

DÁIL ÉIREANN

AN COISTE UM CHUNTAIS PHOIBLÍ

COMMITTEE OF PUBLIC ACCOUNTS

Dé Céadaoin, 16 Nollaig 2020

Wednesday, 16 December 2020

The Committee met at 4.30 p.m.

MEMBERS PRESENT:

Deputy Colm Burke,	Deputy Paul McAuliffe,
Deputy Matt Carthy,	Deputy Imelda Munster,
Deputy Cormac Devlin,	Deputy Catherine Murphy,
Deputy Alan Dillon,	Deputy Verona Murphy.
Deputy Marc MacSharry,	

DEPUTY BRIAN STANLEY IN THE CHAIR.

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

Business of Committee

Chairman: No apologies have been received. We have the minutes of the recent meetings from 2, 9 and 10 December and they have been circulated. Are they agreed? Agreed. As previously agreed, the minutes will be published.

I now propose that we go into private session to deal with some housekeeping matters before resuming in public session to deal with accounts and statements laid before the Houses of the Oireachtas and correspondence and our work programme. Is that agreed? Agreed.

The committee went into private session at 4.32 p.m. and resumed in public session at 5.22 p.m.

Chairman: Deputy MacSharry wishes to raise an item from last week.

Deputy Marc MacSharry: I thank the Chairman for the opportunity. Last week, we had the pleasure of meeting officials from the Department of Justice and the Prison Service to raise a number of issues. There is one issue that I had raised at our very first meeting as part of the main reason to bring them in I refer to the fact that following the meeting of the Committee of Public Accounts on 17 January 2019 I had raised the issue of an alleged sexual assault against an agency nurse working in the Prison Service. I understood from Mr. Don Culliton, who represented the Prison Service last January and again last week, that they would look into the matter. Since then, the person in question has taken a case to the Workplace Relations Commission, WRC, and there has been a ruling. The Committee of Public Accounts and the relevant Deputy, although not named but it was me, were named in the judgment. It was found that as a direct result of the case being mentioned at our meeting on 17 January 2019 the person had all of their shifts cancelled so had to find alternative work and as a result was granted an award that is a matter of public record. Naturally, when the Committee of Public Accounts came together first, I said that we should want to raise the matter. While I appreciate Standing Order 218, which seeks to reaffirm historic limitations without any leeway, the Prison Service and the Department should have been in the invitation to last week's meeting under notice that we were going to raise that matter. It is shocking that a court ruled that as a direct result of something being raised here, and a matter so serious as a sexual assault, would lead to somebody in the judge's opinion losing their job and getting compensation, appropriately.

Now it seems that the State is appealing the case. The nature of how it was dealt with last week by the Secretary General of the Department of Justice and the Prison Service was appalling. It was totally unfair to the committee and totally unfair to the victim. The Accounting Officer for the Department of Justice owes an explanation to this committee as to what their position is on having been found to be liable for taking action against somebody because a matter was raised at this meeting. These are not my words. That was the judgment.

Last week, we were stonewalled. I think I used the phrase "How people like Maurice McCabe ever managed to get justice is beyond me" because if somebody in the Prison Service came to me with a complaint today I would genuinely advise them not to issue a protective disclosure, not to make a complaint and not to have it raised at a meeting of the Committee of Public Accounts because other apparatus in the State will move directly to throw them under the

bus. While I appreciate that I can be abrupt and robust in my questioning, which is unnerving for people and is probably unseemly to watch but it was necessary. I am appalled at what took place at last week's meeting with the Department of Justice and the Prison Service because we were merely making up the numbers. It was a total waste of taxpayers' money considering the lack of candour, directness and basic respect shown to what is the only constitutional committee in the Oireachtas.

Deputy Catherine Murphy: People will continue to have a problem as long as the power imbalance has been shifted so much in respect of Standing Order 218. It almost works against the committee and in favour of the witnesses so I do not see how we can continue, and effectively do our work, without change or a rebalancing of Standing Order 218. We must redouble our efforts to do that. It is like having a pair of handcuffs on and I found it quite difficult to straddle that in the Chair last week. It is obvious that there has been a shift.

Chairman: I was not here last week but I am aware of the case where a judgment was made in favour of a former worker in the Prison Service.

Deputy Cormac Devlin: I have raised Standing Order 218 previously and I said that the issue would become more prevalent and it has, unfortunately. I am a new member of the committee and at the initial meeting, we were greeted with the new Standing Order 218. From my understanding of the committee prior to joining it, the Standing Order has put the kibosh on our ability to question witnesses or certainly put pressure on the Chair to ensure that there is compatibility with the Standing Orders of the House.

I ask that the impact on our committee be analysed at the weekly meeting of the Oireachtas committee chairman and, indeed, by the Committee on Procedure, of which I understand I am now a member. I really think it only impacts on this committee and not so on others. It is imperative that we do that because when Covid is over and we have longer than two-hour sessions with witnesses, the impact of the Standing Order will come into sharper focus and be unfair to this committee. As Deputy Catherine Murphy eloquently said, it will impact more so on us as committee members and favour those who are here as witnesses. It is important that we deal with this matter as soon as possible, preferably in January, before the committee meets again. I appeal to the Chairman, as the guardian of the committee, that we deal with this matter.

