether they even have time to look at these things when they do get them. The number of claims increases every year. Our question is, in the first instance, more directed at the health service rather than the State Claims Agency. We will just take an observation from the witnesses at this stage and we will then move on to the substance of the matter.

Mr. Patrick Lynch: By the time it becomes a claim, it is at the very end of a process so it may be a number of years on.

Chairman: Yes.

Mr. Patrick Lynch: On what we tried to illustrate in the report, we know already there are

big areas of risk in terms of harm that happens in the health service. It is not always medical negligence. It is not down to a clinician who is negligent but to a whole range of factors. In the report, I tried to set out for members some of the big areas of harm we know that have happened. Really then, we should be way ahead of it in terms of prevention. I then have a particular interest in when incidents happen. We know that a lot of people go the legal route for a number of reasons. One is, in particular, that they do not feel they have got the answers to what went wrong. I have met a number of patients who have been harmed. Last week I met a number of mothers who had lost babies in Portiuncula and the committee is aware of the larger review. Those three mothers are now involved in the improvement programme and are leading it. They told me that one of the reasons they went to court was that they did not get the information and were not told what had happened. They had very simple questions, namely, what happened, why did it happen and what had been done to fix it. They wanted to know that it was not going to happen to anyone else.

We work closely with the State Claims Agency, not only when it comes to claims but also in incident reporting. The national incident management system was established by the State Claims Agency but is owned by the public service. In the four years since its establishment, we have seen a 33% increase in the number of incidents reported. That is a good thing, although it may seem counter-intuitive, because any health system with a healthy patient safety culture will report incidents. That includes incidents where no harm has been caused at all, which may be negligible or which may have had no impact on the person involved. Good incident reporting leads to good learning at the outset. Any health system in the world encourages reporting because assuming that increased numbers are an indication of poorer safety takes from the culture of patient safety in hospitals, institutions or community services. That has been a big success. While the State Claims Agency can answer for itself, I think it would point to that as being very significant. It allows us to see the trends in incidents, whether at a local level in a hospital, community service or hospital group, or at national level. That is just one part of it.

Only 1% of the incidents reported are considered major or extreme. These are incidents that result in serious harm to people and, in some cases, people die as a result. We do not want to wait until a claim is lodged to get people to start looking at why it happened. With category 1 incidents, where that level of harm has occurred, there is a requirement to review them and understand what happened, not after two or three months but immediately. If another person coming in to that facility today will face a risk, that risk has to be sorted and the factors that led to the incident have to be identified. As I said in the paper, we have introduced an incident management framework. It is easy to talk about policy at national level but this framework provides a practical way for people to review incidents, get the learning and fix the problem there and then at local level. Some issues are more systemic but they may only be systemic in a hospital, rather than across a number of hospitals. All hospital groups and community health-care organisations now have serious incident management teams and quality and patient safety committees that review that information. At national level, we also look at that data and where there are significant systemic issues, we may have a national initiative to deal with it or we may hold national learning events to get the message out across the system.

The question of open disclosure has been the subject of discussions here as well. That is fundamental to a caring healthcare system because it not only provides the person harmed with the information he or she is entitled to and should have immediately, but is a lever for services in itself. If we tell patients what happened to them, we are also expected to tell them what we are doing to fix it. I have tried to give a bit more detail.

Chairman: I will ask a few short questions before the Deputies contribute. Mr. Lynch might not know this off the top of his head but perhaps he could send us a report on the number of category 1 incidents. While the numbers involved are small, these are the most catastrophic cases which result in major claims down the road. Mr. Lynch described the increase in reported incidents as a good thing and a reflection of a more proactive and open approach. I get that point. We are interested in the category 1 incidents, so I ask him to send us figures on those. What mechanisms are in place for immediate action when category 1 incidents occur?

Open disclosure is improving and people understand that. We were told at a previous meeting that when someone lodges a claim and names a consultant or an individual, the State Claims Agency is told to drop the names and substitute them with the HSE corporate. When we asked whether some people had caused or been involved in several serious incidents, the State Claims Agency's response, which called to mind a fireside chat, was that it had spotted one or two names cropping up a few times and referred such cases to the HSE asking why these individuals' names had popped up a few times. There did not seem to be any mechanism for dealing with that. Mr. Lynch has repeatedly mentioned learning but we have not seen learning based on what we have heard so far. What happens to people who make a mistake or do not know their job? Are they taken off duty for six months? Mr Lynch knows what I am getting at. He gets my question. That is what we want to hear.

I concur with Mr. Lynch on a final point. Many people end up taking claims, which I blame on HSE management rather than consultants, nurses or doctors. They may have been part of it but if something goes wrong in a hospital, the hospital manager or senior manager is eventually involved. It is a major issue. Group management then comes into it. There is a policy of not being open at that stage. The reason many people take cases is that they did not get answers in the first place. Some of the fault lies in the management structure of the HSE. Management probably thinks its first objective is to protect the HSE and the patients come second. Mr. Lynch has admitted to that culture and that people did not get answers when they asked questions. I am pleased to hear him say that.

Mr. Patrick Lynch: I deal with and talk to patients, and at my level I tend to meet people who have gone through some of the most difficult experiences in the health service. We have heard that again and again but that also happens internationally. To develop that culture of open disclosure, we need openness from the very outset.

The second question was about clinicians. When we look at incidents, we know that the majority of incidents cannot be laid at the feet of any one individual.

Chairman: I understand that.

Mr. Patrick Lynch: I know people do not like the idea of systems or systems failure but I have seen many review reports where a clinician is only the final point in a weak chain. They are the ones dealing with patients face-to-face but a whole series of things will have gone wrong before that point. As well as the joint senior governance forum between us and the State Claims Agency, we now have a senior clinical risk forum between the clinical indemnity scheme in the State Claims Agency and senior management in the HSE. We meet quarterly to look primarily at clinical risk. It is an opportunity for the State Claims Agency to escalate concerns it has raised locally to a national level. Its risk advisers deal with local hospitals but if it is concerned that issues are not being addressed or are not adequately responded to, there is a forum, quite apart from the interactions we have on a day-to-day basis, at which it can escalate those issues. Equally, if we see emerging risks, which the State Claims Agency as the indemnifier will need

to know about, there is a formal forum for that. Again, the State Claims Agency may want to comment on that.

Chairman: I will make one further comment before handing over to Deputy Connolly. Mr. Lynch mentioned the clinical risk forum. The former chief executive of the HSE, Mr. Tony O'Brien, was before this committee 14 months ago, shortly after the Vicky Phelan case became public, and we asked him about that. He was the chief executive and he said he was not aware of that issue at all. We then sought to examine the risk register of the HSE but that case was not on the risk register. Mr. Lynch is now stating that there is a clinical risk forum. That surprises us. That certainly was not the practice up until recently, although it might be the plan now. The chief executive indicated that he was not even aware of the case. Did the clinical risk register forum even exist at that stage?

Mr. Patrick Lynch: It had started prior to that. A new head of clinical risk in the State Claims Agency came in about that time. We had agreed at that time that we were going to-----

Chairman: Is clinical risk not a HSE function?

Mr. Patrick Lynch: It is a joint clinical risk forum. It is a partnership between two of us. The State Claims Agency has information that its gets as it comes through the claims process. The agency also has risk advisers. We have information from our side. Rather than the two agencies not talking to each other or bringing this intelligence together, we set up the clinical risk forum in order that we could escalate-----

Chairman: Clearly, people in the HSE were familiar with the cervical cancer issue because it was going before the High Court. Yet, there did not seem to be any communication within the HSE for that to be known at senior level.

Mr. Patrick Lynch: I think that was acknowledged.

Chairman: The problems start in the HSE. We want the HSE to take more ownership. The view seems to have been that since the agency handles all the cases and gets all the legal documents and discovery, the minute a case comes in it is over to the agency. This lack of communication has contributed to the lack of adequate learning. The HSE only learns when the case is over. If the chief executive only hears about these issues after a High Court case or on RTÉ's "Six One" news programme, then something is faulty in the system. Is Mr. Lynch a medical person?

Mr. Patrick Lynch: No, I am not a medic. I am national director for quality in the HSE. I am not a medic or a doctor.

Chairman: Mr. Lynch stated that he met several people. That was not in the medical context. What was the context?

Mr. Patrick Lynch: One of the things that my role includes is trying to improve the way we proactively prevent harm as well as improving how we respond when incidents happen. I get a lot of cases that may have gone on for years. Some of them may be historical and may date back ten or 12 years. Major damage has happened to people, much of which is not because of the original incident. It is about the years they felt they were battling the health service in order to get information. By the time cases come to me, they tend to involve people who have been very harmed. I hear the stories from them about their experiences.

We have made significant improvements in recent years. Ours is a large health service, with over 120,000 staff. We have millions of service interactions every year. In the midst of this there are still people who are harmed and who have tragic stories. I hear those stories all the time. It means that I am not removed from hearing about what actually happens to people. It is about improving that.

Chairman: I thank Mr. Lynch because he is saying what we have been saying. It is good to hear someone in the HSE voicing the same concerns that have made their way into the public arena. The fact that Mr. Lynch is voicing these concerns appears to be recognition of some of the issues about how cases were or were not dealt with over a period.

Deputy Connolly, Deputy Murphy, Deputy MacSharry and Deputy O'Connell are all down to speak. We will get everyone in.

Deputy Catherine Connolly: I welcome what Mr. Lynch says but it is not happening in practice. I hear about three aspects of this. The first is when an incident happens. I hear about learning from that incident. Then I hear about how cost-effective the State Claims Agency programme is at minimising the cost of dealing with something that happens inevitably. It could be something that should not happen. Many of the incidents and accidents should not have happened. Some were inevitable and some were not. There are different aspects to it.

The first aspect is the extraordinary liability. A sum of €3.15 billion is the liability for this year. Can Mr. Breen tease that out somewhat? He mentioned some of the reasons, including the Russell case and one or two others. Can he tease out why that figure is so large? What methodology was used to calculate it? Could it be more or could it be less?

Mr. Ciarán Breen: The answer to the last question is "Yes". It could be more in the future because the figure is dynamic. In other words, it is set at a point in time.

Deputy Catherine Connolly: At this point in time, what is it?

Mr. Ciarán Breen: The exact figure is €3.15 billion. That is over the two schemes. The figure for the clinical indemnity scheme is €2.33 billion.

