

DÁIL ÉIREANN

AN COISTE UM CHUNTAIS PHOIBLÍ

COMMITTEE OF PUBLIC ACCOUNTS

Déardaoin, 7 Samhain 2019

Thursday, 7 November 2019

The Committee met at 9 a.m.

MEMBERS PRESENT:

Deputy Bobby Aylward,	Deputy Alan Kelly,
Deputy Peter Burke,	Deputy Marc MacSharry,
Deputy Shane Cassells,	Deputy Imelda Munster,
Deputy Catherine Connolly,	Deputy Catherine Murphy,
Deputy David Cullinane,	Deputy Kate O'Connell.
Deputy Pat Deering,	

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. He is joined by Ms Geraldine Mooney, deputy director of audit.

We have received no apologies for this meeting. The first item on the agenda is the minutes of the meeting of 24 October - we had no meeting last week - together with the follow-up questions sent to the Department of Agriculture, Food and the Marine. Are the minutes agreed to? Agreed.

The next item on the agenda is correspondence. The first items, Nos. 2513 and 2525, are correspondence received from the Department of Employment Affairs and Social Protection, including briefing documentation and an opening statement for today's meeting. We will note and publish the correspondence. Is that agreed? Agreed.

Category B is correspondence received from Accounting Officers and/or Ministers in follow-up on matters raised at meetings of the Committee of Public Accounts and other items for publication. At our last meeting we agreed to hold over some items for consideration this week. Items Nos. 2432 and 2465 are correspondence, dated 4 October 2019, received from Ms Katherine Licken, Secretary General of the Department of Culture, Heritage and the Gaeltacht, enclosing a copy of the post-project review mentioned and referred to in our previous periodic report on the Palace Cinema project in Galway. I will make a number of brief observations.

Recommendation No. 7 on page 3, with which I am sure members will agree - I will highlight some of the recommendations made in what I stress is a 35 page document - is that performance indicators should be established for all grants funded by the cultural division and that data should be collected and collated in a systemic manner. This is a great recommendation, but in my view it does not grasp the point from the Committee of Public Accounts' point of view. This is a project within a Department that went seriously over budget. The Department's view is that within it there should be performance indicators within the cultural division. That is unacceptable from the point of view of the Committee of Public Accounts. Where mistakes like this have been made within a section in a Department, the lessons must be learned, not only within that section but also within the Department and across the public service. We will be writing to the Department of Public Expenditure and Reform as a result of this report to say it must put a system in place to ensure that in a case where lessons are learned, the results will not be pigeonholed in one cubbyhole in one section in one Department. That is a method that ensures there will be no learning across the public service from mistakes that happen in particular areas. The confining of the recommendation is not acceptable from the point of view of the Committee of Public Accounts.

The Department also states there is to be a Department of Public Expenditure and Reform spending code update. We will ask for a copy of it if it has been completed. The reference is included at the bottom of page 3.

Page 4 of the report essentially refers to the fact that the Committee of Public Accounts dealt with this issue in its periodic report and recommendations and that a post-project review was carried out as a result. We are pleased that that has happened. However, the Department has

confined its learning from the mistakes to a very narrow section within it.

On page 6 of the report - this is a theme that arises here every week - the Department states two independent reports were commissioned to examine the demand for cultural cinema in Ireland: the Neil Connolly and Maretta Dillon report in 2001 and the report produced by the English consultants Todd in 2004. We are great at spending money in employing consultants. There is no problem with employing a consultant, but when one has to come along a short time later and employ another to examine a closely related issue, that is where we consider no proper value for money is being achieved. We had representatives of a State organisation here only a few weeks ago that essentially had four consultants looking at the same thing over a two-year period. Our concern is the overuse of consultants. Some may think we do not need them, but everybody can agree that our concern is their overuse.

Table 5 on page 9 of the report deals with the original allocation of €4.3 million for the project which ended up costing €8.3 million. The table shows where funding was received from various bodies. When site costs are included, the project was originally projected to cost €6.26 million, but it ended up costing €10.3 million. That is a serious overrun.

We have picked up on this project because the Comptroller and Auditor General highlighted it for us initially. Paragraph 6.5 on page 15 of the report refers to the fifth departmental review carried out in 2018 of the various cost increases over a period of time. It took five reviews to get to the end. In his report the Comptroller and Auditor General outlined some of the issues at which the Department had looked. My conclusion is that after so many reviews and consultants, the response of the Department has been to confine any learning to one narrow section within it. That is a point I have already made. There is to be no learning across the public sector on the issue.

Perhaps Deputy Connolly might like to add something. We will publish this information today, if we have not already done so.

Deputy Catherine Connolly: I thank the Chairman for that overview. I was a councillor at the time and perhaps I am zoning in on the minutiae. It would be worth everyone's while to read the report. Who carries out the post-project review? Is it done within the Department?

Chairman: Yes, it would appear so.

Deputy Catherine Connolly: Was that as a result of our recommendation?

Chairman: We made the recommendation, but that is not to say that it may not have been done in any event. The committee did make a recommendation, however. The Comptroller and Auditor General compiled a chapter on it.

Mr. Seamus McCarthy: There is an obligation to review any significant capital project that is in the public spending code, but it does not always happen. Perhaps the focus of the chapter, along with the attention of the committee and its report, would have precipitated it.

Deputy Catherine Connolly: This is certainly one project where there should have been a post-project review from within the Department, particularly because of the history of involved. When looking at the conclusions and recommendations to give us a flavour-----

Chairman: To which page number is the Deputy referring?

Deputy Catherine Connolly: I am referring to page 23, where it is stated:

Overall, it is the assessment of this review that the Department complied with the project management framework in place at the time. [That is of concern to me, regardless of whether the Department complied with it] The final assessment of this review considers that the main problem with the project was the fact that the original project promoters, while very well-intentioned and passionate about cinema, were not sufficiently skilled to manage a project as complex as Pálás. Solas had no demonstrable experience of operating a cinema or managing a large construction project ... [and there was a] lack of relevant experience.

Passion is great. I am always giving out about a lack of passion and a lack of vision, so that is marvellous. I want to take the focus off the people who came forward with passion and vision but who did not have the experience. I will go to the Department, which saw that passion and vision, but did not match it with oversight. In the sentence I have just quoted, I am being told the Department complied with what was in place at the time. I have made notes on it. I am almost about to give up. On the one hand, the Department is saying it has learned something from it while , on the other, it is stating that it complied with what was in place at the time.

Another concern relates to the funding. It has been suggested that the operator of the cinema was the second biggest contributor after the Department. In fact, Galway City Council was the second biggest contributor because it donated the site, which was worth almost €2 million, and it gave €500,000 on top of that. This is not even recognised in this review, which is a matter of great concern.

We knew generally at the time that there were problems with this project. This is what is important. How can projects go ahead if people, including lots of councillors, had concerns? They were demonised and ostracised and told they were not wearing the Galway jersey. This was the type of conversation that happened in respect of this project. We were the ones who endorsed the project in the beginning. We did so with vision. As the problems emerged, we called for accountability. Those who dared to ask questions were told they were not donning the jersey. This is a problem that must be learnt by all public representatives.

Consider, also, the bespoke nature of the project. Perhaps somebody could explain what that means. On page 22 of the review, it is stated:

The bespoke design of the building, while architecturally significant and award-winning, does present Element Pictures with a number of challenges as operators. The Pálás cinema was designed by De Paor architects and has been described as a contemporary moulded-concrete “tower house”. [And the description of it is included] ... the facade may be somewhat intimidating to people and, as such, presents a barrier to entry. Element Pictures [who have been left with this baby on their hands now] are working to make the interior as warm and inviting as possible and encourage the public to explore and experience the building. The highly bespoke nature of the building added to the overall cost of the project and over the long-run means that upkeep and refurbishment of the building will be a costly undertaking, as there are a number of functionality issues that make the building less than optimal for its intended purpose.

The Department, which might as well be working for Fáilte Ireland, goes on to give all the advantages to the cinema - which we knew and that is why we have been promoting it - and tells us how important it is for the area of Galway and the cultural quarter. It tells us that there are four houses at the site and that these will be artisan dwellings. The Department does not mention, however, that these houses have been empty since the council purchased them in 2005 or 2006. In a housing crisis, these four houses are empty, but that is not mentioned at all.

Five reviews were carried out. Fair play to the Department - it was good and carried out the five reviews. The reviews, however, were limited and each time they concluded that they had no choice but to go ahead and not have a hole in the ground. They also tell a story that is not quite accurate with regard to the first contractor. The review provided a list of reasons as to why there was a problem, one of which was the recession. Earlier in the report, it cited the design problems, delays and other issues that led the builder to walk from the building. It was not the recession. I welcome the report, and it is a starting point, but we or the Comptroller and Auditor General need to go through it.

The promotion of Galway is unnecessary in this context. It is not part of a project review. Did we succeed? Yes, we did. The idea was to build, and we did build, but it was built over a period of 11 years at a cost of €11 million, with a housing crisis in Galway and a failure to purchase a building across the road that was better value at €450,000. All along the way there were implications for the decision to continue. Element Pictures are the operators now. I wish the company the best and have always done so. I have been in the building. None of this is about personal views, it is about how we got to the stage where a project that was to cost much less ended up costing €11 million. It is about how there was no project manager. Solas was offered a project manager by the Irish Film Board and refused to accept. I am just mentioning some of the issues. There is a list of notes, but I will not delay the meeting any longer.

This project raises so many questions and generally it raises very serious questions about the use of public funds in this manner. There have been five reviews into the project that allowed more money to be paid out. Within this there is also the city council that gave a site worth €2 million and gave another €500,000 even while there was a serious problem in Galway around lack of funds for serious issues. I have gone out on a limb for the arts and I have read the arts reports for the committee. This is not about arts versus something else, it is about making very sensible and practical decisions, with proper oversight from a Department. That did not happen in this instance.

Deputy Marc MacSharry: Who carried out the review?

Chairman: It would have been the Department.

Mr. Seamus McCarthy: On the cover, it gives the individual's name who is part of the evaluation unit in the Department of Culture, Heritage and the Gaeltacht. She is attached to a unit in the Department of Public Expenditure and Reform, which is the Irish Government Economic and Evaluation Service.

Chairman: What is the purpose of that unit?

Mr. Seamus McCarthy: Its staff are recruited within the Department of Public Expenditure and Reform but are then delegated to go into Departments and work in a specialist way.

Chairman: Is it a permanent unit and fully staffed?

Mr. Seamus McCarthy: Yes. It is a permanent unit.

Chairman: We might ask for a note on that. I was not aware of its existence.

Mr. Seamus McCarthy: Yes, a note from the Department of Public Expenditure and Reform. Around the time of the budgets, the service publishes a number of studies of this kind.

Deputy Marc MacSharry: I welcome the fact that we did not go out to tender and pay

somebody a couple of hundred thousand euro to compile this report. We discussed this project previously and the €11 million that was spent on it. Am I right in stating that it is run now by a private sector company? Is it also correct that it gets a preferential rent? What is the rent?

Mr. Seamus McCarthy: It is very small. I cannot recall but I will find that figure. It is small.

Deputy Marc MacSharry: The report is standard. It is a case of circle the wagons, nobody is to blame, nobody pays the price and Galway has a piece of infrastructure. We are all proud of Galway's culture, heritage and the part it plays. With every respect to Deputy Connolly, however, Galway does pretty well out of public funds when it comes to the arts. As I said at the meeting when we first raised this, it is an abomination. If it was the private sector, there would be disciplinary action and lay-offs, and whoever was responsible would have difficulty in getting into any kind of job in the future. Yet here we have a report that says not only did it cost €11 million, but we built this €11 million building for a private sector project. The building is so beautiful that people are frightened to go into it. We will not be able to heat it. It will cost a substantial amount of money to maintain it. The building is to be operated for the profit of a different outfit at a preferential rent. That is a disgrace. It is endemic of what goes on in this room. Whenever the State is involved, we put the car into the hedge but nobody pays the price. We put it down to experience and state that we will know better next time. Without tangible sanction for the endemic mediocrity of the apparatus of the State, this is going to happen again. It is probably happening as we speak. Without doubt, the same unit will use its training in the dark arts of circling the wagons and making a bunch of muck look like a bowl of ice cream.

This committee has to make a recommendation. There must be tangible sanction when total incompetence is endemic to the extent that we have spent €11 million for a private sector company to make profit and we have offered a preferential rent. I have nothing against Galway and its great cultural prowess. If we want to spend this €11 million in Galway it would be better spent on light rail or public transport. Galway has a traffic problem that is proportionately 100 times worse than that of Dublin, not to mention housing, health and other challenges. It is a disgrace. We cannot say it strongly enough. This is a good example on a relatively small scale of what we happens on a massive scale with projects like the national children's hospital - we throw good money after bad. The Taoiseach recently stated that the cost of the latter is heading towards €2 billion. The Deputy beside me has said it will cost more than that. God knows who will be in this room to pick up the pieces when it is finished, or how many billions it will eventually cost. The Pálás Cinema must be seen as a classic example of the incompetence of the apparatus of the State and its inability to admit when it is wrong. There must be tangible sanctions to deter such poor management practices in the future. That tangible sanction is what is missing from the work of the State.

Deputy Catherine Murphy: I will be very quick because the issues have been outlined well. To find the origin of the problem we have to go back to the original decision rather than the reviews. It was the same building before this started as it was when the reviews were carried out. Over and over again we see a failure to anticipate or understand resource requirements. It is all very well to carry out a review afterwards. That is fine. The origin of many of these problems lies in the decision to take the project on and in the initial scoping. It would be useful to know if that unit of the Department has a function in identifying how those failures can be prevented in the first instance. I keep on saying that we have made a national pastime of creating problems and then trying to resolve them in reverse. In a lot of other countries projects are scoped out, the resource implications are considered, things are planned and governments do

not end up with a very costly problem at the tail end.

Chairman: I wish to make one or two final comments. We will obviously write to the Secretary General of the Department about the implementation of the recommendations listed on page 3. Recommendations have been made and we want to see what is happening. That is a minor point. We should write to the Secretary General of the Department of Public Expenditure and Reform about this issue and send this report to him. There are two issues that have been highlighted here. Deputy Connolly has noted that the value of the local authority's contribution is not dealt with in this report. We should insist that the Department of Public Expenditure and Reform-----

Deputy Catherine Connolly: It is dealt with in that one sentence, which states that Element Pictures, not the city council, was the biggest contributor.

Chairman: Very well. We want to ensure that projects take a whole-of-Government approach if funding comes from various sources and not just the line Department. We also want the Department of Public Expenditure and Reform to have a policy on reports. A public spending update is to be published, or perhaps it has already been published. One recommendation is that training should be mandatory. While training is currently provided, it is not mandatory. Some of the people working on projects do not bother to undergo training on the public spending code. That is insufficient.

The Department of Public Expenditure and Reform should insist that every project review, evaluation or value-for-money report carried out in a Department must include a section on the whole-of-Government lessons from what went wrong in the unit in question. Such reports must be considered inadequate without this section. The public service is designed to confine a mistake to the one unit in which it takes place. We have seen this in the HSE. When something goes wrong in a hospital, there is not even a mechanism in place to share the lessons learned with other hospitals. We are seeing here that when something goes wrong in the cultural division, the issue is confined to that unit of that Department. That is guaranteed to ensure that there is no whole-of-Government learning. We will ask the Department of Public Expenditure and Reform to ensure that spending codes include a requirement for every report to have a section outlining the overall lessons for the public service. Unless there is a practice of sharing of lessons learned, the current system is bound to make the same mistakes in some other Department.

Deputy Catherine Connolly: I wish to make a final comment. The Department of Culture, Heritage and the Gaeltacht did carry out reviews, which were very welcome. Those reviews highlighted problems. Those involved did try to do this. There is a bigger issue here. This took place in a political atmosphere in which the project had to go ahead. We need to look at that element, as in the case of the national children's hospital.

Perhaps the Comptroller and Auditor General could comment on project reviews. I do not know what should go into a project review, but this seems to consist of Fáilte Ireland telling us how good Galway is. The report notes that the city council "owns four properties immediately adjacent to Pálás and intends to develop these". This is a post-project review and nobody seems to have had the wit to ask why the four properties are empty. When that type of review is carried out and not one question is asked about this, one begins to question our whole way of doing things. That might be a bit unfair, but we decided to have a review. The project review says how wonderful the project is for Galway and that particular quarter, as opposed to asking how this happened.

Chairman: It is wonderful, but-----

Deputy Marc MacSharry: That is typical of reviews.

Deputy Catherine Connolly: Yes.

Deputy Marc MacSharry: “Wit” is the perfect word. Sometimes the language in this committee is far too politically correct to capture the disastrous approaches that are taken. This is the standard three-card trick of saying how wonderful things are. This is not a bit wonderful. There is nothing wonderful about it.

Chairman: We have discussed this matter. We will get correspondence back from the Department of Culture, Heritage and the Gaeltacht about the implementation of the narrow recommendations, and we will suggest that there should be wider lessons for the Department and for the Department of Public Expenditure and Reform.

Deputy Catherine Connolly: Can we ask about the four empty houses?

Chairman: Absolutely. Given the fact that the unit made reference to this in the report, we want to know what consideration was given to that matter.

No. 2467 is correspondence from Mr. Derek Moran, Secretary General of the Department of Finance, dated 14 October. The letter responds to our request for information on fees paid to barristers. We agreed to note and publish this two weeks ago. This concerns fees paid in respect of the Apple case. We held it over because Deputy Kelly, who raised this matter, was not here. Members will want to discuss this.

Deputy Alan Kelly: My apologies. I came in literally two minutes after the Chairman finished with this item. I was caught in traffic.

This has been going on for a long time. I have been asking questions about this since before last summer. To provide a little bit of context, this information was previously given out in response to parliamentary questions. When I looked for a subsequent update on the continuing costs, it was denied to me under the general data protection regulation, GDPR. I also asked questions regarding the two-payments system when it comes to public servants, that is, one can only get one payment if, for instance, one works for a university, is a member of a board or anything like that. I understand that a number of people who are being paid under this actually do work in other public sector roles as well. I was absolutely shocked that this information was denied to me. I was further shocked that the Attorney General’s advice was that this information cannot be given. I had help from the Ceann Comhairle in this regard, as he felt that questions should be answered. However, when it came to the advice from the Attorney General, that is where it stopped because, as we all know, such advice can never be published.

I brought this matter to the attention of the Committee of Public Accounts because I felt that it was necessary to use this forum to get some leverage as regards how we are going to get this information. Frankly, the volume of money that is being paid is a scandal but nobody knows where the money is being spent, who it has been given to, for what and in what detail. Furthermore, this matter creates a worrying precedent in cases where people are being paid, if they are constituted as individuals. This precedent that has been set by the Government means that if one constitutes oneself as an individual for payment purposes-----

Deputy Marc MacSharry: One is in the clear.

Deputy Alan Kelly: -----one does not have to declare and the payment will not be made public. Consequently, were Sean Fleming a sole trader who was giving advice or doing anything for the State, we will never know how much he is being paid because the GDPR will prevent us from knowing, which is insane. This is not the reason GDPR exists.

I must thank three journalists, namely, Danny McConnell, political editor, Fiachra Ó Ci-onnaith and Elaine Loughlin, who work for the *Irish Examiner*, for pursuing this matter. Subsequently, they got the Data Protection Commissioner effectively to state she does not understand why the advice has been issued or in what context and that it is not justifiable. The *Irish Examiner* ran a story on this issue earlier this week.

We must pursue this matter in the strongest way possible. These are serious public sums and this will go on for years. A dangerous precedent is being set whereby others will be able to use this loophole, potentially, to not have the amount of the payments made or costs awarded to them for various different items of work being made known. In addition, from a Data Protection Commission point of view, it looks like this situation is not appropriate. I am in the hands of the committee but we really need to pursue this matter because frankly, such a situation cannot go on. It is against the public interest, it is against what GDPR is being used for and we will not know what people are being paid in this case. Furthermore, I suspect the Department uses the non-two-payments rule for public servants to the letter of the law in many cases but yet, when it comes to situations in which people working in public bodies constitute themselves as individuals for other payments, the two-payments system does not apply to them and we will not be able to tease that out. It is a four legs good, two legs bad scenario and that cannot be allowed to happen. I thank the Chair and shall take his advice.

Chairman: I call Deputy MacSharry and then Deputy Catherine Murphy.

Deputy Marc MacSharry: In the brief discussion we had the last day when this matter arose in Deputy Kelly's absence, I made many similar points. At best, we are seeing the politically opportunistic use of legislation that was not intended for that purpose. At worst, and as with actions we saw in the Dáil during the week, through the use of articles of the Constitution on money messages, it defines life in a dictatorship disguised as a democracy. I do not know what actions are open to us as a committee, but the system is all-powerful. The Office of the Attorney General is effectively the commander-in-chief in respect of all matters of definition. The intended integrity of elected representatives and the institutions within the Oireachtas itself - committees, the Dáil, the Seanad and everything else - are being undermined hand over fist as a result of legal advices, be they from the Attorney General's office or, sometimes, the Office of Parliamentary Legal Advisers, OPLA, which sees the system as its client rather than the messengers of the people, those being, the elected representatives who try to raise these issues and ensure that information is made available to the public regarding the amounts of money paid to individuals, companies or whatever on their behalf or who exercise the will of the people through the tools available to us.

The money message issue, which is not the business of this committee this week *per se*, and the issue before us, which can only be described at best as the politically opportunistic use of GDPR, are deplorable and need to stop immediately.

Deputy Catherine Murphy: We cannot have accountability without transparency, and the absence of transparency opens up questions that might not even be valid. No group of people are better able to advise themselves on the law than the legal profession. They are in a commanding position. I have received replies to parliamentary questions on consultancy firms ad-

vising various Departments on GDPR. The committee must get to grips with this issue, given that it will become the new “commercial sensitivity” element. We have been getting responses about “commercial sensitivity” for years.

Deputy Marc MacSharry: Absolutely.

Deputy Catherine Murphy: Now, GDPR is another component of that. I am an advocate of people having their rights to privacy protected but there is a balance to be struck that reflects the public good and the public purse. We need to get to grips with this aspect, since it will continue being rolled out. For years, we have seen that doctors’ practices-----

Chairman: These are GPs.

Deputy Catherine Murphy: ----got the largest amounts. That was unfair sometimes, given that they could be practices with the most patients with medical cards when other practices were not accepting such patients. Some practices also had other stuff, so how the figures were presented were not entirely fair.

How is it that one profession can be in the public domain when another is not? As this will be a continuing problem for us, we had better get ourselves some good advice on GDPR.

Deputy Catherine Connolly: The issue needs to be teased out. I am struck by how all of the financial arrangements and payments in respect of the Legal Aid Board, including criminal legal aid, are published. The names of the barristers and solicitors involved are set out, as are the moneys they receive. I am unsure as to how that has been the practice-----

Deputy Marc MacSharry: The Deputy is spot on.

Deputy Catherine Connolly: Will that no longer be the practice because of GDPR?

Chairman: That is a good question.

Deputy Catherine Connolly: This issue needs to be teased out. In my experience, all of that information was public every single year and still is.

Deputy Alan Kelly: To conclude, I will make two points. I have been at this for six months now. The Data Protection Commissioner and the Information Commissioner have effectively stated, in layman’s terms, that this is rubbish and should not be done. The latter cited two examples of how this situation could be addressed. The Data Protection Commissioner, who appeared before us not so long ago, cited something as well. Mr. Graham Doyle cited, in information provided to us in written documentation, payments to individuals such as barristers for the advice that the commission took post GDPR.

Chairman: Yes.

Deputy Alan Kelly: The Data Protection Commission, DPC, is giving us information on who is representing it in cases and how much they are being paid post GDPR, yet the Attorney General is saying the opposite.

Chairman: Correct.

Deputy Alan Kelly: This is ridiculous.

Chairman: I propose that we send the particulars of the case that are subject to parlia-

mentary question and further discussion to the DPC, which appeared before us recently, as a follow-up issue that has arisen. We will ask for the DPC's opinion on it and a letter in reply. My opinion is that, if GP practices' figures can be published, then others can be published. If it is intended to interpret GDPR so as to ensure that no payment to any individual can ever be published again, then it would be an abuse of the legislation.

Deputy Alan Kelly: Absolutely.

Chairman: The legislation was not introduced to prevent every payment to every individual from ever being disclosed again. It was not intended for that. To be straight about it, I see what is happening in respect of the non-disclosure of fees paid to barristers, on the advice of the Attorney General, as the legal profession in the employ of the State and the barristers who are working on behalf of the State working together to protect one another. It is as simple as that. In the letter from Mr. Derek Moran, he referred to it being necessary and proportionate. Regarding the test of what is proportionate, if someone is saying that a person getting €1 million from the State – some barristers at tribunals got €2 million or €3 million over time – is not proportionate in the public interest and that it would be disproportionate to the individual who received a cheque of €3 million to have his or her name published, that is an abuse. I know what is happening. The legal profession is happy to spend the next five years in the Supreme Court and wherever else it goes to ensure that this does not come out. It just wants to run down the clock, during which time it will continue seeking not to publish the figures.

In the first instance, we will get a response from the DPC. Arising from that, the Committee of Public Accounts, of all the committees in the Oireachtas, has an absolute duty to verify to whom taxpayers' money is being paid and for what purpose. Our committee will have a role. If we are ultimately satisfied that the legislation is not sufficiently drafted to ensure public accountability for public funds, that issue will have to be revisited. We will have a little bit of a road to travel first, but the intention of GDPR is not to protect barristers. It is an abuse of the system by the legal profession, full stop. It is the most powerful lobby and would not have been as quick were this about doctors' fees or payments to other individuals.

Deputy Alan Kelly: Yes.

Chairman: It is because the legal professionals, both in the employ of the State and the other category, are all the one club.

Deputy Alan Kelly: I thank the Chair for his advice. I appreciate it. We will write to the DPC and travel a road in respect of this matter.

When I first started asking these questions, my motivation related to the two-payment situation. I know of many good people who have served on boards and worked in other public service jobs who adhered to the non-second payment principle. That is fine – they contribute, which is good, as we know that it can be difficult to get people to join certain boards. However, we now see a situation where information that was being made public is no longer being made public. I believe that is because the fees are so vast. As a result, GDPR is being used. In response to information being sought on the two payments, they have used GDPR as an excuse and have created a dangerous situation, one that will have to be unlocked.

Chairman: It will have to be tackled. We must move on.

Deputy Marc MacSharry: I will make a final point. We might suggest to the Department of Public Expenditure and Reform that, where all public expenditure is concerned, tenderers

should be told that their fees and costs will be public information. They would be entitled to know.

Chairman: That could be a recommendation of the committee as part of our work this autumn, for example, when people make submissions for tenders, they should note that the information can be accessed under freedom of information legislation. Everybody-----

Deputy Marc MacSharry: And if individual barristers are that hung up about their privacy, they do not have to do the work for the State.

Chairman: We may make a recommendation to the effect that, if anyone tenders for any public job, this note about information will be stated on the tender document. If people do not want their names published, they should not apply for the job.

Deputy Marc MacSharry: Absolutely.

Chairman: We have various ways of approaching this. We have exercised our minds on the matter. We will travel the road to ensure safe passage to the far end in the interests of public accountability for public funds.

Deputy Marc MacSharry: Hear, hear.

Deputy Catherine Connolly: I have no issue with any of this and I support it, but comments should not be made generally about a profession.

Chairman: Okay.

Deputy Catherine Connolly: This is a letter in reply from the Department of Finance.

Chairman: Correct.

Deputy Catherine Connolly: Where any group is concerned, we should be careful in what we say. The issue is extremely important. I fully support the issue. We are dealing with a letter from the Department of Finance rather than maligning a whole profession.

Deputy Marc MacSharry: It is a very honourable profession.

Deputy Catherine Connolly: It is difficult-----

Chairman: I will put it this way – I take Deputy Connolly’s point completely. In this day and age, it is probably not politically correct to say what one believes. I am one of those people who, even if it verges a little further than some people would like-----

Deputy Catherine Connolly: But I-----

Chairman: I take the Deputy’s point.

Deputy Catherine Connolly: On that, it is difficult for me. I am an ex-barrister, so I am inclined to keep my mouth closed. Generally speaking, this committee commented before but the issue in question is much more important than the comment. It is extremely important, and we should be going right to the core of issues. I support this issue completely.

Chairman: We have a road to travel.

Deputy Marc MacSharry: The profession is definitely as well resourced as it is honour-

able.

Chairman: I take on board Deputy Connolly's point. We have a road to travel on this matter.

Next is No. 2482 from Dr. Deirdre Keyes, chief executive of the Kildare and Wicklow ETB, providing information requested by the committee regarding non-compliant procurement of €1.8 million as set out in the 2016 audit accounts. We will note and publish that, as we are doing a body of work. Perhaps Deputies would like to comment.

Deputy Catherine Murphy: I will make a quick comment.

Chairman: It is useful information.

Deputy Catherine Murphy: What jumps out at me relates to the bog standard things that are involved, for example, cleaning services, schoolbooks, IT and transport by bus companies. There is nothing of a specialist nature. Actually, perhaps the IT element is. It might be a roll-over. None of this is the type of thing one should expect to find where there is not a competitive process.

Chairman: Fine. We will hold this over because we will shortly be making a comprehensive compilation on this issue.

Next is No. 2483 from Mr. David Gunning, chief officer of the National Paediatric Development Hospital Board, dated 18 October, in respect of our request for an update on project costs of the new children's hospital. We will not have a long discussion on this issue now, since the board will be appearing before us in three or four weeks' time, but a paragraph in the letter reads:

As reported to the Public Accounts Committee in January 2019 and in May 2019, there are a number of exceptions that have always been outside of the approved budget, and for which there cannot be price certainty at this point, or for the duration of the project.

To date, we have been told that what has been tendered for and the cost overruns are within the overall budget figure. Now, however, it is clear that a number of exceptions have been outside the approved budget. We have a dual system. There is what is within the budget and a parallel system of exceptions outside the approved budget.

Deputy Marc MacSharry: Yes.

Chairman: There is effectively a system of double recording. There are two independent methods of recording the cost.

Deputy Peter Burke: Camouflage.

Chairman: There is the published approved contract under which everything was to come in, but there is a separate list of exceptions for items not in the approved tender. This is where the overruns will be. The letter states that they cannot be priced at this stage or how long doing so will take. It is an extraordinary admission that there are a whole lot of items outside the general contract that will not or cannot be priced at this stage. We must get to the bottom of this. The board will be before us in a couple of weeks' time. I will allow brief comments now, but we will not labour the point. The sentence had to be put into the public arena in light of recent comments.

Deputy Alan Kelly: It reads: “As reported to the Public Accounts Committee in January 2019 and in May 2019, there are a number of exceptions that have always been”. That is the bit that gets me. I do not remember it. It states: “...always been outside of the approved budget, and for which there cannot be price certainty at this point, or for the duration of the project.” There can be any price rather than price certainty.

There are two issues. There has been an escalation in costs at a significant scale in the space of a few months. Within five months, there has been movement from €314 million to €397 million. In any other case, there would be a national outcry over such a scale of increase but the public is conditioned to this now.

We now have a contract for construction *et al* and we also have, in a very convenient way for the Government, a separate process that cannot be costed on an ongoing basis and will only be revealed in years to come when the project is finished. That cannot happen.

Chairman: That is correct.

Deputy Alan Kelly: The public deserves to know on an ongoing basis all of the costs related to this. We must remember when we spoke about this previously we were told the costs that were outlined, which had been signed off by the Government - and the Taoiseach put the figure in the public domain - were outside of issues such as fit-out and IT.

A significant number of months ago I stated the project cost would exceed €2 billion. In the Dáil, the Taoiseach did not reference me by name but said that people who were saying this were exaggerating. I now ask him to guarantee it will not exceed €2 billion. Given what is written here, the scale of the increase within a few months and the fact we now have a totally separate stream that will be uncosted, when the NPDHB is before us in a couple of weeks, we absolutely have to go through this in a level of detail that has not been seen before on behalf of the taxpayer because it is out of control. We do not know where it will end.

Chairman: We will try to be brief because we will be coming back to this.

Deputy Marc MacSharry: I do not have much to add to this but I had picked it out and underlined the relevant sentence. Effectively, it amounts to a blank cheque. The Taoiseach had signalled this earlier. It seems, if we are to believe it, that we are about to write another blank cheque for broadband provision. This is a significant concern. We are continuing down an endless road in respect of the costs of this project. They got it wrong from the beginning. They handed out the contract to the man before the house was designed at all and God knows where it will end because there is not a person in the Oireachtas who will be able to say how much it will cost until it is finished, and I would say it will be significantly more, as Deputy Kelly said.

Deputy Catherine Murphy: One of the factors was flagged earlier. Wage inflation may well be a reason for an even further overrun. This is not Monopoly money and we must have serious concerns about cost control. There is an opportunity cost in what is not going to be able to be done. There is a degree of spin about this that no other project will be impacted. We have to keep a close eye on this because there is a pattern where some contractors come in low and there is an add-on. This contractor has that type of profile. The NPDHB will come before us in the coming weeks but we need to have somebody come in and speak to us about the cost control side of the project at this stage because unless we maintain a grip on it and interrogate the additional bills coming in, we will run into even bigger cost overruns.

Deputy Catherine Connolly: I agree with everything that has been said and our role is to

keep an eye on the costs. To go back to the Pálás Cinema, we had the exact same issue. The project started at a certain price and there were cost overruns. All of this was set out in the report. Costs arose in parallel with it, which the architect for the Department subsequently said were justified.

I forget which witnesses who came before us were asked whether the cost would stay below €2 billion. They were not in a position to say it would not. They were very upfront and told us they could not state that.