Chairman: My views on Standing Order 218 are well known. I agree with what has been said about it imposing a stricture on us. There are two issues with the Standing Order. One interpretation is that it is there to prevent us from discussing matters that should properly be before another committee, such as the health or justice committees. That is fair enough. From my perspective as Chairman, I do not want to get involved in some kind of jostling match with the Chairmen of other committees or the committees themselves. I am sure members are reasonable enough to know that there is no need for us to do that and that there are capable people on all the committees across the Houses. That is one interpretation. There is a procedure, where that needs to be adjudicated on, to send a request to the Committee on Procedure. This is what we have been told legally. There would be a turnaround time of a week. I understand that this in the Standing Orders of the Committee on Procedure, which is welcome enough in itself.

However, there is a bigger issue. We have had witnesses before committee meetings, including Secretaries General, where things were completely free-flowing and there were no objections to asking any questions about anything. In fact, I and other members asked one Secretary General not just about the past but the present. We also discussed the future with him. He was very forthcoming, which is his style. I also know that in the case of other wit-

nesses, I had to intervene to tell them they had to answer the question. It can be used to close down questioning from members. I do not want to preside over meetings like that. It puts me in a difficult position and it restricts things. I am not completely *au fait* with that particular issue but from members are saying here, I take it that this problem has popped up and we need to try to circumvent and deal with it. The Deputy is correct. This committee is the one that will be restricted. Constitutionally, the Committee of Public Accounts is the one place where we can bring people before us to get answers, to discuss and analyse what is going on and to issue reports. It is important that we do not restrict that.

Deputy Imelda Munster: Last week was a prime example of the effects of Standing Order 218 and how it ties the hands of committee members. The whole purpose of the committee involves its probing nature and accountability systems, practice and procedures. Because of that Standing Order, witnesses who may have felt that they were coming in for quite a grilling if there was justification relating to practice and procedures will be only be too happy. I do not see how it serves the purpose of this committee. It would serve witnesses who are not forthcoming with information when requested. Regarding the practice whereby witnesses refuse to answer continues, if we had a penny for every time we were told last week that someone could not answer this or that question, we would be rich. If it is not changed, it will continuously make the purpose and remit of the committee more and more redundant.

Deputy Cormac Devlin: As a member of the committee, I take exception to what the Chairman said about him as Chairman and other committees not having to jostle over certain issues. I think the Committee of Public Accounts does trump a number of committees. They may decide they want to discuss certain issues with certain witnesses but from the point of view of public accountability, we should have the privilege of inviting witnesses in and discussing certain issues irrespective of whether another committee also wants to do that because we cut through the issue of whether it has a certain departmental aspect, be it health or education. We can still invite them in and it is important for this committee to retain the ability to do that. Standing Order 218 affects our ability to question those witnesses. Irrespective of whether any other committee has standing in the House to do that with that organisation, we should still be able to do that. I would not like us to lose that ability. I would like us to retain it and through the Chairman, I would like us to push for that more. As Deputy Catherine Murphy said, of all committees, this committee needs to ensure that Standing Order 218 has a better re-balancing for committee members.

Chairman: I agree with the Deputy. Of course, we do not want to restrict ourselves in terms of examining the finances or accounts of any organisation or Department where public money is concerned. The point I am making is that sometimes another committee may want to look at an issue from a different angle. If that committee invited a witness before us, we are not going to get into a jostling match with it.

Deputy Cormac Devlin: That is fine. We can still invite them in.

Deputy Colm Burke: I was a member of the Oireachtas Committee on Health when the Committee of Public Accounts was looking at section 38 and section 39 organisations. We have a problem in the sense that over 2,500 organisations are getting funding from the HSE. I remember raising an issue relating to an organisation that I wanted to invite before the Oireachtas Committee on Health but we were advised that we could not get it in because the Committee of Public Accounts was dealing with section 38 and section 39 organisations, which I thought was wrong. In fairness to the Committee of Public Accounts, it could only deal with one or two organisations at the time with regard to cross-examination, whereas the Committee on Health

could easily have dealt with other issues. We need to be careful that we do not prevent other committees from looking at other issues. Regardless of whether organisations come under the remit of the Departments of Justice, Agriculture, Food and the Marine or Health, we should not prevent other committees from pursuing other aspects.

The Committee of Public Accounts still has fairly extensive powers relating to accountability. The one difficulty we have is that where there is any litigation involving an issue coming before us, it is impossible to deal with any of that. In another forum, I have come across cases that have been pending for four or five years and are deliberately in the courts to prevent that public examination, which is one of the other difficulties we can face.

Chairman: We have come back to Standing Order 218 so we need to make a decision about what we are going to do about it.

Deputy Marc MacSharry: The problems I had last week were not hugely about Standing Order 218. Was the Prison Service told, as was my intention from the very first time I mentioned it, that this matter was going to come up before its representatives came in?

Chairman: I do not know but we can get the answer.

Deputy Marc MacSharry: Could we get an answer to that because it was my understanding that it would have been told and it ought to have been told? As it was within the remit of the 2019 accounts, Standing Order 218 was not an issue. A peculiar angle that was taken that we do not discuss individual cases. I do not know any law against that. That might be a practice that is adopted but if we have an individual case, for example, a protected disclosure, there is nothing in law that prevents the relevant Accounting Officer saying “we got that, we’re working through that and here’s what happening with it.” There is nothing to prevent that but that has become the practice. The practice is we do not discuss individual cases. My view is that we do not have to accept this practice, the practice needs to change and we need a more candid approach. If some is *sub judice*, that is a different matter. That applies to all committees. The question is, was the Prison Service told, as it should have been, that we would be discussing this? As a matter of basic professionalism, the Secretary General should have come in shouting from the rooftops that it was aware that we were central to a case in which it was found guilty and which it was appealing and the reason it was appealing the decision, because this committee would be entitled to know that.