Deputy Catherine Connolly: What does that include? What has the State Claims Agency put in there? For example, does it include women with cases relating to cervical tests?

Mr. Ciarán Breen: It includes every live case that we are managing.

Deputy Catherine Connolly: Is that every live case where proceedings have issued?

Mr. Ciarán Breen: No, it is every case that becomes a claim.

Deputy Catherine Connolly: Is that from the moment the agency is given a letter?

Mr. Ciarán Breen: Exactly. We do what an insurer would do or what a medical defence organisation would do. We value the claim based on what we believe will be the most likely outcome. As Deputies can imagine, in the context of any individual claim, the person's health may worsen. For example, the damages will go higher if the person is completely incapacitated.

Deputy Catherine Connolly: Many variables can lead to that figure changing. At any given point in time, that figure is the best estimate of the agency. Is that right?

Mr. Ciarán Breen: That is our best estimate, exactly.

Deputy Catherine Connolly: Why is it such a big figure? Why has there been such an increase from previous figures? It is going up all the time. Is that correct?

Mr. Ciarán Breen: Yes it is.

Deputy Catherine Connolly: Why is that?

Mr. Ciarán Breen: The reason it is going up is, as I mentioned to the Chairman, related to the Gill Russell case. That is highly significant.

Deputy Catherine Connolly: What value did the agency put on the consequences of that case?

Mr. Ciarán Breen: I will try to give the committee an idea. It meant approximately a 35% increase in any individual catastrophic injuries claim. It added 35% to the original calculation of damages.

Deputy Catherine Connolly: What was the value? Of the €3.15 billion, what value does the agency attribute to that case?

Mr. Ciarán Breen: I would not be able to isolate it exactly. Within the portfolio of clinical negligence cases we have a relatively significant number of cerebral palsy or catastrophic injury cases. Recently, one of those cases in total cost €32.5 million. That was an exceptional case and there were exceptional features associated with it, but it gives members an idea of the potential cost of any particular catastrophic injuries case. Given the number of those cases that we have, we can see why the liability is climbing. The fact of the matter is that in clinical negligence damages, settlements and awards are climbing. We expect that to happen in any event.

Deputy Catherine Connolly: Few cases go to court. Is that right? Only a small percentage of cases go to court.

Mr. Ciarán Breen: Approximately 3% go to court.

Deputy Catherine Connolly: Approximately 97% are settled either through mediation or on the steps of the court. Is that right?

Mr. Ciarán Breen: It can happen beforehand as well.

Deputy Catherine Connolly: I would expect the cost to go down. Let us leave aside the awards for the moment. What about the legal costs? We would expect them to go down. Is that not the case?

Mr. Ciarán Breen: Legal costs are problematical no matter what we do. We can control our legal costs. We do that through procurement, for example. We procured the services of the solicitors and barristers who work for us.

Deputy Catherine Connolly: I understand that. Mr. Breen has set that out before and has set out the improved methods in place.

Mr. Ciarán Breen: We cannot control the plaintiff's legal costs. A formal taxation system ultimately decides those levels. We are constantly challenging these. We have had some good successes over a period with these, but they remain problematical.

Deputy Catherine Connolly: I have waylaid Mr. Breen. I will come back to costs in a

moment. The State Claims Agency praises itself for the reduction. I see that on page 48 of the document and I will come to it.

The figure of €3.15 billion is because courts are giving higher awards in the small number of cases that go to court, but they set the precedent for the other cases. Are there higher awards? Is that what Mr. Breen is saying?

Mr. Ciarán Breen: That cost of care with inflation is going up. Committee members can imagine that is a significant element of any catastrophic injuries claim to compensate in future. General damages are staying at a level that is pretty much capped by the court at €450,000. The balance of all those claims comprises the cost of care to the point when one is settling, or past care, and then the cost of future care. In some of these cases one might need all-round nursing care; one might need two or three carers per day. All of that has to be costed and paid.

Deputy Catherine Connolly: Are all of those variables accounted for in this figure?

Mr. Ciarán Breen: Yes.

Deputy Catherine Connolly: Does Mr. Breen expect that figure to increase next year?

Mr. Ciarán Breen: Yes, absolutely.

Deputy Catherine Connolly: How high does Mr. Breen expect it to increase?

Mr. Ciarán Breen: It is hard to predict but if one looks at previous years, the percentage increase can be anything from 10% to 20%. For example, we could get at any point in time a mass action - a number of cases on the one point, which could come in suddenly. The valuation of those will add considerably to the estimation for the future.

Deputy Catherine Connolly: Page 47 outlines some of the mass actions in process.

Mr. Ciarán Breen: Yes.

Deputy Catherine Connolly: As a woman, one could take a social history from this. We have mother and baby homes, the Shine abuse case, thalidomide and symphysiotomy. Some university might take this up and examine how women were treated. For the purpose of this mass action, we have the lack of in-cell sanitation. I will come to those specifically because I want to ask questions. What value has the State Claims Agency put on those within that €3.15 billion?

Mr. Ciarán Breen: That particular amount in respect of those is contained in the €820 million we have against the general scheme, which is the employers' and public liability scheme.

Deputy Catherine Connolly: All of those.

Mr. Ciarán Breen: Yes.

Deputy Catherine Connolly: They are not part of the €3.15 billion.

Mr. Ciarán Breen: They are part of the overall €3.15 billion, but they are not part of the clinical indemnity scheme.

Deputy Catherine Connolly: I see.

Mr. Ciarán Breen: If the Deputy wants to look at the in-cell sanitation, the valuation we

have on that is roughly €100 million.

Deputy Catherine Connolly: Does Mr. Breen want to go through the rest of them while we are on it? I want to come back in and ask questions about them separately, but just overall-----

Mr. Ciarán Breen: It might be better if I did a note for the Deputy on those.

Deputy Catherine Connolly: Yes, that would be great. Mr. Breen will go through each mass action-----

Mr. Ciarán Breen: I will go through all of the mass actions.

Deputy Catherine Connolly: ----- Lariam, mother and baby homes, thalidomide, and give us a note on the agency's estimate for those costs.

Mr. Ciarán Breen: When we do that it is important that it be kept private to this committee because, as the Deputy can imagine, it is sensitive commercial information both in our hands and in the committee's hands.

Chairman: I am obliged to say that we cannot accept that because I, as Chairman, cannot guarantee it will be kept private if it is sent into the Oireachtas. I am being truthful. It is disappointing. If Mr. Breen provides a figure to Oireachtas Members, it will appear in the public domain thereafter. I do not want to compromise the agency's handling of cases by publishing a figure that could give claimants an indication of what it is willing to pay.

Mr. Ciarán Breen: That is my difficulty.

Chairman: It is my difficulty too in not being able to accept it because I do not want the Oireachtas to be a conduit for information getting into the public domain.

Deputy Catherine Connolly: Just on that-----

Chairman: I am sorry. We can talk about this.

Deputy Catherine Connolly: The Chairman can make a ruling. I am not interfering with a ruling.

Mr. Breen has given one global figure.

Mr. Ciarán Breen: Yes, that is just as an example.

Deputy Catherine Connolly: That is okay. Is there a difficulty giving global figures? If there is specifically, can we have an overall global figure?

Mr. Ciarán Breen: Yes, I could give, for example, an aggregate figure broken down by both schemes - the clinical indemnity scheme and general indemnity scheme - and that would-----

Deputy Catherine Connolly: Will that include the mass action?

Mr. Ciarán Breen: For the mass actions particularly, yes.

Deputy Catherine Connolly: Chairman-----

Chairman: We could go into private session for two or three minutes so that Mr. Breen could speak to us without supplying any documentation.

Deputy Catherine Connolly: We should carry on in public session for the moment because it is not about us. It is about knowledge and knowledge is empowerment to people.

Mr. Ciarán Breen: I can supply it in aggregate without public risk.

Deputy Catherine Connolly: For the public record, it can be supplied as Mr. Breen plans to do it. If we want to go into private session subsequently, that is fine by me. For the record, he is going to give that in public session.

Page 48 deals with legal cost claims settled in 2018. There were 556 cases negotiated and settled presumably. Is it the number of cost claims negotiated?

Mr. Ciarán Breen: That is the number of cost claims, yes.

Deputy Catherine Connolly: Are those negotiated and settled?

Mr. Ciarán Breen: Yes.

Deputy Catherine Connolly: The amount claimed was €90.6 million.

Mr. Ciarán Breen: Correct.

Deputy Catherine Connolly: The cost of claims was €53.7 million.

Mr. Ciarán Breen: It was a 41% saving on what was-----

Deputy Catherine Connolly: That is great and it looks great. How, in God's name, could there be such a difference between what is going in and the outcome? We have met Mr. Breen many times previously. It is great on paper that there is a reduction in the cost. How, in God's name, could the estimate of the bill going in be so out of touch?

Mr. Ciarán Breen: It might be helpful if I explained what we do. For example, if we get in a large claim for costs for more €1 million or a couple of million euro, if it is a tribunal or whatever, our legal cost accountants in the agency examine the files of the solicitor who is presenting that bill of costs.

Deputy Catherine Connolly: Presumably they go through it in detail.

Mr. Ciarán Breen: Exactly,-----

Deputy Catherine Connolly: I understand.

Mr. Ciarán Breen: ----- and we make reductions to it on time and-----

Deputy Catherine Connolly: I have heard that and I welcome that. It is very good. The State Claims Agency goes through it in minute detail and says, "That's way too high." How does the bill keep coming in overestimated?

Mr. Ciarán Breen: That is a question the Deputy would need to put to the Law Society or the lawyers because they are the people responsible for putting in those bills.

Deputy Catherine Connolly: In Mr. Breen's experience, has that aggregate Bill increased each year?

Mr. Ciarán Breen: We are finding that legal costs are always problematical. May I men-

tion one thing to this committee that deserves mention and it is problematical for us? There had been an agreement with the Bar Council going back a number of years ago - way back - that there would be payment for only one senior counsel in any action in the High Court.

Deputy Catherine Connolly: That is correct.

Mr. Ciarán Breen: We are finding now there is great divergence from that and that in fact we are being asked at taxation and even in court that we pay for two seniors in these cases. The difficulty we are having is that is increasing legal costs and it will continue. It is a big challenge for us. By the way, we have mentioned this at the cost of insurance working group, which as the Deputy probably knows, the Minister of State, Deputy D'Arcy is chairing. It has been a point of contention there as well.