Our role is just to keep an eye on it, to check and to ask questions. The bigger picture, and excuse the bad pun with regard to the Pálás Cinema, is that once it is decided that a project will go ahead, it will go ahead regardless. In Galway, we were told we could not have a hole in the ground and it had to go ahead. In Dublin, we have been told we need the children's hospital without any analysis of the consequences of continuing with the decision or looking at an alternative or the implications for the health of children in other hospitals. Sometimes it is very difficult to see the wood for the trees.

Chairman: We will note and publish it and, as I have said, the NPDHB will come before the committee in a couple of weeks.

No. 2484 B is directly related so we will not have an extensive discussion on it. It is from Ms Eilish Hardiman, chief executive of Children's Health Ireland, CHI, and is dated 17 October 2019. It is in response to our request for information relating to each consultancy project undertaken by CHI since 2016. This is also in connection with making sure that while the building is built that it will work on behalf of patients. CHI will come before the committee. It is interesting that Ms Hardiman has said there is a lot of work involved in gathering the information on the consultancy projects. We will have the information at the end of next week. We will note and publish this. CHI will come before the committee shortly. There is another stream of major costs with regard to the hospital that will pile up into a major amount. These are non-construction costs. This is why we need an overall picture of where things stand when it comes before the committee in a couple of weeks.

No. 2485 B is from Ms Carol Hanney, chief executive of City of Dublin Education and Training Board, providing an information note on the processes and procedures in SUSI for grant application cases involving difficult family situations. We are all aware of cases where families have fallen out, a son or daughter might not be in good communication with the parents and an application for a SUSI grant is held up. We have asked what SUSI does about these hardship cases and this letter makes for difficult reading. It states the applicant can provide information to confirm parental divorce or separation by providing the separation or divorce agreement, a court order or a barring order. We are talking about GDPR and SUSI is requesting college students to provide details of a barring order issued in the family court, which is a private matter, to a Government body to achieve a grant. Talk about abuse not just of GDPR but the family court procedures. For SUSI as a State body to ask for detailed information about third parties, as the student is the applicant, with regard to a barring order between two other individuals is outrageous in the extreme. We are asking it to reconsider this.

SUSI states the student can provide details of the dissolution of a civil partnership, whether a parent is in receipt of a deserted wife's allowance or a one-parent family payment. Sometimes people go their way without a legal agreement for separation or divorce. In this case, a student can get a letter from a solicitor confirming that legal proceedings are pending or from the family mediation service, and separate utility bills to show they are living apart. No wonder people

experience difficulty when they are being asked for proof of barring orders. It does not address the reality of students in houses where there is no communication between all of the original family members. It makes it worse to speak about getting copies of family law court barring orders as evidence.

Deputy Catherine Connolly: I had this marked and the Chairman has addressed it. The proceedings are held *in camera* for a reason. Children are being asked to get a copy of the order and bring it in. What is being asked beggars belief. It is important to show something, however. Therefore, there is an issue, but it should not be addressed in this way. Where are we going with it?

Chairman: This came from City of Dublin Education and Training Board. It is the public body that processes the applications on behalf of SUSI. This rule probably comes from the Department of Education and Skills. We need to write to the Accounting Officer of the Department for his comments in light of what has been said here and try to find a better way of assisting people who should be entitled to a grant. We have often dealt with students who were just not able to go to an institution because they could not provide information of the kind in question. On exceptional basis, maybe an interview or something could be done, behind closed doors or whatever. There has to be a way to give students the grants. There is a part designed to ensure they cannot meet the conditions.

Deputy Catherine Murphy: There is one other issue. We have all come across it. When dealing with these at constituency level, we give people advice on how to proceed. There are many people who will not present and lose out on an education. This also needs to be pointed out to the Department. Irrespective of what comes back to us, there has to be some public understanding that if there is a difficulty, applicants will not be excluded.

Chairman: We will write to the Department. Has SUSI its own board? Is it a separate organisation?

Mr. Seamus McCarthy: No, the City of Dublin Education and Training Board has responsibility for operating-----

Chairman: Administration.

Mr. Seamus McCarthy: Yes.

Chairman: But it might not have written the rules.

Mr. Seamus McCarthy: Those would be procedural.

Chairman: Is the Department the right body to write to, or both?

Mr. Seamus McCarthy: It may have a view.

Chairman: We will write to the City of Dublin Education and Training Board as well as the Department.

Deputy Catherine Murphy: It is also a matter of what the legislation states. There is legislation guiding this.

Chairman: I would be shocked if we let that through the House without addressing it.

No. 2486 B is from Mr. Graham Doyle, head of communications, Data Protection Commis-

sion. It relates to various issues we raised at the committee. We will note and publish the cost of the investigation by the Data Protection Commission in regard to the public services card. We will be talking to the mother Department for the card, the Department of Employment Affairs and Social Protection, during the course of the day. We will be raising these issues at the meeting. We sought a breakdown of details on complaints, the role at EU level and the amount of time spent investigating public bodies. We also sought the legal costs awarded against the Data Protection Commission. The names of the cases are given. I do not believe that the letter we were given gave the names of the people who were paid the fees, however. We also sought information on outstanding reports being completed under the 2018 legislation. I suppose that when the legislation changed, the infrastructure for producing these reports was different. We will note and publish the information.

Deputy Catherine Murphy: The correspondence was very useful. It is quite interesting that this is coming from the Data Protection Commission. There is quite a sizeable amount of information naming people. It jumped out.

Chairman: I looked at that. That is the name of the case - David Fox v. Data Protection Commission.

Deputy Catherine Murphy: Page 2. It has the names of the people.

Chairman: That is their own staff.

Deputy Catherine Murphy: I know, but my point is that they are individuals. It is just interesting.

Chairman: It is.

Deputy Catherine Murphy: We will be back here in a short enough time in respect of this. When the representatives were in front of us, we asked them whether they have the resources. They have lead responsibility in regard to the technology sector in particular. It has a European dimension. They got a fraction of what they looked for in terms of the budget they anticipated. If they are not able to do the job, there will be failings, and we will see those failings here. This is typical. We will be interrogating and asking why certain things were not done. Let us mark this moment in time. One cannot proceed without the resources.

Chairman: We will note and publish this. All these replies will feed into our next report. We may be here in the new year to deal with that.

No. 2487 B is from Mr. Ray Mitchell of the Health Service Executive, providing information requested by the committee. There is quite a bit here. The HSE witnesses will be here in a couple of weeks so we will be able to interrogate them further on these matters, but we will note and publish the correspondence for today. An information note has been provided on risk analysis in respect of decision-making for public private partnerships, PPPs, for health centres. Regarding the chapter in the report of the Comptroller and Auditor General for this year, the witnesses will be coming in to deal with this in a couple of weeks. I will confirm what else is in the letter, sighing in the process. There is a reference to cash advances to section 38 organisations. Deputy Kelly mentioned this matter. On the top of page 3, there is a reference to the total payments to the section 38 and 39 organisations in 2018, amounting to €3.258 million for section 38 organisations and €1.025 million for section 39 organisations. We asked for details on cash advances. The letter is internally self-contradictory because it states all cash balances are to be neutral at the end of the year and then it states there was €73.6 million outstanding at the

end of 2018. The essence of what is being said is that one gets an advance during the year that is to be paid back by the end of the year. They give us the year-end outstanding balance saying it will come off next year. Therefore, it is not neutral in the year, although that is the impression the HSE has been giving us up to now. We will tease this out further.

There is further information on the cross-border initiative and its cost. There is a note on the arrangements for holiday cover in respect of home help. I will raise this myself again. It is a new departure to cancel cover for people. Cover is provided when home helps go on holidays on a priority basis. That was not the case in the past. We will be coming back to this with the HSE in a couple of weeks.

Deputy Imelda Munster: Page 2 gives a list, with seven headings as to what are deemed significant risks. The responses are unreal. With regard to Nos. 1 and 2, pertaining to planning and design, the first line states the planning risk transfer was reduced as the HSE had received planning permission. There was limited risk as opposed to significant risk. With regard to No. 2, design, the State had already done the design so, again, there was limited risk, not significant risk. No. 4 concerns operational risks or events that could lead to the facility being unavailable, including failure to have the rooms in the facility heated to the correct temperature, leaks, vandalism, or failure to have the facility adequately cleaned. None of these is deemed a significant risk. Is the HSE saying a project is classified as a PPP project because of the risk that a radiator might not be working or that a tap might be dripping? Even in regard to the building being cleaned, do all public buildings not have cleaners to clean them? It is pure nonsense. On legislation, the correspondents more or less state in response to No. 7 that they should obey the law. It is totally unsatisfactory and pretty much a nonsense that this is their justification for PPP classification. Could we get a very detailed breakdown, in advance of the witnesses coming in, on who the contractors were, the operation costs, the companies, the duration of the contracts, the building costs, etc.?

Chairman: In regard to the PPP projects, we will ask for a detailed breakdown under all the various headings the Deputy mentioned so we will not be asking for the information on the day and getting it after Christmas. We will ask now to have it supplied to us in the briefing material in advance so we can examine it before the witnesses come in and discuss it in detail with them on a PPP project by PPP project basis. Some projects are in bundles. One contractor might be doing three or four in some cases. They are in the middle of a tendering process for more, I understand.

Mr. Seamus McCarthy: I believe that is for lease arrangements.

Chairman: Lease arrangements, not PPPs.

Mr. Seamus McCarthy: One of the points we made in the report was that there are three different models of provision of primary care centres and that it would be timely to have an analysis and determine which way of delivery represents the best value for money.

Deputy Alan Kelly: First of all I think the clerk should forward this correspondence to the Joint Oireachtas Committee on Health because there is an element of crossover here. Second, with regard to the section 38 and section 39 organisations, which I have been raising for over a year, this is complete and utter garbage. It is actually riddling the books. A number of these organisations are on the edge and cannot sustain themselves. Basically, what happens is the HSE gives them so-called loans or cash advances to function. This used to happen after the summer but it is now happening in the first or second quarter of the year. Are they insulting our

intelligence? They are trying to insult our intelligence by saying that this will be cash neutral. It is not going to be cash neutral. These organisations have huge deficits. They are basically doing the work of the State but they have been starved of resources. In many cases, their services are weakening and in some cases, they are going to close down. There is an avalanche of these issues coming. In advance of our meeting and in order to help this committee in its deliberations and questioning, I want those figures broken down further. I would also like a breakdown of how much has been given in cash advances over the past two years, in tabular form, to each organisation and when the advances were given. In another column, I would like to see the total spend per year for each organisation in 2017, 2018 and the following year. This is just rolling on and getting worse every year. We need that information in advance. We do not want to be asking for it at the meeting and having the witnesses tell us that they will come back to us with the information. Let us ask for it in advance and then we will be able to go through it cumulatively and individually for these organisations.

Chairman: We need to list the agencies. The HSE has no problem publishing in its annual report a list running to dozens of pages of payments to these organisations. It publishes this information every year in its annual report so we are not asking-----

Deputy Alan Kelly: It needs to take out the table and send it on to us.

Chairman: Just in case people think we are being prurient, we are not looking for information on organisations for which the HSE does not publish global figures on an annual basis. It lists the organisations in its reports so there is no secret as to their identity. However, we need the information to be a bit more manageable because there are hundreds of organisations. Perhaps we should look for figures for those organisations that receive in excess of €500,000-----

Deputy Alan Kelly: That is fair enough.

Chairman: We could have a list the size of a telephone directory otherwise.

Deputy Alan Kelly: It is actually not as big as that but-----

Chairman: What figure would the Deputy suggest?

Deputy Alan Kelly: I would say over €250,000.

Chairman: Fine. That is agreed.

Deputy Alan Kelly: The list is not as big when one is dealing with the larger amounts.

Chairman: Fine. I would be worried that we would get an unmanageable amount of data-----

Deputy Alan Kelly: That is a fair point.

Chairman: We will seek information on the organisations in receipt of annual payments in excess of €250,000. That will cover all of the big ones.

Deputy Catherine Murphy: There are a number of issues I wish to raise. We have talked about this particular issue previously and I agree with what has been said. These organisations are losing clinical staff because they cannot pay the same rates as the HSE. In many cases, the services being provided should be public services but often the charities are more flexible and are being paid less by the State for comparable work. There is a real issue there. I ask that

before the representatives come in, they provide us with some context for the table on page 7 on home support services in the various CHOs. Expenditure in the year to date is one thing but we need to know what the waiting lists are like. Just giving us those figures is not enough. It looks like one area is doing better than another but the size of the catchment area for the CHOs provides a context, as does the length of the waiting lists. There may be a much longer waiting time in an area that seems to be under-provided for than in an area that appears to have a lot of money. I do not think the table on its own is sufficient. I would like to see that additional information before we meet them.

Chairman: Also in relation to each of those CHOs, people are approved for home help but are put on a waiting list. Patients are approved but the HSE does not have the money. We need to know how many have been approved and put on waiting lists in each of the regions. There are many such people out there.

Deputy Catherine Murphy: Yes, there are.

Chairman: We all get letters from people who have been approved for home help but are on a waiting list until funding becomes available. We need that figure, broken down by CHO region too.

The next item of correspondence, No. 2502, is from Mr. Ronan Murphy, the chief executive of Horse Sport Ireland, HSI, dated 23 October, providing a detailed response to a request for a timeline for the implementation of the recommendations of the Indecon report, Review of Certain Matters relating to Horse Sport Ireland. HSI states that the recommendations were implemented between August 2017 and 2018. We will note and publish this. There is a lot of data there so I suggest that we note it for now and if any member wants to take it up in further detail, he or she is free to do so.

The next items of correspondence, Nos. 2503 and 2526, are letters from Mr. Jim Meade, the chief executive of Irish Rail, dated 23 October and 6 November, respectively. The correspondence relates to the public services card and in particular, to a case that was referred to at our meeting on 26 September. Included in the correspondence is some detail on how suspected fraud is dealt with by the organisation. The letter is claiming that what was said at the Committee of Public Accounts meeting was untrue and inaccurate. Based on the information given at this meeting, everybody here acted in a totally reasonable manner and assumed certain things. There is criticism of me in the letter but I was giving Irish Rail the benefit of the doubt that when it issued a bill, notice or charge to somebody it did so on the basis of knowing how many trips were taken. I was giving the organisation the benefit of the doubt rather than suggesting that it was issuing bills willy nilly, without knowing how many trips were taken. In the letter received, Irish Rail says it is untrue to say that it had details of the trips taken by an individual, which is surprising. The follow up correspondence, No. 2526, states that Irish Rail issues a fixed penalty notice in circumstances where a free travel pass is cancelled but a person continues to use it. This has highlighted the fact that there is no proper exchange of information between the Department of Employment Affairs and Social Protection and the CIE Group in order to make sure that free travel cards do not continue to be used when they are no longer valid. It takes months for this information to be provided to Irish Rail and Mr. Meade refers to the fact that people can be using withdrawn cards for years. There is something very seriously wrong in the coordination between the Department of Employment Affairs and Social Protection and the CIE Group on this matter. Understandably, this has been a learning process for everybody. The letter explains that a fixed penalty notice is based on the period in which the card was being used. If it is, for example, four months since the card was cancelled, Irish Rail sends out a notice for

four months although the individual may not have ever used the card. Irish Rail says that there is a separate situation whereby a passenger who fails to deliver up a valid ticket on a specific day when requested to do so by an authorised officer will be issued with a fixed penalty notice. This is separate from a debt, which is a civil matter. The correspondence to which I originally referred related to an actual debt. On the debt issued, we do not have the exact details of how that was calculated and Irish Rail has not offered those details. We asked for details on the fixed penalty notices that were issued in 2016, 2017 and 2018, the amounts paid and the payments outstanding. In summary, the situation for last year was that 12,000 notices were issued and 6,000 were paid. The value of the fixed penalty notices issued was €1.7 million and the amount paid was €0.7 million. Less than half of the fixed penalty notices are paid but more to the point, we want details on the bills that Irish Rail issues, that is, what it calls debts. It issues bills for what it terms “a debt due” and we want the same type of information on those bills, namely the number issued for each of the three aforementioned years, as well as the amounts paid and the amounts outstanding. It will be helpful to us when we get that information. We will also ask the Department of Employment Affairs and Social Protection later today about the exchange of information. We were told at a previous meeting that the travel companies know the details of all the trips taken using the card but do not know the name of the person. The number on the card is anonymised but the Department can relate the number back to the public services card and it knows how often it was used. The CIE Group of companies and Irish Rail are saying that they do not have details of the person’s individual travel. The outcome of all of this is troubling. Whether it is a fixed payment notice or a debt, Irish Rail is issuing bills to people that are not connected with the number of trips those people should not have taken and for which they did not pay. Those bills were issued on a time basis or some other method. We will come back to this issue. We will get some information from the Department of Employment Affairs and Social Protection and then we will conclude our work on this matter as soon as we have that further clarification. I will continue to pursue this because I raised this issue and I was referred to in that letter. We will get further clarification. We will note and publish the information.

No. 2504 B is from Mr. John O’Sullivan, chief executive and Commissioner of Valuation, Valuation Office, dated 23 October 2019, providing the further information we requested regarding appeals, adjustments to valuations in 2017 and 2019 and the rateability of car parks in supermarkets and shopping centres. These issues have been mentioned and there is interesting reading in this document. Mr. O’Sullivan makes a distinction between his role as the Commissioner of Valuation and his entirely separate role as Accounting Officer. I can understand how people interested in filling stations along the motorways have an interest in this area. A letter was written to Mr. O’Sullivan on this matter and he is stating that there is misunderstanding of his separate roles of Accounting Officer and Commissioner of Valuation. Is that a valid separation of duties?

Mr. Seamus McCarthy: I am sorry, what did the Chairman ask?

Chairman: The Commissioner of Valuation is replying in his letter stating that there is confusion when people speak about his role. He is stating that people who have written to this committee do not take account of the distinction of the Commissioner of Valuation being independent in carrying out functions under the Valuation Acts and the entirely separate role as Accounting Officer in the context of public financial procedures. Is Mr. O’Sullivan the Accounting Officer?

Mr. Seamus McCarthy: Yes, he is.

Chairman: That is fantastic. People deal with Mr. O’Sullivan and I can understand how

people in that situation, dealing with Mr. O'Sullivan as the head of the Valuation Office, can think they are dealing with Mr. O'Sullivan in his separate legal role of Accounting Officer for the Valuation Office. Mr. O'Sullivan is stating that people should not confuse writing a letter to him as the Commissioner of Valuation as opposed to writing to him in his separate legal role of being the Accounting Officer for the Valuation Office. That is lovely stuff.

Deputy Catherine Murphy: There must be entirely different Chinese walls in existence.

Chairman: Mr. O'Sullivan must have two halves to his brain that do not communicate. According to this letter he has two separate roles, or perhaps two separate hats might be the best way to put it. We will note and publish that information and people may be interested in it. Many people are interested in this topic and in car parking for supermarkets.

Deputy Catherine Murphy: Last week, or the week before, we requested permission to publish some of the material provided to us.

Chairman: We did not see that.

Deputy Catherine Murphy: We need to keep an eye on that.

Chairman: We are waiting for that.

Deputy Catherine Murphy: It is public information in respect of understanding how this works.

Chairman: Yes, it is guidance. There is an interesting note on the valuation of car parks in the context of shopping centres where the main supermarket or property company may own the whole thing and there may be an anchor tenant and other tenants. Individual rates may not be paid but there would be a reflection in the rents. The bottom line for the people who operate the car park is that it is rateable. That is interesting for people involved in that trade and we will follow up on that outstanding item of information.

No. 2505 B is from Mr. Dave Walsh, chairperson, An Bord Pleanála, dated 25 October 2019. It provides information requested by the committee at our meeting on 3 October 2019, including a breakdown of the 2,800 decisions made by the board, encompassing the number of decisions made by the full board and those made by a partial board. Mr. Walsh states that 88% of all meetings comprised the full board. That is my understanding of the answer given to our first question. The second question concerned categories of decisions where the chairman felt that it was an appropriate matter to bring to the full board. Mr. Walsh refers to that as category one.

It is also noted that we asked two questions that are more appropriate to the Department of Housing, Planning and Local Government, namely, the number of times in which the Minister has invoked section 181 powers to grant permission and the issue of gender balance on the board. Those are matters on which the Department will have to reply to us.

Mr. Walsh gives further information on the current status of the 101 recommendations of the 2016 report. That information is here. Our fifth query concerned a breakdown of the categories of respondents to the consultation regarding An Bord Pleanála's website. That response can be read and includes details on the type of people who access the website.

A note on gender balance is also included and the Minister will be asked to answer that query. Copies of the resumés of all of the board members are attached, as is a breakdown of the number of decisions of the board accepting an inspector's recommendation. People will be

interested in this topic. Mr. Walsh has stated that in 89% of cases the report of the inspector is accepted but not in the other 11%. An acceptance rate of about 90% is fairly high and it would be inevitable that the board would be entitled to make its own decision on some cases.

Mr. Walsh's letter next addresses the issue of strategic infrastructure decisions. Some 84% of all such applications are granted, with 16% refused. That is interesting because there is a presumption abroad that under the strategic infrastructure process, if there is a meeting with the board, the details of an application are gone through and that application is then submitted on the basis that confirmation would almost be certain. That is not quite the case, as some 16% of applications are refused at the end of the process.

Our next query dealt with the number of cases that have been with An Bord Pleanála for more than a year. There are 74 of those and details are given in the correspondence. Some of those instances are referral cases and some involve complex legalities. All of the information is given in the correspondence.

We also inquired about the number of oral hearings upheld by the board. Mr. Walsh informs us that oral hearings were held in nine planning cases in 2018 and the planning authority upheld decisions in eight cases.

Our 12th question regarded cases where the decision of An Bord Pleanála contravened a county development plan. The correspondence states that An Bord Pleanála does not gather such information. It makes its decision and is aware of the county development plan, but An Bord Pleanála does not gather statistics on cases where such decisions are made. We know An Bord Pleanála takes such information into account, but it is not legally bound to follow the county development plan. That is because things are often put into a development plan for good local reasons that would not stand up to the scrutiny of An Bord Pleanála.

That is good information, it is good to get it and I thank An Bord Pleanála for supplying all of the information requested. We will note and publish that information.

Deputy Catherine Murphy: That final question is important. The county development plan interrogates a wider scenario than an individual development. It is a wider framework and not just about the development of an individual site. It takes into account whether there are water and public transport services and similar aspects. I refer to a breach of the county development plan. New wording has gone into county development plans on foot of court cases where it has been directed that there should be compliance with it, as opposed to having regard to it, but An Bord Pleanála has a different standard. That is really significant in respect of problems that will arise in the future. It is not for this committee to deal with, but I will not be in silent consensus with the idea that information is not gathered. That is a really worrying issue. There will be a cost if the services available are not measured and then they have to be retrofitted. There may well also be services provided in another location.

Chairman: It is a good letter and Deputy Murphy's point is quite right. The information referred to is not being gathered by An Bord Pleanála, so we might write back and ask it to put a procedure in place from now on to see that is done. It is important for the local and regional authorities and the Department to know this information. It would appear that somebody should be collecting this information, so we will pass this information on to the other sectoral committee when we get it. The reason I am commenting is that I have seen county development plans that have stated there should be no mobile phone masts within 200 m of a house. That stipulation was put in in the full knowledge that it was only for local consumption. Sometimes

things get into local development plans that everybody knows will not stack up, but sometimes the right decisions are made in these types of situations.

Deputy Catherine Murphy: This is important in respect of strategic decisions.

Chairman: We will ask An Bord Pleanála to start compiling that information for its next annual report. I call Deputy Kelly.

Deputy Alan Kelly: I support the previous comment. We should pass this information on to the relevant sectoral committee because it is interesting.

Chairman: Agreed.

Deputy Alan Kelly: I also note, however, that I raised issues regarding the management of the process that deals with appeals from local authorities and the validity of that process. I refer to the process not being corrupted, and I mean that in a generic sense rather than any reference to individuals-----

Chairman: In a criminal way.

Deputy Alan Kelly: It is important to ensure the process is not upset or corrupted because of the fact, as we have been told publicly, anonymous objections are getting through not just the local authority but An Bord Pleanála whereby somebody is objecting in somebody else's name and paying the fees involved but the person does not exist. What is startling is the fact that the chairman of the board said there is more than one case of that. We know of one case, which has not been answered. I ask specifically about that. We might write to the board to ask it what it will do to ensure the integrity of the process and that such corruption of it, which can have a massive impact on certain locations, can never happen.

Chairman: Okay.

Deputy Alan Kelly: Can we write and ask it about that?

Chairman: We will. Is the new planning regulator in place yet?

Deputy Alan Kelly: Yes.

Chairman: We should also address that letter to the planning regulator.

Deputy Alan Kelly: Perfect.

Chairman: We should address that point as the regulator is overseeing the law.

Deputy Alan Kelly: I thank the Chairman.

Chairman: We will address that point-----

Deputy Alan Kelly: To both.

Chairman: -----to both of them. We will thank the board for the letter and follow up those particular points.

No. 2506, is from Moyagh Murdock, chief executive officer of the Road Safety Authority, dated 25 October, providing information regarding the policing by the authority of the foreign registered vehicles working in this State. Two and a half pages of a letter have been provided

giving details of inspections. For those who have an interest in this matter, the best thing we can do is note it today and publish it. They may come back to us but we are not experts on the inspections of vehicles, whether they are registered in Ireland or outside the State. A legitimate point was raised with us regarding the regime of inspections. There is a reply there, which we will note and send to the organisation that contacted us on the matter and perhaps we will have further communication from it at a later stage. That is agreed.

No. 2507 is from John McKeon, Secretary General of the Department of Employment Affairs and Social Protection, relating to our request for the business case for the public services card. He makes it very clear in his letter there is no single business case document relating to the development of the SAFE identity authentication process for the card. He sets out that the Comptroller and Auditor General covered this in his report three years ago, and it is analysed time by time. The Secretary General will be before us later when we will discuss the public services card. We will note and publish that correspondence and discuss it later.

No. 2508 is from Steven Sheridan of the Housing Agency responding to a request for a list of approved housing bodies, AHBs, registered with the interim regulator. He clarifies the regulator's office operates on a voluntary code and AHBs are signed up to it rather than registered. There are 275 bodies signed up to the code. The Department of Housing, Planning and Local Government is responsible for maintaining the register of all AHBs, of which there are now 551, but we know that 95% of the assets are in the bodies signed up to the code. The information is set out in a link to the website.

No. 2512 is from John McKeon, Secretary General, of the Department of Employment Affairs and Social Protection, who will be here shortly, regarding grants paid to travel operators in respect of free travel. That arose from discussion on the matter. We will discuss the public services card and free travel with him. We will note and publish that correspondence and it can be discussed later.

Some category C correspondence has been held over for a little while. No. 2464 is from an individual, dated 14 October, on behalf of a group based in Donegal called the Great Arch action committee, which is requesting the committee to investigate a planning decision by Donegal County Council regarding a proposed pathway to a viewing point for the Pollet Great Arch, Fanad. Local authorities are not within the remit of the committee. We must write back stating that it is not within our remit to examine that matter and directing the group accordingly. It has obviously talked to the local authority, the ombudsman or whoever it believes is the appropriate body but it is not this committee.

No. 2479 is from persons calling themselves B and C, dated 17 October. Members will recall the individuals had previously corresponded with the committee regarding the University of Limerick, UL. The committee was copied with correspondence that was sent to the Minister for Education and Skills. We have had other correspondence relating to UL in recent weeks. While there has been an effort to conduct a mediation in the college it seems it has not reached a successful conclusion. I propose we add these matters relating to third level colleges, including UL, to our work programme. The UL issue seems to be ongoing. We will not get to complete that issue between now and Christmas but we can have it on our work programme for the new year.

No. 2488 is from Deputy Bríd Smith, relating to an inquiry into Our Lady's Hospice, Harold's Cross. At our meeting on 19 September, we noted an update from the HSE that the case is currently with the Director of Public Prosecutions, DPP, who is addressing some further

queries with An Garda Síochána and there was no further information at that time. The HSE is scheduled for a meeting with us on 5 December and we will request an update on this for that meeting. Members will note the matter is with the Garda and the DPP. This committee will not have a role in it but we will get an update on it from the HSE as our meeting with it in a few weeks time.

No. 2490 is from an individual, dated 20 October, who raises some points about the Government's spending policies. The individual raises issues that have been before this committee on several occasions previously. He refers to the cost of providing broadband and the cost of the children's hospital. We will note it and circulate it to members of the committee. It is not for publication but members can take it into consideration. We will not be specifically following it up but it relates to spending of Government money on matters already covered by the committee.

No. 2491 is from Deputy Cullinane, dated 21 October, regarding media allegations that RTÉ is facilitating tax avoidance. Perhaps the Deputy would like to speak on this topic.

Deputy David Cullinane: This relates to an arrangement, which I have raised previously, regarding top presenters who can set up companies for the purpose of paying a portion of salary as corporation tax and not as income tax. The issue was examined in other areas of the public sector in the past where there was a mix of public and private. It is timely it has come up today given the announcement by the director general of RTÉ that there will a 15% pay cut for these top presenters, which most people will welcome. The Joint Committee on Communications, Climate Action and Environment is the first port of call for the director general. We have examined this issue in the past and established that more than 50% of RTÉ's funding comes from the taxpayer.

Given that significant pay cuts, voluntary redundancies and the closure of services in Limerick and elsewhere are to take place at RTÉ, it might be an issue that we would want to examine because when the Accounting Officer appears, they cannot answer questions on those issues. They can only answer for the money that is transferred from the Department to RTÉ. I appreciate we have a heavy workload and that the sectoral committee will examine this but it might be something we could also consider. This correspondence relates to an article in *The Sunday Business Post* that put a focus on these types of schemes, which are not available to the vast majority of workers. I was seeking that we write to RTÉ to ask what is the practice. Let us establish the facts because we do not want to be unfair to anybody but let us find out how it works and how many staff members are involved in this practice. I imagine it is people at the very top. I doubt very much it is anybody earning less than €40,000 a year. I want to get a sense of how widespread the practice is. I imagine it involves a small number of staff, most likely the highest paid. We should establish how it works and why RTÉ engages in it. If we could get a note on it from the organisation, we could take it from there, if that is acceptable.

Chairman: RTE mentioned it was completing another review of people who are self-employed.

Deputy David Cullinane: Yes.

Chairman: I think it said it would have something for the end of the year.

Deputy David Cullinane: I have not mentioned this yet but because I raised it, I have had some correspondence from some staff members who have been interviewed. They were not

happy with the process or with the contracts they were subsequently offered. Some of them were found to have been on the wrong contracts. They were self-employed but should have been on proper contracts. They are being offered proper contracts but at less than what they were on. There is dissatisfaction with that. It is a vindication of the issue raised in that it was a practice used by RTÉ to save money and to avoid its responsibilities as an employer in terms of holiday pay and sick pay. This practice should not be used by any organisation funded by the taxpayer.

Chairman: We will do that.

Deputy Catherine Murphy: Not backdating is another issue that was raised by some of the staff. When they changed contracts an issue arose about not backdating contracts.

Deputy David Cullinane: I am conscious that the director general does not have to come in. She is not an Accounting Officer. I made the point that there is a debate about funding public broadcasting. RTÉ is very clear that it needs more money and a reform of the licence fee. I accept that is primarily a matter for the sectoral committee but there is an issue regarding accountability. I do not believe we can stand over more money going to an organisation where the director general is not accountable to the Committee of Public Accounts. I see that as one of the principles that needs to change. There is a mix of public and private investment to come but it was established-----

Chairman: It was more than 50%.

Deputy David Cullinane: -----that it was more than 50%. That is a policy area as well so I understand that.

Chairman: It has changed from year to year. In the good times it had much more advertising revenue and when the advertising revenue dropped, the proportion of licence fee was more than 50%. The point is well made. We will come back to that.

No. 2494 is correspondence from Deputy Catherine Murphy, dated 29 October, in respect of matters raised with the Department of Justice and Equality by a whistleblower in the Prison Service.

Deputy Catherine Murphy: The correspondence came to me and given that the Committee of Public Accounts was already dealing with the matter, I forwarded it.

Chairman: That is fine. We will keep it under review.

No. 2497 is a matter that should be dealt with in private session.

Nos. 2500 and 2511, dated 23 October, are from an individual with an inquiry regarding the school transport system. We have already written to the Department requesting a note on whether Bus Éireann's auditors and the Department are satisfied that the scheme profits are not or have not been used to cross-subsidise Bus Éireann since the scheme began. I propose we note the correspondence and wait for the Department to respond.

There was an article in a Sunday newspaper on 3 November in which it was stated that three Oireachtas committees are seeking answers to school bus scheme profits claim. The Committee of Public Accounts is on the case. We have mentioned it. The Joint Committee on Transport, Tourism and Sport is looking at the matter from a Bus Éireann point of view and the Joint Committee on Education and Skills is also examining it. We are not going to do any more. I do

not believe in three committees of this House dealing with one item of correspondence so this committee will take no further action. If we get a response to the last letter, well and good, but it is not fair on the Oireachtas to have three different committees working on the same topic. I understand what is involved. The matter affects the Committee of Public Accounts, Bus Éireann and the school bus service but there needs to be a system here to ensure that members of three different committees are not reading the same correspondence at three different meetings in the one week. We will wait for a response.

We are nearly there. We said that we would have the witnesses come in about now. The next item is the financial statements and accounts since the previous meeting. A few have been received. The first relate to Fáilte Ireland, the National Tourism Development Authority . Its turnover for the year was €140 million. It received a qualified audited opinion on the basis of its deferred pension asset. Fáilte Ireland's accounts do not recognise pension asset funding in respect of its pension scheme. We have seen that previously. It is a standard one.