On the issue relating to other committees, this is the only constitutional committee of the State and it does trump every other committee. The reality is that we are entitled to talk to any Department or agency that spends public money and is audited by the Comptroller and Auditor General. We are entitled to quiz them and to look at them. I remember the row about section 38 and section 39 bodies at the time. They were getting an awful lot of money from the State and we were entitled to quiz them. It can be a bash to the ego. I have been on several committees, including the Joint Committee on Health, at times when the Committee of Public Accounts was ahead on issues but that is what is in the Constitution.

Deputy Colm Burke: The point I was making is that over 2,500 organisations are getting funding from the HSE and the amount involved this year, for instance, is €4 billion. The Committee of Public Accounts at the time was focused on one organisation in particular which meant that the other 2,499 organisations could not be touched by the Joint Committee on Health, which was a problem. That should not happen again.

In the context of the separation of powers, it is very difficult for this committee to deal with any issue if there is a court case pending that is relevant. Something might be said here that could, in some way, prejudice a court case and we must be careful from that point of view. That is why the issue of the separation of powers is important.

Chairman: There are two separate strands here. We can decide on Standing Order 218 in a minute but a specific issue was raised relating to last week's meeting. Clarification has been sought as to whether the issue was specified on the invite and the answer is that we must check back. We will get clarification on that in the coming days. There is some uncertainty around it at the moment. It is unclear what exactly was specified on the invite but the committee secretariat will revert on that in the coming days. In terms of what we do then, if members want the committee to correspond with the Secretary General of the Department or the head of the Irish Prison Service to express their dissatisfaction with what took place at the meeting, that can be done and we can seek to have them before us again. I would certainly be open to that. Is that proposal agreed? Agreed.

On Standing Order 218, we cannot just spend our meetings giving out about it; we need to do something about it. I am open to suggestions on this. We can seek further legal advice on it to determine whether legislation is needed to change it. This came from the Kerins case and my opinion on it is well known. I believe that it is an over-the-top interpretation and that it went in the wrong direction. It is missing the point altogether. We need to see where we stand legally on that. We also need to seek a change to Standing Orders. However, the Opposition is in the minority in this Dáil. I am saying this in a collegial way but we will need Members of the House on board with this, whether they are in government or in opposition. It does not matter what hat Deputies or Senators are wearing; they will be handcuffed and restricted in terms of what they can do at this committee while Standing Order 218 is being used and interpreted in the way it is at present. Does anybody have any suggestions on this?

Deputy Colm Burke: Some people are saying that we need a change in legislation. Why not look for advice on what changes are required? Then the committee would be in a position to approach all parties to tell them that it has received legal advice to the effect that there is a need for legislative change here and to push for that change, if that is what is required.

Deputy Cormac Devlin: I agree with Deputy Colm Burke and getting feedback from the parties and from the Oireachtas committee chairpersons would be important. It probably has more of an impact on the Committee of Public Accounts than any other committee but it would be important to tease out the discussions the Chairman of the Committee of Public Accounts has had with other committee chairs. Is there a weekly meeting of committee chairpersons? When do committee chairpersons meet?

Chairman: We meet very intermittently.

Deputy Cormac Devlin: I thought it was frequent-----

Chairman: I do not want to misrepresent the chairpersons of the other committees but to be honest, this has not become an issue for them.

Deputy Cormac Devlin: Is it mainly an issue for this committee?

Chairman: Yes. The only committee that this will restrict is the Committee of Public Accounts. Our hands will be tied behind our backs in situations that are already arising, as was predicted. I suggest that we meet the Office of Parliamentary Legal Advisers, OPLA. Let us

face it, there can be a lot of jostling and tussling when people from different political parties and none are involved but on this issue, unless we are at one, we will get nowhere. Committee members from all sides of the House need to be on the same page.

Deputy Cormac Devlin: It will change the dynamic of this committee.

Chairman: Absolutely. Initially, we should seek a meeting with the OPLA. Members of the Committee of Public Accounts who are also members of the Committee on Procedure and Privileges, CPP, should flag this as an issue at the next meeting of the latter committee. They should indicate that we will be seeking to change it.

Deputy Cormac Devlin: On that, my understanding is that members of this committee who are also members of the CPP may not be able to sit in on the discussion at the CPP. I await clarification of that but that is my understanding. I made it clear on my appointment to the CPP that I was a member of the Committee of Public Accounts. I do not know who else is in that position. If that is the case, it changes the dynamic as well.

Chairman: Deputy MacSharry was also a member at one stage.

Deputy Marc MacSharry: I was a member for about a day.

Chairman: He lasted for a day.

Deputy Marc MacSharry: Yes. It seems someone moved quickly to rescind that appointment.

Deputy Catherine Murphy: I was a member when it was called the CPP. I think the name was changed to Committee on Procedure in the last Dáil.

There have been different interpretations of the Supreme Court judgment. It would be useful to revisit the judgment itself. It required a new set of rules to be put in place but it is the balance of those rules that is the issue. If we are going to have a conversation with the OPLA, we need to know what we want. We also need to know why that Standing Order was proposed in the way that it was. What is it addressing in the context of that balance? If we go through that forensically, we may well find that there are opportunities to strike a better balance within it.