Deputy Catherine Connolly: Of the 221 potential cervical smear test cases, how many cases are before the agency?

Mr. Ciarán Breen: We have 117 claims in total.

Deputy Catherine Connolly: Is that out of the 221?

Mr. Ciarán Breen: This is out of that. This is as of 27 June. There are three further potential claims. Seven cases have been settled, one of which is finalised. When we say finalised, we mean all costs have been agreed and paid. Just to mention, there are three cases which are listed for hearing in the High Court in October and mediation in one of those cases will take place this month.

Deputy Catherine Connolly: Within that is there a figure the agency has estimated?

Mr. Ciarán Breen: Yes, there is.

Deputy Catherine Connolly: Is Mr. Breen prepared to give us that figure?

Mr. Ciarán Breen: I will not give it. I will give it, obviously, when I write in with the general mass actions. It would be in the aggregate, but I would not give it for the particular cohort of cases. It may not make sense to give it because our estimate is based on, for example, things like non-disclosure of the audit results and the likely level of general damages coming from that, or the possibility, like we had in the Ruth Morrissey case, where we get a clinical negligence case, separate from the screening and so on. Many of these will be taken care of from the *ex gratia* scheme that has been set up and the tribunal when it is set up. It will change quite a bit; it is quite dynamic.

Deputy Catherine Connolly: The State Claims Agency is handling these cases now and Mr. Breen has given the figures. Separately there are other potential cases coming when the Royal College of Obstetricians and Gynaecologists-----

Mr. Ciarán Breen: That is correct.

Deputy Catherine Connolly: There is another-----

Mr. Ciarán Breen: Perhaps.

Deputy Catherine Connolly: These are the ones we know and there may be more coming.

Mr. Ciarán Breen: Yes.

Deputy Catherine Connolly: When is the Supreme Court appeal in the Ruth Morrissey case likely to be heard? Does Mr. Breen have any information on that?

Mr. Ciarán Breen: We do not. We are very much in the hands of the Supreme Court.

Deputy Catherine Connolly: Does the setting up of the tribunal have to wait for the Supreme Court? Does Mr. Breen have any information on that?

Mr. Ciarán Breen: No, we have no information concerning that. We are not involved in that.

Deputy Catherine Connolly: Has awaiting the Supreme Court case had an influence on the way the State Claims Agency deals with these cases?

Mr. Ciarán Breen: No. I would like to clarify to the committee that we have simply sought leave to appeal from the Supreme Court. We have to apply to the Supreme Court to take the appeal. It will make a decision on whether it will take it. It will then take the appeal if it decides to do so.

As far as these cases are concerned, we have a judgment of the High Court, which said what it said. That judgment is on appeal. Therefore, things are as they were before that High Court judgment.

Deputy Catherine Connolly: The tribunal that will take over will be a court in my opinion. Other than the fact that it will not be in public, it will have all the characteristics of a court and it will make an award. Will the agency still have a role in that?

Mr. Ciarán Breen: We will to an extent. If a woman was refused a payment in respect of non-disclosure under the *ex gratia* scheme, for example, she might want to include that as an aspect of her claim before the tribunal. Equally, the tribunal will hear a claim by the woman against the laboratory, or laboratories if there are two smears.

Deputy Catherine Connolly: How much money has been allocated for the *ex gratia* scheme?

Mr. Ciarán Breen: That is probably a question for the Department, which is operating it.

Deputy Catherine Connolly: I wish to go back to health and prevention. I do not like to be parochial about anything but I will use the example of Galway to generalise. I thank the Chair and the secretariat of the Committee of Public Accounts. I sought all the external reviews in University Hospital Galway, UHG, over a ten-year period. The purpose of that was to establish the number carried out, the recommendations, the costs and the changes that could be made. This responsibility fully falls on Mr. Lynch. We learned from the language he has used.

An extraordinary letter came back. I have mentioned it loads of times. It stated that UHG did not have a system to record the number and cost of all external reviews. That letter was dated 5 November. On 18 December, it was followed by another, advising following a further search that the hospital did not have an electronic system to record the number and associated cost of all external reviews and investigations. Finally, on 25 April, the committee found out that a manual search showed there were 13 external reviews concerning the hospital between 2010 and 2018, at a cost of €246,883. That seems like good value for money. I will follow up on that. A figure of 13 external reviews is not a great answer. It does not show trust.

Secondly, I refer to a visit to the hospital. I have the greatest respect for public nursing and public medicine. I refer particularly to units five and six of Merlin Park University Hospital. Again, this concerns management pre-empting and learning from claims. I refer to a report of a visit by the Health Information and Quality Authority, HIQA, in December and January. I will not quote it because my time is limited. During the inspection, the inspectorate sought written assurance that the water supply was safe for use, but this was not provided. I remind witnesses that this is a hospital. The report refers to inadequate signage relating to water. I will not go into it. I have the greatest respect for both units. Like other members, I have made so many representations to get people in there. I have only mentioned one of the factors that have been highlighted. There are many more. It is no reflection on the staff; it is a reflection on management. It seems to have failed to act.

Separate to that is another file I have mentioned many times. This is a file of letters from consultants who have written to us about the extraordinarily long waiting list. This is to do with money, not health. It is to do with the cost to the public purse that eventually arises when people are forced to sue or when people die prematurely and legal actions result. One correspondent told us that it is intolerable and that it is a regional crisis too big for management to address. I can hand any of this to the witnesses. The correspondent describes a catastrophic waiting list of almost 2,000 patients, which has been accumulating since the shortfall in infrastructure. That is not to mention the pain and suffering caused.

I will stick with that bad word, “money”. People end up suffering more, which on top of all their pain and suffering costs the State more in the end, and we end up facing cases. I refer to risk assessment, acting on risk and identifying the problems on the ground. Capacity is the first item on the risk register for this hospital.

Mr. Patrick Lynch: I cannot answer for the totality of the health service. I am sorry.

Deputy Catherine Connolly: Mr. Lynch might address those general-----

Mr. Patrick Lynch: Starting more generally with risk, without getting into the specific concerns of Galway-----

Deputy Catherine Connolly: These things can happen. There can be a problem with water or a temporary waiting list. However when it goes on and is not identified by management, is that not a problem?

Mr. Patrick Lynch: Absolutely. The Deputy asked about risk and the assessment of risk. We know there is not enough money to do everything. The point of risk management is to assess where the biggest risks lie. In my world, that is where those risks impact directly on patient safety.

Deputy Catherine Connolly: Mr. Lynch is in charge of quality assurance. If there is a question mark over water - the most fundamental thing - in a hospital, surely that is a red alert?

Mr. Patrick Lynch: It is if it reaches me. I was not aware of that particular issue.

Deputy Catherine Connolly: What is wrong with the process that it has not been dealt with and highlighted?

Mr. Patrick Lynch: Without trying to absolve myself of responsibility, we have hundreds of community centres. Having heard that, I am concerned. I do not have the answer. I do not

know what is happening in Galway. Certainly if HIQA has raised that and there has not been a local response to deal with it-----

Deputy Catherine Connolly: Then there is a problem. There are two questions. First, was there a response after the HIQA inspection? What about the response previously when the problem was highlighted by staff? Why did it take HIQA? If that is the situation in one hospital it raises questions, notwithstanding all the lovely stuff I read here. I note the special committee, and I see the doctor that chaired the inquiry into Ms Savita Halappanavar's death is on that committee. I welcome all of that. Sometimes I read and read and say "Good Lord". There are so many cases where risk assessment is simply not working. I am only highlighting a tiny bit.

Mr. Patrick Lynch: As I said earlier, millions of people are served every year. That does not take away from the fact that people are harmed. It is what we do. We cannot forget the individuals in the-----

Deputy Catherine Connolly: I take more comfort from the fact that Mr. Lynch is going to hear about this than I do from the general situation. I am allergic to people having to suffer as collateral damage for the greater glory. I know Mr. Lynch is not saying that.

Mr. Patrick Lynch: One of the things I value about my job, which as a national role can be difficult sometimes, is that I meet people who are affected by what happens in healthcare. I am not divorced from the reality of what happens. I will not walk out of the room and forget the things the Deputy has outlined.

Deputy Catherine Connolly: I thank Mr. Lynch. Is my time nearly up?

Chairman: There is time for a final question.

Deputy Catherine Connolly: I want to go back to pages 46 and 47, which concern mass actions, with Mr. Breen. We talk about a litigious society. I have an allergy to several things, including that idea. Nobody featured on these pages is taking a case without cause. Mr. Breen will agree with that. One of these actions concerns a lack of in-cell sanitation, which is a State responsibility. Now the public purse is brought into it because of the State's inaction. We have a list of cases, such as the anti-malaria drug Lariam and the mother and baby homes. I understand that Mr. Breen will come back to the committee secretariat on these cases.

In addition, there is the incidence of prison-based tuberculosis. This question is also addressed to Mr. Lynch from the HSE. I know of a case in Galway where a patient with tuberculosis was admitted. In the paper record, which I followed up, everything was perfect, the patient was isolated and all the protocols implemented, but in fact that did not happen, the patient was left and other patients and staff were exposed to tuberculosis, so this will give rise to cases against the State. This was completely preventable.

I have questions for Mr. Breen about those living with the effects of thalidomide. There are 36 active cases. On a previous occasion we went through a Government scheme for the people involved and the contributions from the German company. Is it correct there are a further 36 cases outside of that?

Mr. Ciarán Breen: Yes.

Deputy Catherine Connolly: Is it correct that none of those cases has been resolved?.

Mr. Ciarán Breen: That is not quite the case.

Deputy Catherine Connolly: I am looking at the report

Mr. Ciarán Breen: They stand there all right. Six of the 36 cases accepted and received an amount of €62,500, which was a payment made to them in advance of the drop dead date in August 2013 concerning the German law.

Deputy Catherine Connolly: I might use a different word than the drop dead date. To recap, the six people received €62,500 each, but those six people are included in the figure of 36 cases.

Mr. Ciarán Breen: That is correct.

Deputy Catherine Connolly: Since 2018, the State Claims Agency, SCA, has received two more cases, bringing the figure up to 38. The next column states that none of the cases is resolved.