Next is the Mental Health Commission. Again, this is a qualified audit opinion. The cost of the superannuation entitlements are not properly recognised versus international accounting standards as the standard of qualification in the health service.

The next one is Galway and Roscommon Education and Training Board, ETB. It is a clear audit opinion. Attention is drawn to non-compliant procurement of €698,000 and the board's concern is regarding the adequacy of the internal audit resources. They have all mentioned that latter point. We are writing to them for a detailed report on the non-compliance with public procurement and to request them to give us the details of the contracts and the measures that are in place and as to why that happened. In the new year, we hope to compile all the sets of accounts that have come to us in order to deal with that topic. For now, it is a compilation of information. We will not ask people to rework it at this stage.

Mr. Seamus McCarthy: I want to put on the record that there is a page missing from the statement on internal financial control, which is the relevant page in respect of the matters to which I have drawn attention. We have alerted Galway and Roscommon ETB to the fact that that piece is missing. It seems to be just something in the copying of that page.

Chairman: The one that is laid before the Oireachtas.

Mr. Seamus McCarthy: It will have to be re-laid.

Chairman: If the Comptroller and Auditor General has already contacted the ETB-----

Mr. Seamus McCarthy: Yes.

Chairman: -----we will wait for that.

Mr. Seamus McCarthy: We will follow up on it to make sure that happens.

Chairman: I thank the Comptroller and Auditor General. I appreciate that.

The next set of accounts is Traveller' Protection Fund and Travel Agents' and Tour Operators' Bond Accounts. There is a clear audit opinion in this regard.

Next is the National Concert Hall, for which there is also a clear audited opinion.

Next is Bord na gCon. It is a clear audited opinion but attention is drawn to impairment

losses totalling €20.6 million recognised in the financial statements of five subsidiary companies following the board's review of impairment for 2018. We had representatives from Bord na gCon before the committee recently. We went through these impairments and the company's revaluations of its assets, but we are formally noting that. The accounts have since been laid before the Oireachtas. That is why we are noting it but we did discuss it at length. That is the end of that particular topic.

The next item is the work programme, in respect of which we will have a very brief discussion. Before us today are officials from the Department of Employment Affairs and Social Protection. Next week, on 12 November, we will have a private meeting from 4 p.m. Tomorrow morning, the secretariat will issue a working paper to members of the committee in respect of the work it has carried out in assisting us with our consideration and drafting of a periodic report. No report has been drafted and one will not be issued. This is a working paper from the secretariat. It has had no input from any member of the committee. It is not a Committee of Public Accounts document. We will consider that working paper at our meeting on Tuesday next, 12 November. I plead with members to try to read the document, which contains many pages, because it would be great if we could get through our first reading in the one meeting. Otherwise, we will have to keep coming back to it and we want to get this report out as soon as is practicable. If members have anything in particular to say, they should make a note rather than starting to read this document when we arrive for the meeting.

I will come back to the work programme but Deputy Cullinane has indicated. We had suggested a meeting on the following Tuesday, 19 November, to deal with the Department of Communication, Climate Action and Environment in respect of greenhouse gases and carbon taxation. I propose that we do not proceed with the meeting on that date and that we will reschedule it for a Thursday afternoon. Three Tuesdays in a row is a bit too heavy for us. We do much work on a Thursday so we will try not to have that third Tuesday meeting.

Deputy David Cullinane: Can I raise an issue about the work programme and how we allocate the lead and second speakers?

Chairman: Yes.

Deputy David Cullinane: This is the place and the time to do it. I assume it is a rotation.

Chairman: Yes.

Deputy David Cullinane: The secretariat do it fairly so I have no problem with that but what happens when Government representatives who are allocated their speaking time as leader or deputy leader do not take their slots? How is it then allocated? I do not mean to make this as a political point but it is becoming a habit that Government representatives are being allocated lead and deputy lead positions and then do not turn up. I have seen that a couple of them are noted as being not available, which is not acceptable from my perspective. There has to be fairness in how those positions are allocated. The secretariat or the Chairman might be able to inform us as to how it is done.

Chairman: We might discuss it in private session in a moment but, at the beginning of this Oireachtas year, as Chairman, I went through it with the secretariat and, other than myself, we listed all the 12 members in strict order and then moved on to----

Deputy David Cullinane: It has been fair. I have no quarrel with that.

Chairman: Yes, and to make sure there was no speaker and second speaker from the same party on the same day. The problem arises when people pull out, and I am not quite sure of the position in that regard.

Deputy David Cullinane: That is what I am asking.

Chairman: We will discuss it in private session to get an agreement on it. The way it worked in the previous committee-----

Deputy David Cullinane: It was whoever turns up.

Chairman: No. If a person said on the Tuesday that he or she would not be available for the Thursday, the secretariat would ask somebody else on the committee to do a swap. That meant they lost the slot they had the next month by taking the slot on the Thursday. The question is-----

Deputy David Cullinane: The reason I am raising it is not so much that they do not turn up; that is a matter for them. I am not going to pass judgment on who does or does not turn up but when people are informed that they could be leader or the second lead-----

Chairman: A day's notice.

Deputy David Cullinane: -----not enough notice is given. For those of us who take our positions here seriously, when one is lead speaker, a lot of research has to be done. We have the support from the secretariat, which is great, and from Billy Carrie, who gives us support also, but we do our own research as well and a day or two days notice does not suffice. We should look at the way that is done to do ourselves justice.

Chairman: We will discuss it in private session in a minute. I know who attends and does not attend meetings. If we check the record over decades, Government Deputies may not always have been the best attenders at meetings of the Committee of Public Accounts, possibly because they are taking on their own Ministers' line Departments week in and week out. Be that as it may, I felt it was appropriate that each of the 12 members be given an equal opportunity to be lead speaker. However, as the Deputy said, the problem arises when they do not show up. Can we hold over that matter for discussion in private session?

Deputy David Cullinane: Yes, that is no problem.

Chairman: We will come to it in private session in a few minutes' time. The point is valid.

Deputy Alan Kelly: We might consider the sports capital programme at a future date. It is, I hope, very cost-effective, but I do not know if we have ever looked at the process by which it is operated or the application process or conducted an analysis of the outcomes. The programme has been ongoing for a significant period of time. I do not expect to go back forever in time, but perhaps we might look at how it has operated in the last few years or the last two allocations. By the time we do so, the next allocations will have been made. Perhaps we might look at that allocation and the one before it. I want to examine the process by which the programme is operated and the changes that have been made which have been significant in the past few years, as well as the outcomes. I have seen an awful lot achieved with small amounts of money, but we need to see how projects that receive larger sums are performing. It is an issue to which we might come in the future.

Chairman: We will do that. The sports capital programme was looked at by the last Com-

mittee of Public Accounts. The most interesting point made was that there was no sunset clause. I do not know if there is one now. The issue was that grants were approved, the officers of organisations changed and projects never proceeded. The Department had no mechanism in place for taking back money and it was very slow in going back, say, after three years to ask if organisations were going to complete projects. It is important that if they are not proceeding, that we get back the money allocated.

Deputy Alan Kelly: That is one of the issues about which I have a concern, that the process continues for such a period when there is a change. The second point concerns how the application process works and we ensure grants are disbursed. I want to examine both the process and outcomes.

Chairman: We will write today to the Department for a detailed briefing document on the issues the Deputy has raised. We should be able to receive it within a reasonable period. We can then schedule the carrying out of further work.

Deputy Alan Kelly: Thank you. That is appreciated.

Chairman: Let us get the information first, given that there have been changes to the scheme.

The work programme is the same as it was last week. We have representatives of the Courts Service scheduled to appear on 14 November. On 21 November we have representatives of the Charities Regulator before us. We have agreed to have representatives of the Department of Communications, Climate Action and Environment before us that afternoon, rather than hold a special meeting on the Tuesday evening. Those sessions might not take too long and we might put a time limit on both. On 28 October we will have representatives of the Revenue Commissioners before us in what will be a very important meeting. On 5 December - a big day - we will have representatives of the National Paediatric Hospital Development Board, the Department of Health and Children's Health Ireland before us. We will have a separate session with representatives of the Health Service Executive to deal with the development of primary care services. We have asked for updates because the representatives of the HSE has already been here to discuss its financial statements. Therefore, it will be a second round and the HSE is asking what specifically we want to discuss on that occasion. It would be helpful if we did not just go back over what we did before the summer. We have mentioned a few items, for example, measures to reduce the incidence of cases involving clinical negligence that may lead to State claims, matters related to CervicalCheck, the oversight of section 38 and section 39 bodies and home help services, including the changes made during the year. I also want to receive an update on private ambulance contracts which have been in place for years and not renewed. I have asked parliamentary questions about this issue. They went out to tender and there was a two-year process, but I believe that process has collapsed. I do not know what has happened. Any member will be able to raise an issue in order that representatives of the HSE will be prepared on the day.

Deputy David Cullinane: On the point about being prepared for the meeting with representatives of the National Paediatric Hospital Development Board and the Department of Health, we are learning lessons that we need to be as well prepared as possible and receive as much information as possible in advance of meetings. I know that can be problematic because when we receive information, it is then leaked beforehand. Perhaps that is why they will not send it to us until the last minute. However, there have been additional claims submitted. Before the witnesses come, we will need the most up-to-date information on the additional claims made,

what they were for and the areas in which they were made in order that we will not be trying to drag it out of them and not spend half the session dragging out information that should have been presented to us in advance. I do not mind if we receive it one day beforehand because at least we will have it, but we need this information. What happens at times is that we end up wasting an awful lot of the time of the lead questioner, whoever it might be, in trying to obtain information that we should receive in advance. I ask that we make that request.

Chairman: That is agreed. If there are particular issues members want to raise at that meeting, they should contact the secretariat. The HSE witnesses will say they were here to discuss the annual financial statements and that if there are further specific issues the committee would like to raise, they want us to tell them what they are. It would be helpful if they were to be given advance notice in order that we could receive the briefing material in advance. As they will be here in the afternoon, it will be a long day. Representatives of the the National Paediatric Hospital Development Board will be before us that the morning, while representatives of the HSE will be before us in the afternoon. I ask members to mark the date in their diaries.

Deputy David Cullinane: Will it only be about the national children's hospital or will we be able to raise the long list of health issues in Waterford also?

Chairman: In the morning session we will have representatives of the National Paediatric Hospital Development Board, the Secretary General of the Department of Health and representatives of Children's Health Ireland and the HSE before us. In the separate second session we will discuss the Comptroller and Auditor General's report on primary care centres, to which Deputy Munster referred, and other matters we did not deal with specifically.

Deputy David Cullinane: I am seeking clarity on the matter. As we will discuss the financial statements, the discussion will not be confined to the national children's hospital. Is that correct?

Chairman: We will discuss the financial statements of the National Paediatric Hospital Development Board, not the HSE. In the morning session we will discuss the national children's hospital, while in the afternoon we will discuss primary care services with the HSE, not the Department of Health, and other specific items we will raise with the HSE in the meantime. We had a general discussion on the HSE's financial statements and this will be a follow-up session.

There being no other items to discuss, we will go into private session for a few minutes. We will then take a five-minute break and start public session with the witnesses at about 11.15 a.m. A lot has been covered in the last two hours. Sometimes the first two hours can be important.

The committee went into private session at 11.10 a.m and resumed in public session at 11.30 a.m.

2018 Annual Report of the Comptroller and Auditor General and Appropriation Accounts

Vote 37 - Employment Affairs and Social Protection

Chapter 12 - Regularity of Social Welfare Payments

Chapter 13 - Timeliness of Income Support Claim Processing

Chapter 14 - Customer Service - Development of Income Support Application Forms

Mr. John McKeon (*Secretary General, Department of Employment Affairs and Social Protection*) called and examined.

Chairman: This morning we will meet officials from the Department of Employment Affairs and Social Protection regarding the appropriation accounts 2018 for Vote 37 - Department of Employment Affairs and Social Protection, the 2018 Social Insurance Fund, and the following chapters from the annual report of the Comptroller and Auditor General: chapter 12 - regularity of social welfare payments, chapter 13 - timeliness of income support claim processing, and chapter 14 - customer service - development of income support application forms. We are joined from the Department of Employment Affairs and Social Protection by Mr. John McKeon, Secretary General, Ms Jacqui Mc Crum, deputy Secretary General, Ms Kathleen Stack, assistant secretary, and Mr. Jim McDonnell, principal officer. Seated behind are Ms Deirdre Shanley, assistant secretary, Mr. Tim Duggan, assistant secretary, Mr. Ciarán Lawler, principal officer, and Ms Eilis Hamilton, principal officer. We are joined from the Department of Public Expenditure and Reform by Ms Gráinne McGuckin, principal officer.

I remind members, witnesses and those in the Public Gallery to switch off all mobile phones or put them on airplane mode as they can still interfere with the recording system if merely turned to silent.

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

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

We expect witnesses to answer questions asked by the committee clearly and with candour. They should expect to be treated fairly and with respect at all times in accordance with the witness protocol.

Mr. Seamus McCarthy: The Department of Employment Affairs and Social Protection operates a wide range of income support, welfare and labour activation schemes. Expenditure on the schemes is accounted for in two accounts: the appropriation account for Vote 37, and the account of the Social Insurance Fund. The Department's overall expenditure on scheme pay-

ments in 2018 totalled €19.6 billion. An appendix to the appropriation account provides a useful summary of the combined scheme expenditure, set out on a scheme-by-scheme basis within broad programme groups. The Department's expenditure on administration of the schemes amounted to a further €636 million.

The Vote account is funded mainly through direct Exchequer issues. In contrast, the Social Insurance Fund is financed mainly from pay related social insurance contributions, which are collected by the Revenue Commissioners, acting as the Department's collection agent. Total receipts into the fund in 2018 were €11.2 billion, an increase of 9.4% on the previous year and an increase of almost 47% on the 2013 level. The fund receipts included €575 million in levies payable to the national training fund operated by the Department of Education and Skills. The surplus on the Social Insurance Fund for 2018 was in excess of €1.1 billion. This left the fund with accumulated reserves of €2.3 billion at the year end. I gave a clear audit opinion on the accounts of both the Vote and the Social Insurance Fund for 2018.

Before I turn to the three chapters of my 2018 report, I wish to draw the committee's attention to a typographical error we identified in the Vote account as published. In note 6.1, which deals with the Department's expenditure on compensation cases, the column titled "compensation awarded" should have been titled "legal costs awarded" and *vice versa*. The figures in the note are not affected. I wish to correct the record on that matter.

On chapter 12, regularity of social welfare payments, for a variety of reasons, some welfare recipients may be paid amounts to which they are not entitled or that exceed their entitlements. Such irregular payments can arise as a result of inadvertent claimant errors, deliberate fraud by claimants or departmental administration errors. Control surveys of welfare schemes carried out by the Department are intended to identify the types of cases where such excess payments arise. The surveys also provide a basis for estimating the level of irregular payments and underpayments affecting the schemes examined. The results of successive control surveys suggest that there is a material level of irregular payments on both Vote and social insurance schemes in 2018. As has been the case for several years, I have drawn attention to this in both audit certificates.

Chapter 12 also outlines the findings of a 2018 control survey of a random sample of 1,000 recipients of the non-contributory State pension. The Department found that one in five of the recipients whose claims were reviewed in the survey were receiving payments in excess of their entitlements. The overpayments averaged approximately €50 per week for those who were overpaid. The excess payments represented 6.5% of the overall value of the payments reviewed. Significantly, the control survey also found that more than 8% of recipients were receiving less than they were entitled, by an average of approximately €30 per week. The underpayments represented 1.1% of the overall payments reviewed. From a regularity perspective, these errors do not offset one another. Paying one claimant less than their entitlement does not compensate for paying someone else more than their entitlement. The Department has initiated changes to the control framework for the scheme to address the causes of the errors.

Chapter 13 reviews the timeliness of claim processing by the Department, which is a key performance measure. Claim processing indicators have been included in the annual Vote Estimates for several years. The Department has set targets for each scheme in terms of the volume of claims to be awarded within a defined time period. In most cases, the Department achieves in or around the target levels. It has reported significant progress in recent years in reducing the average time to award claims. The diagram in the written submission I have provided shows the average number of weeks taken to award a claim in 2018 for the main scheme types. Typi-

cally, schemes with the longest waiting time for a decision are those where eligibility conditions require a medical assessment, a means assessment, or both. The examination noted that, for some welfare schemes, the rate of claim rejection exceeds 20%, which may indicate a need to provide better information to claimants about scheme qualification criteria.

Chapter 14 examines the development of application forms from the perspective of customer service. Minimising the difficulty of the application process is key to the delivery of good customer service to applicants for income support and to ensure the correct outcome for each application in a timely way.

The Department relies on an extensive suite of paper forms for information gathering. Based on our examination of a sample of the Department's forms, these are typically lengthy, which may be intimidating or difficult for some applicants. However, the forms examined generally conform well with good design guidance issued by the Department of Public Expenditure and Reform.

In terms of processing, the Department makes extensive use of scanning technology to read certain paper forms but this continues to require extensive manual intervention and checking.

There are a limited number of schemes with an online application facility. Where this option is available, online usage rates are generally very low. There appears to be significant scope for further development and roll-out of online claim application options.

Mr. John McKeon: I thank the committee for inviting me here today to discuss the appropriation account for Vote 37, chapters 12, 13, and 14 of the report of the Comptroller and Auditor General and the account of the Social Insurance Fund, SIF, all for the year ending 2018.

The Chair has already introduced the other members of my team and I ask for permission to rely on them for assistance in answering questions from the committee during the course of the meeting.

Chairman: Absolutely.

Mr. John McKeon: I arranged for an advance copy of this statement, together with briefing material on each of the chapters on the review, the annual report of the Department, the annual statistics report and other relevant information to be provided to the committee secretariat last week. I hope that members found this material to be of use.

In previous opening statements at this committee, I spoke about the role of social welfare in compensating for and mitigating the impact of failures in the market economy and about how our staff are acutely aware, through their everyday work, of the impact of welfare and employment services on the lives of individuals and families. In saying this, it is important to emphasise that the term "social welfare" or "social protection", insofar as it is colloquially and properly used to describe the work of the Department covers a far broader remit than is traditionally associated with the term. For some people the term "social welfare" creates images of dole office queues and connotations of handouts. This was never a fair reflection of the role of the Department, the nature of its work or the disposition of the people it serves and it is certainly not the case now.

The Department is, as members will be aware, responsible for the provision of policy advice and the delivery of services across a broad and expanding remit. As well as the traditional range of cradle-to-grave welfare services, which are themselves expanding, the remit now cov-

ers employment affairs and employment services, as well as general registry services, citizens information and advice and pensions supervision and regulation.

The Department is heavily involved in both the evaluation and development of policy and the design, development and delivery of services, giving it a breadth and depth of responsibility that is unique in an Irish Civil Service context. The expenditure of the Department equates to approximately 37% of Government current expenditure and the Department employs approximately 20% of all staff in the Civil Service. More notably, the impact of the Department's work is felt by every person, family and business in the State. If a single statistic can encapsulate its impact, it is that the schemes and services delivered by the Department reduce the risk of poverty by some 50% compared to that which would otherwise pertain.

In delivering on this brief, the staff of the Department strive to always deliver an effective and efficient service and, in doing this, they are very mindful of the vulnerability of the people who rely on our services. However, it is inevitable, given our breadth and scale, that failures will occur and it is equally inevitable that when these failures do occur, the committee and I, as Secretary General, will hear about them much more frequently and much more vociferously than we hear about the normal, routine, high level of service in, for example, processing over 2 million claims and making over 80 million payments across 86 different schemes and services every year.

I hope I will be forgiven, therefore, if I take this opportunity to acknowledge the work of our staff by drawing attention to the evidence that they consistently deliver a high level of service. Evidence in the customer satisfaction research shows an 85% satisfaction level, in the low level of appeals of less than 1%, in the accreditation for service quality excellence by the International Social Security Association, and in the award of Quality and Qualifications Ireland, QQI, certification up to level 8 of the national framework of qualifications or staff development and training programmes to name just some of the external recognition received during the year. This is not to diminish the cases where we have failed or could do better and we also have to recognise and learn from these cases. That is why the work of the Comptroller and Auditor General not only in reviewing our accounts but in examining, every year, specific aspects of our operations is welcomed, as is the scrutiny of this committee in holding us to account in respect of the findings of the Comptroller and Auditor General.

Turning now to the Comptroller and Auditor General report for 2018, I do not, in the interests of time, intend to comment on all of the accounts and chapters but I do wish to make some remarks in respect of issues that I believe may be of interest to the committee or which have already been signalled as being of interest. These relate to the status of the Social Insurance Fund, Brexit, service performance statistics and the public services card.

The Committee will note from the 2018 accounts that the Social Insurance Fund appears to be in robust financial health. Expenditure during the year of €10 billion was some €1.1 billion less than receipts, yielding an accumulated surplus at the year-end of €2.3 billion. I can confirm that this trend has continued and we anticipate that this surplus will be in the order of €4 billion, or thereabouts, by year-end 2019. It is important to note that this positive trend will not continue and should not be allowed to engender complacency with regard to the challenges that lie ahead. Past experience indicates that cyclical forces can wipe out this surplus very quickly. In 2008, a surplus of €3.4 billion was wiped out in 15 months and, over the next six years, the SIF was dependent on Exchequer transfers totalling €7.4 billion in order to meet its obligations to contributors. That was in the context of favourable demographic conditions.

Looking to the future, demographic trends will significantly increase expenditure of the SIF as the number of older people in our society increases. This is clear from our 2020 Estimates, which show an existing level of service increase in expenditure of about €520 million, of which over €330 million is due to pension pressures. This trend will continue with the result that it is inevitable that even with positive economic conditions, the fund will enter into and remain in deficit. The most recent actuarial review forecasts an annual spend of about €15 billion and an annual deficit of about €3 billion per annum by 2030. This sets a challenging context for the development of medium to long-term policy, a context in which the social contract may come under pressure and in which the continuing, if not stronger, support and solidarity of contributors will be essential to the maintenance of the existing level and range of services.

I will now turn to Brexit and its impact on the Department and the people it serves. The Department has two main concerns in relation to Brexit: first to protect access to benefits and entitlements for people and, second, to ensure that we can respond quickly and appropriately to any job losses attendant on an economic shock.

Existing EU-sponsored arrangements provide for access to and portability of benefits in order to protect the interests of its citizens moving between member states. Against this background, many people were concerned that once the UK exited the EU, these arrangements would cease to exist. The Department has for a long time had a very strong co-operative relationship both with the Department of Work and Pensions in the UK and the Department for Communities in Northern Ireland. I can confirm therefore that, building on these relationships and within the framework of the common travel area, the Department agreed and signed an international convention with the UK, which fully protects the interests of citizens from both jurisdictions regardless of the nature of any Brexit. People will have access to the same benefits on the same terms under this agreement as they do at present, including free travel on the island of Ireland.

The Department conducted its own assessment of the likely employment impacts of any downturn in the labour market by region and sector. Based on this assessment, we worked and continue to work very closely with our colleagues in the enterprise and education sectors to ensure that our shared processes to respond to job losses and provide employment and training supports are robust and flexible enough to support affected workers. We are confident, based on this work, that the organisation and processes innovations made following the 2008–12 crisis will stand us in good stead in delivering an effective and seamless service to people who may be affected by job losses post Brexit. We are also confident in our ability to quickly process any large influx of claims and avoid any repeat of long queues outside our offices. The development of our online service capability and the introduction of a front-office, back-office model of working will be particularly beneficial in that regard.

Chapter 13 of the Comptroller and Auditor General's report relates to performance monitoring within the Department. The Comptroller and Auditor General notes that, with some exceptions, service performance on most schemes is within target levels and is improving. Last year, committee members expressed particular concern regarding the time to decide carer's allowance claims. The Department acknowledged these issues and advised that it was taking measures to remedy the situation. Although the data in the Comptroller and Auditor General report offer no comfort in this regard, I can advise that the Department has, during 2019, undertaken a review and redesign of the carer's claims process and has allocated additional staff to this function. We have also increased the complement of medical assessors. Although there is much work still to be done, these steps are now yielding results. For example, the average processing time for carers' claims in October was just under ten weeks. This compares with an average

of 17 weeks in 2018 and is the lowest level in ten years. I understand that ten weeks may still seem a long period to decide a claim, but the complexity of the scheme, which is dependent on multiple conditionalities across two beneficiaries - the carer and the person in receipt of care - is such that these types of claim will always take longer to decide. Nevertheless, we will continue our efforts to improve the service further.

I am aware that the committee members are concerned to understand both the legal status of the standard authentication framework environment-public services card, SAFE-PSC, process and the value for money, or otherwise, of the process. With regard to the legal status, this is, as members are aware, a matter on which there is a difference of opinion between the Department and the Data Protection Commission, DPC. In saying this, it is important to note that there is no difference of opinion between us on the core issue of whether the Department has the function and right to require people to authenticate their identity and to produce a public services card, PSC, when accessing its services. This is a key finding that contradicts and puts to bed the main criticism made of the PSC by some observers. Other aspects are the subject of disagreement between the Department and the DPC and we are anxious, as is, we understand, the DPC, that these matters be clarified and resolved as soon as possible in accordance with the process set down by the Oireachtas. We therefore await receipt of an enforcement notice and, subject to what it might say, we may seek the necessary clarity in the Circuit Court. We hope that this process can be completed expeditiously.

With regard to the issue of value for money, the committee is already aware from its review of this matter in 2016 that there is no single business case document. While, as I indicated in my letter of last week, this is regrettable, it should not be taken as evidence that the project was not planned or executed properly. In fact, as acknowledged in the Comptroller and Auditor General's report from 2016, 17 of the 19 key elements of a best practice business case were, in fact, in place.

Having reviewed the costs and benefits associated with the project, I am satisfied that it has created the basis for improved service delivery, reduced administrative costs and enhanced control savings. In a letter sent to the committee last week I indicated that the total fully allocated costs of the project to date are €67.7 million. However, a large proportion of these costs would have been incurred even if the SAFE process had never been introduced. This is because the Department always sought to authenticate the identity of people claiming its services and issued identity tokens in the form of pension books, social services cards and free travel passes. The SAFE process formalised this approach, established a consistent approach across all of our offices, and introduced a higher, more secure, standard of identity token in the form of a PSC, incorporating a photograph of the person. If a conservative allowance is made, as it properly should be, for the counterfactual or already existing costs, then the actual additional costs of the SAFE-PSC process over the past nine years are, at most, approximately €37 million.

Set against these costs are the benefits of the improved process. These include administrative efficiencies within the Department, reduced payment leakage due to error or fraud, the deterrence and prevention of fraud, but most of all, improved customer service as people accessing our services do not now have to verify their identity on each separate occasion on which they make a new claim or service request. In addition, secure authentication of identity provides the platform on which the Department is now rolling out online service access. This has already delivered some administrative efficiencies and will deliver even greater levels of savings as well as significantly simplifying service access for people into the future. As the PSC and *myGov.ie* platforms are available for use by public service providers, the savings and

service benefits just instanced for the Department can also be realised by these other providers.

Ignoring the deterrence of fraud benefits, which are difficult to estimate, and ignoring the customer service benefits and the benefits that are being realised in other public service organisations, I conservatively estimate that the direct savings attributable to reduced payment leakage and administrative efficiencies within the Department already amount to more than €20 million. As the take-up of online service access increases, as inevitably it will, and as more people who are now SAFE-registered return to make second and subsequent claims, the level of administrative savings and customer service benefits will increase still further. I am confident that these direct savings to the Department will, over the next few years, exceed project costs and that the overall project, taking account of the other benefits mentioned but not included in the figures above, will deliver strong value for money. These figures are estimates only and I acknowledge that we will need a fuller cost-benefit analysis. Therefore, I intend, early in 2020, when full-year costs for 2019 are finalised, to commission a full cost-benefit analysis of the project.

Just under €10 million of the savings realised to date relates to detected fraud. Individual prosecutions on some cases have amounted to more than €400,000 and I have provided the committee, under separate cover today, with some examples of cases for its information. In doing this I wish to return to the principle of solidarity mentioned in respect to the maintenance of the social contract. As one eminent High Court judge has noted, prosecutions such as those circulated help to underpin the solidarity necessary to sustain continued public support for and confidence in the integrity of our social welfare system. In other words, it is important not just that we stand over the integrity of our control processes but that we are manifestly seen to apply high standards in the detection and prevention of fraud and to deploy, within the parameters available under law, the best technology available to that purpose.

The benefit in authenticating identity is, therefore, not confined to administrative efficiencies or from the savings from the detection and, more importantly, the deterrence of welfare fraud but is just as much concerned with the fact that we can defend the system of social expenditure against the claims by some that the system itself is open to widespread and uncontrolled abuse. These claims, although untrue, would, if not rebutted, threaten the continued support of the public necessary to sustain the funding of the services we provide, funding which, as I mentioned in my opening remarks, will have to increase significantly in future years if the existing range and levels of service is to be maintained. Similar considerations apply to demonstrably using the best technology available to minimise administrative cost and error to reassure the public that scarce funds are not being consumed by bureaucracy rather than being delivered to the intended beneficiaries. These are intangible but very important considerations that should not, I believe, be lost in the discussion on the merits or otherwise of initiatives such as SAFE-PSC.

I will repeat something I said last year. We, by which I mean the managers and staff of the Department, work hard to deliver services to the communities from which we come and in which we live, conscious that it is our families, our friends and our neighbours who not only depend on these services but who, through their social insurance contributions and taxes, pay for these services. We are proud of the work we do but we know we are not perfect and we do not always get things right. That is why we welcome the oversight of the Comptroller and Auditor General and of this committee. This process plays an important role in reminding us of our purpose, helping us to identify areas for improvement and helping us to learn from our mistakes. It is through such a process that we would hope to improve. I and my colleagues will be pleased to take any questions that members may have.

Chairman: For clarification, Mr. McKeon said he had provided the committee, under separate cover, with some examples of cases where savings were realised due to the detection of fraud. They include photographs, so I will not circulate them today as to do so might set the wrong message. They will not be published but it might set the wrong tone to hand out photographs of people who were found to have been engaged in fraud. I acknowledge that Mr. McKeon offered them.

I ask members to stick to the times. There is no voting slot today so I suggest that, having started at 11.30 a.m., we take a break at 1.30 p.m. for lunch.

Deputy Shane Cassells: I welcome Mr. McKeon and his team and thank them for their detailed note. Huge areas are covered by the Department and Mr. McKeon confirms that its customers are a huge part of our life and are made up of people of all ages, all demographics, rather than just people on the dole. There are three special chapters in the Comptroller and Auditor General's report that we are discussing, along with the appropriation accounts, this morning. I will start by focusing on the level of irregular payments made by the Department. With an overall budget of €11 billion, the moneys involved in this Vote are substantial. This issue is topical. In January, the Department published the result of a control survey of the non-contributory State pension scheme. The scheme is a substantial piece of expenditure that accounted for some €1 billion in 2018. The Department examined 1,000 payments made during one week in 2017, at which time there were 99,000 beneficiaries. The survey touched on how 8.2% of claims were underpayments. As the Comptroller and Auditor General pointed out, there was a mix of underpayments and overpayments. People might believe that getting an overpayment is grand, but it causes difficulties for older people further down the road when they are hit with the repayment bill. I know of a woman who this year received a bill where €100,000 was the magnitude of the cumulative overpayment. She took a hit through no fault of her own. When her situation was reviewed, she was well into her 80s. The survey showed that 38% of claimants aged over 80 years were in receipt of an incorrect rate. Will Mr. McKeon briefly summarise the measures that the Department has taken to address the levels of irregular payments revealed in the control survey in January?

Mr. John McKeon: The study on the non-contributory State pension also addressed the reasons. The purpose of the control survey was to inform our control activity in specific schemes and provide us with an estimate of the overall levels. The information from that survey showed that the risk areas were people over 80 years of age. In general, their circumstances had changed since they were awarded their pensions when they were 65 and they had not advised the Department of that change. It might seem strange that someone who qualified for a means-tested payment when he or she was 65 somehow has more money at 80, but it happens. It can happen because, for example, people inherit property or live in a household where someone else has passed away and they now get money but they have not told the Department about it. When we then undertake a control review, we find out that they may have more means than were disclosed when they initially put in their claims, giving rise to overpayments. Our approach is to behave reasonably in recovering overpayments. We agree repayment schedules with people, which can be low in weekly terms but which we hope will recover the full amount over time.

In terms of changes going forward, the survey will inform the cases that we pick for review each year. Every year, we undertake approximately 10,000 routine reviews outside the control reviews of the non-contributory State pension. Obviously, we cannot review all 100,000 people on that payment every year. Instead, we try to pick out specific cases. We look at and contact the people over 80 years of age who were close to their means level when they originally got the

pension. We also send out reminder letters to people advising them that, if their circumstances have changed, they should tell us.

What often happens in these cases is that the estate ends up paying the amount. The Social Insurance Fund and the Department are preferred creditors when estates are being wound up. If someone ends up with much more money in a bank account at the time of his or her death, we will be made aware of it and will recover the money from the estate. That could be a shock to the family.

Deputy Shane Cassells: Is that correspondence issued on an annual basis? Many people are frugal up to turning 65 years of age, but perhaps their circumstances then change. They are not being deceitful on purpose, but they might come into some money. They are not checked until they are hit with a bill a number of years later. I mentioned the €100,000 in respect of the 80 year old. Has the effectiveness of the measures and correspondence been improved in recent years?

Mr. John McKeon: We do two things. Until this year, we concentrated on sending reminder letters to people who had already disclosed means. For example, they were on reduced pensions. Every year, we wrote to them asking whether their circumstances had changed. We did not send reminder letters to people who had nil means, though, as we did not anticipate that their circumstances would change. From this year on, we will pick out 10,000 of those cases and write to them.