Chairman: Back in August, I looked at the legal brief on what came out of the Kerins judgment, which other members may have seen too. To be honest, Standing Order 218 goes completely off that in terms of the work of this committee.

Deputy Marc MacSharry: I have gone back to the 1970s to look at what went on and legally, it is still broadly the same. Our primary function is to look at what has been audited by the Comptroller and Auditor General and pursue any issues arising. The change that is being sold to us as an improvement is that we can raise whatever we want, as long as it is laundered through the Committee on Procedure first. That is what is being used against us. The situation always existed that our primary role was to deal with audits. Now we have this new condition that we can deal with anything else provided we all agree and it must be sent to the Committee on Procedure for a decision. The issue is to get that piece out. We do not beat people up when they come in. A Secretary General or an Accounting Officer for an agency can say that he or she is not in a position to answer a question posed by a member or can seek advice before answering. That freedom needs to come back. Strangely, while dressed up as an additional power, that is what is hampering us. The legal advisers will probably tell us that the legal position is more

or less as it was in the 1970s, 1980s, 1990s and since. The Committee on Procedure claims to be bestowing a new power on the committee but it is really a stick with which to beat us because we have to seek approval from it for everything. We had the ridiculous situation on the day we were discussing next year's leaving certificate of the Secretary General, when asked how the Department was fixed for it, not knowing whether he could answer the question. It is going to be the Fifth Amendment, to use an American reference, for every Accounting Officer on any issue. We need to get that piece removed. The Chairman should have the discretion, with all due respect and so on, to ask a Secretary General if he or she is in a position to tell us what we want to know and to allow him or her to answer "No".

Chairman: We have had cases where they have sought the protection of the Chairman not to answer a question and I have had to indicate to the member to try to put the question in a different way to get around that issue.

Deputy Marc MacSharry: Alternatively, the Chairman could direct them to answer the question, if in a position to do so.

Chairman: Yes, and I have done that as well. There were a couple of cases in the last few months in which I had to do that. I do not mind doing that but I would rather if I did not have to be creative about it but had the right to do it.

Deputy Marc MacSharry: May I make a final point?

Chairman: Yes.

Deputy Marc MacSharry: Deputy Devlin made the point that some members are on the Committee on Procedure as well. I would have a real problem if a member of this committee who is also a member of the Committee on Procedure was asked to recuse himself or herself from a discussion on this matter. He or she is an elected Member of the Oireachtas and no less or more powerful than anybody else. As a member of the Committee on Procedure, he or she can give his or her views on the rules. The fact that a rule applies to all committees, albeit is causing less difficulty for other committees, is not grounds for forcing individuals to recuse themselves from a hearing on that matter. I would be interested in the committee getting a legal opinion on that matter before Deputy Devlin would be thrown out of any meeting.

Deputy Colm Burke: I agree with Deputy MacSharry that Deputy Devlin should not be asked to step aside from the Committee on Procedure because he is a member of the Committee of Public Accounts.

Chairman: I am not aware that that is provided for by way of a Standing Order. I cannot confirm whether it is or is not in a Standing Order but I am not aware of it if that is the case. I have not heard anybody say it is in a Standing Order. It may be just custom and practice. The committee secretariat will seek clarification on whether it is provided for in any Standing Order or other procedure that a Deputy or Senator cannot be a member of both committees.

Deputy Cormac Devlin: If I am the only member who is a member of both committees, I will be happy to clarify the matter myself. I was not a full-time member of the Committee on Procedure. I was standing in for somebody else at the time this arose. There will be many members who will be members of both committees at times. The issue around Standing Order 218 needs to be resolved for this committee in particular.

Chairman: We can arrange to meet the Office of the Parliamentary Legal Adviser to get an

initial opinion.

Deputy Cormac Devlin: Will that be in January?

Chairman: It would be useful for members to read the legal brief on the outcome of the Kerins Supreme Court judgment. It would be very useful for them to apprise themselves of it to see exactly the points set out and recommendations therein. In my opinion, what has been put in place has gone beyond what was recommended. The clerk will make the brief available to each member of the committee. Members can read it over Christmas or in the new year and if they want, we can meet the OPLA before Christmas. I am open to doing that by the end of this week, subject to the availability of the OPLA, or early next week. I have no problem doing that. It is in members' hands. Do members want to do it before Christmas?

Deputy Catherine Murphy: I think it would be more realistic to do it early in the new year.

Chairman: Okay. Members can study the brief in the meantime. Is that agreed? Agreed.

The next matter on the agenda is No. 3, financial statements and accounts, of which there were 11 sets laid before the Dáil between 30 November and 11 December 2020.

The Comptroller and Auditor General issued a qualified audit opinion for the National Cancer Registry Board. He states that the accounts give a true and fair view, except that they account for costs of retirement benefit entitlements only as they become payable, although this is standard for many health bodies.

The Comptroller and Auditor General also issued clear audit opinions in all other cases. However, attention is drawn to the following cases. In the 2019 accounts for the Residential Institutions Statutory Fund Board, Caranua, the Comptroller and Auditor General has drawn attention to inadequate control over grant repayments. Members will recall that this issue was also flagged in the 2018 accounts, which were late and only came before us two weeks ago. That is a very lengthy delay. We will be meeting Caranua tomorrow and our invitation included a request to provide information on this and other matters, which we will address at our meeting tomorrow.

In the 2018-19 accounts for the University of Limerick and University College Dublin, attention is drawn to recognition of a deferred retirement benefit funding asset, standard for universities, and significant non-compliant procurement.