Mr. Ciarán Breen: None of the cases is resolved.

Deputy Catherine Connolly: When were the first proceedings in those cases issued?

Mr. Ciarán Breen: I do not have the exact date of the proceedings with me but they certainly go back a number of years.

Deputy Catherine Connolly: Roughly how many years?

Mr. Ciarán Breen: I would say some of them possibly go back eight or nine years.

Deputy Catherine Connolly: May I request a note on the range of the years to be sent to the committee secretariat?

Mr. Ciarán Breen: Yes.

Deputy Catherine Connolly: Is it the case that the State Claims Agency is challenging the cases on the basis that not all were suffering from the effects of thalidomide?

Mr. Ciarán Breen: There is a more fundament point, which is there is a potential Statute of Limitations point in all of the cases.

Deputy Catherine Connolly: The Government is pressing the Statute of Limitations.

Mr. Ciarán Breen: We, the State Claims Agency, have no choice but to do that because we have to treat every plaintiff equally, no matter who they are. These are not our terms but the terms used by the solicitor for the thalidomide survivors, and these are what are called acknowledged and unacknowledged survivors. The unacknowledged survivors are those who are in dispute as to whether the foundation deems them to have suffered from thalidomide in the way they certify them.

Deputy Catherine Connolly: I see that the cases are being managed by a judge of the High Court.

Mr. Ciarán Breen: That is correct.

Deputy Catherine Connolly: When will those cases be resolved in one way or another?

Mr. Ciarán Breen: It is difficult to know. The judge recently said that he was very anxious

that these cases would move on very quickly. Unfortunately, in the interim period, discovery has been sought and that discovery is so large that if it stays as it is, it will only add to the length of these cases, so the judge who is managing the case is handling that discovery order and trying to confine it as best he can.

Deputy Catherine Connolly: Is that the plaintiff's discovery order?

Mr. Ciarán Breen: There is discovery going both ways.

Deputy Catherine Connolly: It is the Government plus the plaintiff is looking for it.

Mr. Ciarán Breen: It is not just us. Let us remember that Grünenthal and TP Whelehan Son and Co., who were the distributor, are involved in these cases as co-defendants.

Deputy Catherine Connolly: Does Mr. Breen see the line about the Shine abuse case where the State Claims Agency has reached an agreement in principle?

Mr. Ciarán Breen: Yes.

Deputy Catherine Connolly: There is no liability but that is in consideration of the State bearing its own legal costs. Why is that the case, if there is no liability, and what are the costs?

Mr. Ciarán Breen: I do not have the exact figure for costs with me. The costs are considerable. The issue is this-----

Deputy Catherine Connolly: Will Mr. Breen give the figure for costs to the committee secretariat?

Mr. Ciarán Breen: Yes, we will give a note on that. The issue in the particular case is that there is an insurer involved who is offering an indemnity to the State in respect of the State agreeing to bear its costs. If the State does not agree to bear its costs, the company will not give the indemnity. There is a calculation to be made by us at that time as to whether effectively a bird in the hand is worth two in the bush and whether we should get out on that basis and take that calculated risk of not exposing the State to a much greater financial risk, and it could be a much greater financial risk.

Deputy Catherine Connolly: What percentage is the cost of what is being agreed for those who suffered?

Mr. Ciarán Breen: The cases have not been settled. This is the point. We are being offered an indemnity on terms whereby if the State is agreeable to bearing the costs to date, the company will settle not just the cases which are in being but even any future cases that might arise.

Deputy Catherine Connolly: Okay, I see. My very last question concerns lack of in-cell sanitation. The Supreme Court judgment will have a very significant bearing on the remaining cases. Is it the case that 77 of these cases were resolved in December 2018, but the State Claims Agency is still awaiting on the Supreme Court judgment?

Mr. Ciarán Breen: We are still awaiting the Supreme Court decision.

Deputy Catherine Connolly: Does Mr. Breen have a date?

Mr. Ciarán Breen: We are hopeful that it might be before the end of July.

Chairman: I call Deputy Murphy.

Deputy Catherine Murphy: I wish to raise the thalidomide cases. Obviously there is still activity in the courts about these cases. In respect of proven cases and the disputes, how does the profile of Ireland compare with other countries? Does the State Claims Agency keep an eye on that? Does that have a bearing on how one decides to handle similar claims?

Mr. Ciarán Breen: Back in 2010, the then Minister for Health and Children asked me if I would produce a report on thalidomide generally, which I did, which was a comparative look on a cross-jurisdictional basis of how persons affected by thalidomide were treated by different governments in different countries. That report is on the website of the Department of Health. There have been significant issues in these cases in other jurisdictions. For example, because of a particular peculiarity, Diageo is involved in the UK cases. There was a very big settlement done many years ago in those cases. Diageo is clearly not involved in Ireland. There are differences between jurisdictions.

Deputy Catherine Murphy: The contingent liability has increased quite considerably. Does the SCA have a profile of roughly how long it takes to settle? I know it can be a case of how long is a piece of string, especially when one is depending on the courts. Departments and Government agencies ultimately have to fund the settlements. I presume that it is appropriate to the body concerned. For example, if it is in the health service, it will be the HSE. If it is a case in the Department of Transport, Tourism and Sport, it will be that Department that ultimately settles. Does the SCA tell them how much they have to settle for?

Mr. Ciarán Breen: We settle and the Department reimburses us.

Deputy Catherine Murphy: In terms of the accuracy of their own budgets and how they capture this, how does that happen? Does the SCA give them a future assessment? What way does it work?

Mr. Ciarán Breen: Yes, we do. We have an actuarial firm which carries out a very detailed look at our current data. The actuaries look at our settlement patterns, for example, things like the period from incident creation date to finalisation of claims. They have their own logarithms which tell them what they think the likely budget is in any particular year on a global basis. Obviously, the really big one here is the one for the HSE. We furnish that to the HSE on an annual basis. We say, based on what our actuaries tell us, what amount we think the HSE should set aside in terms of what will be required.

Deputy Catherine Murphy: With regard to the list of actions where there are groups of people affected in the same way - mass action as opposed to class actions - how many would be grouped if it was to be described as a mass action? How many claims would there be if they were to be put into a category like that?

Mr. Ciarán Breen: It will depend. In other words, what normally happens is that we will either get one claim or maybe a dozen will come in together.

Deputy Catherine Murphy: If there was a dozen-----

Mr. Ciarán Breen: We would say that is a mass action.

Deputy Catherine Murphy: What about the list the agency has given us?

Mr. Ciarán Breen: That is a good indication of the numbers pleading similar things.

Deputy Catherine Murphy: Are there many more like that?

Mr. Ciarán Breen: We have set out in the report exactly what they are.

Deputy Catherine Murphy: Are the ones in the report the only ones Mr. Breen would describe in that way?

Mr. Ciarán Breen: Some new ones have come along in the meantime.

Deputy Catherine Murphy: What would the new ones be?

Mr. Ciarán Breen: For example, there are 26 cases in regard to transvaginal implants. There is sodium valproate, which is a potential mass action. Where there is another abuser, there may be a set of claims which attach to him. We have Gardasil, which is the HPV vaccine, and we have Aulin, which is another medicinal product.

Deputy Catherine Murphy: In regard to the Air Corps, the agency has 21 active claims. Mr. Breen has not mentioned that.

Mr. Ciarán Breen: I am sorry, I did not mean to leave them out. The Deputy is right that we have a number of cases from the Air Corps in regard to alleged exposure to chemicals.

Deputy Catherine Murphy: The State Claims Agency would have had an involvement in risk management. I received a reply to a parliamentary question from the Minister the State, which stated:

I am advised by the State Claims Agency that it has a statutory remit under the National Treasury Management Agency (Amendment) Act 2000 to provide risk management advices to Delegated State Authorities. ... [The] State Claims Agency conducted a number of Health & Safety Management System Defence Forces audits within the Air Corps between the years 2006 – 2015. The Reports are authored by the State Claims Agency and are confidential between the Agency and their Client [which is the Department of Defence].

What would the agency have looked at when it went out to do those assessments? Would it have looked at the paperwork, and would it have gone down to the level of looking at what equipment people are wearing to protect them or the environment they are working in?

Mr. Ciarán Breen: The Defence Forces has put a safety management system in place, and this applies to all branches of the Defence Forces. We have worked very closely with them in that regard. On risk, our people on the ground, when they carry out audits, go onsite and they meet with the person who would have responsibility for safety and health in the particular barracks, battalion or otherwise. They carry out audits of things like, for example, what is being done about lifting and the safety standards in respect of that.

Deputy Catherine Murphy: Would it have looked at chemicals, for example, where chemicals are sited or how they are handled? Would it have looked at the kind of things that would expose people to risk?

Mr. Ciarán Breen: I want to explain the position in regard to the Air Corps because I believe it might be helpful in answering specifically what happened. We started our audits there in 2006. The particular exposure we are looking at in respect of the chemicals in the Air Corps is from 1972 to 2007. In 2007, the particular workshop which is associated with the alleged exposure was changed to a state-of-the-art facility. At no time-----

Chairman: Sorry to interrupt. A vote has been called in the Chamber on a particular amendment.

Deputy Catherine Murphy: I will stay here.

Chairman: Thank you.

Mr. Ciarán Breen: At no time during those audits and reviews was anything specifically brought to our attention about the historical exposure, if there was one, that might have been there and how that was handled. We were very assured by the fact it was now a state-of-the-art facility.

Deputy Catherine Murphy: The agency would not have looked at-----

Mr. Ciarán Breen: The exposure long predated even our establishment.

Deputy Catherine Murphy: I have been given a document, which I might have mentioned before, on the extraordinary age profile of people who have died in the Air Corps. The Air Corps is not a big employer and there have been 72 deaths at pre-retirement age, some of them very young. Of the 72, 14 or 15 are by suicide but others are in particular categories, such as cancers and cardiac issues. It seems a very dangerous place to work - I am sorry, I do not really mean that, but it seems to be a place where an abnormal number of people die prematurely. That would have jumped out to me as something that would make me question the risk. As Mr. Breen said, it goes back to a time prior to when the agency was doing its assessment. I understand there were no registers of this particular chemical available.

Mr. Ciarán Breen: I am not sure. Is Mr. Kirwin in a position to comment on that?