Deputy Shane Cassells: Has the Department been able to extrapolate from the survey an estimate of the overall amount of irregular payments?

Mr. John McKeon: Yes. I do not have the survey results in front of me, but I believe suspected fraud accounted for 0.3%, customer error accounted for 3% and official error accounted for approximately 2%, bringing the total-----

Deputy Shane Cassells: How much was official error?

Mr. John McKeon: About 2.2%.

Deputy Shane Cassells: Changes in means obviously accounted for the largest-----

Mr. John McKeon: It was all down to changes in means. Regarding our categorisations, the committee will notice from our control figures that, over time, the level of customer fraud is reducing and the level of customer error is increasing. That is because we are much more circumspect now in calling something “customer fraud” unless we are 100% certain that it is the case. Where there is a doubt, we will give the customer the benefit of the doubt instead of categorising it as a fraud case.

Deputy Shane Cassells: I will move on to chapter 13 - timeliness of income support claim processing. When the Department appeared before us last year, it had examined this area. Following on from that, there was a finding and recommendation in our March periodic report, which read:

The processing of applications by the Department of Employment Affairs and Social Protection requiring medical assessments is unduly slow. The Committee recommends that the Department of Employment Affairs and Social Protection completes its examination of the possibility of contracting nurses to carry out medical assessments promptly. Should it

not be viable, other alternatives should be actioned to improve processing times.

Mr. McKeon alluded to this issue in his opening statement when speaking about carer's allowance and so forth. Are there further updates?

Mr. John McKeon: I gave the update in our letter. We have been working hard on this issue over the past year. Last year, we acknowledged that medical claims, in particular for carer's claims, were a source of difficulty for us. In the previous year, we had worked closely with the various disability and advocacy groups to redesign our claim forms and try to ensure that we captured as much information as possible up front and in a timely manner. That yielded some benefits, but they clearly did not go the full way.

During the year, we have increased the number of medical assessors by four - it went from 30 to 34 - and added staff to our carer's and disability claims processing areas. We have also undertaken a scheme review. As of October, all of the schemes in question were at or below our performance target level. We expect that, by this year's end, the average processing time for carer's claims will be approximately 12 weeks over the full year. It started off at 17 and is currently just under ten. We expect to maintain or slightly improve that. We would like it to be better, but they are complex schemes. For example, an issue we have encountered may need to be considered from a policy perspective. As we deal with process and staffing issues that clear out many of the difficulties, we are left dealing with the complexities of getting times down from ten to eight weeks. As I may have mentioned last year, we are encountering issues. I fully understand why if someone has a carer's or disability claim, the advice from the disability advocacy groups - they are absolutely right - is to get that claim in as early as possible because that establishes the person's entitlement date. Often, however, people submit claims when they do not have their full medical reports. We must then make decisions on incomplete claims, which delays the process. From a policy perspective, we may need to think about whether we should change the entitlement date.

Deputy Shane Cassells: In its work with the advocacy groups, has the Department communicated that they are delaying processing?

Mr. John McKeon: We have said that, but to be fair to them, if I were a disabled person or carer and had to wait three weeks for my consultant to give me a report, I would be losing out on three weeks' payment, so I would prefer to submit an incomplete claim. From a policy perspective, we may need to establish the entitlement date in those situations. There are risks to being more generous and there would be significant IT consequences for the Department, given that we would have to redesign many of our IT systems if we allowed for some flexibility around the entitlement date, but that is something that we will examine over the next year.

Deputy Shane Cassells: Regarding chapter 14, which is on customer service and the development of income support application forms, I am sure that Mr. McKeon will appreciate how much time is spent in a Deputy's constituency office helping constituents fill out the myriad of forms from the 86 schemes that his Department operates. We often contact the Department's various sub-offices. Will Mr. McKeon speak about the efforts to simplify the forms, given that their sheer size can be frightening for many people? Figure 14.4 in the chapter lists the sizes. The disability allowance form is 36 pages long and the carer's allowance form is 36 pages long. The form for the non-contributory pension is 20 pages long while the form for child benefit is 16 pages long. The forms for these payments are extremely lengthy. I appreciate that it can involve medical reports but are any efforts being made to try to reduce the length of those forms? It is extremely frightening for somebody to receive a 36-page application form for disability

allowance or carer's allowance.

Mr. John McKeon: I fully agree with the Deputy. Every time I see the forms, I am shocked by their length. I have gone through them. On numerous occasions, we have looked to see whether we can simplify or streamline them. In the case of the carer's allowance and benefit application forms, we spent a lot of time with Family Carers Ireland and used a collaborative approach in respect of the design of the form. We work with the National Adult Literacy Agency on the design of our forms. We set up a customer communications unit, which has taken responsibility centrally for all form design because, previously, it was done in each scheme area. We hope that in the coming years, we will be able to refine them. It is about a balance - giving somebody the opportunity to provide all of the information that might be required to decide a claim knowing that in each individual case, perhaps only half the information is required but that if we do not ask the question of everybody, we might not get it. It is about achieving that balance. This might sound counter-intuitive but when we work with advocacy groups, NALA and so on, trying to make the language simpler means that we break questions up, which means that we then lengthen the forms. That is an inevitable consequence. I acknowledge that we may have gone too far on that. As we roll out our online applications, we are going through each claim form and trying to make the online version very simple so that people move from one screen to the next screen and it is not intimidating. One of the issues about forms is that they are not as intimidating as they look but their sheer scale makes them look intimidating. When somebody goes online, we will be able to take that intimidation factor away.

Deputy Shane Cassells: That is the issue. People sees the form and do not go through it. They then come into our offices. Mr. McKeon mentioned online forms. The size of the forms is one issue. How somebody applies is, obviously, totally different. In an era when one can do almost everything online, figure 14.2 in the report shows how out of the 19 main schemes offered by the Department, only five can be offered online. These are jobseeker's allowance and benefit, child benefit, the back to school allowance and maternity benefit. Payments like disability benefit, carer's payments, rent supplement and State pensions are not offered online. What is the Department doing to try to roll out more online applications? What is prohibiting the Department from doing so? Which of the main payments that are not offered online will come online? Will any of them come online in 2020?

Mr. John McKeon: There is nothing delaying us as such, other than that we started late. I acknowledge that the Department arrived late into the online world. There is nothing delaying us. The schemes are complex. We are trying to carefully design the online forms. Eight payments are offered online. The number has increased since the Comptroller and Auditor General wrote the report. The earliest ones we introduced are now doing very well online, for example, paternity benefit, where over half the claims are now made online. A total of 97% of all claims for treatment benefit, which is our largest individual scheme in terms of applications, are processed online with very little need for human intervention. We process about 1.4 million claims per year online for treatment benefit.

Deputy Shane Cassells: Regarding online and paper forms, is the rate of correct completion higher for online forms than for paper forms?

Mr. John McKeon: Absolutely. If one gets the little red thing-----

Deputy Shane Cassells: It would allow somebody-----

Mr. John McKeon: One has the box so all of that happens. In the case of jobseeker's al-

lowance, which we rolled out, we have taken a fairly slow approach to letting people know it is there. We rolled it out in one iteration and had a lot of what techies call customer labs where we would get customers in, tell them this is available and then observe them as they went through the process. We then changed the online system again and repeated the process. We have been going through an iterative process to try to make it very easy to use. When we are comfortable that it is as good as it can be, we will promote it as the best means. Even though we have not promoted it, 11,000 claims for jobseeker's were made online this year even though we have not told people it is available. The appetite is there and we want to move in this regard. Currently, 70% of claims are taken by post and 30% in person. My ambition and that of the Department is for half of claims to be taken online. Going back to the public services card, that is a critical enabler of that because when somebody is applying for a service online, he or she can see the eligibility of his or her existing claim status and his or her contributions. One must be certain that the individuals who are coming online are the persons they say are. The safe process for registering the identity of a person and his or her mobile phone number, which is how we use the two-factor authentication, is critical when it comes to giving people access to online services.

Deputy Shane Cassells: In his lengthy opening statement of six and a half pages, Mr. McKeon dedicated two and a half pages to the public services card. In the periodic report published by the committee in March, we noted that the Department informed this committee that we had helped to identify approximately 220 cases of fraud. This resulted in approximately €4.2 million of savings. Can Mr. McKeon inform us of the number of cases identified in 2018 and the savings accumulated during 2018? Does he have any half-yearly figures for 2019?

Mr. John McKeon: One of my colleagues can get the information. I do not have it with me. What I can say is that the control savings on the public services card come to €10 million. That is partly why I sent out details of some of the cases. Members will see that with regard to the value of some of the cases we circulated, the sum in a case involving one character was €480,000 with the cases of many other people involving over €100,000. The control savings come to €10 million. In 2019, we added 16 cases where we are-----

Chairman: Can Mr. McKeon explain how the figure of €400,000 came about?

Mr. John McKeon: That particular person had made multiple claims under different identities. It was a particularly egregious case. If the Chairman wants us to take the photograph out, I will send the information without it.

Chairman: I did not like circulating photographs.

Mr. John McKeon: The reason I included it is that I know people ask about the photograph and how it works. In most of the other cases, people used two or three identities whereas that case involved multiple identity fraud.

Deputy Shane Cassells: I asked Mr. McKeon about this issue because, obviously, the Department wants to judge the expenditure that has been set out of some €67 million against what is being saved. The back page of the *Irish Examiner* on Tuesday covered Mr. McKeon's letter to the committee on that issue, and the article also featured a very fetching picture of Mr. McCarthy. It mentioned the business case. The line that caught my eye was Mr. McKeon's statement that the total fully allocated costs of the project to date come to €67.7 million but a large portion of these costs would have been incurred even if the public services card had not been introduced. Mr. McKeon stated that this was because the Department always sought to authenticate the identity of people claiming its services in any event. When I read that line, the words

of another Secretary General, who appeared before the committee, came flooding back because they were nearly exactly the same as those uttered by the Secretary General of the Department of the Taoiseach, Martin Fraser, when he spoke about the infamous strategic communications unit. Following the scrapping of the spin unit, Mr. Fraser pivoted and said the Department of the Taoiseach would have spent the money in any case because all the guys were working in various press offices across various Departments and nobody lost their job afterwards. The two things do not tally because there was, of course, a cost in establishing the strategic communications unit. I put the same point to Mr. McKeon. On the one hand, he is saying the Department of Employment Affairs and Social Protection would have incurred the costs in any event but then talks about the savings. I think he alluded to savings of €20 million. What is the real cost? Obviously, the real cost is €67.7 million but Mr. McKeon is trying to say there are counterfactual matters. What is the actual net cost of establishing the services and what have been the real savings identified to date?

Mr. John McKeon: I am not saying there were no additional costs. I am absolutely saying there were additional costs.

Deputy Shane Cassells: I know but language is important in terms of-----

Mr. John McKeon: I know.

Deputy Shane Cassells: Mr. McKeon wants to pivot towards one area and I just want to try to-----

Mr. John McKeon: That is unfair, to be honest. I will give an example. PPS numbers always required an identity check regardless of the SAFE process. Since the SAFE process was introduced, we have issued approximately 1 million of them, predominantly to new people coming into the State who do not have any identity with the Department. We have always looked for documentary evidence such as birth certificates, passports or bank statements. Irish people receive a PPS number at birth and the first time we come across them is when they make a claim. Any time anybody made a new claim we always checked the identity. Until the mid to late 1990s in many cases, we sent a social welfare inspector to the home. We always incurred costs on identity.

I did not include the cost of sending social welfare inspectors to anyone's home. I looked purely at using the process we were using for identity checks prior to the introduction of SAFE and how much it would have cost to keep doing it when issuing social services cards, pensions books and free travel passes. At a conservative estimate, that cost would have come to between €30 million and €31 million. The actual net additional cost is approximately €37 million and that is genuine and sincere. I acknowledge that the committee would expect, like Mandy Rice-Davies, that I would say that anyway but I was not involved. I was not even in the Department at that stage and I was not in the Civil Service. I was made Secretary General of the Department in 2017, the same year as this whole thing broke. The easiest thing for me would have been to say there was a new broom, that everything until then had been wrong and that I was going to fix it. I genuinely looked at the situation and the net cost is approximately €37 million at most, in a conservative estimate. As I said in my opening statement, I am quite happy and I do intend to commission an external cost-benefit analysis next year. I understand the Mandy Rice-Davies-type argument that I would say that anyway. We will do that and publish it.

The benefits break into two themes. One is administrative efficiencies in the Department, including the online cases I mentioned.

Deputy Shane Cassells: Is Mr. McKeon trying to quantify them with a monetary figure?

Mr. John McKeon: We have-----

Deputy Shane Cassells: What is the monetary figure?

Mr. John McKeon: We have done that. The online savings to date are in the order of €2 million. There is a very low level. The claims being done online go straight through with little human interaction and there are €2 million savings in this. The other big saving is the avoidance of multiple identity checks. In recent years, a number of people have come back to us for a second or third claim. In the past they would have had to have their identity checked every time and this was a huge source of frustration. I remember it being raised not at this committee but at the Oireachtas Joint Committee on Employment Affairs and Social Protection with regard to why somebody who made a claim for jobseeker's allowance in 2012, who then got a job but came back to make a claim in 2015 had to provide the same identity information again. We do not need to do this any more. This saving amounts to approximately €9 million. These two savings amount to approximately €10 million. We also have the savings in leakage in payments, which I have referenced, of €10 million. This amounts to approximately €20 million. It is a fair and reasonable estimate that the net cost is approximately €37 million. So far, we have saved approximately €20 million. These savings will accelerate.

Deputy Shane Cassells: The Comptroller and Auditor General mentioned the business case and said there were probably contradictions in some of what was being attempted in various documents. If he was to look at it retrospectively now, with regard to what Mr. McKeon said, and if the business case was put in place retrospectively, does he feel it would stack up?

Mr. Seamus McCarthy: It would be pure speculation if I was to respond to that. I would prefer not to. Given that I examined this three years ago, it may be timely to look at it again and to look at the figures quoted by the Accounting Officer. I cannot give an off the cuff opinion in relation to----

Deputy Shane Cassells: I am not asking for anything off the cuff. The Comptroller and Auditor General is listening to the information the same as everyone else. Mr. McKeon is saying he is quantifying the amount he believes are efficiencies and savings. Does Mr. McCarthy believe that if he retrospectively looked at this it would quantify the success or justify the implementation of the service?

Mr. Seamus McCarthy: I am not be prepared to give a view one way or the other. I have only heard many of these numbers in recent days so I am not prepared to take a view without examining it formally and looking into how the numbers come to be presented.

Deputy Shane Cassells: Offset against that-----

Chairman: Deputy-----

Mr. John McKeon: I will commission a cost-benefit analysis of this from a body such as the ESRI and we will publish the results. In response to the Deputy's question to the Comptroller and Auditor General, I suggest that when this is done if the Comptroller and Auditor General wants to come in and look at it, he will be very welcome.

Deputy Shane Cassells: The other elephant in the room is the fact it is being examined in respect of data protection issues. The Data Protection Commission said the cost of its initial

investigation into the public services card was almost €200,000, comprising €130,000 internal and €66,000 external. Almost €200,000 has been spent investigating it, again fuelling people's frustration with the expenditure of public money. How much money will the Department have to spend on legal costs to defend this particular implementation?

Mr. John McKeon: In truth, I do not know. It will depend on the nature of the enforcement notice when it is received and whether we in fact need to appeal it or not. If we appeal it, there will be an appeal at the Circuit Court, which I understand is more cost effective than a High Court appeal. As the committee will be aware, the Department does not carry legal costs in matters such as this. They are carried by the Comptroller and Auditor General and the Chief State Solicitor's office in any event. The issue at heart here is the interpretation of social welfare legislation and the Office of the Attorney General will lead on that defence.

Deputy Marc MacSharry: I welcome the witnesses and thank them for the record volume of information they sent us in advance. They were lovely packs with all of the information. In his opening statement, Mr. McKeon said evidence of customer satisfaction research shows an 85% satisfaction level, which is great. How is that information compiled?

Mr. John McKeon: We commission a reputable market research agency that surveys 1,100 people in each survey and we do this a number of times a year. It produces the statistics. It is 85% satisfaction, approximately 7% dissatisfaction and the balance do not know.

Deputy Marc MacSharry: Is there any consideration of the fact that people in receipt of social welfare might be afraid?

Mr. John McKeon: It is an independent research agency and it is fully anonymous.

Deputy Marc MacSharry: That is fine. The Department outsourced training and retraining to Turas Nua. Will Mr. McKeon provide the committee with a breakdown on the number of people doing courses in the regions? He probably does not have it with him but he can send it to us.

Mr. John McKeon: We can certainly send that. There are approximately 60,000 people on the programme and it is 50:50 between Turas Nua and Seetec. There have been approximately 230,000 people in total over the period of the contract. I can certainly get the Deputy a breakdown.

Deputy Marc MacSharry: The Department has a number of employment support schemes to get people back to work, including CE schemes and the back to work initiatives. These participants are not on the live register. They are not included in the figures. Is this correct?

Mr. John McKeon: In most cases they are not included on the live register. They are captured in the official unemployment figures, which are done separately by the Central Statistics Office.

Deputy Marc MacSharry: The headline figures we hear in the media tend to be the live register figures.

Mr. John McKeon: Less so now. The reason they used to be the live register figures is they were released monthly whereas the official unemployment figures were quarterly. The CSO now does the official unemployment figures-----

Deputy Marc MacSharry: What is the total figure?

Mr. John McKeon: The total number is approximately 180,000 people-----

Deputy Marc MacSharry: What is the number on back to work schemes and CE schemes?

Mr. John McKeon: It is approximately 40,000.

Deputy Marc MacSharry: In total?

Mr. John McKeon: At the end of December the figure for Tús, the rural social scheme and CE was approximately 30,000 and another 20,000 people are on education and training schemes so it is approximately 50,000 overall.

Deputy Marc MacSharry: What about the back to work initiatives?

Mr. John McKeon: That is also approximately 50,000. I will get the Deputy the exactly numbers. There will not be a difficulty with that.

Deputy Marc MacSharry: The cost of this is just over €800 million, comprising €796 million and €18 million.

Mr. John McKeon: Yes.

Deputy Marc MacSharry: Has the Department ever carried out research or a survey across the various employment schemes to measure their effectiveness in getting people back to work?

Mr. John McKeon: We have done such research across a number of schemes and have a rolling programme of doing this. We do them ourselves and commission people like ESRI to do them, and all the research is published. We have done this with the back to education allowance, JobBridge as it was, JobsPlus, JobPath, and the back to work enterprise allowance. We will be doing community employment this year, probably, but if not in 2020.

Deputy Marc MacSharry: Can the Department provide us with a percentage of those who went into full-time employment?

Mr. John McKeon: We can for all of those. We may have provided many of those reports to the committee last year but we can provide them again.

Deputy Marc MacSharry: It is useful and I thank Mr. McKeon for all of the detail that his Department has sent us. Can he send a one-pager to us with this information, with the percentage that went to of full-time employment, part-time employment, back on the live register, and that went on to another income support scheme, whether disability, invalidity or carer's allowance, if possible?

Mr. John McKeon: We will do what we can. It may not be possible to have all of that information but we will have most of it and will send the committee on what we can.

Deputy Marc MacSharry: As to what is not possible, can I ask Mr. McKeon to investigate it, because these are four headings that are very important, namely, the percentages of full-time employment, part-time employment, people who went back on the live register, and those who went on to other income support schemes, like disability, carers, etc.

All of us here and indeed anybody in the political business will have constituents who have become unemployed recently coming into us and expressing frustration that they cannot apply to participate in schemes like community employment placements or third level back to educa-

tion schemes because they have to be on the live register for a year, or they cannot be considered for the job initiative scheme for the same reason. Should the employment supports kick in earlier, so that those so inclined do not become complacent on being on the live register, or lose confidence in their ability to work? Has the Department carried out any research on the most appropriate time to interact with people who become unemployed?

Mr. John McKeon: There is a huge body of research on this worldwide. The OECD has done a study on Ireland and a number of other countries. It does seem, in some ways counter-intuitive, but someone who becomes unemployed has to wait nine months for some schemes and 12 months for others. The evidence reveals two issues. One is the potential deadweight cost that arises where someone who would have got a job within the nine-month period was on a scheme or training course, and does not then compete for the job. We are carrying the cost of them on the scheme when they could have been in employment.

Deputy Marc MacSharry: Is that consideration cost-driven?

Mr. John McKeon: No, it is actually outcomes-driven. When one looks at the best outcomes across a huge range and body of research all over the world, the best outcomes are for people to get back into employment as quickly as possible. That carries forward into their long-term employment and earning prospects.

Deputy Marc MacSharry: In the real as opposed to the academic research world, our constituency clinics would not be bearing that out as to the frustration-----

Mr. John McKeon: The evidence in Ireland, and the Deputy will see when we send this onto him as regards the review of the back to education allowance scheme-----

Deputy Marc MacSharry: Would there have been many reviews done, where people in the front line were contacted, like county councillors and Deputies, or Senators etc.?

Mr. John McKeon: We receive a lot of contact, and have a lot of anecdotal evidence which is worthwhile. We are driven by evidence. That is what we try to do in the Department.

Deputy Marc MacSharry: So am I.

Mr. John McKeon: That is why we tried, when the budget was tight this year, to concentrate this tight budget on children and lone parents. That is where the evidence is of the groups that poverty is hitting most.

Deputy Marc MacSharry: I am just talking about employment now and am not talking about robbing Peter to pay Paul. If people are working there is more tax coming in and there will be more money for single parents.

Mr. John McKeon: This is ultimately a policy decision for Government but certainly, if I was advising Government, I would say to look at the evidence from our back to education allowance evaluation, where people can get on to the allowance after nine months. The employment outcomes of people who went on the back to education allowance scheme who did either a short course for a year or a longer degree course, compared to a control group of identical people - this research was done by the ESRI for the Department, not by the Department itself - were 14% lower. There are two competing things at work, the regression effect and the lock-in effect. For somebody who is unemployed, the lock-in effect is that they then go on to a scheme that lasts two years, then try to go for employment and the employer asks how long has the

person been without a job. When the person says three years that immediately damages their chance of employment, which is what the evidence shows. For some people it is right thing to do. The issue is how does one target it at the right people.

Deputy Marc MacSharry: If one is lying around for nine or 12 months doing nothing, that is hardly any good.

Mr. John McKeon: The evidence is-----

Deputy Marc MacSharry: It is a gap in one's CV.

Mr. John McKeon: That is why we tier it. During the first period we try to work with people with our own case workers, to encourage and support them in JobSearch. If, at the end of nine months, they have not got there, the schemes are then available to them. That is a proportionate and reasonable approach. It is ultimately a policy decision. The evidence is-----

Deputy Marc MacSharry: Waiting a year is a political consideration, is it?

Mr. John McKeon: It is not a political consideration, it is a policy decision.

Deputy Marc MacSharry: That is in the political domain.

Mr. John McKeon: It is.

Deputy Marc MacSharry: It is a Government decision to wait a year.

Mr. John McKeon: The issue here is what advice the Government works on, and it works on the best evidence-based advice it can get. This is no different. These rules have been in place since the 1990s

Deputy Marc MacSharry: This is presumably in the eye of the beholder.

Mr. John McKeon: There have been a number of the beholders over numerous Governments, who have looked at these issues and have all come to the same conclusion.

Deputy Marc MacSharry: What Mr. Mc Keon means is that they have all listened to the same advice.

Mr. John McKeon: I believe it is good advice. I have not always been the person who has given that advice.

Deputy Marc MacSharry: International research therefore shows that early intervention is not the way to go.

Mr. John McKeon: No, what international and Irish research shows is that the most effective form of assistance for somebody who has lost a job is what is called job search assistance and support through job counselling. The next most effective is work placements and direct job-related skills training. The least effective are state employment and education schemes.

Deputy Marc MacSharry: Returning to the issue of education, in particular, where somebody has to wait around, apart from focusing on the research which supports Mr McKeon's own view of what is good research-----

Mr. John McKeon: My view is based on the research, it is not my own view.

Deputy Marc MacSharry: I appreciate that. Is there other research that says early intervention is the key or the way to go? If somebody presents as unemployed today and is prepared to undertake a degree or apprentice course in whatever-----

Mr. John McKeon: I have not seen any research which would suggest that the first thing one should do is to put somebody on a training course.

Deputy Marc MacSharry: Could Mr. Mc Keon look, on behalf of the committee, to see if there is any research - I fully appreciate that according to Mr. McKeon's expertise this is not his view based on the research he has read - that early intervention is the way to go, particularly on back to education but on each of the schemes?

Mr. John McKeon: I can tell the Deputy that we keep abreast of all of the research all of the time.

Deputy Marc MacSharry: Is that a "yes"?

Mr. John McKeon: I believe we have already looked.

Deputy Marc MacSharry: So, the Department will not look then, is that what Mr. Mc Keon is saying?

Mr. John McKeon: We tend to look at and review every piece of research that is published in this area.

Deputy Marc MacSharry: If I find research, can I send it on to Mr. McKeon?

Mr. John McKeon: Yes, please send it on to me. The research we rely upon is peer-reviewed and properly controlled. One will find pieces of-----

Deputy Marc MacSharry: It is a wonder that in 20 years in the political system, I was never contacted by any academic to ask of my personal experience of dealing with people in the front line. One wonders about these academics, who tend to review other literature, written by other academics. The practical reality on the ground, I am suggesting - our witness can take it from somebody who knows through hard graft experience - is that this is an issue. If we want to hide behind literature and peer reviews, there are nonetheless 108 front-line workers coming to this conclusion, including myself, and I have also spoken to some of the Department's own inspectors, current and retired. I did not just dream this up to give our witness grief. It is something of a dismissal to say that we have considered everything, this is the way that it is, one can like it or lump it. I would most respectfully ask that Mr. McKeon seek out some research to see if early intervention is better across all of those schemes, but in particular the back to education one. I see no justification to make somebody, who is geared-up and focused, hang around for a year, when they are best-placed on furthering their education, so that they can add value and more taxation to the other schemes that the most vulnerable are in need of. We will leave that issue there. Could Mr. McKeon send us a summary of the research that supports everything he has been saying, but in particular, could he seek out research on early intervention, because I am sure some exists?

Some 38% of claimants who were over 80 years of age were in receipt of an incorrect rate of payment. Why was that the case? Are they doing the wrong thing? Presumably most payments to people over that age are for State pensions, contributory or non-contributory.

Mr. John McKeon: Yes, I would-----

Deputy Marc MacSharry: How could that be miscalculated? People will have the pension since the age of 66 or perhaps younger. How could the Department be making that kind mistake? Is it the officials or are people over 80 contacting the Department and giving wrong information? How is that happening?

Mr. John McKeon: I already covered a bit of this with Deputy Cassells. The situation is that these are all non-contributory pensioners. They are means-tested pensioners. They are people who, at the time they made the claim, satisfied the means test, but 20 years later because their circumstances changed, they no longer satisfy the means test. People's circumstances change even in retirement because they bequeath wills and so on. Their income changes. That does affect their entitlement.

Deputy Marc MacSharry: Is it that they inherit money and so on?

Mr. John McKeon: And other things, exactly. They may have a number of different sources of income. They have found a source of income that was not in place at the time they made the claim. It is predominantly through inheritances. That is something they need to tell us about and sometimes they do not. They do not realise they need to tell us and then when we do a check or a survey, we find they have a lot more money in the bank than they declared when they were 65 or 66 and that affects their entitlement.

Deputy Marc MacSharry: It is the 80 year old's fault.

Mr. John McKeon: It is predominantly people over 80 who fall into that category.

Deputy Marc MacSharry: It is their own fault.

Mr. John McKeon: It is related to the passage of time.

Deputy Marc MacSharry: Is it their own fault?

Mr. John McKeon: I would not describe it as their own fault. We did not describe it as a fraud or anything like that in the control report. We described it as either customer error or our error. We are not equipped to-----

Deputy Marc MacSharry: Do the Department need to undertake a communications campaign, set up a unit or dedicate some staff to liaising with people of a certain age if this is an issue because 38% seems high?

Mr. John McKeon: That is exactly why we do the control surveys - to inform our control approach. As I explained earlier, what we have done up to now is write to a large number of people in receipt of pensions every year who had declared means. We knew they had means and we say, "Listen, if things have changed, will you please tell us?" We are now going to issue 10,000 letters a year to people who have new means and where it has been a number of years since they last claimed, reminding them that if their means have changed, they need to tell us.

Deputy Marc MacSharry: On recovery of welfare assistance overpayments, the net overpayments recorded in 2018 were €2.262 million. Was this covered earlier?

Mr. John McKeon: Sorry, could the Deputy say that again.

Deputy Marc MacSharry: There were €2.26 million in overpayments recorded in 2018.

Mr. John McKeon: Was this on the control report or is the Deputy looking at the-----

Deputy Marc MacSharry: It is on page 35 and deals with recovery of welfare assistance overpayments.

Mr. Seamus McCarthy: It is in the appropriation account, note 4.3.

Mr. John McKeon: I just need to check those figures; I do not recognise the number.

Deputy Marc MacSharry: It is €2.262 million.

Mr. Seamus McCarthy: It is on page 35 of the appropriation accounts. It is the departmental error figure on the net overpayments recorded.

Mr. John McKeon: That is overpayments recorded, not recovered.

Deputy Marc MacSharry: Sorry, recorded.

Mr. John McKeon: We recorded overpayments of €91 million and of those, €2.2 million were departmental error.

Deputy Marc MacSharry: On estate cases-----

Chairman: We are on time.

Deputy Marc MacSharry: I will skip to the next question. I will leave estate questions to somebody else.

Was the €32 million written off covered earlier?

Mr. John McKeon: No, I do not think it was.

Deputy Marc MacSharry: The €32.162 million written off as unrecoverable in 2018 is a vast amount.

Mr. John McKeon: The age profile of our debt goes back to 1980.

Deputy Marc MacSharry: Right.

Mr. John McKeon: We had very limited ability to recover overpayments until relatively recently. We were restricted to recoveries of €2 per week, for example, from people whom we had overpaid.

Deputy Marc MacSharry: And then-----

Mr. John McKeon: A lot of those debts are very old and in effect-----

Deputy Marc MacSharry: So, people pass on and they are no longer able to.

Mr. John McKeon: We have had to take a judgment call, as every organisation does, as to how much effort is put into trying to recover very old debts that have a low value in circumstances where-----

Deputy Marc MacSharry: Okay.

Mr. John McKeon: ----- when we do go to court on some of these, the judge tells us to go away or the Ombudsman tells us to go away. We need to take a judgment of how much of this debt is recoverable. We did an exercise and we work with the Department of Public Expendi-

ture and Reform on it. We got sanction to write off debt and it was not given easily.

Deputy Marc MacSharry: I just want to be clear. The €32.162 million relates to unrecoverable money dating back to 1980.

Mr. John McKeon: Any debts that were from 2010 or older, which were below a certain value and on which no payment had been received since 2010-----

Deputy Marc MacSharry: What was the value?

Mr. John McKeon: I think the value was anything less than €10,000.

Deputy Marc MacSharry: The Department was going to write off anything less than €10,000.

Mr. John McKeon: That was more than nine years old and no money had been recovered on it.

Deputy Marc MacSharry: If I was in a poorer space in 2010 and owed the Department €10,000, I am on the pig's back according to the 2018 accounts.

Mr. John McKeon: That is the judgment we took. Our experience is that we would not recover that debt. Investing staff resources on chasing debt that is non-recoverable in a situation where-----

Deputy Marc MacSharry: How much of the 38% of 80 year olds was under €10,000?

Mr. John McKeon: The average debt was fairly low because if one looks at the volume of overpayment - Mr. McCarthy might correct me on this-----

Deputy Marc MacSharry: Was the 38% of 80 year olds more?

Mr. John McKeon: No, the overpayment value for the 38% of over 80s was in the order of less than €50 a week.

Deputy Marc MacSharry: For anybody who owed us less than €10,000 from before 2010 - I am thinking about more recent years now and not necessarily way back - a decision was made in 2018 to write that off.

Mr. John McKeon: Only in circumstances where we had no prospect of recovery and where we had been unable to get any-----

Deputy Marc MacSharry: What criteria have the Department applied to that?

Mr. John McKeon: We have been writing to people. We have been chasing people. We have been sending them reminder letters and we have not been able to get any response.

Deputy Marc MacSharry: Would the Department go to court?

Mr. John McKeon: We have gone to court in some of these cases and generally what one will find when one goes to court is the judge tends to come down on the side of the little guy rather than the big guy. That is understandable. We have discussed this here previously. A lot of people have overpayments not because they were defrauding the Department but because there were genuine mistakes either by them or the by the Department. I think we have to be reasonable in those circumstances because many of them are still on social welfare payments.

Deputy Marc MacSharry: If somebody has the misfortune to be overpaid now, will they have to wait 30 years before it is written off again?

Mr. John McKeon: No, we will chase people's debt this week, next week, the year after.

Deputy Marc MacSharry: What proportion of the €32 million was between 2000 and 2010?

Mr. John McKeon: We are at cross-purposes. The 38% in the control report was from a survey at a point in time.

Deputy Marc MacSharry: That was the over 80s. I am now back at the €32 million in write-offs.

Mr. John McKeon: On the €32 million, they were all older than 2010.

Deputy Marc MacSharry: They are all before 2010, but how many are from in modern times?

Mr. John McKeon: We will get that profile for the Deputy.

Deputy Marc MacSharry: If we could get a range on that-----

Mr. John McKeon: I misunderstood the question.

Deputy Marc MacSharry: I thank Mr. McKeon.