In the 2019 accounts for Tipperary Education and Training Board, attention is drawn to significant non-compliant procurement. The secretariat will follow up with these bodies in relation to procurement as a matter of course. Do members wish to address the accounts of Tipperary Education and Training Board, the University of Limerick or Caranua? As we are meeting Caranua tomorrow and this issue has been flagged with it, members might want to confine their remarks and questions to the Tipperary Education and Training Board and University of Limerick.

Deputy Marc MacSharry: The University of Limerick, UL, is on our work programme as well.

Chairman: Yes.

Deputy Marc MacSharry: In regard to Tipperary ETB, can Mr. McCarthy define "signifi-

cant?"

Mr. Seamus McCarthy: It is over €500,000. In this case, it was €696,000 and mixed-type procurements. I do not have the detail here but it is a mixed procurement.

Deputy Catherine Murphy: There is quite a bit of correspondence in regard to several ETBs. Has there been a change? I know guidance was issued to the ETBs. Has the Comptroller and Auditor General noticed a change or improvement since that happened?

Mr. Seamus McCarthy: Yes. Since we started paying attention to it, there has been a reduction. We generally draw attention where there is non-compliant procurement in excess of €500,000. That could be a large amount for a small body or a small amount for a large body but, cumulatively, by coming back at it year after year, we have driven down the value of procurement that is non-compliant. Tipperary ETB is working towards eliminating non-compliance or, at least, getting it below the threshold of €500,000. Also, a lot of the correspondence is responses to the committee having written to them where I have drawn attention to non-compliance in the past. Members may remember there was a large number of bodies whose accounts came before the committee in respect of which the clerk would have written and asked for a further explanation. A lot of that information is now coming in. I think that is why there is such an amount of it in the correspondence this week.

Deputy Catherine Murphy: The amalgamation of vocational education committees into a smaller number of ETBs was chaotic. If I remember correctly from previous examinations we had in this area, there was some really good practice and some terrible practice. There is also a Garda investigation-----

Mr. Seamus McCarthy: In one case.

Deputy Catherine Murphy: Yes, in one case, but a significant one. It looked like there was inadequate thinking around the amalgamations and that they were not properly planned. Some of this bad practice has come from that. How we stamp it out is the issue. Is there something we need to do in relation to this particular ETB? Has the committee written to it specifically?

Chairman: I suggest that we seek an update from Tipperary ETB in regard to its €696,000 spend on procurement that did not go through proper procurement.

Deputy Imelda Munster: I was going to bring up a matter under correspondence but we are talking about it now. I want to speak broadly about the responses we got from the education and training boards, ETBs. They all seem to report issues with maintaining and reporting on compliance across the board, due to the organisations and bodies that they oversee not having uniform reporting systems. Is Mr. McCarthy aware of a process in place to unify the systems within individual ETBs and if there is not such a process in place, what would be his guidance on best practice to appraise them as a whole?

Mr. Seamus McCarthy: Perhaps I should mention that I am finishing a report on the financial management of ETBs and the systems in place for their financial management at the moment. It is using a model that we developed generally for use in the public sector. We have trialled it in the ETB sector and there are learning points there. There is no doubt that from the time of their amalgamation, there were different accounting systems and record-keeping systems in the different ETBs and some of them are still operating two and three separate financial reporting systems. They are having difficulties and there are legacy problems there.

The procurement problems are probably lessening. A more structured approach to procurement is being put in place and it is something that they can definitely do within individual ETBs. For something like an accounting system, ETBs are moving towards a shared services model where they will all be using a similar system within their jurisdictions.

There is quite a lot to be done in the sector because it was a radical restructuring and six years on, they are still in the process of putting the required systems in place. I have drawn attention, because the ETBs have also done so, to the problems with ICT networks and the adequacy of the available internal audit service. Improvements are happening but they are happening slowly.

Deputy Imelda Munster: There is concern and fear that the ETBs are starting to sound like the HSE. There are a variety of different agencies for procurement and they cannot give all the details. There are different areas and they do not have details about different branches. Will the new system counteract any of that?

Mr. Seamus McCarthy: A more strategic approach to procurement should eliminate some of the problems. There is no doubt that a dispersed provision of services across a geographic area creates problems of centralisation.

Deputy Imelda Munster: Yes.

Mr. Seamus McCarthy: Schools do not necessarily want to have to contact the county town, or whatever, to get every little thing. Even within an ETB region, there can be clustering for procurement purposes and that gives suppliers in the locality an opportunity to service the schools that are close to them. It is certainly not anything as problematic in the ETB sector as it would be in the HSE. The HSE is in a class of its own.

Deputy Imelda Munster: I do not think many people would disagree with that. Another thing I noted was that the ETBs are involved in settling legal disputes. Would it be possible for the Comptroller and Auditor General to do a report about all of the legal settlements by the ETBs, including the cases and the costings? Would that be possible? There seem to be fairly substantial moneys involved.

Mr. Seamus McCarthy: It is certainly something at which I will look. ETBs are obliged to disclose in their statement of internal financial control, SIFC, the aggregate level of settlements. We would not want to be in a position of going in and second-guessing whether a settlement was appropriate because that is not for us to do. However, if the information is available in the statement of internal control, SIC, it should not be that difficult to at least have a first cut at the information. We could ask the liaison officer to see what information is available across the ETBs and to provide a note to the committee.