Mr. Pat Kirwin: Not specifically. The chemicals that are discussed in the statement of claim are a wide range of chemicals, basically organic lubricants and degreasers. I do not have that information or the Deputy would need to be more specific about the particular chemical she is talking about.

Deputy Catherine Murphy: I have the names of the-----

Mr. Pat Kirwin: I know that when we audited there, we were satisfied that, for the chemicals that were in the workshops - I am talking in a general sense - there where material safety data sheets available for any chemical that we sampled. That would suggest they were registered in some way.

Deputy Catherine Murphy: I am trying to find out how to mitigate risk and I am using this as an example. What I am hearing is that there still is not, or there was not in recent years, use of protective clothing and availability of a particular type of protective clothing when handling these materials. Would the State Claims Agency have looked at that, given it would have known the profile? Is the agency satisfied the risk assessment is mitigating this risk?

Mr. Pat Kirwin: I head up the enterprise risk unit that would have carried out the audits. When we go out, we look at the systems that are in place. We are back to that word, "systems", again. We sample as we go out. They are snapshots. One is only there for a particular day. We talked to the staff and the members of the Defence Forces who were available in the workshop. They are highly-trained, technical people. We came across no evidence of procedures or practices being carried out to anything other than the appropriate standards at that time.

Deputy Catherine Murphy: I understand that the Air Corps does not carry out mandatory risk assessments. Does the SCA not instruct particular organisations to carry out mandatory risk assessments? Is that not essential?

Mr. Pat Kirwin: Absolutely. It is not only essential from the point of view of the agency's expectations, but it is also a legal requirement under the Safety, Health and Welfare at Work Act 2005. Again, that was not our experience. Ultimately the Defence Forces are responsible for the risks. When we originally worked with the Defence Forces they had risk assessments in place. In organisations as complex as the Defence Forces, the Naval Service, the Air Corps, and the Army, we are talking about thousands of different types of risk assessments. I cannot vouch for any particular risk assessment but, in general, the Defence Forces do have risk assessments in place.

Deputy Catherine Murphy: Are they mandatory?

Mr. Pat Kirwin: It is mandatory under Irish legislation for appropriate risk assessments to be in place. It is also absolutely mandatory as part of the occupational health and safety management system the Defence Forces have had in place for some time.

Deputy Catherine Murphy: What does the SCA do? Does it visit, carry out the assessment, and give the Defence Forces a certificate? Is there a certificate for each year? Were there years in which they were not given a clean bill of health?

Mr. Pat Kirwin: There are approximately 56 units in the Defence Forces. We cannot possibly audit every single one every year. We carried out approximately 100 audits between 2006 and 2015. An audit might be themed, that is, we might be looking at particular themes. For example, we may be worried about appropriate training documentation because that is something we have learned about from dealing with claims. We may have seen a number of incidents of a given type. For example, we may have seen particular injuries arising from vehicle crashes. For that reason we might look at that aspect of the system in particular. In general we look at roles and responsibilities, the structures that are in place, and the types of risk assessments and documentation that are in place.

Deputy Catherine Murphy: Does the SCA work with the Health and Safety Authority on any of this?

Mr. Pat Kirwin: No. We have worked collaboratively with the Health and Safety Authority to produce guidelines in respect of, for example, schools, critical incidents and stress management. We have a different role in this area however. It is a policing authority and enforces legislation. On the specific issue of chemicals in the Air Corps, we were involved with the Health and Safety Authority in the sense that, after going in and carrying out one of its inspections, it made some recommendations and advised the Defence Forces to consult with us in addressing those recommendations.

Deputy Catherine Murphy: Did the Health and Safety Authority not threaten legal action over shortcomings in the use of chemicals?

Mr. Pat Kirwin: I am not-----

Deputy Catherine Murphy: It is my understanding that it did.

Mr. Pat Kirwin: I am not exactly sure and I would not like to speak on the Health and

Safety Authority's behalf. I do know that it audited the Air Corps and raised issues. I am not sure of the level at which they were raised. We were active in helping the Defence Forces to address those issues to the satisfaction of the Health and Safety Authority.

Deputy Catherine Murphy: It is my understanding that the authority did threaten legal action. It seems extraordinary that one arm of the State may be doing so while another is giving the Air Corps a clean bill of health with regard to risk. That does not stack up in terms of mitigating risk into the future.

Mr. Pat Kirwin: Again, I would have to know the specific details to comment but statutory legislation underpins the health and safety of our employees across the State sector and, indeed, all employees within the State. With regard to chemical safety in particular, there is a complex suite of legislation in place. There is legislation from 2001, 2007, 2010 and, most recently, 2018. In addition, there is guidance in that area. It moves. In other words-----

Deputy Catherine Murphy: The SCA is not expert in all of this, so does it have to bring in people who are experts in a given area?

Mr. Pat Kirwin: We are experts in this area. Members of our enterprise risk management team have backgrounds in engineering, science, public health, and nursing. Most have, at a minimum, a degree level qualification. Many have masters and some have doctorates. They are experts in various areas. We have expertise right across the main areas one would expect to encounter in dealing with employee and public safety. We are a very expert unit. We publish national and international guidelines. We are recognised as such.

Deputy Catherine Murphy: How many people work in Mr. Kirwin's unit?

Mr. Pat Kirwin: We have 20 members of staff.

Deputy Catherine Murphy: Most of these people have professional qualifications. Are there administrative staff included in that 20?

Mr. Pat Kirwin: There may be two administrative staff members included in that 20. The others have worked at very senior levels in the Defence Forces, the Health and Safety Authority, and other semi-State and private organisations nationwide, usually in some area of environmental or public health and safety.

Deputy Catherine Murphy: Is there a bonus system or anything of that nature in the agency for mitigating risks?

Mr. Ciarán Breen: Is the Deputy asking whether we operate such a scheme for State authorities?

Deputy Catherine Murphy: Yes.

Mr. Ciarán Breen: No, we do not. There is no kind of risk-pooling approach in the public service. That does not happen. Every year, however, we ourselves recognise individual State authorities in a ceremony we hold at one point in the year. We give certificates to authorities that have done something very particular to mitigate their risk, and which produce documentation to prove it, at an annual event.

Deputy Catherine Murphy: We saw some evidence of that the last time the SCA was before the committee. We could see serious progress with regard to slips and falls. That is to

be commended. I am still not entirely clear what the SCA looks at when it goes out to such organisations to look at issues such as the handling of serious chemicals. Does it look at whether adequate equipment, such as gloves or clothing, is provided to reduce the risks? Does it evaluate risk at that level?

Mr. Pat Kirwin: I fully understand that it is quite difficult to understand. There are thousands of risks in, for example, a large facility such as that of the Air Corps in Baldonnel. We have to be guided by what we see, for example, reported on the national incident management system. At no time did we see any significant level of reported incidents relating to chemicals. In other words, it was not flagged to us as a hotspot to investigate. Nonetheless, because, as I said, chemical safety is important in workshops, it is something we test. I use the word “test”. In other words, we sample. On the day, we talk to people, we look at how the chemicals are stored, and we ensure the appropriate documentation is in place.

Perhaps I should give an alternative example. We did a very large job with the Defence Forces with regard to the guarding of machinery. We did so because there had been incidents of people being seriously injured because guards were not in place. We looked at a series of workshops. In that case, some workshops were closed down and some machines had to be retrofitted. That investigation proceeded machine by machine. We looked at it in detail because we, as a claims agency, saw it as a definite source of litigation risk. The Deputy talked about the Health and Safety Authority. It will be guided by the statutory legislation. We obviously consider what we are particularly concerned about that could lead to claims. One of the indicators is whether incidents are being reported.

Deputy Catherine Murphy: On those cases, are they ongoing, settled or in dispute?

Mr. Ciarán Breen: They are ongoing. One is in the Court of Appeal. A date has been given for the year after next because there is a glut of appeals in that court. Others are awaiting an important decision by the Supreme Court on a discovery issue.

Deputy Catherine Murphy: When mediation is possible for a group, but not necessarily the group in question, how does it happen? If there are a dozen cases coming in on something or other, does the agency wait for one case to be proven in the court? What approach does the agency take?

Mr. Ciarán Breen: We do not have what in the United States and certain other jurisdictions is called class action, whereby a whole series of cases is taken at the one time, or for the group. Here a lead case will be chosen by a plaintiff’s solicitor, and it will be agreed with us that it will be the lead case. We engage on that case in terms of our separate investigations. One can imagine that we are preoccupied with the question of whether the State has a liability. Where it does, we obviously want to settle at the earliest possible opportunity. One of the vehicles we might use for that is mediation, if it comes to that. Having settled one, we would be of the view that unless the other cases could be differentiated in some way, we should seek to settle them through incurring the best possible cost and as quickly as we could.

Deputy Catherine Murphy: On CervicalCheck, a couple of years ago we saw Vicky Phelan going public. If she had not done so, would others have realised they could have been affected in the same way? Is that used as a means of mitigating against damage done to individuals? I am referring to settling with what is known as a gagging order.

Mr. Ciarán Breen: As the Deputy knows, we were not party to any of that. That case was

settled by the particular laboratory.

Deputy Catherine Murphy: Yes.

Mr. Ciarán Breen: We were only involved peripherally in relation to the non-disclosure part of the case. I understand the point the Deputy is making, however. We talked on the last occasion I was here about how the other women found out. That is a different issue.

Deputy Catherine Murphy: Yes.

My last question relates to something that came up by way of correspondence. Somebody had written to us and advised us about the prison facilities or detention facilities. It might have been in Garda stations. We were talking about it earlier. I cannot remember the details.

Chairman: It was about glass blocks in the prison and Garda stations.

Deputy Catherine Murphy: Yes. The correspondence pointed out the risk, or potential risk, in design. Is this something the agency would look out for in terms of mitigating against risk, or does it give advice? It is a matter of trying to make sure claims are not presented in the future.

Mr. Ciarán Breen: Sure

Deputy Catherine Murphy: It was very helpful that this person pointed out that there was risk by virtue of the design of the facility. Does the State Claims Agency have any role at all, even in giving advice, where people are particularly exposed?

Mr. Ciarán Breen: Yes, if there were a risk to human health in any way arising from something such as design and it became obvious to us on a visit to the premises or, better still, if we had on our national incident management system, even one incident that might have been a safety incident, that would trigger a certain reaction from us in terms of how we would consider it and the advices we would give. We do that on a constant basis.