Chairman: On that point, I assume all the debts the Department wrote off were in respect of people who are not currently in receipt of a payment.

Mr. John McKeon: Yes, absolutely.

Chairman: The Department could not have written off debts and handed people money at the same time.

Mr. John McKeon: We are very reasonable with people in receipt of a payment because-----

Chairman: We all know that; I am only talking about the write-off.

Mr. John McKeon: -----in receipt of a payment it means they do not have a sufficient means. It would be very modest amounts to be recovering.

Chairman: We will get into that later. I am only talking about the write-offs. There are people who have emigrated, gone, do not reply, no longer at that address or their numbers are not in the system for payments because if they were, the Department would track them down somewhere. I can take it that it would be inconceivable that the Department would write off an old debt of more than €10,000 as not collectable if it was currently making a payment to them.

Mr. John McKeon: Yes, because we would deduct €2 a week or €5 a week.

Chairman: Of course, the Department would.

Mr. John McKeon: It is only cases where were not recovering money.

Chairman: Not recovering money and cases where the Department is not currently making

any payments are not quite the same thing.

Mr. John McKeon: They overlap-----

Chairman: They do.

Mr. John McKeon: -----because if there is a payment in place, we are recovering.

Chairman: Yes, in all cases.

Mr. John McKeon: Yes.

Chairman: I would hate to think the Department was writing off.

Mr. John McKeon: No.

Chairman: It is obvious what I am asking. The answer is obviously the Department would not do that.

Mr. John McKeon: No.

Chairman: I just wanted Mr. McKeon to say that.

Mr. John McKeon: The Chairman is right.

Deputy Catherine Murphy: I apologise for having to leave earlier. We do not do the bi-location very well here. I apologise if I have missed something where Mr. McKeon has given an answer. I note the point about some of the online payments and the need for an identifier. I will come back to the public services card after I have asked a few other questions. I acknowledge that some of the payments made online, such as maternity benefit, are very efficient. We should acknowledge that some things are working very well.

I refer to the exceptional and urgent needs payments. The majority of those would consist of the housing assistance payment, HAP. We all meet people who require such payments, as they have emergencies and so on. They are an essential safety net. Can the witnesses provide an analysis of the payments made under the housing subhead? I ask for some headline points on that.

Mr. John McKeon: In 2019, up to the end of September, we paid €133 million for rent supplement.

Deputy Catherine Connolly: Could Mr. McKeon repeat that?

Mr. John McKeon: We paid €133 million for rent supplement. Through the supplementary welfare allowance, we have paid about €1 million in the form of deposits. That allowance is for people going onto HAP or rent supplement who need assistance in making their first deposit payment. That €1 million accounts for 1,400 people, which is an average of about €700 per person. We also give out what we call “kit-out payments” to people moving into accommodation with no furniture or equipment. We have paid €12.6 million to 7,000-----

Deputy Catherine Murphy: To how many people or tenancies does that figure relate?

Mr. John McKeon: That relates to 7,366 people, up to the end of September.

Deputy Catherine Murphy: Okay. That is the figure for 2019.

Chairman: Does that figure include people moving into houses owned by approved housing bodies or local authorities?

Mr. John McKeon: The kit-out payment would include that.

Chairman: I am referring to approved housing body and local authority tenancies.

Mr. John McKeon: The payment is given if there is nothing in the house. In many cases, local authorities or housing schemes provide fully equipped houses, so the issue does not arise. It only comes up when there is nothing in the house.

Chairman: How would the Department know whether that is the case?

Mr. John McKeon: The person will make a claim to our community welfare officer who will confirm the situation.

Chairman: Some approved housing bodies give out fully furnished houses on day one and others do not.

Mr. John McKeon: Our community welfare officers who are working on the ground know people's situation and circumstances .

Chairman: Local knowledge. Okay.

Mr. John McKeon: People have to certify it, and the community welfare officers ask about it and check it out.

Chairman: Mr. McKeon gets my question.

Mr. John McKeon: I have looked at one in Letterkenny. The community welfare officer there knows the names, addresses and everything else in such cases. No wool is being pulled over anyone's eyes in that situation.

Chairman: That is good.

Deputy Catherine Murphy: There are much fewer community welfare officers than there used to be. Obviously Intreo centres-----

Mr. John McKeon: I disagree with that.

Deputy Catherine Murphy: We might get those numbers at some point.

There was a supplementary budget. Where did that additional money go? Was it within the Department? There was a supplementary budget of €7.8 million. The budget went from €36 million to €42 million.

Mr. John McKeon: Could the Deputy tell us which page those figures are on? A few different payments are called supplementary.

Deputy Catherine Murphy: I am referring to the figures on pages 20 and 25.

Mr. John McKeon: I will wait for them to come up here.

Deputy Catherine Murphy: Okay.

Mr. Seamus McCarthy: There was an overall supplementary provision for the Estimate of €132 million.

Mr. John McKeon: That is what I am wondering.

Deputy Catherine Murphy: It is included in that.

Mr. Seamus McCarthy: That is obviously disaggregated across many schemes. There was probably some virement going on and movement between schemes.

Mr. John McKeon: That is the case. I just wanted to make sure the Deputy was not looking at the supplementary welfare allowance. The Supplementary Estimate related mainly to the Christmas bonus.

Deputy Catherine Murphy: I will move on to something else. I refer to the administration expenses.

Chairman: Does the Deputy mind if I cut in for a few seconds? Is Mr. McKeon saying that the Estimates the Oireachtas approved for the year did not include the Christmas bonus?

Mr. John McKeon: They never do.

Chairman: Is it a November decision?

Mr. John McKeon: It is a November decision. We then we bring in a Supplementary Estimate.

Chairman: Do we not provide for any element of the bonus in the Estimates?

Mr. John McKeon: No. That has never been the case.

Chairman: Okay.

Mr. John McKeon: The decision is made at the discretion of the Government later on in the year, depending on how the Exchequer is performing.

Deputy Catherine Murphy: Sometimes accounts-----

Mr. Seamus McCarthy: I think the figure on exceptional and urgent needs payments would not be a Christmas bonus figure. Is that correct?

Mr. John McKeon: No. That €7 million is demand-led. As such, payments are by their nature exceptional, it is very difficult to forecast what exceptional needs might arise year-to-year. We often have a Supplementary Estimate for exceptional needs as well. Sometimes it is negative and sometimes it is positive.

Deputy Catherine Murphy: The amount of money being used predominantly for housing demonstrates the crisis we are currently in. I just wanted to make that point.

I refer to administrative expenses. Bank charges of €2.2 million and negative interest of 1.1% were incurred in 2018. I ask the witnesses to explain how the Department receives money and whether there are ways of reducing or avoiding the amount of money paid for administration. Does that figure relate to drawdowns or arrears? What is its nature?

Mr. John McKeon: Most of the bank charges relate to payments. We have to pay the bank

when payments go through and they are driven by demand. As the volume of payments such as jobseeker's allowance reduces, so does the amount of money we pay in bank charges. I will explain how we manage our money and why there would be negative interest. We are funded by the central Vote from the central account. We draw the money down from that, put it into our own bank account, and then send any surplus back. Unfortunately, there were negative interest rates during the year but we cannot operate on the basis that there is no money in our account. There has to be money in our account in order to meet sums that are due. There are negative interest rates, which is unfortunately the reality. To give the Deputy some comfort, in terms of Social Insurance Fund receipts and the surplus there, we give those to the National Treasury Management Agency, NTMA. We do not hold them in the bank for a moment longer than they need to be held because we do not want to incur negative interest on them.

Deputy Catherine Murphy: I have a number of topics to go through so I will try to be succinct. Has the Department carried out an evaluation of how much of that money is due to transactions, bank charges and so on? Has the Department evaluated the cost-effectiveness of An Post, for example?

Mr. John McKeon: The Minister announced this morning that we are renewing the contract with An Post, which is roughly €50 million a year. About a third of all our payments are made via An Post, and about 70% via the banks. The bank charges are significantly lower than the equivalent charges through An Post.

Deputy Catherine Murphy: Mr. McKeon might tell us how significant that difference is. I ask him to give us a note on that.

Mr. John McKeon: Those are the figures. We pay €50 million to An Post and the bank charges are €2.6 million.

Deputy Catherine Murphy: Okay. In today's correspondence we received a reply from Mr. McKeon on the public services card. It included an assessment of the public services card project which outlines what is or is not done and what stage everything is at. The benefits realisation plan does not appear to have been assessed. The organisation's capacity to undertake the project does not seem to have had a full evaluation either. One of the criticisms of this project has been that there is no single on-paper business case, which is what this letter is addressing. I ask Mr. McKeon to respond briefly to those two points.

Mr. John McKeon: We covered some of this earlier. It was also covered at length by my predecessor, the then Secretary General, in 2016. There was no single business case document. Looking back, one sees that there should have been, but there was not. The reason for that was explained at the time and related to how the public services card project had evolved going back to 1993. There are difficulties involved in estimating benefits in particular. Most of the elements of a business case were in place in different documents, but were not compiled in one place. I acknowledge that it would have been preferable to have everything in one document, and said as much in my letter. However, such a document was not put together and there is no point pretending it was. We have to acknowledge that it was not. For the purposes of this committee meeting, I have tried to set out the marginal and incremental costs we have incurred. We would have incurred a lot of costs in any event, which I explained earlier. It is about €37 million. The benefits we have accrued to date are about €20 million. Those benefits will be ongoing-----

Deputy Catherine Murphy: I noted that from Mr. McKeon's opening statement.

Mr. John McKeon: I have tried to set that out. I am committing to a full cost benefit analysis, and we will make that public.

Deputy Catherine Murphy: I thank Mr. McKeon. On the ongoing issue in regard to the Data Protection Commissioner, what questions were asked? I am not asking for the legal advice because I know that it will not be available. Rather, I am asking what queries and concerns Mr. McKeon raised with the Attorney General.

Mr. John McKeon: The way it operates is that we would have received the report and sent to the Attorney General and asked for advice and opinion on whether the findings were legitimate and stood up. We specifically requested that the counsel who was advising on this would look at it, in some ways, from the most maligned perspective possible from our view. We gave it very careful consideration. We did not want to challenge the findings unless we could be absolutely assured that a challenge was not only appropriate but necessary. The Attorney General came back with advice. We did not seek to lead, inform or direct the Attorney General in any way. We left it open to the Attorney General to advise on this.

Deputy Catherine Murphy: Can Mr. McKeon identify why uptake of myGov is quite a distance behind that of the public services cards?

Mr. John McKeon: The public services card commenced roll-out in 2011. The myGovId is only under way two or three years such that there is a catch-up to be done. It is purely a timing issue.

Deputy Catherine Murphy: How much has been spent on myGov?

Mr. John McKeon: I think the figure to date is of the order of €7 million. We have given the Deputy a parliamentary question response on it; I see the figure is €8 million.

Deputy Catherine Murphy: I might come back to that. Before doing so, I want to ask a question on Turas Nua and JobPath. There is concern in regard to one of the providers using a server outside of the jurisdiction, which is an online CV builder. Was a sanction imposed on that provider? Was this even known and, if so, how did Mr. McKeon learn of it?

Mr. John McKeon: I am not too sure that it is true. I think that might be speculation. My information is that there is no information transferred out of the Irish jurisdiction. I will inquire further into the matter.

Deputy Catherine Murphy: I ask Mr. McKeon to do so.

Mr. John McKeon: Yes, and I will send the Deputy a note on it.

Deputy Catherine Murphy: I thank Mr. McKeon. It is constantly mentioned that we are at a below 5% unemployment rate. Hopefully, that will continue or it will reduce further. In the Celtic tiger era, 5% was generally regarded as full employment yet we are still awarding contracts for Turas Nua and JobPath. What is the thinking behind this?

Mr. John McKeon: There are two factors. We did not award a contract, we extended it. We extended it for a year and that is the limit of it. The reason we extended it is two-fold. The two issues that informed our consideration were, first, the approximately 600 people who work as employment advisers in Turas Nua and Seetec providing employment support and advice to people. It would have been foolhardy to take that resource capacity out of our system when Brexit was on the horizon and there was talk of approximately 50,000 job losses in a hard Brexit

scenario. That is the most important point. Second, we need to do a review of our contracted employment service provision across JobPath, local employment services and JobsPlus to comply with EU procurement rules. We will do that review and we will determine the future of contracted employment services once that review is completed. They are the two main reasons. As I said it would have been premature to take a decision to stop something until we had completed that review.

Deputy Catherine Murphy: People sometimes enter into JobPath more than once. Are there changes in the way in which they are dealt with when they enter the scheme on more than one occasion? I continue to hear complaints about this scheme, although not on a weekly basis or anything like that. One complaint related to a person who had completed a degree in nursing and had signed on while awaiting accreditation and was forced to participate in this scheme. Why would such a person be brought into the system and a payment to an employer when it was known that person would have a job following accreditation? I still do not understand that.

Mr. John McKeon: I ask the Deputy to send me the details of that case. It sounds very strange. The people who are referred to JobPath should be on the live register for at least 12 months. Most of them are on the register three years. If the person the Deputy mentioned has just received an accredited degree in nursing it does not sound as though he or she was on the live register for the past year or three years.

Deputy Catherine Murphy: No.

Mr. John McKeon: I ask the Deputy to send me the details because what she has set out is not the standard.

Deputy Catherine Murphy: I gave that as an example. I am sure I am not only one here who can give examples.

Mr. John McKeon: On JobPath, while various people have criticised it, the evidence shows the value that it is providing to people, including in terms of employment progression and earnings. Also, customer feedback is good. We survey JobPath participants twice a year. The positive feedback is remarkably high. The negative feedback is equal to that in respect of other local employment services. I always caution people about tarring a particular service with a brush that could equally be applied to other services.

Deputy Catherine Murphy: Are there are changes to the scheme where people are entering it, say, a second time?

Mr. John McKeon: We ask the staff to do that. It has to be borne in mind that it is an employment advice and counselling service. For example, people receive coaching on how to produce a better curriculum vitae and how to do a better interview and so on. We will send them on short-term training courses and so on. The ingredients in the recipe are the same but it will be tailored depending on the circumstances of the individual.

Deputy Catherine Murphy: I want to return to the public services card. On the issue of biometrics, a couple of weeks ago, the committee received correspondence that indicated that there was funding of, I think, less than €300,000 in the accounts - I cannot recall the particular year - and it specifically identified biometrics. This is an issue on which the Department is in discussion with the Data Protection Commissioner. The Minister constantly tells us they are not biometrics yet we are told there is an amount in the accounts. The description of what takes place indicates that they are biometrics. What is the-----

Mr. John McKeon: I will clarify it for the Deputy. In public commentary three different things tend to get conflated. For example, people have said that the public services card contains biometric data. We are very clear that it does not. There is no biometric data in the photograph or on the card or chip. We are very clear on that. Second, people we say we share biometric data. We are very clear we do not share biometric data with anybody. Third, people say we collect biometric data. Again, we are very clear we do not collect biometric data. The term “collect” has a particular meaning in a data protection context. We do not collect biometric data. For example, it has been said that when people walk into our offices our cameras can immediately scan their faces and collect biometric data. None of that happens. In terms of what we do, we process the photograph to create a biometric template. We have always said that. In replies to parliamentary questions we have always been clear that we produce an arithmetic template. We have called it biometric and we say that on our website. We say it in the frequently asked questions and comprehensive guide for the Committee of Public Accounts. We do create a biometric template for our own purposes. That is what enables us to identify issues of identity fraud. The information does not leave the Department. It is not on the card, it is not collected and it is not shared. People hear that there are no biometric data on the card and even though biometric is referenced they are different things.

Deputy Catherine Murphy: On debt reconciliation related to redundancy debt, it is a risk. Previously, an employer would pay and recoup the payment. There was a change and there was a reluctance to do that. Then there was a delay in paying redundancies because a lot of these happened at the same time. Would the Department identify that as a particular risk? What is the amount of money involved? Some of the money has to do with insolvency and some has to do with employers opting for this method, as opposed to paying it. Mr. McKeon might address that.

Mr. John McKeon: I do not have the page number here but the accounts show the balance of the debt is €331 million. It is detailed in note 5 of the Social Insurance Fund accounts. It is a risk but all debt carries a risk in terms of collection and we have to recognise that what the Social Insurance Fund is doing in that situation is effectively acting as a bond. It is like a travel bond when one travels. It is a payment of benefits to people, such as a redundancy payment, accrued pension contributions, holiday time or back wages where the employer is not in a position to pay the employees, because the employer is going bust. Consequently, we pay it; the Social Insurance Fund steps in and makes that figure up. It is like a bonding scheme. We then raise the debt against the employer but the truth is that when debt is raised against an employer that is insolvent or going bust, the chances of ever recovering it are very low. In practice, we will only ever recover about 10%.

Deputy Catherine Murphy: So of the €331 million, the Department would only expect to get maybe €33 million?

Mr. John McKeon: Yes, over time. We are a preferred creditor with the Revenue and liquidation processes and we hold the debt on our books as a note to the accounts until such time as the liquidation process is completed. At that point we have got what we have got and we write the debt off.

Deputy Catherine Murphy: There is always a perception that any losses the Department might incur are through individuals but in fact this is one area where there is a sizeable amount of money and where the State picks up the tab because people cannot get their entitlements because the employer is insolvent.

Mr. John McKeon: I want to be fair to employers in those situations. There have been some employers that would raise hair on the back of one's neck with their behaviour but most employers in that situation are not there by choice and they are trying to do their best. That is the reality. One can always pick out the egregious case as an example and there have been one or two notable cases that we have gone to court with but most employers are not doing it because they are trying to avoid their liabilities. They just cannot meet them.

Deputy Catherine Murphy: I accept there are genuine people like that but we see in the building sector, for example, that the same people appear as directors of a new company. What kind of follow-on does the Department do on the individual directors? Is there a liability on the individual directors?

Mr. John McKeon: There is no liability on the individual directors. If it is a limited company, the liability is with the business. We work with Revenue and we raise issues in court cases about whether directors should be barred from holding future directorships and so on but in practice, the debt is owed by the limited company and not by the shareholder. I understand the point but it is the same for Revenue or for any creditor.

Chairman: We have raised that point here year in, year out.

Deputy David Cullinane: I welcome Mr. McKeon and his officials. I have a few questions on the public services card. Mr. McKeon might be aware we had the Data Protection Commissioner before us a number of weeks ago and we put questions to her on this issue as well. She published a report a number of months ago and made a number of directions to the Department on foot of that report. There were three high-level findings in her report. First, she found there was no lawful basis on which the Department can rely on the SAFE 2 register and issue PSCs to persons required to obtain a PSC in order to transact with a public body other than the Department. That was the first high-level finding from her investigation. Does the Department accept that finding?

Mr. John McKeon: We are on the record as saying we do not accept it.

Deputy David Cullinane: The Department does not accept that finding. The second finding was that the Department has not complied with the data retention principle, in that it keeps all documentation relating to SAFE registration for longer than necessary. Does the Department accept that finding?

Mr. John McKeon: No, we do not.

Deputy David Cullinane: The Department does not accept that one either. The third finding was that the Department has not delivered sufficient transparency to the public in what personal data it processes in the context of SAFE 2-and the PSC. Does the Department accept that finding?

Mr. John McKeon: No, we do not.

Deputy David Cullinane: Those were three high-level findings from an independent individual who has statutory powers and a responsibility to ensure the rights of citizens are protected after a lengthy investigation. The Department does not accept any of the three high-level findings from her investigation.

Mr. John McKeon: There were four findings. The first was that the Department had-----

Deputy David Cullinane: There were three. I am reading from the Data Protection Commissioner's report so I will put what is in the report first.

Mr. John McKeon: It is important to say-----

Deputy David Cullinane: Bear with me. I will discuss what is in the report. Page 10 of the report talks about three high-level findings. There may be more findings and there are many other things she talks about but there are three high-level findings, which I have just put to Mr. McKeon. The Department does not accept any of three findings. That is my point.

Mr. John McKeon: No, we do not, and there are reasons for that. It is not a decision the Department took lightly. We took it on strong advice from the Attorney General. The public services card delivers a lot of benefits to administration and customer service. It would be reckless and foolhardy if we were not to challenge those findings on the basis of the advice we received.

Deputy David Cullinane: The Department is entitled to put up a defence but I just want to clarify for the record, so there is no dispute, that the main three findings of the Office of the Data Protection Commissioner's investigation are not accepted by the Department.

Mr. John McKeon: There are four main findings and it is important to say the first finding was that the Department is perfectly entitled to register people, to issue public services cards and to ask for them to be produced in the context of the Department's own services.

Deputy David Cullinane: I want to read from the Data Protection Commissioner's report because there may be other versions. I am reading from her own report and I am putting questions to Mr. McKeon on the Data Protection Commissioner's report. Page 10 details the "High-level findings of this Investigation" and it states "Three key findings of this investigation are...". It does not mention four findings, it mentions three and there may well be others but the Data Protection Commissioner cites three findings.

Chairman: Is that from September? Do we have the same report in front of us?

Deputy David Cullinane: Yes. It is the same one.

Chairman: Is it the Department's response?

Deputy David Cullinane: No, it is the Data Protection Commissioner's report. In any event, I will move on because I want to look at processes. We had quite an interesting discussion with the Data Protection Commissioner on the interaction between the Office of the Data Protection Commissioner and the Department. The Data Protection Commissioner had some stuff to say about that, which I will get to. I have extracts from what she said. There were a number of issues with that interaction. On point 12 of the executive summary in her report, she says the Department was not in a position to meet in a deadline that was set on 31 October 2018. It was a deadline for a draft report. She stated the Department intended to send its response to the DPC by 30 November. At that point the Department threatened the possibility of legal proceedings. Is that correct?

Mr. John McKeon: It is unfair to call it a threat. The context there, which is important to point out, is that we got the draft report from the Data Protection Commissioner, which ran to a number of hundreds of pages, at the end of August 2018. We were asked to respond in a period of about four weeks. We had to consult with the Office of the Attorney General and the Depart-

ment of Public Expenditure and Reform and it was simply not possible to meet that deadline. We indicated we needed a period of three months to do so. The Office of the Data Protection Commissioner responded to say it did not accept that more time than four weeks was needed but agreed to give us eight weeks. In that situation, we had to reply to say we really needed the three months, to point out that we were entitled to due process and to say that if it was necessary we would take steps to ensure we got due process.

Deputy David Cullinane: The Data Protection Commissioner's point was there were a number of extensions given and this was another extension that was sought and again given.

Mr. John McKeon: We looked for one extension to the end of November. As I said, the Office of the Data Protection Commissioner said it would give us another month rather than the extra two months we had sought. We responded and said we really needed the three months.

Deputy David Cullinane: The Data Protection Commissioner states in her report that "On 26 October 2018, [her office] responded agreeing to one further extension and stating that the threat of legal proceedings [and she used the word "threat" - not me] was unwarranted in circumstances where the DPC had already provided an extension of a month."

Mr. John McKeon: That is exactly what I have just said. There is no difference between-----

Deputy David Cullinane: There were a number of extensions.

Mr. John McKeon: The Office of the Data Protection Commissioner gave us one extension of four weeks and then we wrote in to say we really needed an extra extension and that if we did not get that extension, we were reserving the right to look for due process. Then the Data Protection Commissioner gave us the extension.

Deputy David Cullinane: I am interested in that due process and in what the relationship was between the Department and the Office of the Data Protection Commissioner at the time. What interaction was going on? I seek an understanding of how Departments interact with what is a statutory office. The response was sent on 30 November 2018. The Data Protection Commissioner stated in her report that 470 scanned pages, which were unpaginated, were then sent with 28 appendices. Who sent them?

Mr. John McKeon: The Department.

Deputy David Cullinane: Who in the Department?

Mr. John McKeon: Our data protection unit. I think-----

Deputy David Cullinane: Who in the Department was responsible for it?

Mr. John McKeon: I want to deal with the first issue first, if I may. In our letter of 30 November, which included the document and which we published, we explained precisely why the document was unpaginated. The Data Protection Commissioner had sent us 14 findings and 17 requests for further information. To respond to those 14 findings and 17 requests for further information, we had to insert in the document many exhibits, technical specifications and so on, which were scanned documents. They were not our documents but were technical documents. That meant they were being scanned with pages numbers already on them, which meant that the numbering sequence, when we paginated it, did not make sense. For example, our text, which was 151 pages of the 400-odd page document-----

Deputy David Cullinane: I wish to stop Mr. McKeon there for a moment.

Mr. John McKeon: Let me explain it. It is important.

Deputy David Cullinane: I will let Mr. McKeon respond again.

Mr. John McKeon: The Deputy is suggesting that we are somehow trying to be difficult.

Deputy David Cullinane: With respect, I am putting the questions. If we, as a committee, sought information from a Department and received 470 scanned, unpaginated pages, I am sure we would return them. When this was put to her, the Data Protection Commissioner stated this was unusual and far from the norm when receiving information from a Department. In fact, she was critical of the Department for the manner in which it was sent.

Mr. John McKeon: The important issue is-----

Deputy David Cullinane: The important issue is that there are good and healthy exchanges between Departments and statutory agencies, and that there are appropriate ways in which responses are given on serious issues. Ms Dixon had a draft report and sought responses from the Department but they were sent as 470 scanned, unpaginated pages. Subsequently, she received what she described as a searchable version but it took some time to receive it. That is what she stated. It is a fact in her report.

Mr. John McKeon: If the Deputy will allow me to say what I need to say, I will be grateful. He suggests we are trying to be difficult or obstructionist but that is far from the case.

Deputy David Cullinane: I do not suggest that. It jumps from the report.

Mr. John McKeon: “Jumps” or “suggests”. If the Deputy talks to any other body that has done reports, including the Comptroller and Auditor General or the Office of the Ombudsman, he will find that the Department bends over backwards to facilitate inspectors and auditors and to give co-operation and support. Even in the case of reports that have been critical of us, as a number of Ombudsman reports have been, the authors always compliment the Department and the co-operation given without fail. In this case, the reason we sent the documents was to try to be helpful-----

Deputy David Cullinane: I have listened to Mr. McKeon-----

Mr. John McKeon: If I can, Chair, I wish to finish my point on when exhibits are put into a document and paginated. Following pages 1 to 10, inclusive, of the document, we had to insert an exhibit that was separately paginated 20 to 25, inclusive, and then return to page 11 of our document. It just did not make sense. What we did-----

Deputy David Cullinane: Through the Chair-----

Chairman: Let Mr. McKeon finish.

Deputy David Cullinane: This is my time.

Mr. John McKeon: I do not think the Deputy wants to hear the answer.

Deputy David Cullinane: I do want to hear the answer.

Mr. John McKeon: He should let me give it.

Deputy David Cullinane: I will let Mr. McKeon give the answer in a moment but I will not be bullied or prevented from putting questions to him. It is my time and I am putting questions to him. If I believe I am not getting the answers, I will ask him to stop because I want to put further questions to him or to clarify what he has said.

Mr. John McKeon: I am entitled to give the answer.

Deputy David Cullinane: Mr. McKeon is entitled to give the answer but he was not answering. I listened to what he stated but it was not an acceptable answer.

Mr. John McKeon: The Deputy did not get the answer because he kept interrupting me.

Deputy David Cullinane: No, I did not. I let him speak for one minute and did not hear anything acceptable to me.

Mr. John McKeon: The reason we did what we did was that pagination did not make sense when exhibits were included. We numbered every paragraph in the document to support document navigation. It was scanned because we had to scan documents that were not of our authorship into the document. When the DPC came back a number of weeks later and asked us to paginate it in any event and give a searchable document, we turned it around in a day or two. We were not being difficult. We were trying to be helpful by numbering every paragraph for navigation purposes, rather than every page, because pagination made the document un-navigable-----

Deputy David Cullinane: It is fair to say the Department received fair wind in the response. Mr. McKeon's is not the opinion of the Data Protection Commissioner.

Mr. John McKeon: Well, that is fine.

Deputy David Cullinane: We are entitled to give our views as individuals. What Mr. McKeon stated is not my view, either. It was not a reasonable way to respond.

Mr. John McKeon: I think it was reasonable.

Deputy David Cullinane: I do not think it was, and I am entitled to my opinion.

Chairman: To clarify, in order that our guests will understand, if a member draws a conclusion, it may not be the view of the committee. The committee will have a view in due course.

Deputy David Cullinane: More importantly in this case, as I can have my opinion, the Data Protection Commissioner also has her opinion. A response was received to a parliamentary question, which I put to the Data Protection Commissioner and which I also will put to Mr. McKeon. The reply stated:

The Department sought to meet the DPC on two occasions since receipt of the report with a view to outlining the basis for its conclusions and seeking to clarify a number of matters of concern relating to inconsistencies both within the DPC's report and between the report and the accompanying letter from the DPC. The request for a meeting was declined on both occasions.

The Data Protection Commissioner referred to a number of media appearances made by the Minister on behalf of the Department. The essential point was that the Data Protection Commissioner refused on two occasions to meet the Department. What happened?

Mr. John McKeon: We got the Data Protection Commissioner's report. She asked us to take a certain number of steps, some within one week, three weeks and six weeks. Jacqui McCrum, the deputy secretary at the Department, wrote at the end of the first week to ask for an early meeting to discuss matters, and the Data Protection Commissioner replied to say the commission would meet us once we gave it the full details it looked for at the end of six weeks but that it was not prepared to meet us at that point. It left us in a position where we had to prepare-----

Deputy David Cullinane: When was the Data Protection Commissioner not prepared to meet? It is important.

Mr. John McKeon: She had given us six weeks to produce a detailed implementation plan.

Deputy David Cullinane: On what date was she not prepared to meet?

Mr. John McKeon: 22 August.

Ms Jacqui McCrum: The report was delivered on 15 August. The request went to her on 22 August and she replied on that date to say she was not prepared to meet until such time as we had prepared our plans in accordance with her letter, which would have been at least six to eight weeks later.

Deputy David Cullinane: I wish to read from the Data Protection Commissioner's evidence to the committee. Ms McCrum stated she was not prepared to meet.

Ms Jacqui McCrum: She was not prepared to meet until we had prepared our plans but we needed to speak to her before we made our plans.

Deputy David Cullinane: Let us read from what she stated because the Department's responses to my questions are defensive, which is fine but it shows that it was the same sort of approach to that taken to the Data Protection Commissioner, and to that in a number of other areas where the Department deals with individuals and organisations, which I will address in a moment. Ms Dixon stated she had indicated in her first response that she was prepared to meet. She stated she had responded to a letter from Ms McCrum on 22 August, and indicated in the affirmative that the DPC was willing to meet and that a meeting could be useful once the Department had tabled the implementation plan, which she was entitled to do. She indicated she would meet but that there would need to be an implementation plan, which she stated she had directed in the letter of 15 August. She continued:

In fact, Deputy Cullinane will see from the correspondence on 22 August that I was open to meeting once that implementation plan was tabled. I did not hear anything further about a meeting until correspondence from [Mr. McKeon] on 3 September.

Mr. John McKeon: That is right-----

Deputy David Cullinane: Why was the offer not taken up? It was because the implementation plan had not been put in place. Is that not correct?

Mr. John McKeon: The Deputy can try to present the matter in whatever way he wishes but it is a simple, professional process of an exchange of correspondence. That is all it is. We sought an early meeting in our letter to the DPC on 22 August. The DPC replied that for its own reasons, it was not prepared to meet us until we had submitted the implementation plan, which was to be in October. We sought an early meeting but we did not get acceptance for an early

meeting, which is the point we are making. We then had to consult with the Office of the Attorney General and others. We determined the appropriate response and, at that point, wrote to the Data Protection Commission advising it of our response and that we would still like to meet. There is nothing untoward or difficult about that. There is nothing contentious. It is simply a professional exchange of correspondence.

Deputy David Cullinane: I am putting to Mr. McKeon not my opinion but that of the Data Protection Commissioner, what was in her report and what she stated to the committee. She said to the committee that of course she was willing to meet at the appropriate time when she first got a response. She had directed that there be an implementation plan and she felt that it was appropriate for that plan to be put in place and to then meet. She got a letter from the Department stating that officials wanted to meet her. Her response stated that it would be entirely inappropriate for the commission to engage in a meeting where it had issued finalised findings and clear directions. Is it correct that she had issued finalised findings at that point? She contends that at that point, it would have been inappropriate for her to meet the witnesses. I imagine the Comptroller and Auditor General has a similar process when he does his reports where he allows an organisation to come back. Would he meet with an organisation once he has finalised a report?

Mr. Seamus McCarthy: There would not be any purpose to it. We would have had engagement and meetings in the process. From my point of view, it is important to have points made in writing because that has evidential value. It would have to be from the Accounting Officer. There have certainly been occasions where a point might be discussed because of a way it has been picked up in media reports, but that would be after the publication of a report.

Mr. John McKeon: The Data Protection Commissioner's report was issued as a final report on 15 August, with an accompanying letter. We felt we needed clarifications on the meaning of some of the findings and of some of the directions given in the letter. We felt there were some inconsistencies. We wanted to talk to the Data Protection Commissioner about that to get clarity. The Data Protection Commissioner, as the Deputy rightly says, felt that that would be inappropriate until she had an implementation plan. She subsequently continued to feel that it would be inappropriate. I do not have a difficulty with that decision of the Data Protection Commissioner.