Deputy Imelda Munster: Yes. Would it be possible to get information on individual cases, including the reason for the settlement? I heard what Mr. McCarthy said and we would not want to be making judgment on anything but would it be possible to get costings and all of that for individual cases?

Mr. Seamus McCarthy: In order to do it, one would have to figure out what classifications to use. One would want a fairly consistent set of definitions as to types of cases. Nobody is going to want to provide information that identifies individuals involved in cases. It could be that some of the settlements are with employees or former employees. It could be settlements with people who have claims against the ETB, let us say for slips and trips, that kind of thing, or it

could be suppliers, where there are contractors and a dispute arises over a construction contract, or whatever. All of those could result in settlements. If the Deputy wants information on that kind of classification, the first thing to do would be to ask the ETBs to provide the information for a defined period.

Deputy Imelda Munster: That would be a start anyway.

Mr. Seamus McCarthy: It is important to be clear on the classes or classification about which the Deputy wants to get information. They would have to be fairly clearly defined.

Chairman: We could look for the total figure paid in claims by ETBs-----

Deputy Imelda Munster: And then look for a breakdown.

Chairman: -----over the most recent five-year period that is available for each ETB. They have now been established for six years and it would be a useful exercise to know how much each one has had to pay out for claims against those public bodies. We can look for that.

I will bring members back to the question about Tipperary ETB. Are we agreed that we are going to ask the secretariat to look for a breakdown of the €696,000 for the year 2019? We would like to know what it was for and the reasons for not going through normal procurement procedures. We will put a note beside the figure asking why. Is that agreed? Agreed.

Deputy Catherine Murphy: May I say something?

Chairman: The Deputy may.

Deputy Catherine Murphy: We, on this committee, have learned something about amalgamations. They have to be properly planned. An audit must be done beforehand to understand exactly where the gaps are going to be and what needs to be provided for. It is clear that the amount of planning that went into these amalgamations was not adequate. That lesson should be learned for future amalgamations. When it presents to us later, very often the wrong people are blamed or in the firing line because they cannot help it if they have three different accounting systems in three different counties in the one ETB. That is the position in which they have found themselves.

There is also a difficulty in terms of economies of scale and trying to find a nimbleness, while being fair to local suppliers. There is a range of things presented repeatedly in the audit to which we are going to have to come at some point because some of that information can be valuable for future amalgamations. The origin of the problems was poor planning.

Deputy Matt Carthy: To follow on from the Deputy's point, the Comptroller and Auditor General will recall that the amalgamations of vocational education committees, VECs, as they were at the time, into ETBs were set out as cost-saving measures. Is Mr. McCarthy aware of any analysis as to whether any costs were actually saved? The old VEC system had its faults but it was the only democratic means of education in terms of the oversight that was there. As a former member of a VEC, I always found it beneficial in many respects and in the breadth of experience it brought. I am not convinced that the amalgamation process worked in ensuring accountability. I am aware that a lot of members of ETBs are overstretched because they are expected to be on several boards of management across different counties, and there are all sorts of silly rules and regulations that were brought in with the legislation. I know that is not necessarily a concern for this committee but whether a cost benefit accrued from the amalgamation is

our concern. Will the Comptroller and Auditor General address that point first?

Mr. Seamus McCarthy: I am not aware of any exercise that has been done that demonstrates either that there have been savings or that there have not been savings.

Deputy Matt Carthy: Would the Office of the Comptroller and Auditor General perhaps be in a position to take a look at that?

Mr. Seamus McCarthy: It is something we could certainly try to look at, but really the obligation in the first instance to demonstrate value for money is with the Department and the ETBs themselves.

Deputy Matt Carthy: The committee might consider that as a part of our work programme, and write to the Department of Education about the cost benefit that accrued from the amalgamation, for us to examine.

I have one other point on the ETBs if I may.

Chairman: We are on the Tipperary ETB, but we have gone into a bigger discussion.

Deputy Matt Carthy: We are talking about the general thing. One of the issues that has arisen from time to time is the costs of legal settlements within ETBs. Would the Comptroller and Auditor General carry out an analysis of legal settlements? I am aware of a number of incidences, anecdotally, in different parts of the country where quite substantial settlements were reached by ETBs in respect of members of the public, staff or students. They are usually accompanied by confidentiality clauses so there is very little scope, that I am aware of, for accountability around those. Is this something the Comptroller and Auditor General might look into, perhaps when he is preparing the 2020 reports?

Mr. Seamus McCarthy: As I previously said to Deputy Munster, if settlements are made they are obliged to disclose them in the statement of internal control, SIC. We will have a look at that first and see if we can get a note across the 16 boards as to the scale of the settlements. We can then look into the reporting obligations they have in relation to it.

Deputy Matt Carthy: I apologise to Deputy Munster. I must have been out of the room for that.

Chairman: I thank the Comptroller and Auditor General for that reply. There is an issue also around the members of the ETBs. I was a member of one of the old VECs. A lot of this happens and the members of the board of directors have no part at all in this. They are not involved, unfortunately. I think it is one of the weaknesses, and not just in the ETB system. It is also in the local government system. The members of each ETB should be in a more powerful position instead of the powers being taken off them, which has happened over the years. It has gone the opposite way.

We will look for the information on the Tipperary board. The issue has also been raised on the overall position. Maybe the Comptroller and Auditor General will report back to the committee on that.

Mr. Seamus McCarthy: I did a report also around certain matters in Kildare-Wicklow ETB. Obviously there are further investigations going on in a separate way with regard to that. The reason for doing the report was to try to draw out some of the learning points in relation to the operation of boards and the relationship between boards and executives. There might be

some learning points there, if the committee wanted to look at that at some stage.