Deputy Catherine Murphy: We may well give the agency the information we got.

Mr. Ciarán Breen: We would be grateful to receive it.

Deputy Kate O'Connell: Bearing in mind the mass actions, particularly regarding thalidomide, Pandemrix and the vaccine that came out, who is responsible for the learnings from such historic events? I was trying to look up these events but I could not. The thalidomide issue arose around 1958. I had not time to look it up. The HPRA is now the body that authorises medicines in this country. When did it start? Was it the 1990s?

Mr. Ciarán Breen: It was not established around the time of the thalidomide issue. It was much later.

Deputy Kate O'Connell: How were drugs authorised before the HPRA was established? Hopefully Mr. Breen will know that answer. Did we just go with the UK?

Mr. Ciarán Breen: There was a drug advisory board, I recollect. It had responsibility for examining how drugs were certified for use in Ireland, for example, but even that was after the thalidomide issue.

Deputy Kate O'Connell: Before the thalidomide matter, there must have been something.

Mr. Ciarán Breen: My recollection is that there was no single body that had authority. It was largely based on the view that what was available in the UK would be available here.

Deputy Kate O’Connell: The drugs advisory board was essentially a precursor to the HPRA.

Mr. Ciarán Breen: Yes.

Deputy Kate O’Connell: The latter has international standing. What have we learned from the time in question, particularly regarding thalidomide? I am a chemist by profession so I am aware of how the thalidomide issue arose. The isomer changed and had a profoundly different effect. The regulations and hoops companies have to go through were really reinforced as a result of the thalidomide issue. The Swiss cheese theory, of things going through the gap, was mentioned. It opened a whole new regulatory process, which was very exciting for people like me but not very exciting for most people. That gives rise to greater safety. What have we learned from the thalidomide issue that will ensure we do not let the same thing happen again? I acknowledge it arose in a different era. I am referring, in particular, to the recent legislation introduced by the Minister for Health on access to medicinal cannabis, with the expansion of the compassionate access programme. Is the agency considering potential risks to the State seeing that it seems to have circumvented the HPRA’s regulatory rules? Are we opening ourselves wide to another situation in the future if we circumvent the processes put in place? “Circumvent” is probably a loose word. I am referring to where processes might not necessarily be abided by 100%, bearing in mind what arose from the thalidomide issue.

Mr. Ciarán Breen: In answer to the Deputy’s question, our handling of thalidomide, Aulin and Pandemrix is by way of a special delegation order because we actually have excluded from our remit product-liability-type claims. It is only when they become claims-----

Deputy Kate O’Connell: That it hits the agency.

Mr. Ciarán Breen: -----a large number of them, that they come to us, so it is really the Department that the Deputy should speak to about the lessons learned and so on.

Deputy Kate O’Connell: Aulin was available in Ireland but not in the UK. I was actually working in the UK at the time. Are the learnings a matter for the Department?

Mr. Ciarán Breen: Yes

Deputy Kate O’Connell: It was well documented in the UK that people were not to be on Aulin, and it was taken off. We seem to have been so far behind the UK in terms of our learnings. I am assuming Mr. Breen’s answer will be the same as with thalidomide.

Mr. Ciarán Breen: I am sorry, but it is.

Deputy Kate O’Connell: It is the same answer but Mr. Breen is still the person who has to come in here and answer the questions as to why there is so much money being spent.

Mr. Ciarán Breen: Yes.

Deputy Kate O’Connell: In the case of Pandemrix, the emergency, the epidemic or potential epidemic – I believe it was swine flu – the State took on the liability associated with the drug. It had not gone through the trial process. Does the Department have to provide the learning from that experience?

Mr. Ciarán Breen: We obviously would contribute to that by reference to what we see and find. We would work with the Department and say these are the things that happened. The World Health Organization, WHO, called the pandemic on swine flu. There was an urgent search for a vaccine and the only two providers were Baxter with Celvapan and GlaxoSmith-Kline with Pandemrix. The issue for Ireland at the time, as I recall and as I have seen in the litigation, was how would we get our hands on sufficient quantities of a vaccine so that we would not have a pandemic in Ireland, and particularly for the more vulnerable categories of persons one would want to vaccinate.

Deputy Kate O'Connell: The best effect of not going to the trial process is the cost. The question is about the effect on the children's lives and those of their families. Turning to claims against the State, 3% of people go to court.

Mr. Ciarán Breen: Yes.

Deputy Kate O'Connell: The proportion of claims that are related to obstetrics and gynaecology is massive. Is it 60%?

Mr. Ciarán Breen: It is 50%-----

Deputy Kate O'Connell: So, half of all-----

Mr. Ciarán Breen: -----of the total transactional pay in any particular year. In terms of the estimated liability, it is 74% and 25% in volume terms.

Deputy Kate O'Connell: Does the 50% encompassing obstetrics and gynaecology cover the claims of the mother and baby or is that figure only for mothers' claims?

Mr. Ciarán Breen: Most of the claims procedure cases are maternity and obstetrics related. There potentially are two aspects to the claim. There is looking after the infant and that is the catastrophic injury claim that costs what it does. There is also often the trauma to the mother as a result of the birth.

Deputy Kate O'Connell: Does the 50% for obstetrics and gynaecology cover the babies and the mothers?

Mr. Ciarán Breen: It does.

Deputy Kate O'Connell: What I am getting at is why people do not go to court. I am all for mediation but are a disproportionate amount of affected women not going to court? Mr. Kelly and Mr. Lynch spoke compassionately earlier but the reality is that if a woman suffers damage during a birth that has aspects of negligence, if she was to go to court, like the 221 women who were misdiagnosed in the CervicalCheck case, she would have to go to court and prove she was doubly incontinent and not able to have sex. To go into court and detail that publicly is something no one would ever want to do. Is the system weighted against women? I am trying not to be sexist but if a man hurt his knee, that would not be overly private. Think of a woman who has to go court and say she had fourth-degree tears and has had to wear a nappy since she was 30 and will have to keep doing so in the future. That is not an attractive place to seek justice as a woman. Is the amount of women with complaints related to obstetrics and gynaecology particularly low?

Mr. Ciarán Breen: It is not. We meet those cases all of the time and we get them. Thankfully, women are not afraid to advance those cases, nor should they be.

Deputy Kate O’Connell: That is a very general statement. I have spoken to women who have specifically said that they would never go to the court process because they do not want their wider family or the wider community knowing the intimate details of their lives as a result of medical negligence.

Mr. Ciarán Breen: We see a volume of those cases. Perhaps there are women as the Deputy has described but remember that-----

Deputy Kate O’Connell: There are such women. There is no “perhaps” about it.

Mr. Ciarán Breen: It is open to a woman to ask a court to ensure her anonymity is preserved and that there is not reporting, for example, of a particular case. We generally find that, when we have such cases, our aim is always to spare a woman having to go into court and go through that. What we try and do in all of those cases, insofar as we establish liability, is to arrange as early a mediation as we possibly can and treat people with the dignity they are due. I agree with the Deputy that women should not be forced to go into court to make those kinds of very private declarations about their health.

Deputy Kate O’Connell: We want to spare women the court experience, as Mr. Breen said. There is a process preceding mediation. Consider the case of a woman who has an incident at birth and we will leave the infant out of the situation, we are only dealing with the mother. There are experts on the HSE side and the mother’s side. I understand from the health committee meeting yesterday on the tribunal for the 221 women affected by CervicalCheck, there is a third layer of experts. I may have misheard the Minister, but the judge will have his or her own expertise. When we talk about sparing women, in practice a woman who suffers injury at birth and there is negligence must explain her entire case to her own legal people, medical people including psychiatrists, psychologists and everything else, and then to another equivalent group of experts for the defence on behalf of the HSE. We are not sparing women. That process involves manual and verbal examinations. We are not doing anything to spare women from the indignity of that sort of process. I understand why women would not want to seek justice because the current process is so invasive and intrusive. It is inappropriate to put women through that. An expert is an expert. Medical experts are bound by their ethics and their governing body. I cannot understand the need for two colorectal surgeons to examine a women’s rectum to see how damaged it is. I do not know why we are doing that to people. Can Mr. Breen explain?

Mr. Ciarán Breen: Yes. We would, in the first instance, use an expert to establish liability and causation issues. There is then a condition and prognosis expert who will examine the woman to say what her present state of health is. There are different ways to approach it.

Deputy Kate O’Connell: It happens on both sides.

Mr. Ciarán Breen: It does.

Deputy Kate O’Connell: Everything is in duplicate. That is my point.

Mr. Ciarán Breen: I accept that might happen.

Deputy Kate O’Connell: We have had words about sparing women the experience of court. This is not sparing women.

Mr. Ciarán Breen: In some cases, we accept the report where we can. We accept the report

from the woman's side if we can do that.

Deputy Kate O'Connell: How often does that happen? I have never heard of that.

Mr. Ciarán Breen: It has happened but I agree it does not happen often. Our difficulty is that unfortunately, our tort system is adversarial. Therefore a person has to establish that he or she has had damage and all the rest. We then must be in a position to say this is the injury, and the extent of it, if we are going to sign a big cheque.

Deputy Kate O'Connell: I get that.

Mr. Ciarán Breen: We sometimes need that to value the case as well.

Deputy Kate O'Connell: I get that we cannot be throwing money around willy-nilly. However, if someone is an expert, they are an expert. They should be impartial. One expert should do in this case.

Mr. Ciarán Breen: The reality, unfortunately, is that experts sometimes differ. For example, we get life expectancy reports on children who are catastrophically brain damaged. The Deputy has no idea of the variation we get in those life expectancy reports. One would imagine that a life expectancy expert would say one thing and that everybody would be in agreement. That happens in an ideal world.

Deputy Kate O'Connell: That is more theoretical.

Mr. Ciarán Breen: It happens.

Deputy Kate O'Connell: Assessing the physical state of someone's rectum is not as out there as that.

Mr. Ciarán Breen: That particular case is difficult to talk about except to say that we clearly have to be able to examine the person and understand the nature and extent of the injury and we do.