Deputy David Cullinane: No, but the Minister had a difficulty with it. The parliamentary question suggested that the Data Protection Commissioner, unfairly in my view, was not willing to meet. In fact, Ms McCrum, when she initially answered the question, said that on that date in August, the Data Protection Commissioner was not in a position to meet. The commissioner added a caveat that the implementation plan should be put in place. My point is that a perception was being created by the Department that the Data Protection Commissioner was unwilling to engage with the Department when, in fact, she was willing to engage. She made it clear that she had directed an implementation plan and it was not put in place. She wanted that to be put in place and then she would meet. By the time the Department wrote to her, she had finalised her report and findings and felt it was inappropriate at that point. It is important for the facts to be made available and that the Department does not create a perception that the Data Protection Commissioner was unwilling to engage or to meet with the Department, when that does not seem to be the case, and she was more than willing to meet.

Mr. John McKeon: I think hair-splitting is happening here to a certain extent. We received a final report. There was no subsequent finalisation of the report. It was received on 15 August, with a letter from the Data Protection Commissioner, setting out the steps that the Data Protec-

tion Commission would like the Department to take. It stated it would take one week for one matter, three weeks for another and six weeks for an implementation plan. We identified issues in the report and in the letter. We also identified inconsistencies. We wanted to clarify those with the Data Protection Commissioner and we wanted a meeting to do that. We asked for an early meeting. The Data Protection Commissioner did not feel that would be appropriate and told us so. The commissioner told us she would meet with us when we accepted her findings and delivered an implementation plan. It would be difficult for us to develop an implementation plan if we did not accept the findings and, even if we did, it would be difficult to develop an implementation plan where we felt there were inconsistencies and a lack of clarity about some of the findings and the analysis. That is why we wanted a meeting. While I do not object to this, the Data Protection Commissioner did not feel it would be appropriate to meet until we had an implementation plan and that is fully her prerogative. There is no contention-----

Deputy David Cullinane: I have one more question but I need to make the point that the Data Protection Commission was clear that there is a difference between findings and rulings. The Data Protection Commissioner makes rulings and has statutory powers. One of the points she made is that there is a growing awareness in some Departments about the role of the commissioner's office. It is not an advisory role, but has enforcement aspects too. I have one more question on the report. It relates to the report of the Comptroller and Auditor General. Paragraph 43 of the commissioner's report states:

The C&AG Report on the Accounts of the Public Services 2015 noted that the Accounting Officer for DEASP was of the view *"that while a business case had not been developed, the project has been coherently planned and implemented in conjunction with DPER and with the support of relevant decision makers and stakeholders"*.

The Chairman referred to the report of the Comptroller and Auditor General earlier. The report then states that the commission was of the view that "the PSC was more piecemeal and less coherent than suggested". I want to get the witnesses' view on what follows because it came from them or the Department. It states:

The DPC notes DEASP's objections to the DPC's description in this regard, firstly on the basis that it represents a "collateral undermining of the Comptroller and Auditor General's view on the PSC project"

What did the Department mean by that?

Mr. John McKeon: I think it is clear.

Deputy David Cullinane: Maybe Mr. McKeon could make it a bit clearer for me.

Mr. John McKeon: The Data Protection Commission, in its preliminary report, referred to the report of the Comptroller and Auditor General from 2016. It noted that the Comptroller and Auditor General said that, notwithstanding that there was no business case, 17 out of 19 elements were best practice and there is evidence that it was coherently planned. I am paraphrasing and Mr. McCarthy might correct me if I am wrong.

Deputy David Cullinane: I will get to Mr. McCarthy in a second.

Mr. John McKeon: The Data Protection Commission then stated in its report that maybe it was not as coherent as the report of the Comptroller and Auditor General suggested. We think that that was an unnecessary observation.

Deputy David Cullinane: The Department referred to “collateral undermining of the Comptroller and Auditor General’s view on the PSC project”. Collateral in layman’s terms would be substantial. Would that be Mr. McCarthy’s view?

Mr. Seamus McCarthy: I do not believe that the Data Protection Commissioner’s points undermine my report. It was not commenting directly on whether my report was reliable or not. I think there is a bit of quoting out of context. In the report in 2016, the team went through the process of looking at the elements that should be in a good business case. It looked at documents compiled between 2003 and 2011. We found that there were many elements there but there were some key ones that were missing. I do not think it would be fair to characterise what we presented in the report as saying that that is as good as a business case. It is not. The conclusions of my report on that explain what a good business case is. I refer to the fact that the Accounting Officer was of the view that it was not possible to build a single detailed business case. While it had not been developed, the project has been coherently planned and implemented. The Data Protection Commissioner was challenging the Accounting Officer’s view, not mine.

Deputy David Cullinane: I want that point to be clear and then I will finish. It is an important point because the Data Protection Commissioner referred to this too. The Department’s response to the Data Protection Commissioner at that point was that it represented a collateral undermining of Mr. McCarthy’s report on the public services card. To be clear, that would not be Mr. McCarthy’s view?

Mr. Seamus McCarthy: No.

Chairman: That is not Mr. McCarthy’s view but there are references in the report in respect of the Accounting Officer. I see a subtle difference. The Department does not take it as a criticism of the Comptroller and Auditor General. Mr. McKeon said it is critical of his report, but his report refers to Mr. McKeon’s comment, so it is critical of Mr. McKeon’s comments.

Mr. John McKeon: That is the point. We do not think, when we read that preliminary report, that it was necessary to invoke the report of the Comptroller and Auditor General at all. That is the point we are making.

Chairman: The first report was delivered to the Department on 15 August. What was the date of publication?

Mr. John McKeon: I think it was early September. I cannot remember the exact date.

Ms Kathleen Stack: The report was published on 17 September.

Chairman: We will suspend for lunch until 2.30 p.m.

Sitting suspended at 1.40 p.m. and resumed at 2.36 p.m.

Chairman: We are resuming our discussion with the officials from the Department of Employment Affairs and Social Protection on the 2018 appropriation accounts, the chapters in the report of the Comptroller and Auditor General and the 2018 Social Insurance Fund. As the Comptroller and Auditor General, Mr. McCarthy, had to leave for another appointment, we are joined by Ms Colette Drinan, director of audit at the Office of the Comptroller and Auditor General.

As to the order the speakers, Deputy Connolly will be followed by Deputy Munster. I will also have questions at the end. Other members may come in in the meantime.

Deputy Catherine Connolly: Gabhaim buíochas leis an gCathaoirleach agus cuirim fáilte roimh na finnéithe. I ndeireadh na dála, tá an chothromaíocht inscne ceart. At long last we have proper gender equality, on which the witnesses are to be congratulated.

Mr. John McKeon: It is not as good as it was last year I am afraid.

Deputy Catherine Connolly: Looking at the witnesses it is looking good.

I thank the witnesses for their comprehensive report. I am not sure whether there is a double message as we are being smothered by an amount of paper, but certainly the report is welcome as it includes an overall view. I thank the witnesses for their positive statements on the social welfare system, including that it covers a lot more than the people on the dole and fraud. There are two sides to it, namely, the Social Insurance Fund and the social welfare budget. The amount involved is more than €10 billion. Does the Department need less money as more people are now working?

Mr. John McKeon: No, we need more.

Deputy Catherine Connolly: Why is that?

Mr. John McKeon: While the level of unemployment has fallen, the population is ageing.

Deputy Catherine Connolly: I see.

Mr. John McKeon: This creates pressures on pension payments. For example, this year, even if there had been no rate increases in the budget, we would have had to increase expenditure by €520 million.

Deputy Catherine Connolly: There are other pressures on the budget such as an ageing population-----

Mr. John McKeon: The two main elements, both of which are related to an ageing population, are a demand for an extra €330 million approximately for pension payments and an extra €200 million for disability payments.

Deputy Catherine Connolly: The Department points clearly to the number of people living in poverty. What is the percentage in that regard?

Mr. John McKeon: The at risk of poverty rate for Ireland is approximately 32% before and 15% after social transfers. It represents a reduction of approximately 50%.

Deputy Catherine Connolly: Does the Department have a breakdown of the amount of money used to actively support people who do not earn enough? One way or another, are we actively supporting the market, as opposed to providing disability and pension payments?

Mr. John McKeon: The main payment in that regard - there are a few payments but the rest are smaller - is the working family payment, the cost of which is €431 million per annum.

Deputy Catherine Connolly: Mr. McKeon is referring to the working family payment.

Mr. John McKeon: It used to be family income supplement.

Deputy Catherine Connolly: Yes, but it is now called the working family payment and the cost amounts to €431 million per annum. How many people-----

Mr. John McKeon: We expect that figure to fall in the next year or two because as incomes rise, fewer people will depend on it.

Deputy Catherine Connolly: Is it up or down on the figure for the previous year?

Mr. John McKeon: The figure included in the 2018 Estimates was €431 million. In 2019 the cost will be €416 million approximately. It will be down slightly in 2019 compared to the figure for 2018.

Deputy Catherine Connolly: It is the payment made families who do not earn enough.

Mr. John McKeon: It is provided for 54,000 families.

Deputy Catherine Connolly: What other payments are available that are directly supporting families?

Mr. John McKeon: I probably can get the numbers. I just do not have them in front of me.

Deputy Catherine Connolly: That is okay but I am interested to see what the range is.

Mr. John McKeon: The main other payment would be the back to work family dividend.

Deputy Catherine Connolly: Back to work, yes.

Mr. John McKeon: That would be a relatively small amount. We have what is called the back to work enterprise allowance payment as well.

Deputy Catherine Connolly: I saw that one. The allocation for that was not fully spent.

Mr. John McKeon: That is right. The back to work enterprise allowance is about €70 million a year.

Deputy Catherine Connolly: There is an underspend on it, is there not?

Mr. John McKeon: As the employment market improves, people go on to that. On the back to work family dividend, the amount is about €16 million.

Deputy Catherine Connolly: That is €16 million, and the enterprise allowance is €70 million, is it?

Mr. John McKeon: That is right.

Deputy Catherine Connolly: Are there any other schemes?

Mr. John McKeon: There are a number that could be relevant, for example children's allowance, which is not quite but one could argue it goes-----

Deputy Catherine Connolly: That is a universal payment. Would it be possible for the officials to go through it and tell me the list of payments and the money that actively support the market?

Mr. John McKeon: The best thing might be for us to send the Deputy a list, rather than take up time here. I could go through the Estimates and start picking them out but it would just take up time. They are the main ones.

Deputy Catherine Connolly: That is okay. Just sticking with the accounts for a minute, I have a couple of practical questions. There is a reference to scheme pre-payments on page 14 of the appropriation accounts. What are scheme pre-payments? The figure has jumped significantly.

Mr. John McKeon: The main issue there would be payments to community employment schemes, local employment services, job clubs and so on, which we fund in advance. The other big payment that is a scheme pre-payment there would be child benefit. The reason it increased a lot at the end of 2018 compared to 2017 was that the payment date for child benefit fell for 2019 just after New Year's Day so we brought it forward into 2018. That would be by far the biggest amount.

Deputy Catherine Connolly: Could we have a note on that? It is a huge jump.

Mr. John McKeon: We had anticipated it because of the payment date.

Deputy Catherine Connolly: That is okay but I would like to see a breakdown, particularly in terms of the community employment schemes. What is the other one called?

Mr. John McKeon: Local employment services, LES.

Deputy Catherine Connolly: Could Mr. McKeon say that again?

Mr. John McKeon: Local employment services.

Deputy Catherine Connolly: I just lost the letters. I know exactly where it is and will be coming back to it. If we had a breakdown of that, it would be good. On unmatched payments in the same accounts, on page 5 I read that overpaid customers sometimes make repayment with insufficient details. People of their own accord decide to pay back some money in the case of an overpayment, is that it?

Mr. John McKeon: That is right.

Deputy Catherine Connolly: They are being very good.

Mr. John McKeon: They are being very good but they do not tell us who they are, unfortunately.

Deputy Catherine Connolly: That is what I want clarified.

Mr. John McKeon: In the past, we were able to do better matching because the banks could tell us it came from a certain account and so on but they cannot any more because of data protection concerns.

Deputy Catherine Connolly: How do they make the payments?

Mr. John McKeon: They generally pay us either by cheque or bank draft or a direct funds transfer. It is mostly a direct funds transfer from their bank account to ours. They do not provide the information to enable us to identify them. Really they should give their name and PPSN.

Deputy Catherine Connolly: Does the Department ring-fence that money and hold on to it?

Mr. John McKeon: We do our best to match it against our own records. That is an ongoing process. We hold it in a suspense account. I cannot remember the exact accounting rules but after a certain period it will transfer out of the suspense account into an appropriation-in-aid and it will be treated as income.

Deputy Catherine Connolly: That paragraph goes on to state that an examination will commence during 2019 with a view to bringing to account and so on. Has that started?

Mr. John McKeon: Yes.

Deputy Catherine Connolly: When did it start?

Mr. John McKeon: It started in September, just after the audit finished.

Deputy Catherine Connolly: When will it be finished?

Mr. John McKeon: I think it is going to take a year at least.

Deputy Catherine Connolly: Who is doing that internally?

Mr. John McKeon: It is our accounts function.

Deputy Catherine Connolly: I have read the Comptroller and Auditor General's chapters and note the Department has taken on board his recommendations. One chapter had no recommendation but really there was a recommendation within the conclusion to simplify online applications. Mr. McKeon dealt with that earlier. The Department has taken that on board, even though it was not a recommendation as such. It was one, without the name.

Mr. John McKeon: Yes, it is best practice and we are trying to follow best practice where we can.

Deputy Catherine Connolly: The Department is working with NALA.

Mr. John McKeon: We work with NALA on all our forms and documents.

Deputy Catherine Connolly: The Comptroller and Auditor General has highlighted that the overpayments are material. That was a finding of his and the officials have dealt with it already.

Mr. John McKeon: If I can give the Deputy comfort, we compare ourselves with other Departments and equivalent organisations around the world. Our overpayment rate is at the average or just below it.

Deputy Catherine Connolly: I never take comfort from anything like that. I just look at the Comptroller and Auditor General's chapter and see what he is saying and then I want to know what the Department is doing. I will take comfort from that rather than a comparator with somewhere else. That is really the basis of our work here in addition to our own questioning.

The Comptroller and Auditor General talked about the timeliness of payments and Mr. McKeon has given us a very good account of how there are only so many weeks. I asked a parliamentary question on this. The disability allowance seems to be one area that is not matching what Mr. McKeon is telling me. Somebody on the ground who has appealed a refusal is waiting. We are being told there is a backlog. I do not see that here. Is there a backlog in appeals for disability allowance and the medical assessors?

Mr. John McKeon: The issue there is about appeals. I have a figure here somewhere. We do have a backlog in our appeals office.

Deputy Catherine Connolly: What is the backlog?

Mr. John McKeon: I will get the figure for the Deputy. I think Ms McCrum has it. As at the end of 2018, the backlog was about 8,900.

Deputy Catherine Connolly: That is 8,900 appeals for disability allowance.

Mr. John McKeon: No, that is across everything.

Deputy Catherine Connolly: What was the figure for disability allowance?

Ms Jacqui McCrum: I am not sure I have the breakdown on that but it is about 23 weeks for a summary decision and 27 weeks for an oral hearing.

Deputy Catherine Connolly: I want to get this straight. When someone applies in the first instance and is refused, that takes a few weeks. How many weeks?

Ms Jacqui McCrum: As the Secretary General said earlier on, for the disability allowance we have moved that down to about 11 or 12 weeks. It varies on an average.

Deputy Catherine Connolly: That is 11 or 12 weeks to process the initial application.

Ms Jacqui McCrum: Yes. So when we get the answer-----

Deputy Catherine Connolly: Let us say it is refused.

Ms Jacqui McCrum: If it is refused, they have the option to go to the appeals office or to have a review. Some of them go straight into the appeals office and the appeals office might deem that they should go back to the deciding officer for a review. About 3,500 go back on that basis.

Deputy Catherine Connolly: They can go for an appeal or a review or they can do both simultaneously.

Ms Jacqui McCrum: Exactly.

Deputy Catherine Connolly: Ms McCrum might just give me the times, please, for that.

Ms Jacqui McCrum: If they go to an appeal, it is taking 23 weeks for the appeals office to get through a decision at this stage. That is not all of them and I do not have them broken down by the various schemes. That is just appeals in general and among all of them there is an average of 23 weeks.

Deputy Catherine Connolly: What would be the longest that they would be waiting?

Ms Jacqui McCrum: It depends on the complexity of the case. In some cases if they have to have an oral hearing there is a backlog on that. It is taking about 27 weeks to get an oral hearing, which is too long. We accept that it is too long.

Deputy Catherine Connolly: What is the problem?

Mr. John McKeon: I think the issue is that we have had a high level of churn in our ap-

peals officer cohort. Generally our appeals officers are more experienced officers at assistant principal level. We have had a high level of retirement so we have had a lot of new people come in. We have increased the cadre by seven appeals officers in the past year to try to deal with the backlog. The Deputy asked specifically about the backlog on disability allowance, which is 1,700.

Deputy Catherine Connolly: They are waiting for 23 weeks for their appeal or review to be heard.

Mr. John McKeon: That is right, on average. The highest level of appeals we have across any scheme is in the disability allowance scheme. About 16% of disability allowance claims will be appealed. On most other schemes, the figure is between 1% and 3%, with the exception of carer's allowance, which is another medical one.

Deputy Catherine Connolly: There is a higher level of appeal here. The Department has to put the resources in to meet that demand. We are dealing with people who are seeking disability allowance. It is very difficult.

Mr. John McKeon: That is what we are doing. That is why we put another seven people into the appeals office. It will take time to deliver the results.

Deputy Catherine Connolly: How much time will it take?

Mr. John McKeon: The appeals office is a quasi-judicial function. The appeals officers have to take decisions *de novo*. Generally speaking, it takes six to nine months for an appeals officer to get really up to speed and be able to deliver full throughput. Unfortunately, I cannot promise there will be an instant response from putting in the extra staff.

Deputy Catherine Connolly: Okay. Is there a problem with or an absence of medical assessors?

Mr. John McKeon: No. We are happy there is a good complement of medical assessors. We have put an extra four medical assessors in place this year.

Deputy Catherine Connolly: The problem does not lie with the medical assessors.

Mr. John McKeon: They are getting through their cases in approximately two to three weeks.

Chairman: Are some of those nurses as well as doctors?

Mr. John McKeon: No. All those we have taken on are doctors.

Chairman: Okay.

Mr. John McKeon: The nurses are called nurses attendants. If a doctor must perform a physical examination, it means there would be two people in the room. The committee can see the reasons for that.

Chairman: We understand.

Deputy Catherine Connolly: I will not get into an individual case, but as a Deputy, it is difficult to listen somebody going through this. It is not even really a role for me, but unfortunately we must put in some letters. My role relates to the process, why it is taking so long and

what should change. When I go back to people in Galway seeking the disability allowance, I must tell them the 16% appeal rate is higher than normal and that is not reassuring. It is something that should be highlighted, but I have not seen it highlighted.

Mr. John McKeon: I can explain why a higher appeal rate is expected. The conditionality around disability or carer's allowance includes an extra layer of medical opinion. Most of the claims we reject are based on a medical assessment and the person's general practitioner or consultant might say, for example, that John McKeon is incapable or unfit to perform full-time work of any type for the rest of his life. Our medical assessor will look at the file and the condition and in some cases do an in-person examination before forming a different view. In nearly all cases the person might have a consultant and against this would be the medical assessor.

Deputy Catherine Connolly: I understand that.

Mr. John McKeon: It is an obvious position to appeal

Deputy Catherine Connolly: It is obvious but the people we are dealing with believe they have a disability. There must be an objective assessment and I am not arguing with any of that. I refer specifically to the length of time. I presume the payment would be backdated.

Mr. John McKeon: It is backdated and applicants in the interim would have access to supplementary welfare allowance, or what is called the basic payment. It is not perfect but it provides income support that is very close to what they would get on disability allowance in any event. The full amount would be backdated.

Deputy Catherine Connolly: I mentioned the following matter in a different context. The Oireachtas Joint Committee on Culture, Heritage and the Gaeltacht has just produced a report discussing the artists' dole. I do not expect the witnesses to have it in front of them. I do not sit on the committee but mention was made of the artists' dole. Will the witness clarify the matter? Department officials informed members that the artists' scheme in the Department was scheduled to be reviewed after one year, but the Department did not believe a large number of artists were availing of the scheme. What is the artists' dole?

Mr. John McKeon: I do not like the term "dole".

Deputy Catherine Connolly: I do not like it at all but it is what the committee used.

Mr. John McKeon: Exactly. I know the Deputy does not like it either. The jobseeker's scheme for artists, or the artist scheme for jobseekers, is a programme whereby we pay people involved with artistic endeavour. We have done the review and I will explain it in a moment. It is a jobseeker payment without applying the conditionality of having genuinely to seek other work.

Deputy Catherine Connolly: Very good.

Mr. John McKeon: We do it for a period, although I cannot recall the exact length. It is approximately a year or two.

Deputy Catherine Connolly: The scheme is functioning. How many people are availing of it.

Mr. John McKeon: When it was introduced, it was confined effectively to people in the visual and written arts. We have now expanded it to include people in the acting profession and

performers as well as people in the written and visual arts.

Deputy Catherine Connolly: What about musicians?

Mr. John McKeon: Yes.

Deputy Catherine Connolly: How does it work?

Mr. John McKeon: The Arts Council has a schedule of professions that it believes to be artistic professions, and as long as the person is engaged in the profession, we will allow them access to the scheme. Until now, a total of 114 people have availed of the scheme and there are 67 people currently on it. Generally, we expect it will increase next year to approximately 300.

Deputy Catherine Connolly: There are 66 people currently availing of it nationally.

Mr. John McKeon: It is 67.

Deputy Catherine Connolly: The Department relies on a list from the Arts Council.

Mr. John McKeon: It has the list of professions considered artistic professions.

Deputy Catherine Connolly: The Department relies on that completely.

Mr. John McKeon: Absolutely.

Deputy Catherine Connolly: I did not want to get into the public services card and an enforcement notice will probably be served on the Department. I welcome Mr. McKeon's openness and accountability in the general presentation but it seemed to desert him with the public services card matter. It is just a comment. We have already heard about the collateral undermining of the Comptroller and Auditor General and the comment should not have been made. I have it in front of me and I have read it numerous times in different contexts. Mr. McKeon should go back and read it. The roll-out of the public services card is chapter 10 of the Report on the Account of the Public Services 2015. Mr. McKeon quoted elements of good practice, which are in paragraph 10.18. It states, "Elements of a good practice business case were included in several documents examined." That is true. The next sentence begins with a big "however". It states, "However, there were a number of omissions or partially addressed matters." There were five of them and we can start with the last of them.

They are "A single project initiation document (PID) was not prepared", "There was no plan setting out how and when the project's benefits would be measured, and who was responsible/accountable for their delivery", "Key dependencies were only partially assessed" and so on, "There was no initial assessment of DSP's capacity to deliver the project" and so on. They are set out in very factual way. I do not have time to read the conclusions but Mr. McKeon can go back on them to see why we have questions about value for money, even before we speak about privacy or other matters raised by the Data Protection Commission, which I will not get into. The conclusions indicate that it was originally intended that 3 million public services cards would be produced by the end of 2013 but by the middle of 2016, two and a half years later, 2 million cards had been produced. It was stated the Department expected to incur costs of up to €60 million by the end of 2017, but what are the current costs?

Mr. John McKeon: It is €67 million. That is up to September 2019.

Deputy Catherine Connolly: There was an activation cost, so is that included in the €67

million?

Mr. John McKeon: Yes.

Deputy Catherine Connolly: Is renewal of the cards included in the €67 million?

Mr. John McKeon: Yes.

Deputy Catherine Connolly: What is the price for the renewal of cards?

Mr. John McKeon: We do not charge people anything. The current cost for a card is €3.35 per card and the Department carries that cost.

Deputy Catherine Connolly: The Department will carry the renewal cost.

Mr. John McKeon: Yes, although that is included in the figures.

Deputy Catherine Connolly: The witnesses have put their hands up and said there was no business case but that one will be done. Why are we doing one now? The chapter I read from is from 2016, so why was the work not done then?

Mr. John McKeon: I can address a couple of points. I have already acknowledged that in retrospect, it would have been preferable to have a single business case document. I agree with the points made in the 2016 document that the project had many of the elements of a business but not all of them. I absolutely agree on that. The Secretary General of the time indicated we would do an estimate of benefits, which have been done and produced for the committee. In light of the concern expressed by the committee about value for money, although it is after the event it is still worthwhile doing a cost-benefit analysis.

Deputy Catherine Connolly: My question is why it has not been done since the concern was expressed over recent years. Why will it be done in future? Why has it taken so long after all this concern?

Mr. John McKeon: It takes time to evaluate benefits. For example, I quoted the number of cases on which we have found control savings, and they did not materialise on day one, two or three. Many of them have materialised in the past year or two. One of the reasons given at a previous meeting for the lack of a comprehensive benefits assessment was that this had to be allowed to happen so we could have the experience on which to do an assessment. We are at the point now where it can be done.

Perhaps I can comment on what the Deputy said about the earlier exchange. I acknowledge the point about the language of collateral damage and if we were to write the report again, which came to 470 pages, we would use different language. It was not meant in the way it has been taken, which would be apparent if it was read in the context of the full report. We were making the point about legality and transparency and we did not see the relevance of bringing the report into the debate at all. We may have made this point clumsily. Part of what was being suggested this morning was that the Department was being deliberately awkward in its response, but that is not the way this Department behaves. We try to be as helpful as possible to people who are carrying out investigations. I do not think it was fair to suggest that the Department was being obstructive or difficult.

Deputy Catherine Connolly: The choice of words was not great. I reread the report of the Data Protection Commissioner. I acknowledge that Mr. McKeon has only been in the job for

two years. The issue of privacy, where a case is pending, is not a matter for discussion today but there are many other issues, such as function creep and no overall plan. The commissioner states that the public services card project has many moving parts and that the complexity of logic and terminology attaching to that makes any analysis, legal or otherwise, challenging. It was to start out as an enabler for services, which would have been great, but the card, as a physical piece of infrastructure, serves little purpose today. There is an ongoing shifting of policy and direction relating to the public services card which has led to what the commissioner says is a fragmented and insufficient approach. There are many and significant deficits in logic and consistency. This project was rolled out at a cost of €67 million with, according to what Mr. McKeon has said, savings of €30 million, which we will look at in due course. There is no business case, no review and proper analysis, so nobody could stand over that.

Mr. John McKeon: I respect the view of the Data Protection Commission but I would not agree with a lot of what has been said. I would be happy to go into greater detail but I do not know if it would serve any purpose. I disagree vehemently with a lot of it. The policy in respect of the public services card was set out very clearly in 1998 and anyone who reads the legislation or the debates of that time, or about the changes made in 2004 or 2005, will see that the policy has not changed at all. There has been no function creep. If there is a legitimate criticism of the public services card programme, it is that it did not happen at the pace at which it was meant to happen. There was non-delivery of mission, rather than mission creep, and this began to be addressed in 2011. I was not involved at that time but I am happy to debate this with anybody. Just because something is said does not make it true.

I have looked at the documentation relating to the business case. There are specification plans, project plans and roll-out plans and the Comptroller and Auditor General has a list of the 17 or 19 cases. There were gaps but I do not believe they were to the extent that is being suggested.

Deputy Catherine Connolly: The Department rolled out the Seetec contract for one more year.

Mr. John McKeon: That is right.

Deputy Catherine Connolly: Mr. McKeon said somebody had to be unemployed for between 12 months and three years before Seetec comes near them.

Mr. John McKeon: We send them to Seetec.

Deputy Catherine Connolly: If somebody has a temporary contract with a local authority for a couple of months and is on a panel for further employment, but unemployed for a few months, he or she should not be with Seetec.

Mr. John McKeon: That would depend on the circumstances. If he or she has broken his or her claim, he or she would not but if he or she worked a day or two per week and continued to claim for three days per week, the claim is still a claim.

Deputy Catherine Connolly: I am raising the case of a person who is on the panel for a local authority working but who is having a break. He or she goes to Seetec but is called onto the panel and Seetec gets the fee.

Mr. John McKeon: That is because, following a tender competition in which everything was benchmarked, we set the fees based on improving employment outcomes relative to the

status quo. Employment progression outcomes for people who were unemployed for more than 12 months stood at 12% so we assume that 12% would have got into work in any event and we build that assumption into the pricing model. We went further than that and increased the progression rate by 60% by basing prices on 16% of people getting into employment without help. We are paying for everybody because it is very difficult to evaluate which person would have got in and which would not, but the prices were set based on an assumption that people would get employment.

Deputy Imelda Munster: The Data Protection Commissioner asked the Department to delete illegally retained data relating to the public services card as of 5 September 2019. Has the Department done this?

Mr. John McKeon: No. We do not believe the data were illegally retained so we did not do it.

Deputy Imelda Munster: She also asked the Department to instruct other agencies to stop processing data. Has the Department done that?

Mr. John McKeon: No. It is not our job to instruct other agencies, although we have told other agencies what our findings are. It is up to them to make a decision.

Deputy Imelda Munster: The Department has not complied with the request to delete illegally retained data.

Mr. John McKeon: No. We do not believe it was illegally retained. I can explain why, if the Deputy wishes me to do so.

Deputy Imelda Munster: No, I just wanted to ask the question. It is clear that the Data Protection Commissioner believes the Department is in breach of the law and she asked it to become compliant. Is it safe to say the Department, at this moment, is breaking the law?

Mr. John McKeon: No, I do not think you can say that.

Deputy Imelda Munster: On what basis?

Mr. John McKeon: There is a difference of opinion between the Department-----

Deputy Imelda Munster: The Department is not dismissing or ignoring an opinion in this case, it is dismissing or ignoring a ruling.

Mr. John McKeon: I do not think it is accurate to say that. The findings of the Data Protection Commissioner have to be given force in an enforcement notice and the Oireachtas has provided that, even when they are given that force, the people subject to it have 21 days to appeal and it does not have force until the appeal is determined. We are waiting for it and have asked the Data Protection Commissioner to give it to us as quickly as possible.

Deputy Imelda Munster: Is Mr. McKeon saying that a ruling by the Data Protection Commission, a statutory agency, is irrelevant unless an enforcement notice is issued?

Mr. John McKeon: I would not use the word “irrelevant”, and it certainly has status as a finding. Everybody who is the subject of a finding by any regulatory body has the option to challenge it. It is part of our democracy.

Deputy Imelda Munster: I am not saying that it cannot be challenged. It was a ruling by

an independent agency and the Department is acting as if it is dismissing or ignoring an opinion.

Mr. John McKeon: No, we are not ignoring it.

Deputy Imelda Munster: The Department is not complying with it.

Mr. John McKeon: We are not complying with it.

Deputy Imelda Munster: Usually, if one is not complying with something, one is in breach of the law.

Mr. John McKeon: That is not the case. If we were not complying with an enforcement notice that was subsequently confirmed by the court following an appeal, we would then be in breach of the law. As matters stand, we have a determination from the Data Protection Commissioner. We take our advice from the Attorney General, who has indicated that the finding is flawed and does not stand up to scrutiny. We operate on the basis of that advice, as we have to do. That is standard across Government. It is not unusual for the Government to challenge the decisions of regulatory bodies. It is not unusual at all-----

Deputy Imelda Munster: No, it is not unusual to challenge them. However, it is generally accepted that Government bodies and Departments adhere to the rulings of statutory agencies. That is why this hit the headlines - the Department completely ignored and dismissed the ruling. It begs the question; does the Department recognise that the Office of the Data Protection Commissioner has powers akin to those of a court?

Mr. John McKeon: Absolutely.

Deputy Imelda Munster: The Commissioner's findings have a special status.

Mr. John McKeon: We absolutely accept their status.

Deputy Imelda Munster: The Department dismissed her findings. That is my point.

Mr. John McKeon: No, we have not. The Deputy is putting words in my mouth.

Deputy Imelda Munster: Of course it has. That was the very first question I asked Mr. McKeon. The Data Commissioner had asked the Department to delete illegally retained data as of 5 September. I asked Mr. McKeon if the Department had done that and he said no.

Mr. John McKeon: I explained that we do not believe the data to be illegally retained, so therefore-----

Deputy Imelda Munster: Although the Data Protection Commissioner has powers akin to a court, the Department is ignoring them.

Mr. John McKeon: This is a first-instance decision. Every year the Department challenges the first-instance decisions of courts with regard to things like appeals and payments. Those cases go to the higher courts and we may or may not win them. However, we continue to operate until the case is determined. That is not unusual.

Deputy Imelda Munster: Does Mr. McKeon think that the actions of the Government and the Department are undermining the Office of the Data Protection Commissioner? Many people would be of that opinion.

Mr. John McKeon: I will not offer an opinion on that. When I believe, under advice, that we are operating within the law in a way that delivers benefits to the Department and the people we serve, I have a responsibility as Accounting Officer to ensure efficiency and efficacy in what the Department does.

Deputy Imelda Munster: I refer to the Department's business case. In Mr. McKeon's statement he said a single business case document would have been preferable. At a hearing of the Committee of Public Accounts just last September the Comptroller and Auditor General said that would be a fundamental requirement for something of this scale and nature. In the document with which we have been furnished, Mr. McKeon has argued that 17 of the 19 elements were adhered to. However the elements that were not covered are fairly substantial. An assessment of organisational capacity to undertake a project and a benefits realisation plan are fairly big omissions. More interestingly, five other elements were only partially covered. Considering the two that were not adhered to and the five others which were only partially covered, it is fair to say that a lot was missing from the business plan. Mr. McKeon has recognised that it was not thorough. Would he still stand over what he has said was an adequate business plan, given that two elements were not complied with and five were partially adhered to?

Mr. John McKeon: I repeat what the Secretary General said in 2016. I believe it to be true because I have looked at it myself. Looking at the documentation I believe the project was coherently planned and managed. I believe that we operated within the public spending code and got all the necessary approvals. In that context, I am satisfied that the project was planned and authorisation was given for the money to be spent in the proper and correct way. I do not think there is any question of that. Of course we acknowledge that there are gaps. One will always find gaps when looking retrospectively at any project of this scale. It is easy to have 20/20 vision in hindsight and ask why this or that was not done. This project evolved over a period of time from 1993. It was an evolution of existing practice and it must be understood in that context.