Chairman: There is a huge imbalance, and anyone who has sat on such boards will tell us that.

Are the accounts and statements agreed? Agreed.

The next item is correspondence and items that members have flagged. Item B is correspondence from Accounting Officers and Ministers, in follow up to the Committee of Public Accounts.

No. 222 B is from Mr. Liam McGrath, acting chief executive officer of Tipperary ETB, dated 27 November 2020, and provides information requested by the committee in relation to non-compliant procurement. This is for 2018 but we are discussing 2019 also. Members will see a table set out in the correspondence. Deputy Munster - who has just popped out of the room temporarily - wanted to discuss this, so we will hold off on it for a minute.

No. 223 is from Mr. Ray Mitchell, assistant national director of the HSE, dated 27 November, and provides information requested by the committee relating to non-compliant procurement to the value of €52.7 million. We can agree to note this correspondence and publish this. A number of members have indicated that we should speak on it. As we will see when we come to our work programme, the HSE will be before the committee in early February. I have flagged this along with Deputies Matt Carthy, Catherine Murphy and Imelda Munster.

Deputy Matt Carthy: In its correspondence, the HSE outlines that it had undertaken to report on 2019 procurement, but that it was delayed due to Covid-19 and staff being redeployed. The HSE states that it was to be completed and presented to the Government by April of this year. The HSE goes on to say that it intends to present the 2020 figures in April 2021. I do not follow why the project for 2019 has been abandoned. They started in February with an April deadline and one would imagine there would be adequate time to complete procurement reports for both years by April 2021. Perhaps the Comptroller and Auditor General could give his recommendation for what he would suggest in that regard. Does he see value in also completing the 2019 audit?

Deputy Catherine Murphy: I echo the point about what they were intending to do. It is completely understandable that it was interrupted because we have had a very difficult year. There is probably no organisation that has had a more difficult year than the HSE. The 2019 accounts, which are in the urgent category, look like those with the biggest level of non-compliance. That is likely to be a very strong feature of the accounts for this year, which we will look at next year, given that so much had to be bought very quickly. Would the Comptroller and Auditor General be looking, for example, for the risk analysis? I am aware that none of us saw this coming and the degree to which it has happened, and to be fair to Mr. Paul Reid he said at the time that there were going to be mistakes made. For example, at the weekend we saw that a cash payment was made to a supplier, Roqu Media, which is a company that did not have a background in the area. That is the kind of thing we are likely to see. Will the Comptroller and Auditor General be paying particular attention to the HSE, and will there be a different approach because of the year that was in it?

Mr. Seamus McCarthy: Yes, we certainly will be looking at procurement by the HSE. We will probably have to do it outside the financial audit. We will do it as a value-for-money examination for exactly the kinds of issues that the Deputy has identified. I expect the HSE

will be identifying problems that have arisen and disclosing problems that occurred. I would expect the HSE to disclose them in its financial statements in May 2021. I particularly want to try to focus on lessons, on what was anticipated in advance of a pandemic that the HSE would need or should have by way of stock and so on, and on what lessons the HSE has learned now on what we need to do to prepare for the future. That is the kind of the focus I would like to bring to that work.

Deputy Catherine Murphy: I presume it stands out when somebody was not in that particular business. They might have been in events management. I am sure this stands out.

Mr. Seamus McCarthy: I certainly do not want to prejudge any case until we look at it. We have consistently emphasised the need to have good procurement procedures and strategies and sound systems, obviously one needs to be able to react quickly. That does not mean that one just invents a new way of doing it. There is an existing way of doing it and existing tests. There is information about suppliers. One should be able to rely on that kind of information when one has to procure something urgently. That is the kind of approach we try to bring to it.

Deputy Catherine Murphy: So we know for planning purposes, is it likely to be the far end of next year before we see that?

Mr. Seamus McCarthy: Yes.

Deputy Catherine Murphy: We really need to be looking at putting it in the timetable around the summer. We need to get the head of procurement in with the Accounting Officer when looking at that.

Chairman: The correspondence presents a very unsatisfactory picture. There has not even been a report of an estimate of non-compliance with procurement guidelines. At the back end of this year - a full year later - that even an estimate cannot be provided is unsatisfactory. It is important that we follow up on this.

As per the work programme, we will have representatives of the HSE before us in early February, which will be the fourth hearing of the committee in the new year. Are people happy enough to deal with this then?

Deputy Catherine Murphy: Yes.

Chairman: We can note what we have and publish it. At that stage we will deal with those matters and others that may have arisen.

Deputy Catherine Murphy: We might ask the head of procurement to come in at the same time as these are quite clearly procurement issues.

Chairman: We can do that.

Deputy Catherine Murphy: These are quite clearly procurement matters so let us get a handle on those first.

Chairman: Is the committee agreed that we do that? Agreed. We will go back to No. 222B, the matter raised by Deputy Munster, which relates to Tipperary Education and Training Board. It gives a table for 2018, which some of us have gone through and marked. It is proposed that we note this and publish it. Is that agreed? Agreed.

The next item is also flagged by Deputy Munster and we can leave it until she is here. No. 239B has been flagged by Deputy Catherine Murphy and relates to education and training boards.

Deputy Catherine Murphy: I have made the points I wanted to make.