Deputy Kate O'Connell: Let us pull back and consider a woman who has had an incident in childbirth that has left her damaged. She may also be dealing with a baby with a catastrophic injury. Does Mr. Breen think it is appropriate that the next thing we put her through is to prove how much she has suffered? That seems lacking, as a way of going about things. I understand that there may be a large variation. For example, a lady might say that she cannot walk. In fairly clear-cut cases where there is actual physical damage as opposed to crystal ball stuff, that is, how long someone will live, and an expert in the field is already involved, however, why are we putting women through two lots of experts? In the case of the Scally tribunal, there could be three sets of experts. I am not saying that the women would undergo physical exams. Rather, I am referring to the process through which they will have to go. It seems a cruel way of dealing with the issue. I understand about protecting the State's money, but it is an unpleasant way of going about this.

Mr. Ciarán Breen: Sometimes, there is reluctance on the part of the plaintiff's solicitor to share the report with us. Therefore, we find ourselves in a situation where we cannot do anything but have the woman examined, as we need to have our own report. The question of estimated liability and so on has been mentioned. If we did not have a report, we would be in danger of miscalculating the value of the case. If there has been an extensive or severe injury, we want to know that at the earliest date so that we can value the case properly. These are functional aspects of the tort system. I agree that it is not the nicest or easiest thing to happen, but

it is part of the rigour of handling cases. Even where we do it as sensitively as we can, there is always a tension between what we do and how people feel about it.

Deputy Kate O'Connell: Will periodic payments be introduced?

Mr. Ciarán Breen: They have been introduced under the statute. We have settled three cases on the basis of the new periodic payment order statutory scheme.

Deputy Kate O'Connell: How should that progress? Will it remain this way? In the case of a catastrophic injury to a child, would there be a payment now and the remainder would depend on outcomes and interventions? Are we moving towards that?

Mr. Ciarán Breen: That is our preference. It is why we introduced the interim payments regime. We want to ensure that families do not have to worry about the future care of their children. A payment will issue annually, which will take care of all the care and other costs that a child needs without his or her parents needing to worry.

Deputy Kate O'Connell: The payouts have been discussed by this committee at length. They keep increasing. Is the proportion of the payout to the person versus the legal fee 50:50? That is my understanding. Is it a case of give and take?

Mr. Ciarán Breen: Our legal costs are running at approximately 19%. The plaintiff's legal costs are between 23% and 27%, depending on circumstances.

Deputy Kate O'Connell: Of the total claim.

Mr. Ciarán Breen: Of the settlement value.

Deputy Kate O'Connell: If we hear on the news that someone got a settlement of €1 million, does that mean that €230,000 to €270,000 will go to his or her legal people?

Mr. Ciarán Breen: Not quite. It is not as crudely calibrated as that. In a case with a value of €10 million, €11 million, €12 million or €13 million, one might expect the solicitor's cost to be somewhere in or around €250,000 to €300,000.

Deputy Kate O'Connell: In the ballpark of 25% to 30% of the money paid out in damages is for the legal people. Is the progression linear? The more someone gets, the more the legal people get.

Mr. Ciarán Breen: It is not as crudely calibrated as that. Cases that are of lower value tend to have relatively higher legal costs. As the value increases, the proportion is not quite as high. If someone settled a case for €30 million, a solicitor would not get 30% of that amount.

Deputy Kate O'Connell: I understand. What about in the case of mediation? What is the balance in ballpark figures? Going through the mediation process might be less adversarial for a woman and it seems to be preferable in most cases, but are the solicitors and senior counsels getting the same legal fees as they would were they before a court?

Mr. Ciarán Breen: It depends on the stage at which mediation occurs. If it occurs a week in advance of the trial, there will not be large savings. If it occurs at a much earlier point, there will clearly be better savings on the legal costs.

Deputy Kate O'Connell: Mr. Breen mentioned the court, the Bar Council and the two senior counsels. Will he elaborate? How long ago was that and did he call it an agreement, chat

or something else? How did that happen?

Mr. Ciarán Breen: There was legislation. I am sorry, but I cannot recollect its exact name.

Deputy Kate O'Connell: That is all right.

Mr. Ciarán Breen: At the time, the Government was going to impose a one senior counsel-only-----

Deputy Kate O'Connell: How long ago was that?

Mr. Ciarán Breen: Approximately 25 years. Actually, it was 1986. As a *quid pro quo*, the Bar Council, by way of a protocol, agreed voluntarily that someone would only have to pay the cost of one senior counsel. The background to this was that, at the time, there was some outcry about legal costs being so high. This was the solution. That protocol operated very well up until the past three to four years, although I am guessing that time. We are now seeing two senior counsels appearing, particularly in clinical negligence cases, with bills for both. It used to be the case under the protocol that, if two senior counsels appeared,-----

Deputy Kate O'Connell: Just one would be paid.

Mr. Ciarán Breen: -----they divided the one counsel fee between them in whatever way they chose.

Deputy Kate O'Connell: When did that practice change?

Mr. Ciarán Breen: We saw this change coming about approximately four to five years ago.

Deputy Kate O'Connell: Has there been much mention of it? I had not heard about it until today.

Mr. Ciarán Breen: It has crept in almost by stealth in individual cases. It happened in one or two cases, then in more. The Taxing Master has begun to allow fees for two senior counsels. It is a point of concern for us.

Deputy Kate O'Connell: Mr. Breen stated that this matter was discussed by the cost of insurance working group.

Mr. Ciarán Breen: Yes.

Deputy Kate O'Connell: Are there soundings from that group?

Mr. Ciarán Breen: Yes. The group took the matter very seriously. We engaged the Department of Justice and Equality and asked it to take up the issue. Obviously, it has legislative responsibility. The matter is in train and we have had discussions with the Department.

Deputy Kate O'Connell: How long ago was it discussed by the cost of insurance working group?

Mr. Ciarán Breen: We have had it on our agenda from time to time. I am sure that I have raised it at a number of points in the past year, for example.

Deputy Kate O'Connell: When Mr. Breen says it is being taken seriously, does he mean that everyone has a serious face or is something actually being done?

Mr. Ciarán Breen: There is a concern about it. The one element that an insurer relies on when saying why insurance costs are increasing is the factual increase in legal costs due to there being two senior counsels.

Deputy Kate O'Connell: Something occurred to me recently. If two children are born on the same day and one has a genetic abnormality while the other suffers a catastrophic incident at birth, an award of, for example, €40 million might be made to provide for the latter's care. The child born with the genetic abnormality might have the same needs, though. As someone working in the Oireachtas, it needs to be highlighted that, if one child gets the bungalow with rails and so on that he or she requires because blame can be attributed to the State or whoever and the other child, who was just born that way and no one is to blame, so to speak, does not necessarily get-----

Chairman: A vote has been called, Deputy. I will explain to the witnesses what is happening. We will finish this session entirely in the next moment or so. If we can return immediately after the vote, we will take a final run through the periodic payments question. We will do it very quickly because there is a debate on issues concerning wards of court in the Dáil shortly. We want to have our work completed before then. We will return immediately following the vote.

Deputy Kate O'Connell: I just want to mention this. It is something with which I have an issue.

Mr. Ciarán Breen: I agree with the Deputy. I think it is anomalous.

Deputy Kate O'Connell: Who is deciding which child born in this country, and a citizen of this country, is more deserving? I refer to where blame is being apportioned. One child definitely has a headstart.

Mr. Ciarán Breen: I agree with the Deputy. It is an anomaly of a tort system which is fault based. It is necessary for someone to prove that there was fault. Damages are then paid. That is opposed to the situation of a child with a naturally born syndrome, of whatever type, which needs just as much care.

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

Deputy Catherine Connolly: I have a quick comment for Mr. Lynch. I welcome the documentation I got from the HSE. When I was mentioning things from Galway, that was in a general manner for use as an illustration. It is fascinating and worrying when I look through that document. When we look at Staffordshire in England, despite all of the protocols and everything else being in place, it was the persistence of the complaints that had an effect and not the mortality rate or anything else. That is my experience in Ireland. Something happens if somebody persists. The second aspect was the extraordinarily high rate of patient falls. These account for 26% of all incidents recorded on the national incident management system. We have run out of time but I just wanted to make those observations.

Chairman: I have one or two questions. We have only a minute or two left. As I mentioned, there is a debate in the Dáil this afternoon regarding issues concerning wards of court. Mr. Breen is familiar with that. We asked him on a previous occasion how much of the payments, approximately, that the SCA makes each year are to the Courts Service. A sum of €347 million was paid out. Was the figure approximately 50%?

Mr. Ciarán Breen: We sent those figures to the committee-----

Chairman: Yes, but I am asking if Mr. Breen recalls that off of the top of his head because there is a debate in the House in an hour. I would be grateful if he could refresh the figure in my head before I go into the Chamber. Was it over 50%?

Mr. Ciarán Breen: It was not quite as high as that, as far as I can recall.

Chairman: I do not need an exact figure now but it was substantial.

Mr. Ciarán Breen: Yes, it is substantial.

Chairman: That was all I wanted to know. We are aware of that. I have two other questions. The last time Mr. Breen was here he also told us that the section 38 organisations have come within the remit of the SCA in the last year. Is that correct?

Mr. Ciarán Breen: That is correct.

Chairman: Will Mr. Breen send us a list of agencies and organisations with which the SCA deals? I am referring to a client list or whatever the correct term might be.

Mr. Ciarán Breen: We will send on the list.

Chairman: I ask Mr. Breen to send that on in due course. It does not have to be done now. The second thing concerns the general claims of €820 million. Can that be broken down by client list or would that be difficult? I know the SCA has such a list.

Mr. Ciarán Breen: Yes, we do have it.

Chairman: That is fine. As I stated, I do not want to do anything that would compromise the SCA's defence. I will just state that it would be interesting to know if perhaps there is an agency that attracted something like 100 claims. Other agencies might have fewer claims. Perhaps there might be a mechanism to group them, if there is a way to provide that information without compromising a defence.

Mr. Ciarán Breen: Could we take a look at that? Then if we feel that we can do it, we will.

Chairman: Mr. Breen and the SCA can liaise with the secretariat. I ask him to give us some reply. He heard me earlier; I do not want to compromise the State's position by over-exposing what is being provided at this stage. Mr. Breen will understand my position.