Deputy Imelda Munster: Would Mr. McKeon consider it a serious omission?

Mr. John McKeon: I have said what I have said. Looking back, it would absolutely be preferable to have a single business case document, if for no other reason than the fact that it would be far easier for me to talk about it before this committee. There was no single business case document, but that does not mean the project was not coherently planned or managed. That is the core point.

Deputy Imelda Munster: Would Mr. McKeon agree with the Comptroller and Auditor General's assertion that it is a fundamental requirement?

Mr. John McKeon: The situation has changed. The Deputy is talking about something which was developed between 1993 and the Government's decisions in 2004 or 2005. Things have changed since then. It was not required at the time for a project of this scale to be subject to a cost benefit analysis, but it is required now. If we were doing it again we would carry out a cost benefit analysis, but that was not the requirement at the time.

Deputy Imelda Munster: I am not talking about that period. I am talking about the past three, four or five years.

Mr. John McKeon: The project was already up and running at that stage. The decisions had been taken.

Deputy Imelda Munster: I refer to the latter part of the programme; the public services card and the concerns the Data Protection Commissioner has flagged. The Department did not draw up a thorough business case. Mr. McKeon has said it was not a requirement back in the day, but the Department would have been aware that it was a fundamental requirement to justify anything of this scale and type, as the Comptroller and Auditor General has said.

Mr. John McKeon: Absolutely. If we were looking for permission to start this project and spend this money now, we would have a comprehensive cost benefit analysis and business case. It was not required then. I honestly believe that the core principles and elements were in place. That is where we are. The decisions had already been taken.

Deputy Imelda Munster: They were not in place though. That is the point; two were not in place and five were only partially covered.

Mr. John McKeon: The 2016 report of the Comptroller and Auditor General confirms that there was a high-level benefit statement. One would not call that a benefits realisation plan, but a high-level benefits statement was expected. Two years ago the then Secretary General made the point that it was very difficult to estimate the benefits of a project like this in advance. It is important to note that we were continuing a process that was already in place and formalising and professionalising it.

Deputy Imelda Munster: I think Mr. McKeon agrees that not doing it thoroughly was a serious omission.

Mr. John McKeon: I am not going to comment on what went on before. The people involved in this project at all points were highly professional in what they did.

Deputy Imelda Munster: No one is questioning their professionalism. I am saying that the lack of a business case was a serious omission. Two elements were not even looked at and five others were just partially covered. There was a certain amount of carelessness for a project of this scale and type.

Mr. John McKeon: As I have said before, if we were doing it again we would have included it. Is it a serious omission? We are applying the standards of 2019 to 2014. I am not necessarily sure that is fair.

Deputy Imelda Munster: This is standard practice. People would expect this sort of thing to be adhered to in a thorough manner for a project of this scale and nature. Not doing that was a serious omission.

Mr. John McKeon: I refer to the list in figure 10.4 of the Comptroller and Auditor General's report. There was a project definition. The project objectives and scope were outlined. There was a stakeholder management plan. The dependencies and procurement issues were planned. The alternatives and consequences of not proceeding were evaluated. Security and data protection were considered. There was a timeline and a work plan. Risks were assessed. The staff resources required to support the project and the project costs were estimated. Qualitative and quantitative benefits to the Department were estimated. Qualitative and quantitative benefits to the customer were estimated. The project structure and project roles were in place. The project initiation document was in place. The two items that were not in place were the benefits realisation plan and an assessment of organisational capacity.

An assessment of organisational capacity is inherent in a lot of other assessments, such as

risk, procurement and staff resources. It was not enumerated as a separate item. I do not think that is a huge deficit, to be honest, though it should have been there. Regarding the benefits realisation plan I note that the benefits were actually estimated, both in qualitative and quantitative terms. Benefits realisation is about measuring the benefits consequent to the plan's implementation. Again, it would be part of a best practice business case. Was it absolutely detrimental to the project plan? I do not think so. I put my hands up in that regard. On whether we would include them in a new plan, the answer is "Yes", but as to whether they were absolutely critical exclusions from the plans that were in place, the answer is "No". It would have been better if they had been included, but they were not critical exclusions.

Deputy Imelda Munster: In responding to Deputy Connolly Mr. McKeon said it took time to evaluate the benefits. Is he saying there really is no point in including it in any business case at this stage? Is he saying it really is a non-requirement because he regards it as better to evaluate the benefits after a period of time?

Mr. John McKeon: I apologise if that is what people took from what I said. There was a benefits estimation in qualitative and quantitative terms and the Comptroller and Auditor General acknowledges the figure in paragraph 10.4. My point was that in terms of the benefits realisation plan, it took time to realise the benefits. It took several years to roll out the 3 million cards. It takes time to realise benefits such as the capturing of data for administrative efficiencies, our not having to process second, third and fourth identity claims each time someone comes in and detecting fraud. That was the point I was making. Having an estimation of benefits actually achieved cannot be done, which is different from having an estimation of benefits which might be achieved, something which was done.

Deputy Imelda Munster: Mr. McKeon spoke about the assessment of organisational capacity to undertake the project. There are then the findings of the Data Protection Commissioner which the Department has chosen to ignore, having dismissed her rulings out of hand. An assessment of organisational capacity to undertake the project was never carried out. Now the Data Protection Commissioner says the Department is pretty much breaking the law by ignoring her rulings, while the general public thinks the Department made a pig's ear and complete hames of it from start to finish. There are serious concerns which the Data Protection Commissioner has flagged time and again. In hindsight, would it have been better for the Department to carry out an assessment of its capacity? The Office of the Data Protection Commissioner is the agency with statutory power and the commissioner is telling the Department that it is in breach of the law which it is choosing to ignore. It has got it all wrong.

Mr. John McKeon: First, we have not dismissed the Data Protection Commission's report out of hand. We considered it very carefully and have invested time and effort in its consideration and obtaining the best advice we can from the Attorney General's office. People should be clear that we did not dismiss the report out of hand. It is not that we decided that we did not like the report and would object to it. If we believed the report and its findings stood on their merits, we would have absolutely accepted them and I would be sitting here telling the committee that we accept them and that this is what we were going to do to deal with it. However, it would be wrong to accept findings that we think are wrong. There is no halo of infallibility on anyone, not on me, the Data Protection Commissioner or anyone else. If we have learned anything from the financial crisis in the period from 2008 to 2012, it is that nobody is infallible, even a regulator. We must respond to the best advice we receive. The advice we have received from the Office of the Attorney General, the senior law officer in the State, is that what we are doing is perfectly in line with the law. As Accounting Officer, I am not going to stop everything

I do when the person whose job it is to advise the Government and me tells me that they are the senior law officer in the land and they say I am perfectly entitled to keep doing what I am doing and that we will deal with an enforcement notice should one arise. That is where I am. I am the Accounting Officer and I cannot do anything other than what I am doing. We must be careful about the language used.

The Deputy referred to the public's feeling. Our response to the Data Protection Commissioner, which we have since published, referred to customer satisfaction research on the public services card. The evidence is overwhelming that there is public support for the card. I know that there is media coverage, that there are activist groups and so on that say something different, but if the Deputy was to ask an ordinary person on the street, as we did in independent research, what he or she thought about the card, if he or she was happy with it and the services provided, if he or she felt it was sufficiently transparent, if he or she was satisfied that he or she understood why his or her data were retained, the answers would overwhelmingly be in the affirmative.

Deputy Imelda Munster: Has the Attorney General actually furnished Mr. McKeon with an opinion that the Data Protection Commissioner is wrong that the Department has no legal basis on which to retain data for purposes other than those of the Department of Employment Affairs and Social Protection?

Mr. John McKeon: I do not want to get into the Attorney General's advice in detail.

Deputy Imelda Munster: Mr. McKeon has told us that that was the justification and said that was from where he had taken his advice from the Attorney General. Did the Attorney General say it was not wrong to retain data?

Mr. John McKeon: There is a long-standing and accepted practice that Attorney General's advice is not disclosed as it is subject to legal privilege. I am not going to disclose the advice. The Deputy can infer from the approach we have taken -----

Deputy Imelda Munster: No, Mr. McKeon is disputing everything the Data Protection Commissioner has said on the grounds that the Attorney General told him the complete opposite. Therefore, even if he will not say it, the only assumption at which one can arrive is that the Attorney General told the Department that it was legally within its rights to retain the information.

Mr. John McKeon: The Deputy can infer that from what I have said, but I will not breach the convention.

Deputy Imelda Munster: Otherwise, the Department would have complied with what the Data Protection Commissioner had requested. She said the Department was in breach of the law. Many others also take the view that the Department is breaking the law by illegally retaining data.

Mr. John McKeon: It is unfortunate that many believe that is the case and we are more anxious than anyone that the point be clarified. We are very anxious to receive the enforcement notice to see what is contained in it. If it reflects what is included in the findings, we will challenge it. We are very anxious to do so to have clarity.

Deputy Imelda Munster: Will the Department challenge it on the basis of the Attorney General's advice?

Mr. John McKeon: We take our advice from the Attorney General. We will wait and see what is included in the enforcement notice, which may be different. I do not know, but it is a matter for the Data Protection Commissioner. If the enforcement notice seeks to give effect to what was contained in the Data Protection Commissioner's letter of 15 August to the Department, we will probably have no choice but to appeal.

Deputy Imelda Munster: To be clear, the reason the Department has not complied with the Data Protection Commissioner's ruling when she flagged that it was in breach of the law is the advice it received from the Attorney General?

Mr. John McKeon: We have taken the Attorney General's advice.

Deputy Imelda Munster: Therefore, that is the reason. Based on the advice of the Attorney General, the Department has ignored and been non-compliant with the Data Protection Commissioner's ruling. Is that the case - "Yes" or "No"?

Mr. John McKeon: We have the advice of the Attorney General.

Deputy Imelda Munster: Then it is based on that advice.

Mr. John McKeon: There are other considerations also.

Deputy Imelda Munster: I am sorry, but the question is whether the decision is based on the advice of the Attorney General and that is the reason the Department is non-compliant with the Data Protection Commissioner's ruling. Is the answer "Yes" or "No"?

Mr. John McKeon: Having taken the advice of the Office of the Attorney General, we have issued our response. That is the position.

Deputy Imelda Munster: Therefore, the advice of the Attorney General is the reason the Department is non-compliant with the ruling of the Data Protection Commissioner. The answer is "Yes" or "No". Why mess about with words? Is the sole reason the Department is choosing to ignore, dismiss and be non-compliant with the ruling of the Data Protection Commissioner the advice of the Attorney General?

Mr. John McKeon: It is not a "Yes" or "No" answer. The answer is the findings require an enforcement notice to give effect to them. There is no enforcement notice for us to comply with. When the enforcement notice is received, if it reflects the contents of the letter of 15 August, based on the advice of the Attorney General, we will appeal.

Deputy Imelda Munster: Yet Mr. McKeon dismissed what the Data Protection Commissioner had said straightaway by virtue of the fact that the Department was non-compliant.

Mr. John McKeon: There is the fundamental principle of due process in parliamentary democracies that when findings are made by a judicial body, other than possibly the Supreme Court and even in terms of the European Court of Human Justice, the people or organisations affected by those findings have a right of appeal if they believe them to be wrong.

Deputy Imelda Munster: I accept that they have the right to appeal, but the enforcement notice was carried out on foot of the Department's challenge of the ruling of the Data Protection Commissioner.

Mr. John McKeon: We have not got an enforcement notice.

Deputy Imelda Munster: No. The enforcement notice would come about because the Department has not adhered to the ruling, or certainly has not been in compliance with it. As Mr. McKeon said earlier, it has dismissed it.

Mr. John McKeon: We have not dismissed it. I reiterate that the language is important. I do not mean to be difficult. We did not dismiss anybody. We gave this decision really careful consideration. It was not reached lightly, dismissed or treated out of hand. We have looked at the legal advice we have received. We have looked at the impact that compliance would have on our ability to deliver services. We have taken those things into account. As I have said, as Accounting Officer I must defend the interests of the Department. I cannot do anything other than wait for an enforcement notice. If the enforcement notice that is received is the same as the letter of 15 August, it is very likely that we will appeal it.

Deputy Imelda Munster: Is the Department's primary reason based on the Attorney General's advice?

Mr. John McKeon: There are a number of considerations. The primary reason at the moment is the lack of an enforcement notice. If an enforcement notice that is the same as the 15 August letter is received, it will have a significant impact on our ability to deliver services. In our view, that impact is not supported by the law, as advised by the Data Protection Commission. As Accounting Officer, I have a responsibility to ensure I can deliver value for money for the State and good services to people. In such circumstances, of course I will appeal.

Deputy Imelda Munster: Okay. I have gone over my time.

Chairman: I will ask a few questions. Deputy Cullinane has had to step out. He might be back. I ask Mr. McKeon to take me through the dates again. We have had a lot of discussion on them and they need to be clarified. What did Mr. McKeon call the report that was received on 15 August?

Mr. John McKeon: It was the final report from the Data Protection Commissioner. It came with a letter from the commissioner setting out the steps she believes we should take to give effect to the findings.

Chairman: Right. Was there a timetable for that to be done?

Mr. John McKeon: There was a timetable of a week to publish the report.

Chairman: For who to publish the report?

Mr. John McKeon: For the Department to publish it. The Data Protection Commissioner asked us to publish the report within a week.

Chairman: It was her report. Why would she not publish it herself?

Mr. John McKeon: She said, and this is her judgment, that under-----

Chairman: Pardon?

Mr. John McKeon: I believe the position is that the Data Protection Commission does not believe it has the *vires* or the authority to publish the report under the 1998 Act, which was then operable.

Chairman: If it does not have the authority to issue a report, does it have the authority to

issue an enforcement notice?

Mr. John McKeon: No, sorry. It has the authority to issue an enforcement notice. I suppose that when it publishes a report that has adverse findings, it has to be careful about putting it into the public domain. I respect this position of the Data Protection Commission. I suppose it took the view in this instance that it could not do so. It decided that it was up to us to publish it.

Chairman: The Department decided to publish it.

Mr. John McKeon: Yes, we decided to publish it. We indicated to the Data Protection Commission at an early stage that we would publish it together with our response.

Chairman: The Department was given one week to publish it.

Mr. John McKeon: One week, yes.

Chairman: One week.

Mr. John McKeon: One week.

Chairman: This was on 15 August, in the middle of August. Was Mr. McKeon around at the time?

Mr. John McKeon: No, I was not, but I came back.

Chairman: Right. Okay. I just want to establish this. On 15 August, the Department got a final report from the Data Protection Commissioner, who did not have the authority to publish the report. She asked the Department to publish it because the legislation required the Department to publish it.

Mr. John McKeon: Yes.

Chairman: Okay. The Department was given one week to publish it.

Mr. John McKeon: Yes.

Chairman: On what date did the Department publish it?

Mr. John McKeon: We published it on 17 September.

Chairman: About four weeks later.

Mr. John McKeon: About four weeks later.

Chairman: Why did the Department not publish it within the week?

Mr. John McKeon: We were very concerned. First of all, it was 15 August, as the Deputy said.

Chairman: Had the Department seen a draft?

Mr. John McKeon: We had seen a preliminary draft approximately a year previously. The final report was quite different in terms of its content. Many of the findings were similar, but the content was different.

Chairman: Let me just take the sequence. We are here at the Committee of Public Ac-

counts. I cannot talk for the Office of the Comptroller and Auditor General. I am sure it sends information to the Department as part of its audit findings. When it makes proposals and recommendations, it gives the Department a chance before they are published. Is it the case that most people who do reports engage with the Department at some stage? Maybe they are not obliged to engage with the Department. Maybe it is a case of “here is the report”.

Mr. John McKeon: I will go back in time. The Data Protection Commission started the investigation in October 2017. It gave us a draft report in August 2018. We responded to that at the end of November 2018.

Chairman: How long did the Department get to respond?

Mr. John McKeon: Initially, a month. During the conversation we had earlier on-----

Chairman: I am asking about 2018.

Mr. John McKeon: Yes, in 2018.

Chairman: The Department was given a month to respond, but it took-----

Mr. John McKeon: We took three months. We had a discussion earlier about the extension we sought.

Chairman: Mr. McKeon will have to understand that I think people would have been confused by that conversation. If the report was issued on 15 August, I think everybody would have assumed we were talking about the report that was issued on 15 August 2019. I was talking about that report. I assumed we were talking about-----

Mr. John McKeon: No, this was a draft report in August 2018. We responded at that-----

Chairman: I think most people watching here this morning will have felt that the report the Department received on 15 August was the one it was given a month to respond to, but that is not so.

Mr. John McKeon: No. We were asked to publish that report within a week and to-----

Chairman: Okay. We will go back to August 2018. I ask Mr. McKeon to bring me through the chronology from that point.

Mr. John McKeon: In August 2018, we were asked to respond within a month. We indicated that it would take us three months. There was a bit of back and forth between the Department and the Data Protection Commission around that time. Eventually, the three-month timeframe was agreed.

Chairman: The Department got two months-----

Mr. John McKeon: We got until the end of November to respond.

Chairman: Right.

Mr. John McKeon: We responded-----

Chairman: Was it from the first draft that the 400-page issue arose?

Mr. John McKeon: That is right.

Chairman: Right. I found it a bit surprising that Mr. McKeon said here this morning that it was not properly paginated. Once the Department got to work on paginating it, it did it in two days.

Mr. John McKeon: Yes, I think it was a very short period of time.

Chairman: Why did the Department not just take two days extra at that stage to get the pagination right, thereby saving a little bit of rumpus?

Mr. John McKeon: Yes, I suppose-----

Chairman: I know the Department was trying to rush it in order to be helpful. In the rush, the extra 48 hours might have avoided this point of conflict.

Mr. John McKeon: Possibly. It was not so much about the rush. Genuinely, the situation was that we had a long document with loads of exhibits-----

Chairman: No, we understand that.

Mr. John McKeon: The pagination just did not seem to make sense to us. We thought the pagination would confuse matters rather than making matters easier. We numbered every paragraph.

Chairman: That was in the Department's first response.

Mr. John McKeon: That is right.

Chairman: Forty-eight hours later, it gave the same response, but with the pagination.

Mr. John McKeon: A number of weeks later, the Data Protection Commission contacted us to say it had our report, but was having difficulty working its way through it. The commission asked us to provide it in a certain format with page numbers on it.

Chairman: It took the Department just two days to paginate it.

Mr. John McKeon: I cannot say. I am sorry. It was a small number of days.

Chairman: A few days.

Mr. John McKeon: Yes, a few days.

Chairman: It was a pity that this hiccup was not-----

Mr. John McKeon: Yes. In retrospect, would we have been better to paginate it? I think a whole big deal is being made out of this pagination issue.

Chairman: Okay.

Mr. John McKeon: To be honest, it is not deserved.

Chairman: That is why I am asking. It seems in retrospect that this matter could have been easily overcome at the time. This issue could have been avoided.

Mr. John McKeon: I think it was overcome at the time. As soon as the Data Protection Commission asked us for a paginated version in a readable format, we provided it. I suppose I

thought there was an inference in some of the questions asked during this morning's discussion that the Department was being deliberately obstructive. That is not our form. I think this committee would know that. We were not being obstructive.

Chairman: I am trying to be fair to everyone here now. Do I understand correctly that when the Department received the draft report in August 2018, it was given a month to respond but it then sought three months?

Mr. John McKeon: In 2018, we were asked for a month and then we sought to extend it out to November for three months.

Chairman: Okay. The next the Department heard was on 15 August this year.

Mr. John McKeon: That is right. I think there was some communication early this year looking for one or two pieces of clarification, which we provided.

Chairman: When the Department got the report on 15 August this year, it had not seen a significant portion of the content previously.

Mr. John McKeon: Yes. There was a lot of new content and new argument and so on. A lot of the findings were similar or the same.

Chairman: Okay.

Mr. John McKeon: We have to acknowledge that.

Chairman: The Department was asked to publish it within the week.

Mr. John McKeon: Within the week, yes.

Chairman: How long did it take the Department to publish it then? Was it four weeks?

Mr. John McKeon: Our position was that we wanted to make sure we understood the report and the consequences and we had a response. We also wanted to get some clarification about it. Obviously, it was going to take us more than a week. We took four weeks to do that.

Chairman: Okay. The Department got the report and was asked to publish it within a week. Was that request set in legislation? Who set that timeframe?

Mr. John McKeon: No, it is not in legislation.

Chairman: Did the Data Protection Commissioner have the authority to set a one-week time limit?

Mr. John McKeon: No, we do not believe so.

Chairman: A lot has been made of this aspect of the issue. Obviously, she was relying on the Department to publish it.

Mr. John McKeon: That is right.

Chairman: There was no legal basis for saying it had to be done within a week.

Mr. John McKeon: No, we do not believe so.

Chairman: Was it suggested that she had the legal authority to request it to be done within a week?

Mr. John McKeon: No. In fact, the Data Protection Commission made the point in its letter to us that it did not have the authority, but it wanted us to.

Chairman: Right. So it was a request more than a demand.

Mr. John McKeon: That is right. I think it was taken up in the public as being a demand.

Chairman: That is the way it has been interpreted.

Mr. John McKeon: I think it was a request, but it was presented in the public as a demand.

Chairman: A demand that the Department was to publish it.

Mr. John McKeon: Yes.

Chairman: The Department wrote to the Data Protection Commissioner seeking a meeting at that stage.

Mr. John McKeon: That is right.

Chairman: I am trying to get the sequence right. I ask Mr. McKeon to explain it. The Department wrote back-----

Mr. John McKeon: We wrote back on 22 August. We said we would publish but that we would like an early meeting to discuss a number of matters. I understand this. It is not a point of contention. Some people have tried to present it as such. The Data Protection Commission wrote back to say it would meet with us when we gave it an implementation plan. The commission has given us six weeks to do up an implementation plan.

Chairman: Is that six-week timetable specified anywhere in legislation?

Mr. John McKeon: No.

Chairman: Where did it come from, then? I know it came from the-----

Mr. John McKeon: The Data Protection Commission thought that was a reasonable amount of time for us to develop an implementation plan to implement the findings.

Chairman: Yes, but there was no statutory or other basis for the six-week timetable other than-----

Mr. John McKeon: No.

Chairman: -----that the Data Protection Commissioner felt it was a reasonable period.

Mr. John McKeon: That is right.

Chairman: The timetable was not fixed in stone.

Mr. John McKeon: No. We said-----

Chairman: The one-week timetable was not fixed in stone; it was a request to publish. The six-week timetable was not set in stone; it was a request.

Mr. John McKeon: Yes, it was. The Data Protection Commission said it would meet us once we had completed the implementation plan. That was not the meeting we were looking for. The purpose of the meeting we were looking for was really to try to clarify some issues to help us decide how we would respond to the report and whether or not an implementation plan was justified or merited and, if it was, what it looked like.

Chairman: From where I am sitting, it maybe would have been better if that conversation had happened before the final report was issued.

Mr. John McKeon: Possibly, but I think-----

Chairman: Yes, possibly. I am not saying that is the view of the committee but it would have helped to deal with a lot of issues if the report had been issued - the Department might not have liked it but it understood what was in it - rather than having to tease it out after the fact. I am just making the point. The Department then published the report on 17 August.

Mr. John McKeon: September.

Chairman: When did the Department publish its implementation plan?

Mr. John McKeon: We have not published an implementation plan. When we published the document, the Data Protection Commissioner's findings on 17 September, we published our own response. At that stage we had got the advice from the Attorney General's office. Effectively, as already discussed, the advice was that we were operating within the law. Therefore, given we were operating within the law, we did not believe it was necessary to develop an implementation plan.

Chairman: The Department was satisfied that it was operating within the law, but there must be some aspects of the plan, without getting into legal matters, that it accepts.

Mr. John McKeon: None of the findings, as written in the letter of 15 August, really, particularly at face value. If we were to have a discussion and clarify a number of matters with the Data Protection Commission, then possibly. However, it is certainly very difficult to see how we could comply with any of the findings in the letter of 15 August, as it is written.

Chairman: What is the legal status, then, of the implementation plan that has not been published?

Mr. John McKeon: There is no status to it.

Chairman: It is again a request.

Mr. John McKeon: Yes.

Chairman: I ask Mr. McKeon to explain the difference between all these requests, which he is telling me is all they were, to publish within the week - the Department did so on 17 September - and to publish an implementation plan, which the Department chose not to do because it does not agree with implementing a report which it does not agree with. I ask Mr. McKeon to talk to me about the legal standing of the enforcement notice. What does the legislation say? How long after the report is published has the notice to be issued? Is there a time limit?

Mr. John McKeon: The timing of the enforcement notice is in the gift of the Data Protection Commission. As I understand it, there is no requirement on the Data Protection Commis-

sioner to issue an enforcement notice, not to issue an enforcement notice or to do so within a particular period. I may be wrong, I may be corrected, but the Data Protection Commission has indicated that it is going to issue an enforcement notice imminently. Obviously, we want to receive it as soon as possible.

Chairman: Again, for all the people who do not understand the legal niceties of this, what is an enforcement notice? There is different legislation.

Mr. John McKeon: The enforcement notice would be a direction to the Department to take certain steps - for example, to destroy documents, to destroy records, to cease doing something. Those are the kinds of directions. It is legally enforceable by application to the court if we do not enforce it. If we do not comply, the Data Protection Commissioner can-----

Chairman: How long after the Department receives the enforcement notice does it have to comply with it under the-----

Mr. John McKeon: We have 21 days to appeal.

Chairman: No, to comply.

Mr. John McKeon: That would be set out in the enforcement notice, so the enforcement notice-----

Chairman: Surely, though, the period for implementing an enforcement notice is in the legislation.

Mr. John McKeon: No. I may be incorrect on this but I do not believe it is because I think it would depend on the nature of the enforcement action. If it were a relatively simple thing to do, the Data Protection Commission could conceivably say, "Please do this with immediate effect." If it were something relatively difficult, the commission would probably take that into account and give a period.

Chairman: If the Department were to publish an implementation plan after receiving an enforcement notice, would there be any limit as to how long it would be allowed to take to publish the document and outline its plan? Is there any timescale as to when it should be implemented, that is, actually carried out?

Mr. John McKeon: There is none specified in law.

Chairman: That is what I am asking.

Mr. John McKeon: That would be a matter at the discretion of the Data Protection Commission, as I understand it.

Chairman: Mr. McKeon's contention is that, given that this is not in law, there is no time limit.

Mr. John McKeon: If the Data Protection Commission in the enforcement notice specifies a time limit, that will be the time limit.

Chairman: Mr. McKeon has clarified that. The Department is awaiting that implementation-----

Mr. John McKeon: Yes, we are awaiting that.

Chairman: If it is similar to the letter the Department received on 15 August, it will-----

Mr. John McKeon: More than likely. We will obviously consider it. One of the criticisms we faced was that we did not come out and respond immediately. That is not what we do. We will consider whatever the enforcement notice is, we will read it carefully, we will consider it carefully and, depending on what it contains, we may or may not appeal. It is highly likely we will appeal, as I said, if the terms are the same as in the letter of 15 August.

Chairman: That starts in the Circuit Court.

Mr. John McKeon: That is in the Circuit Court.

Chairman: It can go to the higher courts after that.

Mr. John McKeon: Yes, depending on what happens.

Chairman: As the case may be.

Mr. John McKeon: Yes.

Chairman: There is genuine interest in the conclusion on the draft that appeared in August 2018 versus the actual report that came in 12 months later. When we referred to August, people might not have-----

Mr. John McKeon: The same month.

Chairman: -----understood that there were different years involved.

We are talking about the public services card. A number of weeks ago, I mentioned the fact that I did not have a public services card. Ms McCrum nicely wrote to me and offered the services of the Department if I wanted to get one. I wrote back to explain that a couple of weeks ago, I think, I arranged by appointment to go into the branch office in Portlaoise, and I received my public services card in the post the following Thursday, so it is a very efficient service. I have not had a reason to use it yet but I acknowledge the efficiency within the Department and the courtesy of the staff.

I want to raise one issue with the card. The witnesses will be aware of it as it comes up at our meetings quite a bit. I refer to the free travel aspect of the use of the card. There has been a lot of confusion among many committee members who are trying to understand how the free travel card works and who has details of it. We asked the National Transport Authority, representatives of which were before the committee a few weeks ago. They said the matter was the Department's affair and that it needs to answer. We have had issues with Iarnród Éireann regarding a particular case I highlighted in which a person received a bill for use of a free travel card where the card had been cancelled some months earlier. The person should not have been using it. I have been very clear on this. That was not the issue I was talking about. I was just curious about the use of the free travel card and how it is known what travel has been taken on it.

Iarnród Éireann has a system in place called a fixed penalty notice. Most of us would not be expert on this, but the Iarnród Éireann representatives said this was available, but seemingly it has a separate process. It can issue a bill, which is a civil matter separate from the fixed notice. I am giving Irish Rail - or Iarnród Éireann, as it is - the benefit of the doubt. In some cases it issued a specific bill to a specific person for the use of the card and based it on actual travel or

journeys used. I would never have contemplated that it would issue a bill for an exact figure without having details of it. I was being generous in assuming it had the details but it told me the statement I made was untrue. This is not a matter for the witnesses before us; it is background. What is clear is that Iarnród Éireann has issued a bill to a person on the basis of a four-month period elapsing, whether or not it knows whether the card was ever used or how many times. It has issued a bill just on the basis of time. I find that even more disturbing than issuing a bill based on actual travel. We have asked for clarification on that from Iarnród Éireann. We will come back to the matter. We were told recently in respect of the travel operator - in recent weeks we have had a couple of meetings at which this has come up - that when the card is used there is a number on it that the Department has such that it knows the trips that are taken on the card when it goes in and out through the machine on the platform, but it does not know who the person is. This is the reference number the travel operator has and the Department can then match it to the individual. The Department has details of the persons travelling through the public services card. We will take it step by step.

Mr. John McKeon: In some elements.

Chairman: That information can be obtained from the card.

Mr. John McKeon: We can get some elements. We can get the time and date of travel and the route. We do not know the final destination or any of that. We know, say, that someone got on the Cork-Dublin train at 12 o'clock but we do not know if they got off in Portlaoise, Kildare or Dublin. We do not have that information.

Chairman: The Department would know where someone got on.

Mr. John McKeon: We know the route.

Chairman: Why is that? Say somebody got on-----

Mr. John McKeon: Say, for example, we know somebody got on the Cork-Dublin train but we do not know if they got on or off in Cork or Kildare.

Chairman: Or which stop in between.

Mr. John McKeon: We do not know where they got on or off. We just know they were on that route.

Chairman: They were somewhere along that route.

Mr. John McKeon: Yes.

Chairman: The Department does not know if a person was on that train at a particular time.

Mr. John McKeon: We know that card was on the train. We have the ITS, integrated ticketing systems, number and we use that information. We do not do so with CIÉ yet although we ultimately will. We use that information with some of the newer providers because that is the basis on which they get their money from the Department.

Chairman: For the free travel scheme.

Mr. John McKeon: For the free travel scheme. We need to know. A block grant is given to CIÉ at the moment. To be honest, CIÉ is not hugely happy with it because it thinks the Department underpays.

Chairman: CIÉ might be right about that.

Mr. John McKeon: CIÉ wants to move to a system where-----

Chairman: Let us take this one step at a time lest we become confused. The Department has information on a person's public services card with a free travel element. The Department knows the route that person was on and the times they were on it. Mr. McKeon has just said that.

Mr. John McKeon: We know the ITS number but we do not associate that number to an individual back in the Department.

Chairman: The Department can do that.

Mr. John McKeon: We can but we do not.

Chairman: The Department has the information to do it.

Mr. John McKeon: A limited number of officers in our business intelligence unit have the capacity to do so. The only time we do it is at the request of the gardaí in the case of criminal investigation or-----

Chairman: Or at the request of the transport-----

Mr. John McKeon: -----the request of what I think are called revenue protection officials. They have the authority under the relevant legislation to look for that information. In such instances, we do not give CIÉ any information about the customer other than to say that it was or was not a valid card.

Chairman: And the Department would say that it was used on the following days or months.

Mr. John McKeon: We do not give that information.

Chairman: What does the Department do?

Mr. John McKeon: A CIÉ revenue protection official will get onto the Department and give us an ITS number. We will check if that is a valid ITS number and, if it is, we say it is and, if not, we will say it was discontinued from a certain date and that is the information CIÉ gets.

Chairman: The Department does not tell the CIÉ official how many times a card was used after that.

Mr. John McKeon: No.

Chairman: We are getting a full understanding. In the particular case, it appears as if four months elapsed from the time the free travel was cancelled to the time CIÉ was notified. Irish Rail, in its letter back to the committee, said that sometimes the misuse of a public services card means someone travels for months or years without paying for a journey after his or her free travel entitlements are withdrawn. That tells me the Department does not have a systematic method of telling CIÉ. CIÉ has written to the committee to tell us that this happened for months in the particular case about which we are talking and we are not identifying the person involved. CIÉ states that this sort of thing can go on for years without it being informed by the Department.

Mr. John McKeon: CIÉ will certainly be informed. We send a file over every day.

Chairman: Containing what?

Mr. John McKeon: Containing reference to new cards that are enabled and properly authorised and cards that are stopped. My understanding is that-----

Chairman: Why was there a delay of four months in this case? CIÉ told the committee that its revenue protection officer went back to the Department for the date the free travel card was cancelled and the date the customer was notified it was cancelled. Mr. McKeon has just said to me that the Department gives that information to CIÉ all the time.