Chairman: The Deputy is happy enough. No. 246B is from Mr. Andrew Deeks, president of University College Dublin, dated 3 December, 2020, providing information requested by the committee relating to non-compliant procurement in 2017 and 2018 amounting to €3.9 million. Mr. Deeks states that €2 million relates to the extension of contracts originally procured competitively and the HSE also states that this is the reason for approximately a quarter of its non-compliant procurement in 2019. We will note this and publish it. Deputy Carthy has further proposed that we request a breakdown of the non-compliant procurement to the value €3.9 million. Our letter specifically requested the number of contracts that were non-compliant with procurement guidelines, the associated expenditure and the reasons for the non-compliance, so it is important that we follow up on this.

Deputy Matt Carthy: No, I will go along with the Chairman's comments.

Chairman: The Deputy is happy enough.

Mr. Seamus McCarthy: The UCD accounts for 2018 and 2019 were presented and there is a similar problem. My recollection is that it is of a similar scale.

Deputy Catherine Murphy: It is really disappointing that the previous committee did a sizable amount of work with universities but that we are continuing to see problems in this regard.

Chairman: Deputy Carthy's proposal is that we request a further breakdown of the non-compliant procurement. Is that agreed? Agreed. No. 247B is from Mr. Maurice Buckley, chairman of the Office of Public Works, OPW, dated 4 December 2020, providing information requested by the committee at our meeting with the OPW on 11 November. We will note and publish this and a number of Deputies wish to speak to it, including me and Deputies Murphy and Carthy.

The first element I will mention is the Mountmellick flood relief scheme. The chairman sets things out as they are and he was very frank the day he was here about the number of hoops that the project must jump through. There are five separate environmental requirements, reports, assessments and screenings that it must go through. We are looking at a four-year timeline before shovels could be stuck in the ground. If the committee agrees, I suggest we write back to chairman to ask if all these are necessary. I am sure he will tell us they are. I am curious how we get to the point where we need five separate environmental studies and screenings before we can go out to do a bit of work. I am not advocating a shortcut through environmental standards or anything like it but it is putting a major cost on the project. Much of the budget for these projects is being eaten up. I suggest to the committee that we write back with questions on this specific item and the five environmental procedures that must be completed for the Mountmellick scheme. Is that agreed? Agreed. I am okay with the rest of it as the information has been supplied on leases.

Deputy Catherine Murphy: I will quickly mention Hawkins House, which is referred to on page 14. I am seeking information on the building status and the timeline for development. Has funding been requested to develop it? Is it likely to be developed by the OPW or will it be

tendered? Will the office give us some more information on it?

Chairman: We can look for that. Deputy Carthy may also come in. We need to watch the time and there is approximately three or four minutes left.

Deputy Matt Carthy: There is a question on request on the historic figures of the measured term contract by the OPW. These figures shed some light on what is increased reliance by the OPW on the outsourcing of work discussed at a previous meeting. Given the spend is multiples of the intended use, this probably serves as a warning to the Government and others that when we cut back on services to make the balance sheet look good in the first year, it can have implications.

The OPW will come back to us in the new year so it would be useful for us to make a query in the mean time if it can confirm that the contract for these historic years in their entirety relates to the same contractor, how long the measured term contract administrator has been *in situ* and what the process for awarding the contract has been. I would like to follow up on that in January or February.

Deputy Catherine Murphy: The Strategic Banking Corporation of Ireland issue will be dealt with in January. We are waiting for other accounts.

Deputy Cormac Devlin: What is the procedure for questioning witnesses on correspondence sent in after an appearance at the Committee of Public Accounts? How soon does a body come back after an appearance?

Chairman: That is as soon as a committee wants them, although we are reasonable. What we have been doing is sending back correspondence that is not satisfactory and seeking clarification. The clerk to the committee and the secretariat have been good in that regard in terms of detail and what the committee wants.

Deputy Cormac Devlin: That is fine. In terms of Miesian Plaza, I remember their response on that. They stated that it would hopefully be concluded quite soon. We might monitor that over the next couple of months. If it is not resolved as they had indicated to the committee, we might reinvestigate that over time.

Chairman: We can get an update on that. I will have to move on.

I propose that we defer the rest of the correspondence and the work programme until the next business meeting of the committee. Is that agreed? Agreed.

On 13 January, we will be examining the Office of Government Procurement 2019 Appropriation Account. Usually, such meetings are on a Thursday. As the Accounting Office is unable to attend on the Thursday, I propose that we switch it around and hold the public hearing on that matter on the Wednesday and hold the business meeting on the Thursday. Is that agreed? Agreed. That gets us started into the new year. There is a table of the work programme from there.

Before I move to any other business, as Chairperson, I wish everybody on the committee, the staff, the Comptroller and Auditor General, the Comptroller and Auditor General's staff, the Comptroller and Auditor General liaison person and the various people who have helped the committee a happy Christmas - Nollaig shona mór daoibh.

Hopefully, in the new year - 13 January is our first meeting - we will get back into the work

of the committee. We were late starting this year with elections, etc. Nearly nine months were lost. In the three months we have had, however, we have managed to find our feet and get going again. I recognise the work of the staff as well in assisting us in doing that.

As there are no other issues members want to raise, we are adjourning until Wednesday, 13 January, when we will engage with the Office of Government Procurement.

Deputy Verona Murphy: What about tomorrow morning?

Chairman: Sorry, we have Caranua tomorrow morning.

The witnesses withdrew.

The committee adjourned at 6.33 p.m. until 11.30 a.m. on Thursday, 17 December 2020.