I have some final points. I am interested in a figure regarding the settlements made by the SCA last year. I would like the figure for previous years. There is no need to go into the exact figures, it is just a general question. Let us presume settlements amounted to €347 million. What would the SCA have provided for in respect of the cases that were to be settled? Had the SCA allowed for perhaps €247 million or something closer to €547 million or what was provided for prospective settlements? How close was the SCA's estimate?

Mr. Breen is telling us what is accumulating. We are underestimating the costs and that leads me to ask how often does the SCA revalue its cases? Let us take the example of a case that comes in and all of the legal papers have been served. It is then adjudged that it is a case worth €1 million. As the months go by, however, more information may become available. Is there a systematic method in place which is regularly used to reassess cases when more information is received? Would a case then be adjusted to state that it might now cost €2 million in light of

the new information received? Does the SCA adjust its overall figures and what is the mechanism for doing that? I am not looking for information immediately. Does Mr. Breen know, for example, out of the settlements made last year, what was the approximate provision before the outcome of those settlements?

Mr. Ciarán Breen: Last year the actuaries told us that the cost of the schemes would be a particular sum.

Chairman: What scheme?

Mr. Ciarán Breen: For all our schemes, clinical and non-clinical. In 2017, for example, the total amount we paid was €303 million whereas-----

Chairman: That is fine.

Mr. Ciarán Breen: -----our actuaries had told us that we would require €391 million.

Chairman: In respect of the specific cases.

Mr. Ciarán Breen: In respect of all of the transaction expenditure in that particular year. That is all of the cases-----

Chairman: Has that been the pattern to over-estimate the provision each year?

Mr. Ciarán Breen: Yes, we managed to save on the actuarial estimate for all of the years.

Chairman: Is there a buffer in this €3.15 billion?

Mr. Ciarán Breen: No. I will explain the reason to the Chair. If we look at the volatilities regarding periodic payment orders and whether people will accept interim payments or default to lump sums, our actuaries are always trying to factor in what might happen in that regard. They might get that absolutely right when they say that four or five cases will revert to lump sums. The outcome could be worse than that, however, and there could be eight or nine cases. There are volatilities inherent in the model and they are very hard to engineer out.

Chairman: The job of this committee is to be satisfied that the SCA's provisioning is reasonable. The only way to verify that is by comparing the provision made to the costs of the cases settled. I accept that in some years that could be very much over or under, depending on the number of high cost cases that might come in a year. I ask Mr. Breen to give us the figures for the last five years. If we had those figures, we could then see over that five year period if the SCA has been under or over-providing. That will also be useful information for the SCA. I presume it may have it already. When this committee gets large figures, such as this €3.15 billion - I know they are audited - we as a committee have to be satisfied that we have verified the figures from our perspective as well. We have a duty to interrogate the figures. I think this is a simple way for us to interrogate the figures.

Mr. Ciarán Breen: We will give the committee what the actuaries state the scheme should have cost in a particular year and what we actually paid in the year.

Chairman: No, I want the figure that the SCA had booked in the provision. I am referring to the figure that is now €3.15 billion. It was something like €2.6 billion or €2.8 billion last year. The SCA will have 10,000 cases, or whatever, with a value for each. How often are the cases valued? Is it once a year or is a monthly rolling system? How is it done?

Mr. Ciarán Breen: Cases are dynamic. They are valued all of the time whenever new information is received.

Chairman: In other words, some cases could be valued three or four times over its history.

Mr. Ciarán Breen: It would be much more than that.

Chairman: Will Mr. Breen send us a note on that?

Mr. Ciarán Breen: Yes, we will do that.

Chairman: I ask that because if we only see figures once a year we assume that they are only looked at once a year. It would give us a greater understanding to know that there is an ongoing review.

Mr. Ciarán Breen: Every time we get a report, whether from the plaintiff or our own report, as a matter of principle we look at our reserve to see if it is measuring up to what we believe is the most likely outcome for that case.

Chairman: I ask Mr. Breen to send us a note on that issue. I understand but not all of the committee members are here. It would also be beneficial to put that on the record from the point of view of the SCA because this is such a major area for us. I have one last question on a different topic for Mr. O’Kelly. I forgot to ask him about it this morning. He can send us a note. It is in respect of the purchasing of carbon credits, which is a matter we are examining. I am referring to the statistical transfer arrangements in the context of renewable energy. Mr. O’Kelly need not answer this question now. The NTMA is the agent for the State to buy carbon credits. It has done that in the past.

Mr. Conor O’Kelly: Correct

Chairman: Mr. O’Kelly might explain to us the market transactions undertaken. There are other funds called the carbon fund for Europe, CFE, and the bio-carbon fund, BioCF. I do not know what those mean. Mr. O’Kelly might send us a note on that. I know that the NTMA has been in the market for some of that recently. I ask that a note be provided on the role of the NTMA in this regard. I know it gets an instruction to buy them as the NTMA is the agent for the State. It is not making the decisions regarding what to buy, however. At this stage, Ireland has not yet purchased statistical transfers from other EU member states in respect of renewable targets. There will probably be a call to stand by those targets. The NTMA must be monitoring that area because it might be called to action on it soon.

Mr. Conor O’Kelly: Would the Chairman like an answer now?

Chairman: Yes, I am happy to take an answer now.

Mr. Conor O’Kelly: We bought carbon credits at different times back in 2007 and 2008 for the 2020 targets, which will be missed. Those will be used against our targets and additional expenditure will be modest. Between €6 million and €12 million will satisfy all our obligations for 2020, along with the credits we have purchased.

Then we have the 2030 targets. No carbon credits have been purchased for the 2030 targets. It is very unlikely that the carbon credit market will even exist for sovereign countries so I do not anticipate-----

Chairman: What does that mean?

Mr. Conor O’Kelly: The idea and principle of carbon credits being bought in the open market, as we did for the 2020 targets back in 2006 and 2007, does not really exist anymore.

Chairman: So countries will pay fines instead of spending money to avoid paying fines.

Mr. Conor O’Kelly: No, there will be bilateral arrangements. If Ireland had a deficit, for example, it would make a bilateral agreement with a country that had a surplus and they would arrange a separate contract between the two of them in order to offset-----

Chairman: Rather than having the market-----

Mr. Conor O’Kelly: Correct. The bilateral negotiations for 2030 will probably not happen until 2027 or 2028 so there will be no forward purchasing of carbon credits in lieu of possible future obligations. That whole business has kind of ended. I anticipate that the carbon fund will not exist in three or four years time.

Chairman: There will still be a mechanism for purchasing the statistical transfers.

Mr. Conor O’Kelly: Exactly. It will be done bilaterally with an approved European mechanism for a country with a deficit to match a country with a surplus. That will be done on a bilateral basis but the mechanism for that is still on the-----

Chairman: We have a note from the line Department saying that in 2017, trades between Luxembourg, Lithuania and Estonia suggested a cost of the order of €22.5 million per percentage point. That was on renewable targets. They were bilateral agreements so that is allowed but there will not be an EU-wide market. Every country will have to do its own negotiations.

Mr. Conor O’Kelly: That is correct.

Chairman: The facility will still be there but it will not be a market.

Mr. Conor O’Kelly: Correct, it will not be traded and therefore it will not be-----

Chairman: Countries will approach other countries.

Mr. Conor O’Kelly: Yes, countries will not be buying in advance in the way we did.

Chairman: That does not matter to an extent. A country may still have to buy the credits and spend the money.

Mr. Conor O’Kelly: They may still have to enter into a bilateral agreement with each other. That will just be a bilateral contract between one country and another.

Chairman: Why will there be no more market transactions?

Mr. Conor O’Kelly: The market for sovereign exchanges failed. There were not enough transactions in the market, it was too volatile and not enough countries participated. There is a market for carbon credits for utility companies, which is an active market that trades, but it is not available for sovereign countries to offset their carbon emissions in. The European Union changed its rules.

Chairman: On sovereigns, are commercial state organisations such as the ones we have in Ireland able to access that market, even though they are State-owned?

Mr. Conor O’Kelly: That is a different business. They can and do actively trade carbon credits in the market.

Chairman: As well as the private sector that is also in the energy production sector.

Mr. Conor O’Kelly: Correct.

Chairman: The likes of the ESB could offset-----

Mr. Conor O’Kelly: Yes, that is an active market.

Chairman: I know this is outside Mr. O’Kelly’s bailiwick but he might know a bit about it. Why would the ESB do this? Would it be doing it on behalf of Ireland or because it has its own plans and targets?

Mr. Conor O’Kelly: It would have its own plans and targets.

Chairman: Is there much of this going on?

Mr. Seamus McCarthy: It is the emissions trading and the targets for states and so on. As I mentioned to the committee before, I am doing a chapter on that for the autumn.

Chairman: On emissions?

Mr. Seamus McCarthy: On carbon-related transactions in various accounts. A separate account is published by the NTMA dealing with the carbon fund. It was just presented yesterday so it is available for examination but it is not in the library yet.

Chairman: Where does that fit into this?

Mr. Seamus McCarthy: It is not in that account.

Chairman: Do we normally look at that?

Mr. Seamus McCarthy: It is published separately.

Chairman: What is the name of the fund?

Mr. Seamus McCarthy: It is called the carbon fund. They are the Kyoto credits that were purchased a number of years ago.

Chairman: In other words, that will be laid before the Houses in the coming days.

Mr. Seamus McCarthy: Yes.

Chairman: We will try to note that for next week before we go.

Mr. Conor O’Kelly: If there are any questions that need to be answered the committee can come back to us.

Mr. Seamus McCarthy: When I have the chapter on the carbon credits with me in the autumn it may be a subject to examine at that stage.

Chairman: That is great. I forgot to raise that matter this morning in the earlier session. I thank our guests from the NTMA, the State Claims Agency, the Department of Finance, the Department of Health and the HSE for their attendance and for the information they provided

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for today's meeting and I thank the Comptroller and Auditor General and his officials for being here today.

Is it agreed to request the clerk to the committee to seek any follow up information and carry out any agreed action arising from the meeting? Agreed. Our next public meeting will be on 11 July when we will be meeting with the Houses of the Oireachtas Commission to examine its appropriation accounts for 2018. We will now suspend the meeting and recommence in private session immediately after the Dáil voting session to conclude our periodic report.

The witnesses withdrew.

Sitting suspended at 2.25 p.m. and resumed in private session at 3.03 p.m.

The committee adjourned at 4.04 p.m. until 9 a.m. on Thursday, 11 July 2019.