Mr. John McKeon: We send that information on a daily file to the National Transport Authority, NTA.

Chairman: To the NTA.

Mr. John McKeon: We deal with the NTA. The NTA disaggregates the file and sends the relevant portions to each of the operators. I understand that takes a period of time.

Chairman: We had representatives from the NTA before the committee a few weeks ago and their reply to this issue was that this is the Department's card. They washed their hands of this query but Mr. McKeon is telling me the NTA is a link in the chain.

Mr. John McKeon: The Department sends a file to the NTA on a daily basis. The NTA disaggregates the file and I understand it sends the information out on a monthly basis. I may be wrong but that is my understanding. The NTA collates the information and sends it out on a monthly basis.

Chairman: Why would an operator not go to the NTA to find out when a card was used if that is who gives them the information? Why would the operator bypass the NTA and go back to the Department?

Mr. John McKeon: That is a good question to which I do not know the answer.

Chairman: I am delighted that Mr. McKeon, who is an Accounting Officer on this card issue, is confused. CIÉ was challenging my integrity because I did not understand this complicated process so I am delighted. The Comptroller and Auditor General misunderstood what had been said. The Accounting Officer of the Department who issues the card is confused. I am happy with that because it is a minefield.

Mr. John McKeon: Perhaps the NTA does not retain the data after they have been distributed. I do not know. I suspect that is the case.

Chairman: If the information was distributed, I put the case that the operator had it. Why would it then need to go back to the Department?

Mr. John McKeon: The way CIÉ operates is that the revenue protection agent has a terminal on the train or the bus and asks a passenger for his or her card. The agent finds out that someone's card is not what it should be. At that point, the agent has the passenger's name and all of that. CIÉ then contacts the Department to ask when the card was stopped and we tell them.

Chairman: CIÉ goes to the Department even though its normal point of contact in respect

of that card is the NTA.

Mr. John McKeon: The NTA may not do that. I will investigate further. Another thing is that we pay CIÉ directly whereas other funds are dispersed through the NTA.

Chairman: CIÉ breaks down the payments within the companies and-----

Mr. John McKeon: That is right. The monetary relationship is with ourselves and perhaps that is why CIÉ comes back to us.

Chairman: And does not go to the NTA.

Mr. John McKeon: That is right.

Chairman: The Department is collecting the information so some of the newer, smaller transport companies are paid based on-----

Mr. John McKeon: It is a combination. In some cases, we do it on surveys because all their buses or whatever do not have tickets. In other cases-----

Chairman: We want a detailed report from the Department on the free travel card, what information goes to the various operators and the NTA, how the payment is calculated and if it is based on a block grant. The figure for CIÉ is historically a block grant. Some of the newer companies are probably fully automated. The NTA operates a system through which some of the operators work. Those operators are licensed by the NTA so some of them are paid for exact numbers and some are paid on a sample basis because they do not have the technology. The Department should give a report to the committee.

Mr. John McKeon: We are very happy to do that.

Chairman: We want a bit of clarity on this.

Mr. John McKeon: We have had an auditor in from the Comptroller and Auditor General's office who is writing up a report on exactly these issues which I think is imminent, although I might be wrong.

Chairman: We will take it up with the Comptroller and Auditor General.

Mr. John McKeon: We are happy to provide the information anyway.

Chairman: We will double-check it next Thursday.

Mr. John McKeon: We are happy to do it.

Chairman: If the Department has provided a lot of information, I do not want to wait for the Comptroller and Auditor General's report because that can go to the Minister and sit there for three months.

Mr. John McKeon: Okay.

Chairman: The Department, not the Comptroller and Auditor General, publishes the report.

Mr. John McKeon: We are very happy to provide the information.

Chairman: What I am asking is totally reasonable from the point of view of the Depart-

ment - a breakdown of payments to the different operators, how the system works, who is paid for actual travel, who is paid for estimated travel and who gets a block grant. This all started with a query about the public services card. We are coming at this information from the points of view of the use of the card and expenditure in the Department.

I have a number of other questions to ask.

Mr. John McKeon: The NTA is a very professional and well-run organisation. I want to say that because I do not want anyone to infer anything negative.

Chairman: There was no such suggestion.

Mr. John McKeon: The NTA is, in our experience, a very good organisation.

Chairman: We asked its representatives a straight question when they were before the committee. They said the Department issues the card and we said we would talk to the departmental representatives about it when they came before the committee. I am not casting any aspersions.

Mr. John McKeon: Okay.

Chairman: I will not ask Deputy Cullinane to wait until I have asked all my questions.

Deputy David Cullinane: I apologise for being in and out of the Dáil Chamber and committees. I have two or three questions on the public services card and JobPath. Mr. McKeon might have answered some earlier but I will ask specific questions I have. In a previous response, Mr. McKeon said that there is no halo of infallibility around anybody. We can accept that, whether we are talking about Mr. McKeon, the Data Protection Commissioner, me or the Office of the Comptroller and Auditor General. This is a serious issue. Our job is to probe reports which are prepared by statutory bodies. When the Comptroller and Auditor General produces a report, it is our job to put questions to the Accounting Officer who is subject to that report. In this case, we have had a report from the Data Protection Commission, which is also a statutory body. Reference was made to high-level findings. The Data Protection Commissioner sets out three high-level findings in the first few pages of her report. Mr. McKeon says that he does not agree with those findings on a point of law, which is fine and that is his right. The difficulty that we have is that either the Department is right or the Data Protection Commission is wrong. If the Data Protection Commissioner is wrong on three very high-level findings then, given that we are talking here about a statutory body whose job it is to protect and safeguard peoples' information and data and ensure it is used in an appropriate way, one way or the other we have a serious problem. It is not a question of a nuanced difference; it is fundamental. It is now being disputed on a point of law. I assume there will be an enforcement order that will be in line with the letter cited by Mr. McKeon. I imagine it will be appealed and ultimately, it will be dealt with in court. One way or the other, for us as Oireachtas Members, there will be profound fallout from this. This will have profound implications because somebody is wrong. We will have to wait and see which party is wrong.

There is one other issue with the public services card, which is important. We dealt with this with the Comptroller and Auditor General when the Data Protection Commissioner appeared before us. When the contract was first negotiated, it was on the basis of 3 million cards. Is that right?

Mr. John McKeon: That is right

Deputy David Cullinane: According to the Comptroller and Auditor General, 2.1 million cards had been issued up to 2016. There was a renegotiation of the contract at some point. Is that right?

Mr. John McKeon: There were a number of change requests, yes.

Deputy David Cullinane: Did those changes mean that at some point, the State had to pay around 50% of the difference between how many cards were produced and how many were intended to be produced? Was there some level of compensation for the number of cards short of the 3 million?

Mr. John McKeon: No, there was a refocusing of pricing. We paid early in respect of some cards but that was taken off the subsequent bills. There was early payment because we had not ordered as many cards as we wanted but that came off subsequent bills. There were also some price changes made in respect of the initial delivery of cards.

Deputy David Cullinane: How much has it cost us up to now?

Mr. John McKeon: The contract at this point in time is around €26 million. Up to the point at which we were at 3 million cards, the cost was €24 million and it is now at €26 million.

Deputy David Cullinane: What was the contract for? Was it for 3 million cards initially?

Mr. John McKeon: The contract was for 3 million cards at around €18 million.

Deputy David Cullinane: Was that based on a cost per card?

Mr. John McKeon: It was based on a number of things-----

Deputy David Cullinane: Was part of it based on a cost per card?

Mr. John McKeon: Half of it was based on a cost per card.

Deputy David Cullinane: Was the cost of the card then increased as part of the renegotiation or rescheduling of the contract?

Mr. John McKeon: It was not the cost of the cards across all cards. The background to this is that we set up the contract and then the economic crisis happened. The Department went off doing other things in response to the economic crisis. We had a provider in Bray who was employing 60 staff and who had set up to deliver this card but we were not giving it orders for cards. I can get the details for the Deputy and am happy to send them to him but as I understand it, we agreed an increased price for about 200,000 or 300,000 cards that were delivered to begin with in order to tide the provider over. We then agreed-----

Deputy David Cullinane: Does that mean that we paid more per card?

Mr. John McKeon: Yes, for that block of cards.

Deputy David Cullinane: I do not have the time to go into this in detail. I ask that the Department would provide a note on the terms of the original contract, the number of times there was any reprofiling, rescheduling or renegotiation of that contract and what changes were made. That would be very helpful. The Comptroller and Auditor General had a slightly different view on this. At the time that we asked him about this, he said that he was not properly briefed, to be fair. If we could get that briefing note, we will be in a better position to-----

Mr. John McKeon: In the interests of clarity, there were other changes. I mentioned other change requests. The timeframe involved in rolling it out was from 2008 to 2011, during the crisis. We had the opportunity to integrate the Leap card integrated ticketing system into it so we took that opportunity, which meant that we had to pay for that. New security features were introduced-----

Deputy David Cullinane: Was that part of the same contract with the same company?

Mr. John McKeon: Yes, the same company. We paid the provider to include a chip for the national transport service. New security features were also developed internationally to make sure cards could not be duplicated and we wanted those features included in the card. We put those extra things in, which is part of the explanation.

Deputy David Cullinane: I ask Mr. McKeon to provide a detailed note on this.

I have a few quick questions on JobPath before I finish. The last time the Department was before us we got a breakdown of how much has been paid to Turas Nua and Seetec. I am assuming that the figure has gone up slightly since. Does Mr. McKeon have the most up-to-date figures with him?

Mr. John McKeon: The total amount paid to date is €207 million.

Deputy David Cullinane: How many people have gone through the different programmes?

Mr. John McKeon: About 230,000. In fact, the exact number is 238,000.

Deputy David Cullinane: The phase for referrals was due to finish at the end of this year but it has been extended. Has it been extended by a year?

Mr. John McKeon: Yes, it has been extended by a year.

Deputy David Cullinane: Does that extension mean that some people will be referred for a fourth time?

Mr. John McKeon: I doubt it; I do not think so. Most people are referred once. A small number of people, around 30,000 or fewer, have been referred for a second time. A total of 1,000 people have been referred for a third time but within the year, they will not get an opportunity to go again.

Deputy David Cullinane: The point here is that every time someone is referred, there is a cost or a payment to the companies.

Mr. John McKeon: Yes, that is right.

Deputy David Cullinane: I ask Mr. McKeon to give us a note on that as well, with the updated figures. The Department gave us a breakdown of what was paid to the two organisations.

Mr. John McKeon: Yes and I remember that at the time it was roughly 50:50. At the moment it is €100 million to one and-----

Deputy David Cullinane: I ask Mr. McKeon to send the precise figures on to us. I am seeking a breakdown for the two companies with the most up-to-date figures for the numbers of people that have gone through. In terms of the referrals, I seek a breakdown of the numbers of people who went through twice or three times. I ask him to set out again how it is unlikely that

somebody would be referred for a fourth time.

Mr. John McKeon: There is a break. We do not send people back immediately. We bring them back in and work with them in the Department for another period of time so it will not arise. There is not enough time in the extension.

Chairman: I have a few final questions, having looked through the documentation presented to us. Mr. McKeon mentioned that around 1% of all cases are appealed. I ask him to send a note on how many refusals are appealed. I presume that most people who apply for a payment and get that payment do not appeal. The only figure that is relevant in terms of judging the numbers that will appeal is the figure for refusals. Perhaps Mr. McKeon knows the global figure for the number of refusals.

Mr. John McKeon: We can work it out and send that information on. Around 85% of claims get awarded, so 15% get rejected. The 1% is out of that 15%.

Chairman: That is around 6% for refusals-----

Mr. John McKeon: That is right. Of those, when they go to appeal, about 2% get awarded.

Chairman: Sorry, 2% out of-----

Mr. John McKeon: My apologies, it is 40% of the 6%. I will do the sums. It is 2.4% that get awarded.

Chairman: How many cases go to the appeals office?

Mr. John McKeon: About 18,000 per year.

Chairman: What percentage of them get awards?

Mr. John McKeon: Around 40% get a positive outcome, but not necessarily from the appeal. The first thing the appeals office does is send the case back to the Department with a request for a second look. Often new information is provided and the Department decides to grant an award, which means that the case does not need to be appealed.

Chairman: Around 40% of cases that go to the appeals office are successful-----

Mr. John McKeon: Will have a successful outcome-----

Chairman: -----either in whole or in part. I ask Mr. McKeon to send us a note on that so that we can have it on our records, rather than just approximate figures off the top of the head. There is not a Deputy in this House who does not know of cases where further information is supplied to the appeals office that might not have been supplied to the Department at an earlier date. This is often due to the passage of time because several months have elapsed in the process and there might be new letters from medical consultants that can influence the outcome and so on. One of the contributory factors is the length of time it takes to process cases. Sometimes people do not provide enough information on the first day but they get it together for the appeals office. We understand that.

The second question that is not answered, and I have had several queries on it, relates to the fact that the qualified adult allowance is not mentioned anywhere in the context of the State contributory pension. It is not listed in the scheme. Will Mr. McKeon send us an note on that for information? There is an assumption, and I know it is not correct, that if a person in the

house is on the contributory pension, the spouse applies for the qualified adult allowance. If he has the pension – I just put it that way as “him” – she should get the qualified adult allowance. I know the answer is that it is means tested but I want to get that officially so that people will see it. How many of those who apply for the qualified adult allowance do not get it because their income is above the limit? People are shocked because they thought it was automatic and I have met many who were not aware that it is means tested. What other payments that can be attached to a contributory payment are allowances? Is the qualified adults allowance the only one?

Mr. John McKeon: In general, qualified adult payments are all means tested.

Chairman: What are the other ones?

Mr. John McKeon: For all payments where there is a qualified adult-----

Chairman: Or a qualified child.

Mr. John McKeon: The qualified child would not be subject to a means test.

Ms Kathleen Stack: It is mainly the qualified adult.

Chairman: Will the officials send us a note on this because, while I know the answer, many people have been a bit taken aback? They have assumed all their lives that it will come to them.

Ms Kathleen Stack: The qualified adult on the contributory State pension was one that came up when we did the control survey on that scheme a couple of years ago. It is an area where we have done a lot of work and reviewing. For example, this year we have reviewed approximately 12,500 of those qualified adults on the State pension. We have made a lot of savings out of it.

Chairman: “Savings” is not the word they use when they talk to me.

Ms Kathleen Stack: We can send the committee a note.

Chairman: The witnesses can understand that our offices are often a microcosm of what is going on in the Department. If I am picking it up and Ms Stack tells me they have done work on it, there might be a connection. Some people do not get it from the beginning because maybe the Department is more exact now in its assessments, knowing that it is a high-risk allowance. That is as it should be, I am not suggesting otherwise.

I have met people who, having got the non-contributory pension at 65, let us say it is €230 or whatever, and being very frugal old people living alone, do not spend it, and it then accumulates in the bank. Years afterwards they are assessed again for some reason and are stunned when their pensions are cut because they might have thousands of euro in the bank. I know the State pension is the maximum pension, although most people think it is the basic pension and are surprised that it is cut because they did not spend it as they got it.

Mr. John McKeon: I acknowledge that is an issue that we are conscious of and are giving some consideration to at the moment.

Chairman: I have seen cases where it has happened because the person did not spend the pension and had zero other source of funds. It just accumulated over 25 years.

Mr. John McKeon: We are certainly conscious of that and we are giving some consider-

ation to it. The difficulty is to identify whether the savings have accrued from the pension or another source.

Chairman: Correct.

Mr. John McKeon: That is always difficult. Everyone will say that they saved all the money in their account from the pension and it is very difficult to-----

Chairman: We both understand that there is a sensitivity to this but there are probably some cases where it is provable that there is no other income but the person just did not spend it as he or she went along. He or she was too frugal and got caught out.

Mr. McKeon spoke about dental benefit and optical benefit in the context of the online applications. That is largely because it is done through the dentist or the opticians, Specsavers or whatever. I can easily see why there is a high percentage of applications for those schemes but he acknowledged that the Department has been behind the curve in getting online. In another situation that we have dealt with, passports, we know that most people in the country have a passport now. There might have been a feeling that people getting payments may not have been the most IT literate group or, if they are older, may not have access to IT. However, they are able to manage passport applications.

The Department needs to take a lead from the other Departments that have moved on, dealing with the same population as Mr. McKeon deals with and have got a massive take up online. The same is true for the Revenue Commissioners, I know many may not be on the Revenue online service but massive numbers are. The other example is car tax. There was a time we had to go in and pay cash at the counter every quarter or six months, now well over 80% of people do it online. Many of them are in receipt of payments from the Department of Employment Affairs and Social Protection and are able to manage that some way. I encourage the Department to do that and it will be a major cost saving.

Mr. John McKeon: We absolutely agree and we have a plan in place to drive the adoption of our digital services. Revenue and the Departments issuing driving licences, passports and so on are delivering the services through the portal we developed. We did the IT development and they provide their services. What is somewhat different about our service is that people are asking us to give them money so the standard of authentication in terms of identity and so on is a bit higher for us.

Chairman: Yes, but the Department has this wonderful personal public service card, which answers all those questions.

Mr. John McKeon: Exactly, and I think we have broken the back of that now with the micro-ID system. We will now be rolling out online, we have dipped our toe in the water and have had some good take up on some schemes. Although the treatment benefit, which the Chairman instanced, is done through the dentists and opticians, it is a good example of what can be achieved within the organisation. We want to do that with doctors and illness benefit claims. We get 10,000 illness benefit claims each day. If we could get those online it would have huge benefits for us.

Chairman: Given that the constituency office is a microcosm I do not hear many people saying they have difficulty doing something online. It has not hit the consciousness of many of the Department's people yet.

Paragraph 12.18 of the survey on regularity of social welfare payments states: “The survey found that 94% of incorrect payments were because the claimant’s means were not correctly accounted for.” Means tests are by far the biggest issue. I probably touched on it with the pension issue a few moments ago. How independent is the appeals office? Is it under the Department’s Vote?

Mr. John McKeon: It is under our Vote and the chief appeals officer and her staff are civil servants in the Department but they do operate independently in the exercise of their functions. They have statutory independence to do so and when cases have been appealed to the courts they have been found to have operated independently. Many of our staff believe they are too independent.

Chairman: We would not hear that on our side of the house, especially from the 40% of cases going in. That is the point we have just covered.

The next sentence is: “Reasons for rejection of claims are recorded and relate, in the main, to failure of the claimant to prove eligibility based on means [an issue on which we have touched], social insurance contributions and residency”. The reference to social insurance contributions relates to payments based on contributions, whether it is a benefit payment or otherwise. People have to prove residency or that they are back in Ireland, whatever the case may be. Will Mr. McKeon give a global breakdown, insofar as he can, of the reasons claims are rejected. How many are rejected based on means? How many are rejected based on the lack of contributions or other factors? These three issues are cited in the recommendations made in the Comptroller and Auditor General’s report. Mr. McKeon has given the main reasons. He might give us a breakdown. It could be submitted to us in writing.

Mr. John McKeon: I have it here, but I will send it to the committee.

Chairman: If it comes in officially, it will be recorded and published.

Mr. John McKeon: We will send it to the committee.

Chairman: I do not need it now. I will be happy to receive it later. We will publish it when we receive it. I can bring it to the attention of members.

Mr. John McKeon: One of the recommendations was that we do exactly that. That is what we are doing.

Chairman: Therefore, something has been done. Now that I am mentioning benefits and PRSI contributions, what is the current position on the people, the majority of whom were women, who left work for family reasons and had their PRSI records re-examined for family leave to determine whether they could receive the higher pension payment? How close is the Department to ending that process?

Mr. John McKeon: Effectively, it is finished. There are 70 cases in which we are still trying to work with the people concerned. We were able to make automatic decisions for quite a number of people. People on whom we had no information were in a different category. There were those who, based on the new model we had developed, did not receive an increase when their cases were processed automatically. We wrote to them and asked whether they had any childcare or other caring duties and to come back to us. All have come back, except 70. We just need to keep chasing them. There will always be a very small tail.

Chairman: There will always be a few stragglers. Most Deputies have encountered some of these cases. I often wonder how close we are to the end of the process. May I have a summary? How many came in? How many applications were there?

Mr. John McKeon: There were 90,000 cases to be reviewed. We are left with 70.

Chairman: Ninety thousand.

Mr. John McKeon: There were 94,000 cases that we needed to review. We have just 70 left.

Chairman: Therefore, almost 94,000 have been dealt with. May I have a breakdown between males and females? Mr. McKeon might have that information to hand.

Mr. John McKeon: A total of 56% were women and 44% were men.

Chairman: I am surprised that there were so many men. My intuition would have led me to believe there would be a lower proportion of men. Will Mr. McKeon send us all the summary?

Mr. John McKeon: We will send the information.

Chairman: The witnesses have all of the information. It is not just for me but for the committee to be outlined when it receive it next week or whenever else. It is good that the Department is near the end of the process.

One thing that has not been mentioned at all today, surprisingly, is the appropriation account for Vote 37. Page 6 includes a big chunk about non-compliance with procurement rules. It is included in the statement on internal controls. Mr. McKeon made no reference to it and, surprisingly, the Comptroller and Auditor General did not refer to it this morning either as he normally does. The committee is now concentrating on the number of Departments and public bodies that are not complying with public procurement rules. For the viewers watching, will Mr. McKeon explain the statement made in the second paragraph of page 6 that “the Department has reported in the 40/02 return to the Department of Public Expenditure and Reform and the Office of the Comptroller and Auditor General fourteen contracts to the value of €2,037,029 that were not subject to a competitive procurement process, of which five contracts with a value of €590,320 are non-compliant”. Details of the five contracts are listed. Will Mr. McKeon explain to the public the difference between a contract that is not subject to competitive procurement and the five contracts that are non-compliant?

Mr. John McKeon: Effectively, it is where only one supplier can provide what is required. I do not want to name a particular provider, but everybody knows the world’s main provider of PC software, for example. The Department has a suite of office application packages and so on and there is only one supplier that can provide them.

Chairman: That is it.

Mr. John McKeon: The others are cases where there could be other suppliers, but we could not, for whatever reason-----

Chairman: They are listed.

Mr. John McKeon: The five cases did not proceed to competitive procurement.

Chairman: Details of the contracts that are non-compliant are listed. Mr. McKeon is say-

ing there cannot be competitive procurement if there is only one supplier.

Mr. John McKeon: There are some, in respect of which we did not proceed to competitive procurement, with a value of about €2 million. Of that figure, €1.5 million was accounted for by providers that were the only providers. The remaining €500,000 was accounted for by cases where there were multiple providers, but we did not proceed to competitive procurement and had to explain-----

Chairman: Did the Department receive a recent tender in those cases?

Mr. John McKeon: In most of the cases we are waiting for an Office of Government Procurement framework. We have an existing provider in place. As the contract had run out, rather than going to tender and having the Office of Government Procurement come along-----

Chairman: In the meantime, we are dealing with a contract that might have expired two years ago. The Department is just rolling on the contract from year to year.

Mr. John McKeon: We would not roll it on for two years. Generally, in all of the cases we do not have proper contracts in place.

Chairman: On the five not subject to competitive procurement, can we be given an information note? The names need not be mentioned.

Mr. John McKeon: We can give that information. The main one was for the supply of application forms, something about which we talked earlier. The others were for the provision of translation services. I refer to Irish translation services and so on.

Chairman: Again, that is something that normally comes up in the course of a meeting, not at the tail end. Mr. McKeon will send us the information. There is a lot of information to come, but the Department will have all of it.

Again on the Vote, paragraph A.33 on page 28 refers to the school meals scheme. The Estimate for school meals provided by the Oireachtas was €54 million, but the outturn was €49 million. The Oireachtas provided €54 million for school meals, which provision is essential. There is a row in most constituencies over the scheme not being extended to more schools. Be that as it may, we find that there was under-expenditure of €5 million. It is stated some new schools were slow in submitting their applications. I am thinking of the children who should have received school meals. If somebody somewhere had their administrative side of the house right and got forms in and processed, it would have occurred. I read it as €5 million provided by the Oireachtas for school meals not being paid out because somebody did not get the paperwork in on time. Will Mr. McKeon talk to me about this? What is the Department doing to make sure it will not happen? Other than writing the cheque and paying the money, the Department should have a slightly proactive approach to make sure that where there is such an important scheme in place, there is an uptake of 100% and a waiting list-----

Mr. John McKeon: We have a dedicated unit that contacts all schools in advance, gives them the timelines, the paperwork to be completed and advice on how to apply. Perhaps we could be better at it, but most schools - the vast majority - get the application form in.

Chairman: How many schools?

Mr. John McKeon: In terms of money-----

Chairman: For the €50 million provided. All DEIS schools are included.

Mr. John McKeon: We have a note on the school meals scheme.

Chairman: Are they all at primary level?

Mr. John McKeon: They are all at primary level. I have information on the hot meals scheme.

Chairman: Is that a different scheme?

Ms Jacqui McCrum: It is the new one.

Mr. John McKeon: There are 1,580 schools and 250,000 children. There is also an urban school meals scheme which is a slightly modified version involving 307 schools and 50,000 children.

Chairman: Is it under the heading of “School Meals Schemes”?

Mr. John McKeon: Yes.

Chairman: How many schools were eligible but did not receive the payment in the first term?

Mr. John McKeon: About 10%.

Chairman: How many schools is that?

Mr. John McKeon: I do not have the precise number, but in monetary terms, it was about 10%.

Chairman: I ask for a note on the matter. I am almost of a mind, although I will not go there today, to ask for the list of schools that for some reason did not provide for children and the amounts of money involved.

Mr. John McKeon: As I understand it, the main difficulty for some schools is that they need to find a provider and give us details of that provider. I believe some schools may have had difficulties in finding a meals provider.

Chairman: I know of providers that would love to fill the gap.

Mr. John McKeon: Yes, okay.

Chairman: Yes. I am back to my basic question. A total of €5 million provided by the Oireachtas for school meals for kids who deserve it but, in 2018, they did not get it because a provider, a tender or forms were not in on time. We owe it to them to get that right. How is the scheme looking for this year? Can the Secretary General give me an update on where we are?

Mr. John McKeon: We will get the Chairman an update on that. I do not have the figures to hand.

Chairman: I need an update. I know this is not the top priority for some others while other principals would kill to get every extra penny for their kids. I would hate to think that some schools have students in a sports or art competition and the attitude is to deal with it after Christmas. It should be a priority for school principals to make sure that they get school meals for

kids where the money has been provided. Please give us an updated note on that and we can take it from there. It is disappointing that the funds have not been fully drawn down.

On the Social Insurance Fund, the total outstanding balance for social insurance redundancy is €331 million; insolvency is €900 million so €431 million is outstanding. I acknowledge Mr. McKeon said that a lot of it is not collectable as the companies are not there, which we understand. That compares with an approximate equivalent number of debts due to the Department for various.

Mr. John McKeon: For claimants, absolutely.

Chairman: The same figure.

Mr. John McKeon: The same money.

Chairman: We have made this point here several times. We were about to receive information from Mr. McKeon on some of the top settlements relating to social welfare payments. We want him to send us the information on the top five. Did any of these have to go to court to get the money? I am talking about the Social Insurance Fund.

Mr. John McKeon: In terms of the employers, I do not believe so. They are nearly all in a liquidation-receiver process so we work with the receiver or liquidator.

Chairman: The Department was preparing some information about significant claims that had been amounts recouped or-----

Mr. John McKeon: There was one court case, which was covered in the paper, and I do not want to name the employer.

Chairman: Yes.

Mr. John McKeon: It was related to redundancy and insolvency, and it was related to a particular corporate restructuring they performed to-----

Chairman: Yes.

Mr. John McKeon: Anyway, it was alleged that the corporate restructuring was deliberately done to avoid redundancy payments. We went to court on that and we did not win.

Chairman: What were the receipts from that during the course of the year, from collections?

Mr. John McKeon: It is about €10 million.

Ms Jacqui McCrum: It is €10 million.

Ms Kathleen Stack: No, €9.05 million.

(Interruptions).

Chairman: I ask the Department to send us a note on the top five settlements in 2018 but not to identify the companies involved so that we have an indication of what-----

Ms Kathleen Stack: In terms of outstanding debt?

Chairman: No, in terms of collections. Out of what was collected-----

Ms Kathleen Stack: Sure.

Chairman: -----we need to get just a feel of what is coming in. Were they all small ones or are there big ones out there of €1 million, €500,000 million or €200,000?

Mr. John McKeon: Most of these are small businesses.

Chairman: The easiest thing is to give us details on the top five where the income was received so we have a feel for what is behind the figures. That is all and I do not know who they might be.

When departmental officials were before the committee previously, sick leave was fairly high in the Department. Where are we on that?

Mr. John McKeon: It is not below the Civil Service average yet. It has come down from approximately 13.5 days three or four years ago to approximately 11.5 days now. A couple of things are different about our Department compared to others, which I mentioned the last time. We have a lot of front-line staff and that creates its own issues. Our staff generally have an older age profile than other Departments. A total of 94% or 95% of all sick leave in our Department is certified by a medical practitioner. The average is 90% in the Civil Service. We tend to have more longer duration cases and it is related to the age profile of staff. The figure now is approximately 700 people over 60. We have 100 people under 30 and more than half of our staff are aged over 55 years. They are the kind of metrics. The people who get ill in that age category, in my experience, they have genuine long-term illnesses. I have experienced throughout my career. We have 80 cases of very long-term illness that account for a quarter of all of our sick leave. They are people with very profound and serious illnesses. We look after them, and I do not apologise for that, but that is the difference.

Chairman: ----

Mr. John McKeon: ----

Chairman: ----

Mr. John McKeon: ----

Chairman: ---

Mr. John McKeon: ----

Chairman: Do many take retirement on health grounds? I mean the ones that have been mentioned.

Mr. John McKeon: We work with them on that. We try to be sensitive in that respect because a lot of people are hanging on to a desire to return to work.

Chairman: Yes.

Mr. John McKeon: You do not want to take that away from them.

Chairman: Exactly.

Mr. John McKeon: We work with them and we encourage them where it seems to make

sense to retire on medical grounds.

Chairman: Does the Chief Medical Officer operate under the Department of Employment Affairs and Social Protection or the Department of Health?

Mr. John McKeon: The Department of Public Expenditure and Reform is the Chief Medical Officer for the Civil Service.

Chairman: I was not sure which Department it was.

I refer to replies to two parliamentary questions that I received from the Department last month concerning outstanding debts for the various schemes. This is relevant to our earlier discussion on write-offs. I asked for details on the outstanding customer debts. I only asked for the large figures, over €10,000, by scheme area at the end of August 2019. I asked for the number of cases where payment plans were in place and the number of cases where no repayment plan was in place. According to the schedule in the reply, there are 5,638 cases where a repayment plan is in place and the value of the debt for which the repayment plan is in place is €156 million, and no repayment plans are in place for 6,075 cases and the figure is €171 million. In those cases, for all the schemes, the majority have no payment plan in place.

I then sought details on the outstanding customer debts with a value outstanding of, again, over €10,000. I did not want to a lot of paper so I just kept to that limit, and asked for an age analysis. According to the chart, in terms of repaying and not repaying, the figure adds up to €327,000. They are the same figures with these now broken down by an age analysis rather than scheme. The first half of the reply was by scheme and the latter half was by aged analysis. The Department has a case from 1984, where a person owes €119,000 and the person is repaying, and two cases of debts, totalling €28,000, where there is no repayment plan in place, going back to 1984.

I estimate that between 1984 and 1989 the Department is owed €1.5 million by 100 people. That is a long time owed. Between 1990 and 1999 there is €16 million owed in respect of approximately 600 cases. Between 2000 and 2009, there is approximately 1,900 cases amounting to €77 million. How do those figures tally with what Mr. McKeon told us about the pre-2010 payments that were written off?

Mr. John McKeon: I might ask Ms Stack to take that.

Chairman: Sorry now, but I think the Secretary General is looking to-----

Mr. John McKeon: She is the leading world expert on this.

Chairman: Does Ms Stack know where I got the figures from?

Ms Kathleen Stack: Yes. We prepared the figures for the Chairman in the parliamentary question replies answers. Since then, we have written off some of those cases that were listed. I will give the figures for the end of September, if that is all right?

Chairman: I ask Ms Stack to send it to us-----

Ms Kathleen Stack: Sure, yes.

Chairman: -----so I can circulate it. There is no point in just telling me. I want to be able to circulate it. As I have just said, it is better that we have a proper record circulated to everyone

and then the letter is published.

Ms Kathleen Stack: Sure, we will do that.

Chairman: Does the Department have an update on that taking into account what we have just spoken about?

Ms Kathleen Stack: Yes, we can do that.

Chairman: At this stage we have exhausted all the questions. I thank the officials from the Department of Employment Affairs and Social Protection, and the official from the Department of Public Expenditure and Reform who got off light today. They had no questions today. I regularly compliment the Department of Employment Affairs and Social Protection and some other Departments for providing good information. Where they do not have the information, they are able to get their hands on the information and send it on to us, which we appreciate. It helps us. It also helps the public have a bit of confidence in what is happening in the system when they see hard questions being asked and good answers being given. That is good for everybody. There are other Departments I cannot say that about.

I thank the Comptroller and Auditor General and his staff for being present.

On behalf of the committee, I request that the clerk to the committee to seek any follow-up information and carry out actions that we have requested. Is that agreed? Agreed.

The next public meeting of our committee is on Tuesday, 19 November, when we will have the Courts Service in in respect of its 2018 appropriations accounts. We will have a private meeting on Tuesday next at approximately 4 p.m.

The witnesses withdrew.

The committee adjourned at 4.40 p.m. until 4 p.m. on Tuesday, 12 November 2019.